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Contents

Federal Register

Vol. 63, No. 201

Monday, October 19, 1998

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
457.....55779
958.....55779

14 CFR
39 (2 documents) 55783, 55918

Proposed Rules:
65.....55920

17 CFR
10.....55784

21 CFR

Proposed Rules:
1310.....55811

23 CFR
1275.....55796

26 CFR

Proposed Rules:
1.....55918

30 CFR

Proposed Rules:
72.....55811
75.....55811

40 CFR
52.....55804

Proposed Rules:
52.....55812
63.....55812

47 CFR
73 (5 documents) 55807, 55808, 55809

Proposed Rules:
73 (2 documents) 55831

49 CFR

Proposed Rules:
574.....55832

50 CFR
660.....55809

Proposed Rules:
17(2 documents).....55839
20.....55840

Rules and Regulations

Federal Register
Vol. 63, No. 201
Monday, October 19, 1998

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Basic Provisions; and Various Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final regulation which was published in the **Federal Register** on Wednesday, December 10, 1997 (62 FR 65130-65177). The regulation includes definitions and provisions common to most crops and the new late and prevented planting provisions.

EFFECTIVE DATE: October 16, 1998.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of these corrections includes definitions and provisions common to most crops and the new late and prevented planting provisions.

Need for Correction

As published, the final regulation contains errors which may prove misleading and are in need of correction: 1) the part heading is incorrect; and 2) section 457.106 Texas Citrus Tree Crop Insurance Provisions should have the phrase "documents and" added after the word "actuarial" and the word "table" should be deleted in section 7(a).

List of Subjects in 7 CFR Part 457

Common crop insurance regulations, Crop insurance, Texas citrus tree.

Accordingly, 7 CFR part 457 is corrected by making the following correcting amendments:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The part heading is corrected as set forth above.

§ 457.106 [Corrected]

3. In § 457.106, paragraph 7(a) introductory text, remove the words "actuarial table" and add in their place, the words "actuarial documents and."

Signed in Washington DC, on October 8, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–27679 Filed 10–16–98; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV97–958–2 FR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Imported Onions; Increase in Grade Requirement for White Onions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the minimum grade requirement for white onion varieties handled under the Idaho-Eastern Oregon onion marketing order from U.S. No. 2 or U.S. Commercial to U.S. No. 1. The marketing order regulates the handling of onions produced in certain designated counties in Idaho, and Malheur County, Oregon, and is administered locally by the Idaho-Eastern Oregon Onion Committee (Committee). This rule is intended to improve the marketing of white onions, increase returns to producers, and provide consumers with higher quality onions. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, the increase in the minimum grade requirement also applies to all imported varieties of white onions.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; and George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, 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, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including onions, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will

not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This final rule increases the minimum grade requirement for white onion varieties grown in the defined production area and handled under order authority. This rule, unanimously recommended by the Committee at its June 19, 1997, meeting, requires that all white onion varieties handled be U.S. No. 1 grade. The previous regulation permitted the handling of U.S. No. 2 grade and U.S. Commercial grade white onions as well. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, the increase in the minimum grade requirement also applies to all imported varieties of white onions.

Sections 958.51 and 958.52 of the order provide authority for the establishment and modification of regulations applicable to the handling of particular grades of onions. Section 958.328(a)(1) establishes the grade requirements for white onions handled subject to the Idaho-Eastern Oregon onion marketing order. Such grade requirements are based on the U.S. Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Types) (7 CFR part 51.2830 et seq.), or the U.S. Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR part 51.3195 et seq.). Previously, § 958.328(a)(1) required that white onion varieties be: (1) U.S. No. 2 or U.S. Commercial, 1 inch minimum to 2 inches maximum diameter; (2) U.S. No. 2 or U.S. Commercial, if not more than 30 percent of the lot is comprised of onions of U.S. No. 1 quality, and at least 1½ inches minimum diameter; or (3) U.S. No. 1, at least 1½ inches minimum diameter.

This final rule requires that all bags or other containers of white onion varieties shipped subject to order requirements be either: (1) U.S. No. 1, 1 inch minimum to 2 inches maximum diameter; or (2) U.S. No. 1, at least 1½ inches minimum diameter. Commingling of these two categories is not allowed. Exemptions under the order for special purpose shipments in § 958.328(e), and shipments qualifying for a minimum quantity exemption in § 958.328(g), continue to apply when applicable.

The Committee justification for its recommendation indicated that shipments of U.S. No. 2 and U.S. Commercial grade white onions have had a negative impact on producer returns and have been a factor in decreasing this industry's share of the fresh domestic white onion market. In addition, the Committee stated that consumers of white onions traditionally demand a quality product and that U.S. No. 2 and U.S. Commercial grade white onions have poor consumer acceptance.

The Committee stated that producers seldom profit from U.S. No. 2 or U.S. Commercial grade white onion sales, and as a consequence, common business practice for many is to discard such onions as culls following harvest. Based upon comments made by handlers and receivers of white onions, the Committee reported that shipments of low quality U.S. No. 2 and U.S. Commercial grade white onions have a depressing influence on the price of the higher quality U.S. No. 1 grade white onions. The free-on-board (f.o.b.) price for U.S. No. 2 white onions usually averages about one-half the f.o.b. price of U.S. No. 1 white onions, reflecting the weak demand for U.S. No. 2 white onions in fresh markets. Furthermore, over the last several years there has been increased competition from white onions grown in Nevada, Washington, Colorado, and Utah. The quality produced and marketed from those States is excellent. Thus, a higher grade for white onions grown in Idaho-Eastern Oregon should help this industry compete more effectively and increase demand through stronger confidence in the quality of Idaho-Eastern Oregon white onions.

Between the 1986/87 and the 1996/97 marketing seasons, an annual average of 336,000 hundredweight of white onions, representing 3.9 percent of the total of all onion varieties, has been shipped from the Idaho-Eastern Oregon production area. The annual average of all Idaho-Eastern Oregon onion shipments for this period, including white, yellow, and red onion varieties, is 9,517,500 hundredweight. During the same period of time, shipments of Idaho-Eastern Oregon U.S. No. 2 white onions averaged 3,807 hundredweight per year, or approximately an annual average of 1.2 percent of white Idaho-Eastern Oregon onion shipments and an annual average of .04 percent of all Idaho-Eastern Oregon onion shipments. The majority, or nearly 99 percent, of the white onions shipped from this production area are U.S. No. 1 grade. Onions from the Idaho-Eastern Oregon production area are shipped throughout most of the year. Most Idaho-Eastern Oregon white onions are marketed during the months of September, October, and November, with significant additional volume through February. Preliminary information pertaining to the 1998/99 shipping season indicates that the f.o.b. price for onions this season could average $13.10 per hundredweight.

As mentioned earlier, section 8e of the Act requires that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must then meet the requirements established for that particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order No. 958 and Marketing Order No. 959, which regulates the handling of onions grown in South Texas, since the marketing orders were established. The current import regulation specifies that import requirements for onions are to be based on the seasonal categories of onions grown in both marketing order areas. The import regulation specifies that imported onions must meet the requirements of the Idaho-Eastern Oregon onion marketing order during the period June 5 through March 9 and the South Texas onion marketing order during the period March 10 through June 4 each season. This final rule changes the import requirements for the period June 5 through March 9 of each marketing year to provide that all

imported white onion varieties must be U.S. No. 1 grade. While no changes are required in the language of § 980.117, all white onion varieties imported during this period are required to meet the modified grade requirement.

White onions are imported into the United States throughout the year from a number of different countries. By far the largest source of all imported onions is Mexico. Mexican white onions enter the United States from November through July, with the heaviest volumes moving during the months of December through April. The annual average volume of all Mexican onions imported into the United States between 1986 and 1996 was 3,333,150 hundredweight, while the annual average volume for all imported onions from all sources during the same period was 4,040,004 hundredweight.

Other sources of imported onions are Canada, Chile, New Zealand, France, Guatemala, Belgium, Morocco, and the Netherlands. In 1996 and 1997, imports from Canada totaled 654,728 hundredweight and 498,950 hundredweight, imports from Chile totaled 139,927 hundredweight and 85,914 hundredweight, and those from New Zealand totaled 13,007 hundredweight and 20,172 hundredweight, respectively. Also during 1996 and 1997, onion imports from France totaled 82,034 hundredweight and 102,956 hundredweight, imports from Guatemala were 32,540 hundredweight and 32,474 hundredweight, imports from Belgium totaled 1,565 hundredweight and 2,386 hundredweight, Moroccan imports totaled 287 hundredweight and 948 hundredweight, and imports from the Netherlands totaled 26,852 and 26,544 hundredweight, respectively.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final 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. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders which regulate the handling of domestically produced products.

There are approximately 35 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 260 onion producers, including approximately 80 producers of white onions, in the regulated area. In addition, approximately 150 importers of onions are subject to import regulations and could be affected by this final rule. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Approximately 90 percent of the handlers and 70 percent of the producers of Idaho-Eastern Oregon white onions may be classified as small entities. Although it is not known how many importers of white onions may be classified as small entities, it can be assumed that a number of the 150 importers could be classified as such.

This final rule increases the minimum grade requirement for white onion varieties grown in the defined production area and handled under order authority. This rule, unanimously recommended by the Committee at its June 19, 1997, meeting, requires that all white onion varieties handled be U.S. No. 1 grade. The previous regulation permitted the handling of U.S. No. 2 grade and U.S. Commercial grade white onions as well. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, the increase in the minimum grade requirement also applies to all imported varieties of white onions.

At the meeting the Committee discussed the impact its recommendation might have on handlers and producers in terms of cost. The Committee stated that producers seldom profit from U.S. No. 2 or U.S. Commercial grade white onion sales, and as a consequence, common business practice for many is to discard such onions as culls following harvest.

Based upon comments made by handlers and receivers of white onions, the Committee reported that shipments of low quality U.S. No. 2 and U.S. Commercial grade white onions have a depressing influence on the price of the higher quality U.S. No. 1 grade white onions. The f.o.b. price for U.S. No. 2 white onions usually averages about one-half the f.o.b. price of U.S. No. 1 white onions, reflecting the weak demand for U.S. No. 2 white onions in fresh markets. Furthermore, over the last several years there has been increased competition from white onions grown in Nevada, Washington, Colorado, and Utah. The quality produced and marketed from those States is excellent. Thus, a higher grade for white onions grown in Idaho-Eastern Oregon should help this industry compete more effectively and increase demand through stronger confidence in the quality of Idaho-Eastern Oregon white onions. Preliminary information pertaining to the 1998–99 shipping season indicates that the f.o.b. price for onions this season could average $13.10 per hundredweight.

While this rule may impose some additional costs on handlers and producers, the costs are expected to be minimal, and should be offset by the benefits of the rule. This final rule is expected to similarly impact importers of white onions. The Committee believes that this modification will benefit consumers, producers, and handlers. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than for large entities.

As alternatives to the proposal, the Committee discussed both leaving the regulations unmodified and using voluntary methods to solve the problem. Both alternatives were rejected. The prevailing opinion was that market confidence and producer income would continue to erode without the implementation of this rule. The majority of Committee members stated that voluntary measures had not been effective in the past.

Section 8e of the Act requires that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in more direct competition with the imported commodity. Imports must then meet the requirements established for the particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order No. 958 and Marketing Order No. 959, which regulates the handling of onions grown in South Texas, since the orders were established. The current import regulation specifies that import requirements for onions are to be based on the seasonal categories of onions grown in both marketing order areas.

The import regulations specify that imported onions must meet the requirements of the Idaho-Eastern Oregon onion order during the period June 5 through March 9 each season and the South Texas onion order during the period March 10 through June 4 each season. This final rule changes the import requirements for the period June 5 through March 9 of each marketing year to provide that all imported white onion varieties must be U.S. No. 1 grade.

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

In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 19, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses. Five comments were received and were of the view that the proposed increase in the minimum grade would not have a negative impact on small entities. These comments are discussed in more detail later in this document.

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

Both an advance notice of proposed rulemaking and a proposed rule were published in the **Federal Register** on February 3, 1998 (63 FR 5472), and on July 2, 1998 (63 FR 36194), respectively. Both publications provided 60-day comment periods to allow interested persons the opportunity to comment on the volume and grade of imported white onions, as well as other aspects of the potential grade increase, including its probable regulatory and economic impact on small business entities. Copies of the publications were faxed and mailed to the Committee office, which in turn notified Committee and Idaho-Eastern Oregon onion industry members of the recommendation and proposed rulemaking. The Department also provided copies of the publications to the administrative offices of the Walla Walla Sweet Onion Committee, the South Texas Onion Committee, and the Vidalia Onion Committee, as well as to the World Trade Organization, European Commission, Brussels, Belgium, onion importers on AMS' mailing list, to foreign embassies of countries known to be interested in exporting onions to the United States, and to the National Institute of Standards and Technology for dissemination to the secretariat of the World Trade Organization. In addition, the Committee's meetings were widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend and participate on all issues. Copies of the advanced notice and the proposed rule were also made available on the Internet by the Department as well as by the U.S. Government Printing Office.

Five comments were received in regard to the advanced notice (63 FR 5472). Four of the comments were supportive of the Committee's recommendation. The Idaho-Eastern Oregon Onion Committee reaffirmed its unanimous recommendation in favor of increasing the minimum grade for white onions from U.S. No. 2 or U.S. Commercial to U.S. No. 1. The South Texas Onion Committee, administering Marketing Order No. 959, expressed its support of the recommended modification as well. The South Texas Onion Committee commented that when the South Texas industry enters the market in March of each year, the market has been flooded with inferior quality white onions from both Mexico and Idaho-Eastern Oregon, and that the onion industries and consumers would benefit from the minimum grade increase. The minimum grade requirement for white onion varieties handled under the South Texas marketing order is a modified U.S. No. 1 grade. This rule will increase the minimum grade requirement for Idaho-Eastern Oregon onions, resulting in the respective minimum grade requirements becoming more similar.

Also commenting in favor of the Committee's recommendation were a South Texas onion handler, and an association representing Texas onion handlers and importers of Mexican onions. Both commenters are located in Mission, Texas. The handler commented that the recommended modification would allow the South Texas industry the necessary confidence to continue to produce onions for a market free from the negative consumer reaction associated with poor quality white onions. The association also added its support of the recommended minimum grade increase. The association stated that it has within its membership approximately 21 South Texas onion handlers, most of whom also import onions from Mexico. The commenter added that the association has numerous members who only handle imported produce, including white onions. The commenter noted further that in the modern competitive produce market, consumers must be provided with the best quality produce available.

A comment was also received from the European Commission, Brussels, Belgium, on behalf of the European Community. That comment stated that the proposal aims at increasing the minimum diameter size requirement for imported onions from 2.54 to 2.79 centimeters for the period June 5 through March 9 of each year, and objected to such action. However, the Committee's recommendation was to increase the minimum grade for Idaho-Eastern Oregon white onions during the period June 5 through March 9 from U.S. No. 2 to U.S. No. 1, and did not include a modification to the minimum diameter size itself, which continues to be 1 inch or 2.54 centimeters.

In conjunction with the issuance of the advance notice and request for comment, the Texas Cooperative Inspection Program monitored white onions imported from Mexico during the period December 1, 1997, through March 9, 1998. This process was conducted at the request of the AMS to determine the quantity of imported white onions potentially impacted by the Committee's recommendation. An analysis of the information provided by the Inspection Program indicates that approximately 98 percent of the white onions imported from Mexico during the test period met U.S. No. 1 grade. The balance of the imported white onions during this period either met U.S. Commercial grade or failed to meet the minimum of U.S. No. 2 grade. There were no U.S. No. 2 grade white onions imported from Mexico during this period. During the test period, a total of 1,006,279 50-pound containers were offered for importation. A total of 948,069 50-pound containers graded U.S. No. 1, 11,427 50-pound containers graded U.S. Commercial, and 10,783 50-pound containers failed to meet the current minimum grade requirement of U.S. No. 2.

Five comments were also received in regard to the proposed rule (63 FR 36194). Comments were received from the South Texas Onion Committee, two Texas produce marketing firms, and two Texas producers. All five commenters expressed support for the proposal. Furthermore, each commenter expressed the view that the increase in

the minimum grade for Idaho-Eastern Oregon white onions will not have a negative impact on small entities, and that the change will in fact assist producers from all growing regions in providing better quality white onions to consumers.

Accordingly, based on the comments received, no changes will be made to the rule as proposed, except for non-substantive format changes to conform to the current scheme in § 958.328.

Idaho-Eastern Oregon onion handlers have just begun shipping 1998–99 crop white onions, and they want to accrue the benefits anticipated. The Department understands that very little modification must be made to existing packing equipment and sorting procedures by domestic handlers and exporters/importers to meet the new grade requirement. However, sufficient time must be provided for the Idaho-Eastern Oregon and import onion industries to comply with the new grade requirement and to allow white onions already picked and packed, and certified as meeting the lower minimum grade requirements to be shipped. To allow this to occur and to allow handlers and exporters time to adjust their sorting and packing lines to meet the higher grade, the Department has decided that the effective date of this action should be November 9, 1998. This effective date is reasonable and will allow both the domestic and imported onion industries sufficient time to adjust to the new grade requirement and to ship any onions that are already picked and packed.

In view of all of the foregoing, the Department has concluded that the increase in the minimum grade requirement to U.S. No. 1 will advance the interests of the Idaho-Eastern Oregon and foreign onion industries and should be implemented.

In accordance with the section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee, the comments received, 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Idaho-Eastern Oregon onion handlers are aware of this action, which was unanimously recommended by the Committee, and are prepared to comply with the new grade requirement; (2) Handlers, exporters, importers, and other interested persons were given an opportunity to provide input through the advance notice of proposed rulemaking and the proposed rule; (3) the grade increase needs to be in place to cover the balance of the 1998–99 white onion shipping season so that the Idaho-Eastern Oregon onion industry can take advantage of the anticipated benefits; and (4) an adequate amount of time has been provided for handlers and importers to adjust their packing and sorting lines to meet the higher grade requirement.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 958.328 is amended by revising paragraph (a)(1) to read as follows:

§ 958.328 Handling Regulations.

* * * * *

(a) *Grade and Size requirements*—(1) *White varieties.* Shall be either:

(i) U.S. No. 1, 1 inch minimum to 2 inches maximum diameter; or

(ii) U.S. No. 1, at least 1½ inches minimum diameter. However, neither of these two categories of onions may be commingled in the same bag or other container.

* * * * *

Dated: October 13, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–27892 Filed 10–16–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–01–AD; Amendment 39–10845; AD 98–21–36]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Robinson Helicopter Company (Robinson) Model R44 helicopters, that requires removing and replacing the cyclic control pilot's grip assembly (grip assembly) with an airworthy grip assembly. This amendment is prompted by a report of a crack in the welded corner of a grip assembly. The actions specified by this AD are intended to prevent use of a grip assembly that may crack, resulting in failure of the grip assembly and subsequent loss of control of the helicopter.

DATES: Effective November 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 23, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505, telephone (310) 539–0508, fax (310) 539–5198. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Boulevard, Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Robinson Model R44 helicopters was published in the **Federal Register** on October 17, 1997 (62 FR 53977). That action proposed to require removing and replacing the cyclic control pilot's grip assembly (grip

assembly) with an airworthy grip assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except that credit is given in the final rule for previous compliance with the requirement of this AD by adding "unless accomplished previously" in the compliance section. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 5 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $576 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,080.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 a new airworthiness directive to read as follows:

AD 98–21–36 Robinson Helicopter Company: Amendment 39–10845. Docket No. 97–SW–01–AD.

Applicability: Model R44 helicopters, serial numbers (S/N) 0001 through 0159, except S/N 0143, 0150, and 0156, with cyclic control pilot's grip assembly (grip assembly), part number (P/N) A756–6 Revision N or prior, installed, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Within 25 hours time-in-service or 30 calendar days after the effective date of this AD, whichever occurs first, unless accomplished previously.

To prevent use of a grip assembly that may crack, resulting in failure of the grip assembly and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the grip assembly, P/N A756–6 Revision N (or prior), and replace it with an airworthy grip assembly, P/N A756–6 Revision M (or later), in accordance with KI–112 R44 Pilot's Grip Assembly Upgrade Kit instructions, dated December 20, 1996.

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

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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with KI–112 R44 Pilot's Grip Assembly Upgrade Kit instructions, dated December 20, 1996. 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 Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 23, 1998.

Issued in Fort Worth, Texas, on October 7, 1998.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–27760 Filed 10–16–98; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 10

Rules of Practice; Final Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is adopting final regulations amending its Rules of Practice, which govern most adjudicatory proceedings brought under the Commodity Exchange Act, as amended ("Act"), other than reparations proceedings. In order to improve the overall fairness and efficiency of the administrative process, the Commission published for comment a notice of proposed amendments to the existing rules. Following consideration of the comments received, this notice sets forth each amended rule in its final form.

Most of the substantive amendments adopted by the Commission serve one of two purposes. Some are intended to foster a greater exchange of information between the Commission's Division of Enforcement ("Division") and the respondents before a hearing takes place and to clarify the production obligations of each party. Others will facilitate use of the authority granted to the Commission by the Futures Trading Practices Act of 1992 to require the

payment of restitution by respondents in administrative enforcement proceedings. The remaining amendments are largely technical in nature.

EFFECTIVE DATE: The effective date of these rules November 18, 1998. The amended Rules of Practice shall apply only to proceedings initiated on or after the effective date. All proceedings initiated before the effective date shall be conducted under the former Rules of Practice.

FOR FURTHER INFORMATION CONTACT: Stephen Mihans, Office of Chief Counsel, Division of Enforcement, at (202) 418–5399, or David Merrill, Office of the General Counsel, at (202) 418–5120, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, D.C. 20581.

SUPPLEMENTARY INFORMATION: On April 3, 1998, the Commission published a notice in the **Federal Register** announcing proposed amendments to the agency's Rules of Practice.[1] Although the Commission's proposals were not intended to be sweeping or groundbreaking, they did represent the first major revision of the Rules of Practice in more than 20 years. The notice identified fourteen existing rules that the Commission proposed to amend. These provisions, and the subject areas that they cover, included Rule 10.1 (scope and applicability of rules of practice); Rule 10.12 (service and filing of documents; form and execution); Rule 10.21 (commencement of the proceeding); Rule 10.22 (complaint and notice of hearing); Rule 10.24 (amendments and supplemental pleadings); Rule 10.26 (motions and other papers); Rule 10.41 (prehearing conferences; procedural matters); Rule 10.42 (discovery); Rule 10.66 (conduct of the hearing); Rule 10.68 (subpoenas); Rule 10.84 (initial decision); Rule 10.101 (interlocutory appeals); Rule 10.102 (review of initial decision); and Rule 10.106 (reconsideration). In addition, the Commission proposed adding to its Rules of Practice a new subpart (proposed Subpart I) addressing the administration of restitution orders issued pursuant to 7 U.S.C. 9 (1994) and a statement of policy relating to the acceptance of settlements in administrative and civil proceedings instituted by the Commission.

In its **Federal Register** notice, the Commission welcomed public comment on the proposed changes to its Rules of Practice and invited other suggestions to improve or expedite the adjudicatory process.[2] Two comment letters were received, one from the Law and Compliance Division of the Futures Industry Association ("FIA") and the other from the Committee on Commodities and Futures Law of the New York State Bar Association ("NYSBA"). Both letters were supportive of the Commission's efforts to improve the overall fairness and efficiency of the administrative process. Neither letter included specific comments on the proposed amendments to Rules 10.1, 10.12, 10.21, 10.22, 10.26, 10.41 and 10.66, all of which are being adopted as presented in the **Federal Register** notice of April 3, 1998.

However, both the FIA and the NYSBA raised issues relating to the remaining seven rules that the Commission proposed amending. While most of their comments focused on issues related to discovery and restitution, both groups asked that the Commission either modify or clarify other proposed revisions to the Rules of Practice. A discussion of their comments, as well as the changes that the Commission has determined to make in the wording of the proposed amendments, follows.

I. Rule Changes Related to Discovery

A. Prehearing Materials

As proposed by the Commission, new Rule 10.42(a) expands the information required to be included in each party's prehearing memorandum to include the identity, and the city and state of residence, of each witness (other than an expert) who is expected to testify on the party's behalf, along with a brief summary of the matters to be covered by the witness's expected testimony. In addition, each party will be required to furnish a list of documents that he or she will introduce as evidence at the hearing and copies of any documents that the other parties do not already have in their possession or to which they do not have reasonably ready access. With respect to expert witnesses, each party will be required to furnish the other parties with a statement providing relevant information about the witness, as well as a statement setting forth the opinions to be expressed by the witness and the bases or reasons for those opinions.

In commenting on new Rule 10.42(a), the FIA expressed concern that, since a respondent would not have had an opportunity to develop a defense strategy before the complaint was filed, he or she may need additional time to decide whether to seek the testimony of an expert witness. As a consequence, it suggested that the Commission explicitly require its administrative law judges ("ALJs") to consider the amount of time a respondent has had to prepare when issuing an order directing him or her to submit materials under the new rule.

This suggestion is similar to other comments in both letters, requesting that the amended Rules of Practice include detailed guidelines for the Commission's ALJs to follow in scheduling proceedings. The Commission generally avoids interfering with the discretion of an ALJ to control his or her docket. Moreover, in new Rule 10.42(d), the Commission specifically authorizes its ALJs to modify any requirement of new Rules 10.42(a), 10.42(b) or 10.42(c) that a party can show is unduly burdensome or inappropriate under all the circumstances. The Commission is not inclined to attempt to draft a code of all the various factors an ALJ may take into account in establishing a schedule for the production of prehearing materials under new Rule 10.42(a) or for other prehearing procedures. The Commission is confident that, in issuing scheduling orders, its ALJs will take all relevant factors into consideration so as to ensure both fairness and efficiency. Accordingly, the Commission has determined to adopt new Rule 10.42(a) as proposed, without making any further changes.[3]

B. Investigatory Materials

As proposed by the Commission, new Rule 10.42(b) obligates the Division of Enforcement to make available for inspection and copying by the respondents a broad range of documents obtained during the investigation that preceded the filing of the complaint against them. These include all documents that were subpoenaed or otherwise obtained by the Division from persons not employed by the Commission and all transcripts of investigative testimony taken by the Division, together with all exhibits to those transcripts. As proposed, the Division would not have to produce, however, any documents that reveal (1) the identity of confidential sources, (2) confidential investigatory techniques or procedures or (3) the business transactions and positions of persons other than the respondents unless they are relevant to the resolution of the

[1] *See* 63 FR 16453 (April 3, 1998).

[2] Although the comment period was originally scheduled to end on June 2, 1998, it was extended by the Commission for an additional 30 days. *See* 63 FR 30675 (June 5, 1998).

[3] For the sake of accuracy, the heading of new Rule 10.42(a) has been changed from "Pretrial materials" to "Prehearing materials."

proceeding. In addition, nothing in the new rule limits the Division's ability to withhold documents or other information on the grounds of privilege or the work product doctrine.[4]

In commenting on new Rule 10.42(b), both the FIA and the NYSBA expressed concern about a number of specific provisions and asked the Commission to consider alternative approaches. As a result of these comments and the Commission's own review of the original proposal, several changes have been made in the wording of new Rule 10.42(b). A discussion of the comments and changes follows.[5]

As an initial matter, based on its own further consideration of new Rule 10.42(b), the Commission has made several substantive changes in the final rule that are designed to clarify the limitations of the Division's disclosure obligations. First, the final rule makes clear that, if the Commission or another governmental entity has a continuing investigative interest in another matter or another person, the Division does not have to turn over information that relates to the other matter or person simply because it happens to have been obtained as part of the investigation that led to the pending proceeding. Only if the information is also relevant to the resolution of the proceeding would it have to be made available to the respondents under new Rule 10.42(b).

Second, and in a similar vein, the final rule clarifies that, if a proceeding has resulted from a broad investigation into a general subject matter or a general kind of conduct, the Division's disclosure obligation under new Rule 10.42(b) only attaches to that portion of the investigation relating to the particular transactions, conduct or persons involved in the pending proceeding. At times, the Division will undertake an investigation into a general subject matter area, like the one that recently occurred in connection with so-called hedge to arrive contracts in the grain industry. Such an investigation may spawn a number of separate inquiries and result in the initiation of a number of separate proceedings. When a proceeding is initiated as a result of this kind of broad investigation, the Division is not required to produce all of the documents that it has obtained in the larger investigation. Instead, as paragraph (3) of new Rule 10.42(b) now indicates, it will only be obligated to produce those materials that relate to the particular matters at issue in the pending proceeding.

Third, a provision has been added to new Rule 10.42(b) that allows the Division to withhold information obtained from domestic or foreign governmental entities or from a foreign futures authority, as defined in 7 U.S.C. 1a(10), that either (1) is not relevant to the resolution of the proceeding or (2) was provided on condition that it not be disclosed or only be disclosed by the Commission, or a representative of the Commission, as evidence in an enforcement or other proceeding. To carry out its statutory duties effectively, the Commission must be in a position to receive information from other governmental entities and from foreign futures authorities under circumstances that allow them to be as forthcoming as possible. Thus, the Commission must be able to protect the confidentiality of information that is irrelevant to the pending proceeding or was furnished to the Commission upon condition that its disclosure be restricted. The language that the Commission has added to new Rule 10.42(b) strikes a balance between the appropriate disclosure of information to the respondents in a proceeding and the Commission's need to encourage cooperative information-sharing with other governmental entities here and abroad and with foreign futures authorities.[6]

Turning to other concerns about new Rule 10.42(b), the FIA comment letter proposed that the Division's disclosure obligations be widened to include all subpoenas and written requests for information issued by the Division, as well as all relevant final examination and inspection reports prepared by the Commission's Division of Trading and Markets and Division of Economic Analysis. The Commission agrees that making available for inspection and copying by respondents those portions of subpoenas and written requests for information that resulted in the production of investigative materials may assist the respondents in understanding the produced materials. Accordingly, language has been added to the new rule requiring the Division to provide respondents with access not only to all documents that were produced pursuant to subpoenas issued by the Division or otherwise obtained from persons not employed by the Commission, but also to any portion of a subpoena or written request that resulted in the furnishing of such documents to the Division. However, respondents need not be given access to subpoenas and written requests (or any portion of a subpoena or written request) that did not result in the production of investigatory materials being made available to the respondents. The Commission is also of the view that the FIA's request for all relevant final examination and inspection reports is too vague.

Further commenting on new Rule 10.42(b), the FIA also requested that the Division be required to make investigatory materials available to a respondent within 14 days after he or she files an answer to the complaint. This proposal, however, invites the kind of micromanaging of the prehearing scheduling process in which the Commission is not prepared to engage.

The NYSBA's comment letter raised separate concerns regarding new Rule 10.42(b). First, it noted that, by making investigative materials available at the Commission office where they are ordinarily maintained, the new rule potentially works a hardship on respondents, particularly where the investigation leading to the complaint was conducted by Division staff at the Commission's headquarters in Washington, D.C. Also, the letter suggested that, in the event the Division chooses to withhold documents from production under new Rule 10.42(b), it automatically should be required to compile an index of such documents, as is now the case under the Federal Rules of Civil Procedure.

Both points are well taken. Accordingly, new Rule 10.42(b) has been revised to require that, upon written request, a respondent will be given access to prehearing materials at

[4] In the final version of new Rule 10.42(b), this provision has been revised to make clear that the rule is not intended to require the production of documents containing information that is protected from disclosure by applicable law.

[5] The FIA suggested that a separate provision be added to new Rule 10.42 clarifying that, notwithstanding the Division's right to withhold documents on claims of privilege or the work product doctrine, the Division is nonetheless obligated to turn over all exculpatory materials required to be produced under *Brady* v. *Maryland*, 373 U.S. 83, 87 (1963). In the notice announcing the proposed amendments, the Commission expressly stated that the scope of the Division's obligations to produce material exculpatory information under *In re First National Monetary Corp.*, [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,853 at 27,581 (CFTC Nov. 13, 1981) and its progeny is not addressed by these rule changes. 63 FR 16455 n.3. The issues potentially raised by consideration of the appropriate interpretation and application of an obligation to produce material exculpatory information are broad and complex. They have been addressed to date only to a very limited extent in Commission adjudicatory decisions. For these reasons, the Commission is adhering to its decision not to address those issues in these rule amendments.

[6] Of course, like all of the documents that new Rule 10.42(b) allows the Division to withhold from inspection and copying by the respondents, these materials may have to be produced under other provisions in the rules, for example, if the Division intends to introduce them into evidence at the hearing, if they were relied upon by an expert witness testifying on the Division's behalf or if they were appended as exhibits to a witness statement or to investigate testimony taken by the Division.

the Commission office nearest to the location where the respondent or his or her counsel resides or works. In addition, the Division will be obligated to furnish the respondents with an index of all documents being withheld when it makes prehearing materials available for inspection and copying under new Rule 10.42(b). The new rule explicitly states that the index of withheld documents should provide sufficient information to enable the respondents to assess the privilege or protection being claimed by the Division, consistent with the asserted privilege or protection against disclosure.[7]

New Rule 10.42(b) does not require the Division to identify on its index of withheld documents any materials containing information obtained from a governmental agency in the United States or abroad or from a foreign futures authority that was provided on condition that it not be disclosed or that it only be disclosed by the Commission or a representative of the Commission as evidence in an enforcement or other proceeding. In the Commission's view, no point would be served by listing such materials on the Division's index, since they would be properly withheld on the basis of the condition alone. However, if the Division has received these kinds of materials from a governmental agency or foreign futures authority, it will be required to inform the respondents of that fact, without having to index or describe further any of the documents at issue or their source.

Both the FIA and NYSBA objected to the provision in new Rule 10.42(b) that deals with any failure by the Division to make investigative materials available to the respondents. As proposed, the new rule requires that, in the event of such a failure, no rehearing or reconsideration of a matter already heard or decided shall be required, unless the respondent demonstrates resulting prejudice. Each comment letter argued that the burden should be on the Division to show that any failure to make documents available did not prejudice the respondents. This argument overlooks, however, a substantial body of federal case law holding that, even in criminal cases, it is the defendant's burden to show prejudice from the loss or wrongful withholding of evidence by the government. *United States* v. *Walsh*, 75 F.3d 1, 8 (1st Cir. 1995) (noncompliance with the Jencks Act does not justify overturning a criminal conviction in the absence of "some showing of prejudice* * *beyond mere assertions that the defendant would have conducted cross-examination differently"). As a general rule, the burden is on the party claiming prejudice to show prejudice and for good reason, since among other considerations, the obligation to prove a negative—in this case, the lack of prejudice—often can be impossible one. Accordingly, the final wording of paragraph (6) of new Rule 10.42(b) is unchanged.[8]

C. Witness Statements

As proposed by the Commission, new Rule 10.42(c) requires that each party to a proceeding make available to all of the other parties any statement made by any person whom the party calls, or expects to call, as a witness that relates to his or her anticipated testimony. These statements include transcripts of investigative or trial testimony given by the witness, written statements signed by witness and substantially verbatim notes of interviews with the witness, as well as the exhibits to such transcripts, statements or notes. For purposes of the new rule, substantially verbatim notes mean notes that fairly record the witness's exact words, subject to minor inconsequential deviations.

New Rule 10.42(c) generally accords with Rule 26.2 of the Federal Rules of Criminal Procedures, which places in the Federal Rules the substance of the Jencks Act, 18 U.S.C. 3500. It differs from the former Rules of Practice, *inter alia*, by requiring all parties, and not just the Division of Enforcement, to produce witness statements. In commenting on the new rule, the FIA and NYSBA argued that it disadvantages respondents unfairly. In their view, by having to produce, in advance of the hearing, statements of potentials witnesses who may or may not testify and the scope of whose testimony may still be uncertain, respondents are being forced to disclose their strategy and evidence prematurely. Also, in their view, since the Division has had an opportunity to prepare its case before the compliant was filed, it is not similarly disadvantaged.

In response to this concern, the language of new Rule 10.42(c) has been revised to require that a respondent will not have to make witness statements available until the close of the Division's case-in-chief at the hearing. By then, the respondent will reasonably know whom he or she will call as witnesses for the defense, as well as the testimony that those witnesses can be expected to give. The final rule also provides that, if additional time is needed for the Division to review and analyze a respondent's witness statements before cross-examining his or her witnesses, the ALJ should grant the Division the necessary continuance.

The NYSBA also suggested that the Commission require the production of any summaries that have been made of investigative testimony or witness statements. In the **Federal Register** notice announcing the proposed amendments, however, the Commission specifically noted that it does not intend to require the production of notes prepared by persons other than the witness himself or herself, including attorney's notes. The Commission created a narrow exception for notes that in effect constitute transcriptions of a witness's statement. The NYSBA proposal would substantially widen that narrow exception, opening the door to endless disputes over what constitutes a summary and putting at risk properly privileged material. Accordingly, the Commission has not adopted the NYSBA proposal.

D. Objections to Authenticity or Admissibility of Documents

New Rule 10.42(f) governs prehearing objections to the authenticity or admissibility of documents. As proposed, it provides that, upon order by the ALJ presiding over a proceeding, each party serve on the other parties a list of documents that it intends to introduce at the hearing. Upon receipt of the list, the other parties have 20 days to file a response, disclosing any objections that they wish to preserve as to the authenticity or admissibility of the documents thus identified. Where any other objects to the authenticity or admissibility of any of the listed documents, the ALK may treat the list of documents as a motion *in limine*. After affording the parties an opportunity to brief the motion to the degree necessary for a decision, the ALJ may rule on the advance of the hearing to the extent appropriate.

New Rule 10.42(f) is modeled on Rule 26(a)(3)(C) of the Federal Rules of Civil Procedure. As the NYSBA comment

[7] In like fashion, paragraph (3) of new Rule 10.42(c) is being revised to require that each party to a proceeding make and keep a similar log of all documents withheld under that provision and turn it over to the other parties when producing witness statements. The FIA comment letter also proposed explicit recognition in the rules of an ALJ's authority to conduct *in camera* review of materials being withheld. While ALJs have exercised such authority without Commission objection, the Commission does not wish at this time to open up questions concerning the nature and scope of any such authority by addressing it through rulemaking.

[8] The Commission likewise has determined not to change the burden relating to the showing of prejudice in paragraph (4) of new Rule 10.42(c), which deals with failure of a party to produce witness statements.

letter correctly noted, Rule 26(a)(3)(C) reserves for trial a party's right to object to the admissibility of a document on grounds of relevance, undue prejudice, confusion of issues, needles presentation of cumulative evidence or waste of time. By contrast, under new Rule 10.42(f) as proposed, all objections not raised by a party may be deemed waived. To make the new rule more compatible with the Federal Rules on which it was modeled, the Commission has modified the final rule to permit all objections not raised by a party to be deemed waived, except fro relevance, needless presentation of cumulative evidence or waste of time. Because the evidence and argument in an administrative proceeding is heard by an ALJ rather than a jury, there is no compelling need to preserve objections based on undue prejudice or confusion of the issues.[9]

E. Subpoenas

Under the former rules, documents subpoenaed by a party to an administrative proceeding could only be produced at the time of the hearing itself. New Rule 10.68 allows the parties to a proceeding to apply for the issuance of a subpoena by the ALJ requiring the production of documents at any designated time and place. Although both comment letters were generally supportive of the new rule, the FIA suggested it be modified (1) to permit the filing of a motion to quash by the owner, creator or subject of a subpoenaed document (rather than just the recipient of the subpoena) and (2) to enlarge the time within such a motion could be filed from seven days to 15 days. In addition, the FIA asked the Commission to clarify the standards under which a protective order can be obtained from the ALJ.

In the Commission's views, new Rule 10.68 should not be an attempt to resolve issues of standing with regard to motions to quash or modify subpoenas. Such issues are more appropriately addressed through adjudication.[10] Also, the Commission has determined to set the time for filing such motions at 10 days after the subpoena has been served, which is the amount of time that Rule 10.26 allows generally for responses to motions. Accordingly, paragraph (c) of new Rule 10.68 has been revised to provide simply that, within 10 days after service of a subpoena or at any time prior to the return date thereof, whichever is earlier, a motion to quash or modify the subpoena may be filed with the ALJ who issued it, without reference to who would have standing to file such a motion.[11]

To clarify the standards under which protective orders may be authorized, the Commission has added language to new Rule 10.68(c)(2) explicitly providing that protective orders may be issued upon a showing of good cause and that, in considering whether to issue a protective order, ALJs shall weight the harm resulting from disclosure against the benefits of disclosure. *Cf.* Fed. R. Civ. P. 26(c) advisory committee's note (observing that, in deciding whether to give trade secrets immunity against disclosure, federal courts routinely weigh the moving party's claim to privacy against the need for disclosure).

In promulgating new Rule 10.68(c)(2), the Commission notes that the burden of justifying any protective order remains on the person who seeks it. *Federal Trade Comm'n* v. *Standard Financial Management*, 830 F.2d 404, 411 (1st Cir. 1987) (unsealing defendant's financial documents as germane to district court's approval of negotiated settlement with agency). Good cause can be established only upon a showing that the person seeking the protective order will suffer a clearly defined and serious injury if the requested order is not issued. *Id.* at 412 ("[a] finding of good cause [to impound documents] must be based on a particular factual demonstration of potential harm, not on conclusory statements"). Any such injury must be balanced against the public's recognized right of access to judicial records. *Id.* at 410. All of these considerations, which are reflected in new Rule 10.68(c)(2), are particularly pertinent in the context of enforcement proceedings initiated by the Commission, since such proceedings are "patently matters of significant public concern." *Id.* at 412.

In connection with these revisions to new Rule 1068(c)(2), the Commission has deleted language found in paragraph (7) of new Rule 10.42(c) that dealt with the issuance of protective orders covering confidential information contained in prehearing materials produced by the Division of Enforcement. In considering requests for protective orders sought under any section of the rules, ALJs henceforth shall rely on the standards set forth in paragraph (2) of new Rule 10.68(c).[12]

II. Rule Changes Related to Restitution

Since 1992, Section 6(c) of the Act, 7 U.S.C. 9 (1994), has authorized the Commission to require restitution in administrative proceedings to customers of damages proximately caused by violations committed by the respondents. To facilitate this process, the Commission prosed amending Rule 10.84 of the Rules of Practice to include a new provisions specifically to address restitution and adding a new Subpart I, which would address the administration of restitution orders.

Commentting on this proposal, the NYSBA suggested that, because the other provisions of Rule 10.84 deal only with procedural matters, it would be preferable to move all of the regulatory provisions on restitution to the new Subpart I. In promulgating final rules, the Commission has made the suggested revision.

As thus revised, the final Subpart I provides that, in any proceeding where an order requiring restitution may be entered, the ALJ shall determine, as part of his or her Initial Decision, whether restitution is an appropriate remedy. In making this decision, the ALJ can consider the degree of complexity likely to be involved in establishing individual claims; the likehood that such claimants can obtain compensation through their own efforts; the respondent's ability to pay claimants damages that his or her violations have caused; the availability of resources to administer restitution; and any other matters that justice may require. *See In re Staryk,* [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,206 at 45,812 (CFTC Dec. 18, 1997). In the event that restitution is deemed to be appropriate, the ALJ's Initial Decision shall include an order of restitution. In it, the ALJ will specify (1) the violations that form the basis for restitution, (2) the particular persons, or class or classes of persons, who have suffered damages proximately caused by such violations, (3) the method of calculating the amount of damages that will be paid as restitution, and (4) if then determinable, the amount of restitution to be paid.

Under new Subpart I, the ALJ's Initial Decision need not address how or when restitution will be paid. Instead, after an

[9] In discussing new Rule 10.26(f), the NYSBA comment letter also questioned whether 20 days is sufficient time for a party to identify all of the objections that he or she may have to the substantial number of trading records and other documents typically involved in a complex trade-practice case. To allay this concern, the language of the final rule has been revised to require the filing of a party's response within 20 days or such other time as may be designated by the ALJ. Again, the Commission is confident that its ALJs will consider all relevant circumstances in trying to set as expeditious a schedule as practicable, consistent with fairness to all parties.

[10] *See generally* Fed. R. Civ. P. 45(c)(3).

[11] The ALJ, of course, may extend the deadline for filing a motion to quash or modify a subpoena, just as he or she may extend other deadlines in the Rules of Practice, for good cause shown.

[12] Consistent with the former Rules of Practice, new Rule 10.68(c)(2) provides that no protective order shall be granted that will tend to impair either the Division's or a respondent's ability to present its case.

order requiring restitution becomes effective (*i.e.*, becomes final or is not stayed), the Division of Enforcement will be required to recommend to the Commission or, at the Commission's discretion, to the ALJ, a procedure for implementing the payment of restitution. Each respondent will be required to pay restitution shall be afforded notice of the Division's recommendations and an opportunity to be heard.

Based on the Division's recommendations and any response from the respondents, the Commission or the ALJ shall establish a procedure for identifying and notifying individual claimants who may be entitled to restitution; receiving and evaluating claims; obtaining funds to be paid as restitution from the respondents; and distributing such funds to qualified claimants. If appropriate, the Commission or the ALJ may appoint any person, including a Commission employee, to administer, or assist in administering, restitution. If the administrator is a Commission employee, no fees shall be charged for his or her services or for services performed by other Commission employees working under his or her direction.[13]

Commenting on the new rules facilitating restitution, both the FIA and the NYSBA argued that, in order to be consistent with provisions of the Act governing reparations proceedings and private rights of action, the Commission should impose a two-year state of limitations on claims for restitution in administrative enforcement proceedings. This argument ignores that, in amending Section 6(c) to add restitution as a remedy available to the Commission in administrative proceedings, Congress did not limit restitution to violations occurring less than two years before the filing of a complaint. Similarly, despite concerns raised by the FIA, the Commission does not believe it would be appropriate to revise new Subpart I to preclude persons who have sued a respondent in other forums from receiving restitution in an administrative enforcement proceeding. The Commission expects that, as part of the process of administering a restitution order, all appropriate equitable considerations can and will be taken into account to avoid double recovery or an undue windfall to any person.

Finally, new Subpart I provides that, unless otherwise ordered by the Commission, all costs incurred in administering an order of restitution shall be paid from the restitution funds obtained from the respondent who was so sanctioned. In response to this provision, the NYSBA asked that the Commission clarify that all costs incurred in administering restitution will come from the restitution fund itself and not from the funds of the respondent. The Commission recognizes that, in federal court practice, receivership costs and other expenses arising from the administration of restitution ordinarily are paid out of the restitution funds themselves. *See generally Gaskill v. Gordon*, 27 F.3d 248,251 (7th Cir. 1994) "[a]s a general rule, the expenses and fees of a receivership are a charge upon the property administered"). Nevertheless, it would be within the discretion of the Commission to require a respondent to pay some or all of the costs incurred in administering an order of restitution. *Id.* at 250 ("[r]eceivership is an equitable remedy, and the district court may, in its discretion, determine who shall be charged with the costs of receivership").

III. Other Rule Changes

In addition to addressing the proposed amendments relating to discovery and restitution, the FIA and the NYSBA commented on other changes and proposed additional revisions to the Rules of Practice. A review of those comments and proposals follows.

A. Separation of Functions and Ex Parte Contacts

Although the Commission did not announce any proposal to amend Rule 10.9, which deals with the separation of functions in enforcement proceedings, the FIA comment letter pointed out that, as currently written, the rule does not fully track the wording of 5 U.S.C. 554(d), the section of the Administrative Procedure Act ("APA") on which it is based. The separation-of-functions requirement presently set forth in Rule 10.9 only references Initial Decisions issued by the Commission's ALJs. By contrast, 5 U.S.C. 554(d) requires that:

> An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings.

The Commission and its staff, of course, abide by their obligations under the law, and so the more narrow wording of Rule 10.9 is of no substantive consequence. However, to avoid any possible misunderstanding or confusion, the Commission has amended existing Rule 10.9 to follow the language of the APA more closely.

Although the FIA comment letter suggested otherwise, the Commission sees no need to revise existing Rule 10.10, which prohibits interested persons outside the Commission from making *ex parte* communications relevant to the merits of a proceeding to any Commissioner, ALJ or Commission decisional employee. The language of Rule 10.10 fully accords with 5 U.S.C. 557(d)(1) and, like that provision of the APA, is not intended to address communications between the Commission and its staff. While the Commission recognizes that some agencies have extended the *ex parte* communications rule to cover persons inside the agency, the Commission does not view that extension as either necessary or well advised. In the Commission's view, 5 U.S.C. 554(d) and the revised Rule 10.9 address the relevant concern. Accordingly, the expansion of the *ex parte* communication rule suggested in the FIA comment letter is not being adopted.

B. Amendments and Supplemental Pleadings

New Rule 10.24 clarifies the authority retained by the Commission to amend the complaint in an administrative enforcement proceeding after the proceeding has been initiated. In addition, it permits the Division of Enforcement, upon motion to the ALJ and with notice to all of the other parties and the Commission, to amend a complaint for the limited purpose of correcting typographical or clerical errors or making similar, non-substantive revisions.

In its comment letter, the NYSBA objected to new Rule 10.24 as disadvantaging respondents unfairly. According to the comment letter, the Commission should be able to amend a complaint only after the respondent has had an opportunity to argue against amendment. The NYSBA's objections notwithstanding, new Rule 10.24 simply recognizes the plenary authority retained by the Commission over complaints that it issues in administrative enforcement proceedings. In order to ensure that respondents are not unfairly disadvantaged when the Commission amends a complaint, a suggestion made

[13] Under new Subpart I, the ALJ will be permitted to combine the procedures for adopting and administering a plan of restitution with the hearing on liability, when the ALJ concludes that presentation, consideration and resolution of the issues relating to restitution will not materially delay the conclusion of the hearing or the issuance of an initial decision.

by both comment letters has been incorporated into the final version of new Rule 10.24. As a result, the new rule will provide that, if the Commission amends the complaint in an administrative proceeding, the ALJ shall adjust the scheduling of the proceeding so as to avoid any prejudice to any of the parties to the proceeding.

C. Interlocutory Appeals

Like its predecessor, new Rule 10.101 governs the filing of interlocutory appeals from specified rulings of an ALJ. To correct an ambiguity in the proposed rule that was pointed out in one of the comment letters, the second sentence in paragraph (b)(1) of the rule has been revised to clarify that, if a request for certification has been filed with the ALJ, an application for interlocutory review under any of the five paragraphs in § 10.101(a) may be filed with the Commission within five days after notification of the ALJ's ruling on the request for certification.

D. Review of Initial Decisions

Like its predecessor, new Rule 10.102 governs the appeal of Initial Decisions to the Commission. Unlike the former rule, however, the new rule allows cross appeals and provides for the filing of reply briefs by appellants. Under new rule 10.102, if a timely notice of appeal has been filed by one party, any other party may file a notice of cross appeal within 15 days after service of the notice of appeal or within 15 days after service of the Initial Decision, whichever is later. If such a notice of cross appeal is filed, the Commission will, to the extent practicable, adjust both the briefing schedule and any otherwise applicable page limitations in order to allow for consolidated briefing by all appealing parties.

In its comment letter, the NYSBA objected to cross appeals, asserting that they raise due process issues. According to the comment letter, by setting up the risk of a cross appeal by the Division of Enforcement when an appeal otherwise would not have been filed, the new rule creates a disincentive for the respondents to appeal Initial Decisions. This argument ignores the fact that cross appeals have long been permitted under the Federal Rules of Appellate Procedure, with no apparent abridgement of any party's right to due process. *See* F.R. App. P. 4(a)(3). The Commission continues to believe that the provision of cross appeals will facilitate the appellate process and so has retained the provision as proposed in the final rules.

The NYSBA comment letter also noted that, because existing Rule 10.12(a)(2) already does so, there is no need for new Rule 10.102 to extend by three days the time within which a notice of appeal must be filed if service of the Initial Decision or other order terminating the proceeding has been effected by mail or commercial carrier. However, since an ALJ is not a party to a proceeding and an Initial Decision is not a document to which any response can be filed, it is unclear that Rule 10.12(a)(2) governs the time within which a notice of appeal can be filed. By amending the language regarding the deadline for filing a notice of appeal, new Rule 10.102 removes any ambiguity.

E. Reconsideration; Stay Pending Appeal

Unlike its predecessor, which addressed motions for reconsideration of Commission opinions and orders, new Rule 10.106 sets forth the standards on which the Commission relies in granting applications by respondents to stay sanctions in administrative enforcement proceedings pending reconsideration by the Commission or judicial appeal. In order to obtain such relief, the applicant must show (1) that he or she is likely to succeed on the merits of the appeal, (2) that denial of the requested stay would cause irreparable harm to the applicant and (3) that neither the public interest nor the interest of any other party will be adversely affected if the stay is granted.

Also, as proposed, new Rule 10.106 provides that, as long as neither the public interest nor the interest of any other party is adversely affected, the Commission shall grant any application to stay the effect of a civil monetary penalty once the applicant has filed an appropriate surety bond with the Commission's Proceedings Clerk. In commenting on the new rule, both the FIA and the NYSBA appeared to question whether a surety bond must be filed along with the stay application itself or afterwards, *i.e.*, once the Commission has determined to grant the stay application.

The final version of new Rule 10.106 has been revised to clarify that, if a respondent seeks to stay the imposition of a civil monetary penalty, he or she must file an appropriate surety bond at the time he or she applies for relief and demonstrate that neither the public interest nor the interest of any other party will be harmed by the stay. As the revision also makes clear, if a respondent chooses not to post a surety bond, then he or she will have to meet all of the criteria necessary to stay the effectiveness of other sanctions or the Commission will not stay the imposition of his or her civil monetary penalty.

In addition, the final rule has been revised to allow a respondent to use the same surety bond procedure in seeking to stay the effectiveness of an order requiring him or her to pay a specific sum as restitution. The Commission added this provision because the rationale justifying a stay of civil penalties after filing a bond is equally applicable to orders of restitution where the amount of restitution to be paid by the respondent has been determined. This provision would not apply, however, to any restitution order of the Commission in which the specific amount of restitution is not set.[14]

F. Commission Policy Relating to the Acceptance of Settlements

As part of the proposed amendments to the Rules of Practice, the Commission included a statement setting forth its policy not to accept any offer of settlement in an administrative or civil proceeding if the respondent or defendant wished to continue to deny the allegations of the Commission's complaint (although they may state that they neither admit nor deny the allegations). The FIA comment letter suggested that the policy statement—which is being incorporated into the rules as new Appendix A—be modified to reflect the fact that the Commission's position is grounded in public policy.

The Commission believes that the public-policy considerations underlying Appendix A are clearly reflected in the document itself. In accepting a settlement and entering an order finding violations of the Act or the regulations, the Commission makes uncontested findings of fact and conclusions of law. The Commission does not believe that it would be appropriate for the agency to be making such uncontested findings of violations if the party against whom the uncontested findings are to be entered is continuing to deny the alleged misconduct. Since these considerations are clearly articulated in Appendix A, the Commission sees no need to alter the wording of its policy statement at this time.

IV. Related Matters

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1988), requires that, in adopting final rules, agencies consider the impact of those

[14] As revised, new Rule 10.106 also makes clear that, in the event the Commission denies a motion to stay the effectiveness of an order imposing a civil monetary penalty or directing the respondents to pay a fixed amount as restitution, any surety bond that was filed by the applicant will be returned to him or her by the Processings Clerk.

rules on small businesses. In its preamble to the proposed amendments, the Commission determined that the Part 10 rules are not subject to the provisions of the RFA because they relate solely to agency organization, procedure and practice. Nevertheless, because the rules do not impose regulatory obligations on commodity professionals and small commodity firms and because the amendments adopted by the Commission will expedite and impose the administrative process, the Chairperson certifies, on behalf of the Commission, that the amended rules will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 17 CFR Part 10

Administrative practice and procedure, Commodity futures.

In consideration of the foregoing, the Commission amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 10—RULES OF PRACTICE

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

Authority: Pub. L. 93–463, sec. 101(a)(11), 88 Stat. 1391; 7 U.S.C. 4a(j), unless otherwise noted.

2. Section 10.1 is amended by deleting the third "and" from paragraph (d), redesignating paragraphs (e), (f), (g) and (h) as paragraphs (f), (g), (h) and (i), respectively, and adding a new paragraph (e), to read as follows.

§ 10.1 Scope and applicability of rules of practice.

* * * * *

(e) The issuance of restitution orders pursuant to section 6(c) of the Act, 7 U.S.C. 9; and

* * * * *

3. Section 10.9 is amended by revising paragraph (b) to read as follows:

§ 10.9 Separation of functions.

* * * * *

(b) No officer, employee or agent of the Commission who is engaged in the performance of investigative or prosecuting functions in connection with any proceeding shall, in that proceeding or any factually related proceeding, participate or advise in the decision of the Administrative Law Judge or the Commission except as witness or counsel in the proceeding, without the express written consent of the respondents in the proceeding. This provision shall not apply to the members of the Commission.

* * * * *

4. Section 10.1 is amended by revising paragraph (a)(2) to read as follows:

§ 10.12 Service and filing of documents; form and execution.

(a) * * *

(2) *How service is made.* Service shall be made by personal service, delivering the documents by first-class United States mail or a similar commercial package delivery service, or transmitting the documents via facsimile machine. Service shall be complete at the time of personal service or upon deposit in the mails or with a similar commercial package delivery service of a properly addressed document for which all postage or fees have been paid to the mail or delivery service. Where a party effects service by mail or similar package delivery service, the time within which the party being served may respond shall be extended by three days. Service by facsimile machine shall be permitted only if all parties to the proceeding have agreed to such an arrangement in writing and a copy of the written agreement, signed by each party, has been filed with the Proceedings Clerk. The agreement must specify the facsimile machine telephone numbers to be used, the hours during which the facsimile machine is in operation and when service will be deemed complete.

* * * * *

5. Section 10.21 is revised to read as follows:

§ 10.21 Commencement of the proceeding.

An adjudicatory proceeding is commenced when a complaint and notice of hearings is filed with the Office of Proceedings.

6. Section 10.22 is amended by adding a new sentence at the end of the introductory text in paragraph (b) and adding new paragraphs (b)(1) and (b)(2) to read as follows:

§ 10.22 Complaint and notice of hearing:

* * * * *

(b) *Service.* * * * If a respondent is not found at his last known business or residence address and no forwarding address is available, additional service may be made, at the discretion of the Commission, as follows:

(1) By publishing a notice of the filing of the proceeding and a summary of the complaint, approved by the Commission or the Administrative Law Judge, once a week for three consecutive weeks in one or more newspapers having a general circulation where the respondent's last known business or residence address was located and, if ascertainable, where the respondent is believed to reside or be doing business currently; and

(2) By continuously displaying the complaint on the Commission's Internet web site during the period referred to in paragraph (b)(1) of this section.

7. Section 10.4 is amended by revising paragraphs (a), (b) and (c) to read as follows.

§ 10.24 Amendments and supplemental pleadings.

(a) *Complaint and notice of hearing.* The Commission may, at any time, amend the complaint and notice of hearing in any proceeding. If the Commission so amends the complaint and notice of hearing, the Administrative Law Judge shall adjust the scheduling of the proceeding to the extent necessary to avoid any prejudice to any of the parties to the proceeding. Upon motion to the Administrative Law Judge and with notice to all other parties and the Commission, the Division of Enforcement may amend a complaint to correct typographical and clerical errors or to make other technical, non-substantive revisions within the scope of the original complaint.

(b) *Other pleadings.* Except for the complaint and notice of hearing, a party may amend any pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, he may amend it within 20 days after it is served. Otherwise a party may amend a pleading only by leave of the Administrative Law Judge, which shall be freely given when justice so requires.

(c) *Response to amended pleadings.* Any party may file a response to any amendment to any pleading, including the complaint, within ten days after the date of service upon him of the amendment or within the time provided to respond to the original pleading, whichever is later.

* * * * *

8. Section 10.26 is amended by revising the last sentence in paragraph (b) to read as follows:

§ 10.26 Motions and other papers.

* * * * *

(b) *Answers to motions.* * * * The absence of a response to a motion may be considered by the Administrative Law Judge or the Commission in deciding whether to grant the requested relief.

* * * * *

9. Section 10.41 is amended by redesignating paragraphs (f) and (g) as paragraphs (g) and (h), respectively, and

by adding a new paragraph (f) to read as follows.

§ 10.41 Prehearing conferences; procedural matters.

* * * * *

(f) Considering objections to the introduction of documentary evidence and the testimony of witnesses identified in prehearing materials filed or otherwise furnished by the parties pursuant to § 10.42;

* * * * *

10. Section 10.42 is amended by revising paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (c) and (e), respectively; by revising newly redesignated paragraphs (c) and (e)(1); and by adding a new paragraph (b), a new paragraph (d) and a new paragraph (f), to read as follows.

§ 10.42 Discovery.

(a) *Prehearing Materials*—(1) *In general.* Unless otherwise ordered by an Administrative Law Judge, the parties to a proceeding shall furnish to all other parties to the proceeding on or before a date set by the Administrative Law Judge in the form of a prehearing memorandum or otherwise:

(i) An outline of its case or defense;

(ii) The legal theories upon which it will rely;

(iii) The identify, and the city and state of residence, of each witness, other than an expert witness, who is expected to testify on its behalf, along with a brief summary of the matters to be covered by the witness's expected testimony;

(iv) A list of documents which it intends to introduce at the hearing, along with copies of any such documents which the other parties do not already have in their possession and to which they do not have reasonably ready access.

(2) *Expert witnesses.* Unless otherwise ordered by the Administrative Law Judge, in addition to the information described in paragraph (a)(1) of this section, any party who intends to call an expert witness shall also furnish to all other parties to the proceeding on or before a date set by the Administrative Law Judge:

(i) A statement identifying the witness and setting forth his or her qualifications;

(ii) A list of any publications authored by the witness within the preceding ten years;

(iii) A list of all cases in which the witness has testified as an expert, at trial or in deposition, within the preceding four years;

(iv) A complete statement of all opinions to be expressed by the witness and the basis or reasons for those opinions; and

(v) A list of any documents, data or other written information which were considered by the witness in forming his or her opinions, along with copies of any such documents, data or information which the other parties do not already have in their possession and to which they do not have reasonably ready access.

(3) The foregoing procedures shall not be deemed applicable to rebuttal evidence submitted by any party at the hearing.

(4) In any action where a party fails to comply with the requirements of this paragraph (a), the Administrative Law Judge may make such orders in regard to the failure as are just, taking into account all of the relevant facts and circumstances of the failure to comply.

(b) *Investigatory materials*—(1) *In general.* Unless otherwise ordered by the Commission or the Administrative Law Judge, the Division of Enforcement shall make available for inspection and copying by the respondents, prior to the scheduled hearing date, any of the following documents that were obtained by the Division prior to the institution of proceedings in connection with the investigation that led to the complaint and notice of hearing:

(i) All documents that were produced pursuant to subpoenas issued by the Division or otherwise obtained from persons not employed by the Commission, together with each subpoena or written request, or relevant portion thereof, that resulted in the furnishing of such documents to the Division; and

(ii) All transcripts of investigative testimony and all exhibits to those transcripts.

(2) *Documents that may be withheld.* The Division of Enforcement may withhold any document that would disclose:

(i) The identify of a confidential source;

(ii) Confidential investigatory techniques or procedures;

(iii) Separately the market positions, business transactions, trade secrets or names of customers of any persons other than the respondents, unless such information is relevant to the resolution of the proceeding;

(iv) Information relating to, or obtained with regard to, another matter of continuing investigatory interest to the Commission or another domestic or foreign governmental entity, unless such information is relevant to the resolution of the proceeding; or

(v) Information obtained from a domestic or foreign governmental entity or from a foreign futures authority that either is not relevant to the resolution of the proceeding or was provided on condition that the information not be disclosed or that it only be disclosed by the Commission or a representative of the Commission as evidence in an enforcement or other proceeding.

(3) Nothing in paragraphs (b)(1) and (b)(2) of this section shall limit the ability of the Division of Enforcement to withhold documents or other information on the grounds of privilege, the work product doctrine or other protection from disclosure under applicable law. When the investigation by the Division of Enforcement that led to the pending proceeding encompasses transactions, conduct or persons other than those involved in the proceeding, the requirements of (b)(1) of this section shall apply only to the particular transaction, conduct and persons involved in the proceeding.

(4) *Index of withheld documents.* When documents are made available for inspection and copying pursuant to paragraph (b)(1) of this section, the Division of Enforcement shall furnish the respondents with an index of all documents that are withheld pursuant to paragraphs (b)(2) or (b)(3) of this section, except for any documents that are being withheld because they disclose information obtained from a domestic or foreign governmental entity or from a foreign futures authority on condition that the information not be disclosed or that it only be disclosed by the Commission or a representative of the Commission as evidence in an enforcement or other proceeding, in which case the Division shall inform the other parties of the fact that such documents are being withheld at the time it furnishes its index under this paragraph, but no further disclosures regarding those documents shall be required. This index shall describe the nature of the withheld documents in a manner that, to the extent practicable without revealing any information that itself is privileged or protected from disclosure by law or these rules, will enable the other parties to assess the applicability of the privilege or protection claimed.

(5) *Arrangements for inspection and copying.* Upon request by the respondents, all documents subject to inspection and copying pursuant to this paragraph (b) shall be made available to the respondents at the Commission office nearest the location where the respondents or their counsel live or work. Otherwise, the documents shall be made available at the Commission office where they are ordinarily maintained or at any other location agreed upon by the parties in writing. Upon payment of the appropriate fees

set forth in appendix B to part 145 of this chapter, any respondent may obtain a photocopy of any document made available for inspection. Without the prior written consent of the Division of Enforcement, no respondent shall have the right to take custody of any documents that are made available for inspection and copying, or to remove them from Commission premises.

(6) *Failure to make documents available.* In the event that the Division of Enforcement fails to make available documents subject to inspection and copying pursuant to this paragraph (b), no rehearing or reconsideration of a matter already heard or decided shall be required, unless the respondent demonstrates prejudice caused by the failure to make the documents available.

(7) *Requests for confidential treatment; protective orders.* If a person has requested confidential treatment of information submitted by him or her, either pursuant to rules adopted by the Commission under the Freedom of Information Act (part 145 of this chapter) or under the Commission's Rules Relating To Investigations (part 11 of this chapter), the Division of Enforcement shall notify him or her, if possible, that the information is to be disclosed to parties to proceeding and he or she may apply to the Administrative Law Judge for an order protecting the information from disclosure, consideration of which shall be governed by § 10.68(c)(2).

(c) *Witness statements*—(1) *In general.* Each party to an adjudicatory proceeding shall make available to the other parties any statement of any person whom the party calls, or expects to call, as a witness that relates to the anticipated testimony of the witness and is in the party's possession. Such statements shall include the following:

(i) Transcripts of investigative, deposition, trial or similar testimony given by the witness,

(ii) Written statements signed by the witness, and

(iii) Substantially verbatim notes of interviews with the witness, and all exhibits to such transcripts, statements and notes. For purposes of this paragraph (c), "substantially verbatim notes" means that fairly record the exact words of the witness, subject to minor, inconsequential deviations. Such statements shall include memoranda and other writings authored by the witness that contain information relating to his anticipated testimony. The Division of Enforcement shall produce witness statements pursuant to this paragraph prior to the scheduled hearing date, at a time to be designated by the Administrative Law Judge. Respondents shall produce witness statements pursuant to this paragraph at the close of the Division's case in chief during the hearing. If necessary, the Administrative Law Judge shall, upon request, grant the Division a continuance of the hearing in order to review and analyze any witness statements produced by the respondents.

(2) Nothing in paragraph (c)(1) of this section shall limit the ability of a party to withhold documents or other information on the grounds of privilege, the work product doctrine or other protection from disclosure under applicable law.

(3) *Index of withheld documents.* When a party makes witness statements available pursuant to paragraph (c)(1) of this section, he or she shall furnish each of the other parties with an index of all documents that the party is withholding on the grounds of privilege or work product. This index shall describe the nature of the withheld documents in a manner that, to the extent practicable without revealing information that itself is privileged or protected from disclosure by law or these rules, will enable the other parties to assess the applicability of the privilege or protection claimed.

(4) *Failure to produce witness statements.* In the event that a party fails to make available witness statements subject to production pursuant to this section, no rehearing or reconsideration of a matter already heard or decided shall be required, unless another party demonstrates prejudice caused by the failure to make the witness statements available.

(d) *Modification of production requirements.* The Administrative Law Judge shall modify any of the requirements of paragraphs (a) through (c) of this section that any party can show is unduly burdensome or is otherwise inappropriate under all the circumstances.

(e) *Admissions*—(1) *Request for admissions.* Any party may serve upon any other party, with a copy to the Proceedings Clerk, a written request for admission of the truth of any facts relevant to the pending proceeding set forth in the request. Each matter of which an admission is requested shall be separately set forth. Unless prior written approval is obtained from the Administrative Law Judge, the number of requests shall not exceed 50 in number including all discrete parts and subparts.

* * * * *

(f) *Objections to authenticity or admissibility of documents*—(1) *Identification of documents.* The Administrative Law Judge, acting on his or her own initiative or upon motion by any party, may direct each party to serve upon the other parties, with a copy to the Proceedings Clerk, a list identifying the documents that it intends to introduce at the hearing and requesting the other parties to file and serve a response disclosing any objection, together with the factual or legal grounds therefor, to the authenticity or admissibility of each document identified on the list. A copy of each document identified on the list shall be served with the request, unless the party being served already has the document in his possession or has reasonably ready access to it.

(2) *Objections to authenticity or admissibility.* Within 20 days after service or at such other time as may be designated by the Administrative Law Judge, each party upon whom the list described in paragraph (f)(1) of this section was served shall file a response disclosing any objection, together with the factual or legal grounds therefor, to the authenticity or admissibility of each document identified on the list. Except for relevance, waste of time or needless presentation of cumulative evidence, all objections not raised may be deemed waived.

(3) *Rulings on objections.* In his or her discretion, the Administrative Law Judge may treat as a motion in limine any list served by a party pursuant to paragraph (f)(1) of this section, where any other party has filed a response objecting to the authenticity or the admissibility on any item listed. In that event, after affording the parties an opportunity to file briefs containing arguments on the motion to the degree necessary for a decision, the ALJ may rule on any objection to the authenticity or admissibility of any document identified on the list in advance of trial, to the extent appropriate.

11. Section 10.66 is amended by revising paragraph (b) to read as follows:

§ 10.66 Conduct of the hearing.

* * * * *

(b) *Rights of parties.* Every party shall be entitled to due notice of hearings, the right to be represented by counsel, and the right to cross-examine witnesses, present oral and documentary evidence, submit rebuttal evidence, raise objections, make arguments and move for appropriate relief. Nothing in this paragraph limits the authority of the Commission or the Administrative Law Judge to exercise authority under other provision of the Commission's rules, to enforce the requirements that evidence presented be relevant to the proceeding

or to limit cross-examination to the subject matter of the direct examination and matters affecting the credibility of the witness.

* * * * *

12. Section 10.68 is amended by revising paragraphs (a)(1), (a)(2), (b)(3) and (c)(1), by revising the heading of paragraph (c), by adding four new sentences to the end of paragraph (c)(2), by revising the second sentence in paragraph (e)(1) and by adding a new sentence to the end of paragraph (f), to read as follows.

§ 10.68 Subpoenas.

(a) Application for and issuance of subpoenas—(1) *Application for and issuance of subpoena ad testificandum.* Any party may apply to the Administrative Law Judge for the issuance of a subpoena requiring a person to appear and testify (subpoena ad testificandum) at the hearing. All requests for the issuance of a subpoena ad testificandum shall be submitted in duplicate and in writing and shall be served upon all other parties to the proceeding, unless the request is made on the record at the hearing or the requesting party can demonstrate why, in the interest of fairness or justice, the requirement of a written submission or service on one or more of the other parties is not appropriate. A subpoena ad testificandum shall be issued upon a showing by the requesting party of the general relevance of the testimony being sought and the tender of an original and two copies of the subpoena being requested, except in those situations described in paragraph (b) of this section, where additional requirements are set forth.

(2) *Application for subpoena duces tecum.* An application for a subpoena requiring a person to produce specified documentary or tangible evidence (subpoena duces tecum) at any designated time or place may be made by any party to the Administrative Law Judge. All requests for the issuance of a subpoena ad testificandum shall be submitted in duplicate and in writing and shall be served upon all other parties to the proceeding, unless the request is made on the record at the hearing or the requesting party can demonstrate why, in the interest of fairness or justice, the requirement of a written submission or service on one or more of the other parties is not appropriate. Except in those situations described in paragraph (b) of this section, where additional requirements are set forth, each application for the issuance of a subpoena duces tecum shall contain a statement or showing of general relevance and reasonable scope of the evidence being sought and be accompanied by an original and two copies of the subpoena being requested, which shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible.

* * * * *

(b) * * *

(3) *Rulings.* The motion shall be decided by the Administrative Law Judge and shall provide such terms or conditions for the production of the material, the disclosure of the information or the appearance of the witness as may appear necessary and appropriate for the protection of the public interest.

* * * * *

(c) *Motions to quash subpoenas; protective orders*—(1) *Application.* Within 10 days after a subpoena has been served or at any time prior to the return date thereof, a motion to quash or modify the subpoena or for a protective order limiting the use or disclosure of any information, documents or testimony covered by the subpoena may be filed with the Administrative Law Judge who issued it. At the same time, a copy of the motion shall be served on the party who requested the subpoena and all other parties to the proceeding. The motion shall include a brief statement setting forth the basis for the requested relief. If the Administrative Law Judge to whom the motion has been directed has not acted upon the motion by the return date, the subpoena shall be stayed pending his or her final action.

(2) *Disposition.* * * * The Administrative Law Judge may issue a protective order sought under paragraph (c)(1) of this section or under any other section of these rules upon a showing of good cause. In considering whether good cause exists to issue a protective order, the Administrative Law Judge shall weigh the harm resulting from disclosure against the benefits of disclosure. Good cause shall only be established upon a showing that the person seeking the protective order will suffer a clearly defined and serious injury if the offer is not issued, provided, however, that any such injury shall be balanced against the public's right of access to judicial records. No protective order shall be granted that will prevent the Division of Enforcement or any respondent from adequate presenting its case.

* * * * *

(e) *Service of subpoenas*—(1) *How effected.* * * * Service of a subpoena upon any other person shall be made by delivering a copy of the subpoena to him as provided in paragraphs (e)(2) or (e)(3) of this section, as applicable, and by tendering to him or her the fees for one day's attendance and mileage as specified in paragraph (d) of this section. * * *

(f) *Enforcement of subpoenas.* * * * When instituting an action to enforce a subpoena requested by the Division of Enforcement, the Commission, in its discretion, may delegate to the Director of the Division or any commission employee designated by the Director and acting under his or her direction, or to any other employee of the Commission, authority to serve as the Commission's counsel in such subpoena enforcement action.

13. Section 10.84 is amended by revising paragraph (b) to read as follows:

§ 10.84 Initial decision

* * * * *

(b) *Filing of initial decision.* After the parties have been afforded an opportunity to file their proposed findings of fact, proposed conclusions of law and supporting briefs pursuant to § 10.82, the Administrative Law Judge shall prepare upon the basis of the record in the proceeding and shall file with the Proceedings Clerk his or her decision, a copy of which shall be served by the Proceedings Clerk upon each of the parties.

* * * * *

14. Section 10.101 is amended by revising paragraph (b)(1) to read as follows:

§ 10.101 Interlocutory appeals.

* * * * *

(b) *Procedure to obtain interlocutory review*—(1) *In general.* An application for interlocutory review may be filed within five days after notice of the Administrative Law Judge's ruling on a matter described in paragraphs (a)(1), (a)(2), (a)(3) or (a)(4) of this section, except if a request for certification under paragraph (a)(5) of this section has been filed with the Administrative Law Judge within five days after notice of the Administrative Law Judge's ruling on the matter. If a request for certification has been filed, an Application for interlocutory review under paragraphs (a)(1) through (a)(5) of this section may be filed within five days after notification of the Administrative Law Judge's ruling on such request.

15. Section 10.102 is amended by revising paragraphs (a) and (d)(2) and the first sentence of (e)(2); by redesignating paragraph (b)(3) as paragraph (b)(4) and revising it; by adding a new sentence between the third and fourth sentences of paragraph (e)(1); and by adding a new paragraph (b)(3) and a new paragraph (b)(5), to

read as follows. (The undesignated paragraph after (b)(3) and before paragraph(c) should appear after new (b)(5) and before paragraph (c).)

§ 10.102 Review of initial decision.

(a) *Notice of appeal*—(1) *In general.* Any party to a proceeding may appeal to the Commission an initial decision or a dismissal or other final disposition of the proceeding by the Administrative Law Judge as to any party. The appeal should be initiated by serving and filing with the Proceedings Clerk a notice of appeal within 15 days after service of the initial decision or other order terminating the proceeding; where service of the initial decision or other order terminating the proceeding is effected by mail or commercial carrier, the time within which the party served may file a notice of appeal shall be increased by three days.

(2) *Cross appeals.* If a timely notice of appeal is filed by one party, any other party may file a notice of appeal within 15 days after service of the first notice of within 15 days after service of the initial decision or other order terminating the proceeding, whichever is later.

(3) *Confirmation of filing.* The Proceedings Clerk shall confirm the filing of a notice of appeal by mailing a copy thereof to each other party.

(b) * * *

(3) *Reply brief.* With 14 days after service of an answering brief, the party that filed the first brief may file a reply brief.

(4) No further briefs shall be permitted, unless so ordered by the Commission on its own motion.

(5) *Cross appeals.* In the event that any party files a notice of cross appeal pursuant to paragraph (a)(2) of this section, the Commission shall, to the extent practicable, adjust the briefing schedule and any page limitations otherwise applicable under this section so as to accommodate consolidated briefing by the parties.

* * * * *

(d) * * *

(2) The answering brief generally shall follow the same style as prescribed for the appeal brief but may omit a statement of the issues or of the case if the party does not dispute the issues and statement of the case contained in the appeal brief. Any reply brief shall be confined to matters raised in the answering brief and shall be limited to 15 pages in length.

* * * * *

(3) *Appendix to briefs*—(1) *Designation of contents of appendix.* * * * Any reply brief filed by the appellant may, if necessary, supplement the appellant's previous designation.

* * *

(2) *Preparation of the appendix.* Within 15 days after the last answering brief or reply brief of a party was due to be filed, the Office of Proceedings shall prepare an appendix to the briefs which will contain a list of the relevant docket entries filed in the proceedings before the Administrative Law Judge, the initial decision and order of the Administrative Law Judge, the pleadings filed on behalf of the parties who are participating in the appeal and such other parts of the record designated by the parties to the appeal in accordance with the procedures set forth in paragraph (e)(1) of this section.

* * *

* * * * *

16. Section 10.106 is amended by revising the section heading; by designating the existing text as paragraph (a) and adding a paragraph heading to it; and by adding a new paragraph (b) and a new paragraph (c) to read as follows.

§ 10.106 Reconsideration; stay pending judicial review.

(a) *Reconsideration.* * * *

(b) *Stay pending judicial appeal*—(1) *Application for stay.* Within 15 days after service of a Commission opinion and order imposing upon any party any of the sanctions listed in §§ 10.1(a) through 10.1(e), that party may file an application with the Commission requesting that the effective date of the order be stayed pending judicial review. The application shall state the reasons why a stay is warranted and the facts relied upon in support of the stay. Any averments contained in the application must be supported by affidavits or other sworn statements or verified statements made under penalty of perjury in accordance with the provisions of 28 U.S.C. 1746.

(2) *Standards for issuance of stay.* The Commission may grant an application for a stay pending judicial appeal upon a showing that:

(i) The applicant is likely to succeed on the merits of his appeal;

(ii) Denial of the stay would cause irreparable harm to the applicant; and

(iii) Neither the public interest nor the interest of any other party will be adversely affected if the stay is granted.

(3) *Civil monetary penalties and restitution.* Nothwithstanding the requirements set forth in paragraph (b)(2) of this section, the Commission shall grant any application to stay the imposition of a civil monetary penalty or an order to pay a specific sum as restitution if the applicant has filed with the Proceedings Clerk a surety bond guaranteeing full payment of the penalty or restitution plus interest in the event that the Commission's opinion and order is sustained or the applicant's appeal is not perfected or is dismissed for any reason and the Commission has determined that neither the public interest nor the interest of any other party will be affected by granting the application. The required surety bond shall be in the form of an undertaking by a surety company on the approved list of sureties issued by the Treasury Department of the United States, and the amount of interest shall be calculated in accordance with 28 U.S.C. 1961(a) and (b), beginning on the date 30 days after the Commission's opinion and order was served on the applicant. In the event the Commission denies applicant's motion for a stay, the Proceedings Clerk shall return the surety bond to the applicant.

(c) *Response.* Unless otherwise requested by Commission, no response to a petition for reconsideration pursuant to paragraph (a) of this section or an application for a stay pursuant to paragraph (b) of this section shall be filed. The Commission shall set the time for filing any response at the time it asks for a response. the Commission shall not grant any such petition or application without providing other parties to the proceeding with an opportunity to respond.

17. A new Subpart 1 is added to Part 10, to read as follows.

Subpart 1—Restitution Orders

Sec.

Subpart 1—Restitution Orders

§ 10.110 Basis for issuance of restitution orders.

(a) *Appropriateness of restitution as a remedy.* In any proceeding in which an order requiring restitution may be entered, the Administrative Law Judge shall, as part of his or her initial decision, determine whether restitution is appropriate. In deciding whether restitution is appropriate, the Administrative Law Judge, in his or her discretion, may consider the degree of complexity likely to be involved in establishing claims, the likelihood that claimants can obtain compensation through their own efforts, the ability of the respondent to pay claimants damages that his or her violations have

caused, the availability of resources to administer restitution and any other matters that justice may require.

(b) *Restitution order.* If the Administrative Law Judge determines that restitution is an appropriate remedy in a proceeding, he or she shall issue an order specifying the following:

(1) All violations that form the basis for restitution;

(2) The particular persons, or class or classes of persons, who suffered damages proximately caused by each such violation;

(3) The method of calculating the amount of damages to be paid as restitution; and

(4) If then determinable, the amount of restitution the respondent shall be required to pay.

§ 10.111 Recommendation of proceeding for implementing restitution.

Except as provided by § 10.114, after such time as any order requiring restitution becomes effective (*i.e.*, becomes final and is not stayed), the Division of Enforcement shall petition the Commission for an order directing the Division to recommend to the Commission or, in the Commission's discretion, the Administrative Law Judge a procedure for implementing restitution. Each party that has been ordered to pay restitution shall be afforded an opportunity to review the Division of Enforcement's recommendations and be heard.

§ 10.112 Administration of restitution.

Based on the recommendations submitted pursuant to § 10.111, the Commission or the Administrative Law Judge, as applicable, shall establish in writing a procedure for identifying and notifying individual persons who may be entitled to restitution, receiving and evaluating claims, obtaining funds to be paid as restitution from the party and distributing such funds to qualified claimants. As necessary or appropriate, the Commission or the Administrative Law Judge may appoint any person, including an employee of the Commission, to administer, or assist in administering, such restitution procedure. Unless otherwise ordered by the Commission, all costs incurred in administering an order of restitution shall be paid from the restitution funds obtained from the party who was so sanctioned; provided, however, that if the administrator is a Commission employee, no fee shall be charged for his or her services or for services performed by any other Commission employee working under his or her direction.

§ 10.113 Right to challenge distribution of funds to customers.

Any order of an Administrative Law Judge directing or authorizing the distribution of funds paid as restitution to individual customers shall be considered a final order for appeal purposes to be subject to Commission review pursuant to § 10.102.

§ 10.114 Acceleration of establishment of restitution procedure.

The procedures provided for by §§ 10.111 through 10.113 may be initiated prior to the issuance of the initial decision of the Administrative Law Judge and may be combined with the hearing in the proceeding, either upon motion by the Division of Enforcement or if the Administrative Law Judge, acting on his own initiative or upon motion by a respondent, concludes that the presentation, consideration and resolution of the issues relating to the restitution procedure will not materially delay the conclusion of the hearing or the issuance of the initial decision.

18. A new appendix A is added to part 10, to read as follows.

Appendix A to Part 10—Commission Policy Relating to the Acceptance of Settlements in Administrative and Civil Proceedings

It is the policy of the Commission not to accept any offer of settlement submitted by any respondent or defendant in any administrative or civil proceedings, if the settling respondent or defendant wishes to continue to deny the allegations of the complaint. In accepting a settlement and entering an order finding violations of the Act and/or regulations promulgated under the Act, the Commission makes uncontested findings of fact and conclusions of law. The Commission does not believe it would be appropriate for it to be making such uncontested findings of violations if the party against whom the findings and conclusions are to be entered is continuing to deny the alleged misconduct.

The refusal of a settling respondent or defendant to admit the allegations in a Commission-Instituted complaint shall be treated as a denial, unless the party states that he or she neither admits nor denies the allegations. In that event, the proposed offer of settlement, consent or consent order must include a provision stating that, by neither admitting nor denying the allegations, the settling respondent or dependent agrees that neither he or she nor any of his or her agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the complaint or creating, or tending to create, the impression that the complaints is without a factual basis; provided, however, that nothing in this provision shall affect the settling respondent's or defendant's testimonial obligation, or right to take legal positions, in other proceedings to which the Commission is not a party.

Issued in Washington, DC, on October 8, 1998, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–27983 Filed 10–15–98; 10:43 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1275

[Docket No. NHTSA–98–4537]

RIN 2127–AH47

Repeat Intoxicated Driver Laws

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule implements a new program established by the Transportation Equity Act for the 21st Century (TEA–21) Restoration Act, which provides for the transfer of Federal-aid highway construction funds to 23 U.S.C. 402 State and Community Highway Safety Program grant funds for any State that fails to enact and enforce a conforming "repeat intoxicated driver" law.

This regulation is being published as an interim final rule, which will go into effect prior to providing notice and the opportunity for comment. Following the close of the comment period, NHTSA will publish a separate document responding to comments and, if appropriate, will revise provisions of the regulation.

DATES: This interim final rule becomes effective on November 18, 1998. Comments on this interim rule are due no later than December 18, 1998.

ADDRESSES: Written comments should refer to the docket number of this notice and be submitted (preferably in two copies) to: Docket Management, Room PL–401 Section, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. (Docket hours are Monday–Friday, 10 a.m. to 5 p.m., excluding Federal holidays.)

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Jennifer Higley, Office of State and Community Services, NSC–01, National Highway Traffic Safety

Administration, 400 Seventh Street S.W., Washington, DC 20590, telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834.

In FHWA: Mr. Bing Wong, Office of Highway Safety, HHS–20, telephone (202) 366–2169; or Mr. Raymond W. Cuprill, HCC–20, telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century (TEA–21), H.R. 2400, P.L. 105–178, was signed into law on June 9, 1998. On July 22, 1998, a technical corrections bill, entitled the TEA–21 Restoration Act, P.L. 105–206, was enacted to restore provisions that were agreed to by the conferees to H.R. 2400, but were not included in the TEA–21 conference report. Section 1406 of the Act amended chapter 1 of title 23, United States Code (U.S.C.), by adding Section 164, which established a transfer program under which a percentage of a State's Federal-aid highway construction funds will be transferred to the State's apportionment under Section 402 of Title 23 of the United States Code, if the State fails to enact and enforce a conforming "repeat intoxicated driver" law.

In accordance with Section 164, these funds are to be used for alcohol-impaired driving countermeasures or the enforcement of driving while intoxicated (DWI) laws, or States may elect to use all or a portion of the funds for hazard elimination activities, under 23 U.S.C. Section 152.

As provided in Section 164, to avoid the transfer of funds, State "repeat intoxicated driver" laws must provide for certain specified minimum penalties for persons who have been convicted of driving while intoxicated or under the influence upon their second and subsequent convictions.

This new program was established to address the issue of impaired driving, which is a serious national problem.

Background

The Problem of Impaired Driving

Injuries caused by motor vehicle traffic crashes are a major health care problem in America and are the leading cause of death for people aged 6 to 27. Each year, the injuries caused by traffic crashes in the United States claim approximately 42,000 lives and cost Americans an estimated $150 billion, including $19 billion in medical and emergency expenses, $42 billion in lost productivity, $52 billion in property damage, and $37 billion in other crash related costs.

In 1997, alcohol was involved in approximately 39 percent of fatal traffic crashes and 7 percent of all crashes. Every 32 minutes, someone in this country dies in an alcohol-related crash. In 1994, alcohol-involved crashes resulted in $45 billion in economic costs, accounting for 30 percent of all crash costs. Impaired driving is the most frequently committed violent crime in America.

Repeat Intoxicated Driver Laws

State laws that are directed to individuals who have been convicted more than once of driving while intoxicated or driving under the influence are critical tools in the fight against impaired driving. In order to encourage States to enact and enforce effective impaired driving laws, Congress has created a number of different programs. Under the Section 410 program (under 23 U.S.C. 410), and its predecessor, the Section 408 program (under 23 U.S.C. 408), for example, States could qualify for incentive grant funds if they adopted and implemented certain specified laws and programs designed to deter impaired driving. Some of these laws and programs were directed specifically toward repeat impaired driving offenders.

For example, prior to the enactment of TEA–21, to qualify for an incentive grant under the Section 410 program, a State was required to meet five out of seven basic grant criteria that were specified in the Act and the implementing regulation. The criteria included, among others, an expedited driver license suspension system, which required a mandatory minimum one-year license suspension for repeat offenders, and a mandatory minimum sentence of imprisonment or community service for individuals convicted of driving while intoxicated more than once in any five-year period.

States that were eligible for a basic Section 410 grant could qualify also for additional grant funds by meeting supplemental grant criteria, such as the suspension of registration and return of license plate program. States could demonstrate compliance with this program by showing that they provided for the impoundment, immobilization or confiscation of an offender's motor vehicles.

TEA–21 changed the Section 410 program and, specifically, the Section 410 criteria that were directed toward repeat offenders. The conferees to that legislation had intended to create a new repeat intoxicated driver transfer program to encourage States to enact repeat intoxicated driver laws, but this new program was inadvertently omitted from the TEA–21 conference report. The program was included instead in the TEA–21 Restoration Act, which was signed into law on July 22, 1998.

Section 164 Repeat Intoxicated Driver Law Program

Section 164 provides that the Secretary must transfer a portion of a State's Federal-aid highway construction funds apportioned under Sections 104(b) (1), (3), and (4) of title 23 of the United States Code, for the National Highway System, Surface Transportation Program and Interstate System, to the State's apportionment under Section 402 of that title, if the State does not meet certain statutory requirements. All 50 States, the District of Columbia and Puerto Rico are considered to be States, for the purpose of this program.

To avoid the transfer, a State must enact and enforce a repeat intoxicated driver law that establishes, at a minimum, certain specified penalties for second and subsequent convictions for driving while intoxicated or under the influence. These penalties include: a one-year driver's license suspension; the impoundment or immobilization of, or the installation of an ignition interlock system on, the repeat intoxicated driver's motor vehicles; assessment of the repeat intoxicated driver's degree of alcohol abuse, and treatment as appropriate; and the sentencing of the repeat intoxicated driver to a minimum number of days of imprisonment or community service.

Consistent with other programs that are administered by the agencies, a State's law must have been both passed and come into effect to permit a State to rely on the law to avoid the transfer of funds. In addition, the State must be actively enforcing the law.

Any State that does not enact and enforce a conforming repeat intoxicated driver law will be subject to a transfer of funds. In accordance with Section 164, if a State does not meet the statutory requirements on October 1, 2000, or October 1, 2001, an amount equal to 1½ percent of the funds apportioned to the State on those dates under each of Sections 104(b)(1), (3), and (4) of title 23 of the United States Code will be transferred to the State's apportionment under Section 402 of that title. If a State does not meet the statutory requirements on October 1, 2002, an amount equal to three percent of the funds apportioned to the State on that date under Sections 104(b)(1), (3) and (4) will be transferred. An amount equal to three percent will continue to be transferred on October 1 of each subsequent fiscal year, if the State does

not meet the requirements on those dates.

Section 164, and this implementing regulation, provides also that the amount of the apportionment to be transferred may be derived from one or more of the apportionments under Sections 104(b)(1), (3) and (4).

In other words, the total amount to be transferred from a non-conforming State will be calculated based on a percentage of the funds apportioned to the State under each of Sections 104(b)(1), (3) and (4). However, the actual transfers need not be evenly distributed among these three sources. The transferred funds may come from any one or a combination of the apportionments under Sections 104(b)(1), (3) or (4), as long as the appropriate total amount is transferred from one or more of these three sections.

The funds transferred to Section 402 under this program are to be used for alcohol-impaired driving countermeasures or directed to State and local law enforcement agencies for the enforcement of laws prohibiting driving while intoxicated, driving under the influence or other related laws or regulations. The Act provides that States may elect to use all or a portion of the transferred funds for hazard elimination activities under 23 U.S.C. 152.

Compliance Criteria

To avoid the transfer of funds under this program, Section 164 provides that a State must enact and enforce:

> a "repeat intoxicated driver law" * * * that provides * * * that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence [must be subject to certain specified minimum penalties].

The statute defines the term "repeat intoxicated driver law" to mean a State law that provides certain specified minimum penalties for an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence. The agencies' interim final rule adopts this definition. The interim rule also defines the term "repeat intoxicated driver." Consistent with other programs conducted by the agencies and with State laws and practices regarding the maintenance of records of previous convictions, the implementing regulation provides that an individual is a "repeat intoxicated driver" if the driver was convicted of driving while intoxicated or driving under the influence of alcohol more than once in any five-year period.

The agencies have conducted a preliminary review of State laws to determine whether any States use a period of time that is shorter than five years, for the purpose of considering an individual to be a repeat offender. We are aware of two States that consider individuals to be repeat offenders only if they have been convicted of an alcohol offense within the last three years. We are aware also of one State that provides the same sanctions for all offenders convicted of driving while intoxicated or driving under the influence of alcohol, including both first and subsequent offenders.

To comply with the requirements of this Part, a State need not have a law that considers all drivers convicted of driving while intoxicated or driving under the influence of alcohol more than once in any five-year period to be "repeat intoxicated drivers," and the State law need not establish separate sanctions for first and repeat offenders. However, to comply, the State must have a law that imposes each of the sanctions described in Section 164 and this implementing regulation on all "repeat intoxicated drivers," as that term is defined in this rule. In addition, the State must maintain its records on convictions for driving while intoxicated or driving under the influence of alcohol for a period of at least five years.

The terms "driving while intoxicated" and "driving under the influence" are both defined by the statute to mean driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the legal limit of the State. The statute also defines the term "alcohol concentration." The regulation adopts these statutory definitions.

To comply with Section 164 and the agencies' implementing regulation, and thereby avoid the transfer of Federal-aid highway construction funds, a State must impose all four penalties prescribed in Section 164 on all repeat intoxicated drivers. Each of these penalties is described below:

1. *A minimum one-year license suspension for repeat intoxicated drivers.*

To avoid the transfer of funds, the State law must impose a mandatory minimum one-year driver's license suspension or revocation on all repeat intoxicated drivers. Research has shown that driver licensing sanctions have a significant impact on the problem of impaired driving. Studies relating to licensing sanctions imposed under State administrative licensing revocation systems, for example, have found that these sanctions result in reductions in alcohol-related fatalities of between 6–10 percent.

The term "license suspension" is defined in both the statute and the implementing regulation to mean a hard suspension of all driving privileges. Accordingly, during the one-year term, the offender cannot be eligible for any driving privileges, such as a restricted or a hardship license.

Based on the agencies' review of current State laws, it appears that there are a number of States that do not impose a mandatory suspension of all driving privileges for a period of not less than one year. Some States permit hardship or restricted licenses during the one-year term. Others provide for the return of an offender's driver's license if an ignition interlock system is placed on the offender's vehicle. In addition, some States provide for a driver's license suspension, but do not establish a mandatory one-year term. These State laws do not conform to the regulation.

2. Impoundment or immobilization of, or the installation of an ignition interlock system on, motor vehicles.

To avoid the transfer of funds, the State law must require the impoundment or immobilization of, or the installation of an ignition interlock on, all motor vehicles owned by the repeat intoxicated offenders.

The term "impoundment or immobilization" has been defined in the regulation to mean the removal of a motor vehicle or the rendering of a motor vehicle inoperable, and the agencies have determined that this definition will also include the forfeiture or confiscation of a motor vehicle or the revocation or suspension of a motor vehicle license plate or registration. The agencies have defined the term "ignition interlock system" in the regulation to mean a State-certified system designed to prevent drivers from starting their motor vehicles when their breath alcohol concentration is at or above a preset level.

The State law does not need to provide for all three types of penalties to comply with this criterion, but it must require that at least one of the three penalties will be imposed on all repeat intoxicated drivers, for the State to avoid the transfer of funds.

Section 164 does not specify when a State must impose the impoundment or immobilization of, or the installation of an ignition interlock system on, motor vehicles. To determine when these penalties must be imposed, the agencies considered the purpose of these three penalties.

The agencies recognize that the purpose of an impoundment or immobilization sanction is very

different from that of the installation of an ignition interlock system.

When an individual convicted of driving while intoxicated is subject to a driver license suspension, it is expected that the individual will not drive for the length of the suspension term. However, some studies have found that as many as 70 percent of all repeat offenders continue to drive even after their driver's licenses have been suspended or revoked. In 1997, nearly 6000 drivers involved in fatal crashes did not have a valid driver's license. This number represents approximately 10.8 percent of the total number (54,935) of drivers involved in fatal crashes, with known license status.

Accordingly, laws that provide for the impoundment or immobilization of motor vehicles are designed to ensure that driver's license suspension sanctions are not to be ignored. They seek to prevent offenders from driving vehicles while their driver's licenses are under suspension.

Laws that provide for the installation of an ignition interlock system on a motor vehicle, on the other hand, are not designed to prevent the individual from driving. Such laws generally provide that these systems will be installed on a motor vehicle once the individual's driver's license has been restored and the individual's immobilized or impounded vehicles have been returned. Instead, these laws recognize that many individuals convicted of driving while intoxicated have difficulty controlling their drinking. Accordingly, they are designed to prevent individuals, once they are free again to drive, from drinking and driving. Research indicates that about one-third or all drivers arrested or convicted of driving while intoxicated or driving under the influence are repeat offenders. These laws are designed to prevent recidivism.

Based on the nature of these penalties, the agencies have decided that a uniform time frame for all three penalties would not be appropriate. Instead, the regulation provides that, to comply with this criterion, the State law must require that the impoundment or immobilization be imposed during the one-year suspension term, and that the ignition interlock system be installed at the conclusion of the one-year term. The regulation does not specify the length of time during which these penalties must remain in effect, since the statute was silent in that regard. Leaving this condition undefined in the regulation will permit each State to establish a term that is most appropriate under its own statutory scheme. The agencies note, however, that many States impose impoundment and immobilization sanctions for the duration of license suspension terms. The agencies believe this approach is a sensible one, and States are encouraged to adopt it.

Consistent with past practices under the Section 410 program, the agencies will permit States to provide limited exceptions to the impoundment or immobilization requirement on an individual basis, to avoid undue hardship to an individual, including a family member of the repeat intoxicated driver, or a co-owner of the motor vehicle, but not including the repeat intoxicated driver. To ensure that the availability of these exceptions do not undermine the impoundment or immobilization requirement, however, exceptions must be made in accordance with Statewide published guidelines developed by the State, and in exceptional circumstances specific to the offender.

An exception to the installation of the ignition interlock system, however, will not be acceptable. The agencies believe that an exception to the requirement that an ignition interlock system be installed is not necessary, since the requirement does not prevent a motor vehicle from being available for others dependent on that vehicle. It only prevents an individual from operating the vehicle under the influence of alcohol.

These sanctions must be mandatory and they must apply to all repeat intoxicated drivers for the State law to conform to this criterion. The agencies are aware of some States that only impose these sanctions on individuals determined to be habitual traffic law offenders. These laws do not conform to the requirements of the regulation. Also, in order to qualify under this criterion, each motor vehicle owned by the repeat intoxicated driver must be subject to one of the three penalties. A "motor vehicle" is defined by Section 164 to mean a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated exclusively on a rail line or a commercial vehicle. A motor vehicle is subject to this element if the repeat intoxicated driver's name appears on the motor vehicle registration or title.

Based on the agencies' review of State laws, it appears that many laws provide for an impoundment, immobilization or ignition interlock sanction. However, a number of State laws do not impose these sanctions on *all* vehicles owned by the repeat intoxicated driver. If this condition is not present in a State law, the law will not conform to the agencies' regulation.

3. *An assessment of their degree of alcohol abuse, and treatment, as appropriate.*

To avoid the transfer of funds, the State law must require that all repeat intoxicated drivers undergo an assessment of their degree of alcohol abuse and the State law must authorize the imposition of treatment as appropriate.

Repeat arrests for either driving while intoxicated or driving under the influence of alcohol is one indication of a drinking problem, and problem drinkers (if they drive at all) are at risk of drinking and driving. Assessments of repeat intoxicated drivers for problems and referrals to appropriate treatments may help to identify and address the underlying problems that lead to drinking and driving.

Under an assessment, individuals are assessed with regard to their alcohol and other drug use (e.g., the frequency and quantity of use, the consequences of alcohol and other drug use, and any evidence of loss of control over use). Generally, an assessment will contain a second component, as well, under which individuals are assessed with regard to their risk of driving while intoxicated or of driving under the influence of alcohol (their recidivism risk) based on factors in addition to their drinking behavior.

In practice, an assessment typically consists of the administration of a standardized psychometric test and a personal interview by a trained evaluator. The information obtained through these means are then supplemented with information from the courts (regarding the individual's criminal and driving history), and family members (regarding the individual's alcohol and other drug use).

Based on the information obtained from the assessment, an informed determination can be made regarding the appropriate treatment, if any, for the repeat intoxicated driver. This determination should be made by a person qualified to evaluate alcohol abuse levels.

There is a wide array of programs and activities that are considered to be "treatment." Examples include: Attendance at outpatient counseling sessions; long-term inpatient (i.e, residential) programs conducted in hospitals and clinics; the use of medications; participation in self-help programs such as Alcoholics Anonymous; or any other program, including educational programs, psychological treatment or rehabilitation, that has been proven to be effective.

To qualify under this criterion, the State law must make it mandatory for the repeat intoxicated driver to undergo an assessment, but the law need not impose any particular treatment (or any treatment at all). It need only authorize the imposition of treatment when it is determined to be warranted.

A review of current State laws reveals that a number of States provide for a mandatory assessment of repeat intoxicated drivers and have the authority to assign such drivers to treatment as appropriate. Other States, however, do not provide for both of these elements.

Some State laws provide for a mandatory education or treatment program for repeat intoxicated drivers, but do not specify that these drivers must be assessed. To comply with Section 164 and the agencies' implementing regulation, such States must demonstrate, such as by submitting sections of the State's statutes, regulations or binding policy directives, that under its laws an assessment is a required component of the mandatory education or treatment program.

Other States provide for an assessment and appropriate treatment for offenders, but only as a condition to permit the offender to avoid certain other sanctions. To comply with Section 164 and the agencies' implementing regulation, such States must demonstrate that an assessment is required and treatments are available for all repeat intoxicated drivers. In addition, the other minimum penalties specified under the Section 164 program must continue to be imposed.

4. *Mandatory minimum sentence.*

To avoid the transfer of funds, the State law must impose a mandatory minimum sentence on all repeat intoxicated drivers. For a second offense, the law must provide for a mandatory minimum sentence of not less than five days of imprisonment or 30 days of community service. For a third or subsequent offense, the law must provide for a mandatory minimum sentence of not less than ten days of imprisonment or 60 days of community service.

Consistent with NHTSA's administration of the Section 410 program, the agencies have defined "imprisonment" to mean confinement in a jail, minimum security facility, community corrections facility, inpatient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained.

House arrests have not been considered to fall within the definition of "imprisonment" to date under the Section 410 program, because it was thought that they did not have a sufficient deterrent effect. However, recent NHTSA research seems to indicate that house arrests are effective if they are coupled with electronic monitoring. A recent study, for example, found markedly lower recidivism rates among offenders who had been placed under house arrest with such monitoring. Accordingly, the agencies have included house arrests under the definition of "imprisonment" under the Section 164 program, provided that electronic monitoring is used.

The agencies note that, under NHTSA's Section 410 program, States were eligible to receive incentive grants if they met certain specified requirements, including a mandatory 48 consecutive hours of imprisonment for repeat offenders. As a result of this requirement, some current State laws impose a mandatory sentence of 48 consecutive hours of imprisonment on second or subsequent offenses of driving while intoxicated or driving under the influence of alcohol. This Repeat Intoxicated Driver Program, however, requires longer terms of imprisonment than were required under Section 410. To comply with this new program, States must provide for the longer sentences required under this new program and the State laws must establish these sentences as mandatory minimum terms.

Demonstrating Compliance

Section 164 provides that nonconforming States will be subject to the transfer of funds beginning in fiscal year 2001. To avoid the transfer, this interim final rule provides that each State must submit a certification demonstrating compliance with all four elements.

The certifications submitted by the States under this Part will provide the agencies with the basis for finding States in compliance with the Repeat Intoxicated Driver requirements. Accordingly, until a State has been determined to be in compliance with these requirements, a State must submit a certification by an appropriate State official that the State has enacted and is enforcing a repeat intoxicated driver law that conforms to 23 U.S.C. 164 and § 1275 of this Part.

Certifications must include citations to the State's conforming repeat intoxicated driver law. These citations must include all applicable provisions of the State's law.

Once a State has been determined to be in compliance with the requirements, the State would not be required to submit certifications in subsequent fiscal years, unless the State's law had changed or the State had ceased to enforce the repeat intoxicated driver law. It is the responsibility of each State to inform the agencies of any such change in a subsequent fiscal year, by submitting an amendment or supplement to its certification.

States are required to submit their certifications on or before September 30, 2000, to avoid the transfer of FY 2001 funds on October 1, 2000.

States that are found in noncompliance with these requirements in any fiscal year, once they have enacted complying legislation and are enforcing the law, must submit a certification to that effect before the following fiscal year to avoid the transfer of funds in that following fiscal year. Such certifications demonstrating compliance must be submitted on or before the first day (October 1) of the following fiscal year.

The agencies strongly encourage States to submit their certifications in advance. The early submission of these documents will enable the agencies to inform States as quickly as possible whether or not their laws satisfy the requirements of Section 164 and the implementing regulation, and will provide States with noncomplying laws an opportunity to take the necessary steps to meet these requirements before the date for the transfer of funds.

The agencies also strongly encourage States that are considering the enactment of legislation to conform to these requirements to request preliminary reviews of such legislation from the agencies while the legislation is still pending. The agencies would determine in these preliminary reviews whether the legislation, if enacted, will conform to the new regulation, thereby avoiding a situation in which a State unintentionally enacts a non-conforming repeat intoxicated driver law and the State remains subject to the transfer of funds. Requests should be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

Enforcement

Section 164 provides that, to qualify for grant funding, a State must not only enact a conforming law, but must also enforce the law. To ensure the effective implementation of a repeat intoxicated driver law, the agencies encourage the States to enforce their laws rigorously. In particular, the agencies recommend that States incorporate into their enforcement efforts activities designed to inform law enforcement officers,

prosecutors, members of the judiciary and the public about all aspects of their repeat intoxicated driver laws.

To demonstrate that they are enforcing their laws under the regulation, however, States are required only to submit a certification that they are enforcing their laws.

Notification of Compliance

For each fiscal year, beginning with FY 2001, NHTSA and the FHWA will notify States of their compliance or noncompliance with Section 164, based on a review of certifications received. If, by June 30 of any year, beginning with the year 2000, a State has not submitted a certification or if the State has submitted a certification and it does not conform to Section 164 and the implementing regulation, the agencies will make an initial determination that the State does not comply with Section 164 and with this regulation, and the transfer of funds will be noted in the FHWA's advance notice of apportionment for the following fiscal year, which generally is issued in July.

Each State determined to be in noncompliance will have an opportunity to rebut the initial determination. The State will be notified of the agencies' final determination of compliance or noncompliance and the amount of funds to be transferred as part of the certification of apportionments, which normally occurs on October 1 of each fiscal year.

As stated earlier, NHTSA and the FHWA expect that States will want to know as soon as possible whether their laws satisfy the requirements of Section 164, or they may want assistance in drafting conforming legislation.

States are strongly encouraged to submit certifications in advance, and to request preliminary reviews and assistance from the agencies. Requests should be submitted through NHTSA's Regional Administrators, who will refer these requests to appropriate NHTSA and FHWA offices for review.

Interim Final Rule

This document is being published as an interim final rule. Accordingly, the new regulations in Part 1275 are fully in effect 30 days after the date of the document's publication. No further regulatory action by the agencies is necessary to make these regulations effective.

These regulations have been published as an interim final rule because insufficient time was available to provide for prior notice and opportunity for comment. Some State legislatures do not meet every year. Other State legislatures do meet every year, but limit their business every other year to certain limited matters, such as budget and spending issues. The agencies are aware of six State legislatures that are not scheduled to meet at all in the Year 2000, and additional State legislatures may have limited agendas in that year. These States will have just one opportunity (during the 1999 session of their State legislatures) to enact conforming legislation, and they are preparing agendas and proposed legislation now for their 1999 legislative sessions. These States have an urgent need to know what the criteria will be as soon as possible so they can develop and enact conforming legislation and avoid the transfer of funds on October 1, 2000.

In the agencies' view, the States will not be impeded by the use of an interim final rule. The procedures that States must follow to avoid the transfer of funds under this new program are similar to procedures that States have followed in other programs administered by NHTSA and/or the FHWA. These procedures were established by rulemaking and were subject to prior notice and the opportunity for comment.

Moreover, the criteria that States must meet to demonstrate that they have a conforming repeat intoxicated driver law are derived from the Federal statute and are similar to some of the criteria that were included under the Section 408 and 410 programs. The regulations that implemented NHTSA's Section 408 and 410 programs were subject to prior notice and the opportunity for comment.

For these reasons, the agencies believe that there is good cause for finding that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest.

The agencies request written comments on these new regulations. All comments submitted in response to this document will be considered by the agencies. Following the close of the comment period, the agencies will publish a document in the **Federal Register** responding to the comments and, if appropriate, will make revisions to the provisions of Part 1275.

Written Comments

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that two copies be submitted.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. (49 CFR 553.21) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by December 18, 1998. To expedite the submission of comments, simultaneous with the issuance of this notice, NHTSA and the FHWA will mail copies to all Governors' Representatives for Highway Safety and State Departments of Transportation.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in the Docket 98–XXXX in Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Regulatory Analyses and Notices

Executive Order 12778 (Civil Justice Reform)

This interim final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agencies have determined that this action is not a significant action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. States can choose to enact and enforce a repeat intoxicated driver law, in conformance with Public Law 105–206, and thereby avoid the transfer of

Federal-aid highway funds. Alternatively, if States choose not to enact and enforce a conforming law, their funds will be transferred, but not withheld. Accordingly, the amount of funds provided to each State will not change.

In addition, the costs associated with this rule are minimal and are expected to be offset by resulting highway safety benefits. The enactment and enforcement of repeat intoxicated driver laws should help to reduce impaired driving, which is a serious and costly problem in the United States. Accordingly, further economic assessment is not necessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this action on small entities. This rulemaking implements a new program enacted by Congress in the TEA–21 Restoration Act. As the result of this new Federal program and the implementing regulation, States will be subject to a transfer of funds if they do not enact and enforce repeat intoxicated driver laws that provide for certain specified mandatory penalties. This interim final rule will affect only State governments, which are not considered to be small entities as that term is defined by the Regulatory Flexibility Act. Thus, we certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of the National Environmental Policy Act, and have determined that it will not have a significant effect on the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other affects of final rules that include a Federal mandate likely to result in the expenditure by the State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This interim final rule does not meet the definition of a Federal mandate, because the resulting annual expenditures will not exceed the $100 million threshold. In addition, the program is optional to the States. States may choose to enact and enforce a conforming repeat intoxicated driver law and avoid the transfer of funds altogether. Alternatively, if States choose not to enact and enforce a conforming law, funds will be transferred, but no funds will be withheld from any State.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, a Federalism Assessment has not been prepared.

List of Subjects in 23 CFR Part 1275

Alcohol and alcoholic beverages, Grant programs— transportation, Highway safety.

In accordance with the foregoing, a new Part 1275 is added to Subchapter D, of title 23 of the Code of Federal Regulations to read as follows:

PART 1275—REPEAT INTOXICATED DRIVER LAWS

Sec.

Authority: 23 U.S.C. 164; delegation of authority at 49 CFR §§ 1.48 and 1.50.

§ 1275.1 Scope.

This part prescribes the requirements necessary to implement Section 164 of Title 23, United States Code, which encourages States to enact and enforce repeat intoxicated driver laws.

§ 1275.2 Purpose.

The purpose of this part is to specify the steps that States must take to avoid the transfer of Federal-aid highway funds for noncompliance with 23 U.S.C. 164.

§ 1275.3 Definitions.

As used in this part:

(a) *Alcohol concentration* means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) *Driver's motor vehicle* means a motor vehicle with a title or registration on which the repeat intoxicated driver's name appears.

(c) *Driving while intoxicated* means driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.

(d) *Driving under the influence* has the same meaning as "driving while intoxicated."

(e) *Enact and enforce* means the State's law is in effect and the State has begun to implement the law.

(f) *Ignition interlock system* means a State-certified system designed to prevent drivers from starting their car when their breath alcohol concentration is at or above a preset level.

(g) *Impoundment or immobilization* means the removal of a motor vehicle from a repeat intoxicated driver's possession or the rendering of a repeat intoxicated driver's motor vehicle inoperable. For the purpose of this regulation, "impoundment or immobilization" also includes the forfeiture or confiscation of a repeat intoxicated driver's motor vehicle or the revocation or suspension of a repeat intoxicated driver's motor vehicle license plate or registration.

(h) *Imprisonment* means confinement in a jail, minimum security facility, community corrections facility, house arrest with electronic monitoring, inpatient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained.

(i) *License suspension* means a hard suspension of all driving privileges.

(j) *Motor vehicle* means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

(k) *Repeat intoxicated driver* means a person who has been convicted previously of driving while intoxicated or driving under the influence within the past five years.

(l) *Repeat intoxicated driver law* means a State law that imposes the minimum penalties specified in § 1275.4 of this part for all repeat intoxicated drivers.

(m) *State* means any of the 50 States, the District of Columbia or the Commonwealth of Puerto Rico.

§ 1275.4 Compliance criteria.

(a) To avoid the transfer of funds as specified in § 1275.6 of this part, a State must enact and enforce a law that

establishes, as a minimum penalty, that all repeat intoxicated drivers shall:

(1) Receive a driver's license suspension of not less than one year;

(2) Be subject to either—

(i) The impoundment of each of the driver's motor vehicles during the one-year license suspension;

(ii) The immobilization of each of the driver's motor vehicles during the one-year license suspension; or

(iii) The installation of a State-approved ignition interlock system on each of the driver's motor vehicles at the conclusion of the one-year license suspension;

(3) Receive an assessment of their degree of alcohol abuse, and treatment as appropriate; and

(4) Receive a mandatory sentence of—

(i) Not less than five days of imprisonment or 30 days of community service for a second offense; and

(ii) Not less than ten days of imprisonment or 60 days of community service for a third or subsequent offense.

(b) *Exceptions.* (1) A State may provide limited exceptions to the impoundment or immobilization requirements contained in paragraphs (a)(2)(i) and (a)(2)(ii) of this section on an individual basis, to avoid undue hardship to any individual who is completely dependent on the motor vehicle for the necessities of life, including any family member of the convicted individual, and any co-owner of the motor vehicle, but not including the offender.

(2) Such exceptions may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which vehicles may be released by the State or under Statewide published guidelines and in exceptional circumstances specific to the offender's motor vehicle, and may not result in the unrestricted use of the vehicle by the repeat intoxicated driver.

§ 1275.5 Certification requirements.

(a) Until a State has been determined to be in compliance, or after a State has been determined to be in non-compliance, with the requirements of 23 U.S.C. 164, to avoid the transfer of funds in any fiscal year, beginning with FY 2001, the State shall certify to the Secretary of Transportation, on or before September 30 of the previous fiscal year, that it meets the requirements of 23 U.S.C. 164 and this part.

(b) The certification shall be made by an appropriate State official, and it shall provide that the State has enacted and is enforcing a repeat intoxicated driver law that conforms to 23 U.S.C. 164 and § 1275.4 of this part. The certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a repeat intoxicated driver law that conforms to the requirements of 23 U.S.C. 164 and 23 CFR 1275.4, (citations to State law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications to the appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 164, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's repeat intoxicated driver legislation changes or the State ceases to enforce its law.

§ 1275.6 Transfer of funds.

(a) On October 1, 2000, and October 1, 2001, if a State does not have in effect or is not enforcing the law described in § 1275.4, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State for the fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

(b) On October 1, 2002, and each October 1 thereafter, if a State does not have in effect or is not enforcing the law described in § 1275.4, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State for the fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

§ 1275.7 Use of transferred funds.

(a) Any funds transferred under § 1275.6 may:

(1) Be used for approved projects for alcohol-impaired driving countermeasures; or

(2) Be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(b) States may elect to use all or a portion of the transferred funds for hazard elimination activities eligible under 23 U.S.C. 152.

(c) The Federal share of the cost of any project carried out with the funds transferred under § 1275.6 of this part shall be 100 percent.

(d) The amount to be transferred under § 1275.6 of this Part may be derived from one or more of the following:

(1) The apportionment of the State under § 104(b)(1);

(2) The apportionment of the State under § 104(b)(3); or

(3) The apportionment of the State under § 104(b)(4).

(e)(1) If any funds are transferred under § 1275.6 of this part to the apportionment of a State under Section 402 for a fiscal year, an amount, determined under paragraph (e)(2) of this section, of obligation authority will be distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under Section 402.

(2) The amount of obligation authority referred to in paragraph (e)(1) of this section shall be determined by multiplying:

(i) The amount of funds transferred under § 1275.6 of this Part to the apportionment of the State under Section 402 for the fiscal year; by

(ii) The ratio that:

(A) The amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs; bears to

(B) The total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(f) Notwithstanding any other provision of law, no limitation on the total obligations for highway safety programs under Section 402 shall apply to funds transferred under § 1275.6 to the apportionment of a State under such section.

§ 1275.8 Procedures affecting States in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 164 and this part, based on NHTSA's and FHWA's preliminary review of its certification, will be advised of the funds expected to be transferred under § 1275.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with 23 U.S.C. 164 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the appropriate National Highway Traffic Safety Administration Regional office.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 164 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being transferred under § 1275.6 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on: October 14, 1998.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

Anthony Kane,

Executive Director, Federal Highway Administration.

[FR Doc. 98–27969 Filed 10–14–98; 3:13 pm]

BILLING CODE 4910–59–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SD–001–0002a; FRL–6175–4]

Clean Air Act Approval and Promulgation of State Implementation Plan for South Dakota; Revisions to the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving certain State implementation plan (SIP) revisions submitted by the designee of the Governor of South Dakota on May 2, 1997. The May 2, 1997 submittal included revisions to the Administrative Rules of South Dakota (ARSD) pertaining to the State's regulatory definitions, minor source operating permit regulations, open burning rules, stack testing rules, and new source performance standards (NSPS). This document pertains to the entire State SIP submittal with the exception of the revisions to the NSPS regulations and the new State provision regarding pretesting of new fuels or raw materials: EPA will act on those two regulations separately. EPA has found the remaining rule revisions to be consistent with the Clean Air Act (Act) and corresponding Federal regulations. Therefore, pursuant to section 110 of the Act, EPA is approving the SIP revisions discussed above.

DATES: This direct final rule is effective on December 18, 1998 without further notice, unless EPA receives adverse comment by November 18, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, 8P–AR, at the EPA Region VIII Office listed. Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, Mailcode 8P–AR, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of the State documents relevant to this action are available for public inspection at the Air Quality Program, Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

On May 2, 1997, the designee of the Governor of South Dakota submitted, among other things, revisions to the SIP. Specifically, the State submitted revisions to the following chapters in the ARSD: 74:36:01 Definitions, 74:36:04 Operating Permits for Minor Sources, 74:36:06 Regulated Air Pollutant Emissions, 74:36:07 New Source Performance Standards, 74:36:11 Stack Performance Testing, and 74:36:15 Open Burning. This document evaluates the State's submittal for conformance with the Act and corresponding Federal regulations. However, EPA is not, at this time, acting on the revisions to the NSPS regulations in ARSD 74:36:07 or the new provision regarding pretesting of new fuels or raw materials in ARSD 74:36:11:04. EPA will be acting on these two regulations in a separate action.

The State's May 2, 1997 submittal also included the State's section 111(d) plan for existing municipal solid waste (MSW) landfills and minor revisions to its title V operating permit program, which will also be acted on separately.

II. This Action

A. Analysis of State Submissions

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565, April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) if a completeness determination is not made by EPA within six months after receipt of the submission.

The State of South Dakota held a public hearing on November 20, 1996 on the revisions to the ARSD, at which time the rule revisions were adopted by the State. The revised rules became effective on December 29, 1996. These rule revisions were formally submitted to EPA for approval on May 2, 1997. EPA did not issue a completeness or an incompleteness finding for this revision to the SIP. Thus, pursuant to section 110(k)(1)(B), the submittal was deemed complete by operation of law on November 12, 1997.

2. Evaluation of State's Submittal

The following summarizes the State's SIP revisions made to the ARSD and EPA's review of those revisions for approvability:

a. ARSD 74:36:01 Definitions. In ARSD 74:36:01:01(79), the State updated its definition of "VOCs" to reflect changes made to the Federal definition of VOCs in 40 CFR 51.100(s) on October 8, 1996 (61 FR 52850). However, EPA has revised its definition of VOCs twice since October 8, 1996. Specifically, on August 25, 1997, EPA added sixteen compounds to the list of negligibly reactive VOCs in 40 CFR 51.100(s)(1) (see 62 FR 44900). In addition, on April 9, 1998, EPA added an additional compound to the list of

negligibly reactive VOCs in 40 CFR 51.100(s)(1) (see 63 FR 17333). EPA has informed the State of these revisions and has requested that future SIP revisions reflect the most recent Federal VOC definition. The State's definition of VOCs, by not excluding the above listed compounds from the definition of VOC, is considered to be more stringent than EPA's definition, which is acceptable.

In ARSD 74:36:01:18 and 74:36:01:19, the State adopted definitions of "MSW landfill" and "existing MSW landfill," respectively. EPA has reviewed those definitions and found the State's definitions to be consistent with the corresponding Federal definitions in 40 CFR part 60, subpart Cc.

Thus, EPA finds the State's revision to ARSD 74:36:01:01 to be consistent with the corresponding Federal regulations and, therefore, approvable.

b. ARSD 74:36:04 Operating Permits for Minor Sources. In ARSD 74:36:04:03, the State revised its list of exemptions from the minor source operating permit requirements to: (1) clarify that a source is not exempt from the minor source operating permit requirements if the source has requested Federally enforceable permit conditions to prevent that source from needing a title V operating permit or a prevention of significant deterioration (PSD) permit; (2) clarify that sources exempt from the minor source operating permit requirements are still required to meet the visible emissions requirements in ARSD 74:36:12:01; and (3) revise the exemption for emergency electrical generators to clarify that the exemption applies to emergency electrical generators fueled by all petroleum products (the State's rule previously only applied to diesel-fueled emergency electrical generators). EPA believes the first two clarifications mentioned above strengthen the existing regulation and are necessary clarifications. In addition, EPA sees no approvability issues with the revised exemption for emergency electrical generators in ARSD 74:36:04:03(7). If an emergency electrical generator is considered to be a major source based on its potential to emit, South Dakota's regulations would require the source either to obtain a construction/title V operating permit under the State's combined construction/title V operating permit regulations in ARSD 74:36:05 or to obtain permit conditions to prevent the source from needing a title V operating permit as discussed in ARSD 74:36:04:03. In addition, the State's new provision in ARSD 74:36:04:03 discussed above, which clarifies that exempted sources are still required to meet the visible emissions standard (i.e., 20% opacity limit), ensures that the emergency electrical generators will be operated adequately to minimize emissions.

The State also repealed its provisions for general minor source operating permits in ARSD 74:36:04:25–26 because of changes in State legislation that provide the State with broad authority to issue general permits under the existing minor source operating permit requirements as well as the title V operating permit program. In addition, the State repealed ARSD 74:36:04:30 regarding the requirement to perform a stack performance test, as this was already required in ARSD 74:36:06:06. These revisions are considered minor in nature and are consistent with the corresponding Federal requirements.

Therefore, because the revisions to ARSD 74:36:04 are consistent with the Act and corresponding regulations and guidance, EPA finds the revisions to be approvable.

c. ARSD 74:36:06 Regulated Air Pollutant Emissions and Repeal of ARSD 74:36:15. The State repealed the open burning provisions of ARSD 74:36:15 and transferred ARSD 74:36:15:01, which contained the list of materials that cannot be open-burned because of the excessive and potentially dangerous pollutants that can be generated from these materials, to ARSD 74:36:06:07. The State also added a statement to ARSD 74:36:06:07 clarifying that all open burning needed to be conducted in accordance with local and State ordinances, laws, and rules. The intent of these revisions was to consolidate similar rules into ARSD 74:36:06, as well as to clarify that other State agencies (i.e., the waste management program) and local governments are the primary authority for approving open burning. Because the State retained the list of items which could not be disposed of by open burning, EPA believes the transfer of open burning approval authority from the State Air Quality Program to other State agencies and local governments is acceptable and will not result in any less stringent application of the open burning requirements. Consequently, EPA is approving the revisions to ARSD 74:36:06:07 and 74:36:06:15.

d. ARSD 74:36:11 Stack Performance Testing. The State revised the title of this chapter and revised ARSD 74:36:11:01 to incorporate Federal test methods for hazardous air pollutants. The State also made minor wording and clarifying changes to ARSD 74:36:11:01–03. EPA has reviewed the revisions to ARSD 74:36:11:01–03 and had found they are consistent with the Act and corresponding Federal regulations.

III. Final Action

EPA is approving South Dakota's SIP revisions, as submitted by the designee of the Governor with a letter dated May 2, 1997, with the exception of the revisions to ARSD 74:36:07 (NSPS) and ARSD 74:36:11:04 (regarding pretesting of new fuels or raw materials). EPA will be acting on ARSD 74:36:07 and 74:36:11:04 separately from this action.

The State's SIP submittal requested that EPA replace the previous version of the ARSD approved into the SIP with the following chapters of the ARSD as in effect on December 29, 1996: 74:36:01 through 74:36:03, 74:36:04 (with the exception of section 74:36:04:03.01), 74:36:06, 74:36:07, 74:36:10–13, and 74:36:17. In this approval, EPA is specifically replacing all of the existing State regulations previously approved into the SIP (except for the NSPS rules in ARSD 74:36:07) with the following State regulations as in effect on December 29, 1996: ARSD 74:36:01–03, 74:36:04 (with the exception of section 74:36:04:03.01), 74:36:06, 74:36:10, 74:36:11 (with the exception of ARSD 74:36:11:04), 74:36:12, and 74:36:13. ARSD 74:36:07 (NSPS rules), as in effect on January 5, 1995 and as approved by EPA at 40 CFR 52.2170(c)(16)(i)(A), will remain part of the SIP until EPA acts on the revised ARSD 74:36:07 which will be done in a separate action. [Note that EPA is not incorporating ARSD 74:36:17, which includes the Rapid City street sanding and deicing provisions, into the approved SIP at this time because EPA has not yet acted on the original January 22, 1996 submittal of ARSD 74:36:17. That chapter will be acted on separately in the near future.]

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

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 18, 1998 without further notice unless the Agency receives adverse comments by November 18, 1998.

If EPA receives such comments, then EPA will publish a timely withdrawal of the final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 18, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review," review.

The final rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 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 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 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. section 804(2).

G. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding South Dakota's audit privilege and penalty immunity law (sections 1–40–33 through 1–40–37 of Chapter 1–40 of the South Dakota Codified Laws, effective July 1, 1996) or its impact upon any approved provision in the SIP,

including the revisions at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of South Dakota's audit privilege and immunity law. A State audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 114, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the SIP, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a State audit privilege or immunity law.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 29, 1998.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

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

PART 52—[AMENDED]

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

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

Subpart QQ—South Dakota

2. Section 52.2170 is amended by adding paragraph (c)(17) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(17) On May 2, 1997, the designee of the Governor of South Dakota submitted revisions to the plan. The revisions pertain to revised regulations for definitions, minor source operating permits, open burning, and performance testing. The State's SIP submittal requested that EPA replace the previous version of the ARSD approved into the SIP with the following chapters of the ARSD as in effect on December 29, 1996: 74:36:01 through 74:36:03, 74:36:04 (with the exception of section 74:36:04:03.01), 74:36:06, 74:36:07, 74:36:10–13, and 74:36:17. EPA is replacing all of the previously approved State regulations, except the NSPS rules in ARSD 74:36:07, with those regulations listed in paragraph (c)(17)(i)(A). ARSD 74:36:07, as in effect on January 5, 1995 and as approved by EPA at 40 CFR 52.2170(c)(16)(i)(A), will remain part of the SIP. [Note that EPA is not incorporating the revised ARSD 74:36:07, new ARSD 74:36:11:04, or new ARSD 74:36:17 in this action, as these chapters will be acted on separately by EPA.]

(i) Incorporation by reference.

(A) Revisions to the Administrative Rules of South Dakota, Air Pollution Control Program, Chapters 74:36:01–03; 74:36:04 (except section 74:36:04:03.1); 74:36:06; 74:36:10, 74:36:11 (with the exception of ARSD 74:36:11:04), 74:36:12, and 74:36:13, effective December 29, 1996.

[FR Doc. 98–27838 Filed 10–16–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–49; RM–9248]

Radio Broadcasting Services; Las Vegas, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of BK Radio, allots Channels 268A and 275A to Las Vegas, NM, as the community's fourth and fifth local commercial FM channels and permits BK Radio and Meadows Media, LLC to amend their pending applications (BPH–960829MH and BPH–960829MG) to specify Channels 268A and 275A respectively, without loss of cut-off protection. See 63 FR 19700, April 21, 1998. Channels 268A and 275A can be allotted to Las Vegas in compliance with the Commission's minimum distance separation requirements and utilized at the transmitter site specified by both BK Radio and Meadows Media, with a site restriction of 3.9 kilometers (2.4 miles) west, at coordinates 35–36–16 North Latitude; 105–15–35 West Longitude. With this action, this proceeding is terminated.

DATES: Effective November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–49, adopted September 30, 1998, and released October 9, 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. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 268A and Channel 275A at Las Vegas.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–27942 Filed 10–16–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–107; RM–9288]

Radio Broadcasting Services; Gaylord, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots substitutes Channel 268A for Channel 237A and modifies the license for Station WMJZ at Gaylord, Michigan, to specify operation on Channel 268A, in response to a petition filed by Darby Advertising, Inc. *See* 63 FR 38785, July 20, 1998. The coordinates for Channel 268A at Gaylord are 45–01–33 and 84–39–40. Canadian concurrence has been obtained for this allotment.

EFFECTIVE DATE: November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–107, adopted September 30, 1998, and released October 9, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 237A and adding Channel 268A at Gaylord.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–27941 Filed 10–16–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–131; RM–9078; RM–9155]

Radio Broadcasting Services; Twin Falls and Hailey, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 269A, in lieu of previously proposed Channel 294A, to Twin Falls, Idaho, as that community's fourth local FM service, in response to a petition for rule making filed on behalf of JTL Communications Corporation (RM–9078). *See* 62 FR 27710, May 21, 1997. Additionally, in response to a counterproposal filed on behalf of Hailey Local Service Co. (RM–9155), Channel 294C is allotted to Hailey, Idaho, as that community's first local aural transmission service. Coordinates used for Channel 269A at Twin Falls, Idaho, are 42–33–42 and 114–28–12. Coordinates used for Channel 294C at Hailey, Idaho, are 43–22–03 and 114–12–30. With this action, the proceeding is terminated.

DATES: Effective November 23, 1998. A filing window for Channel 269A at Twin Falls, Idaho, and for Channel 294C at Hailey, Idaho, will not be opened at this time. Instead, the issue of opening a filing window for those channels will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–131, adopted September 30, 1998, and released October 9, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Hailey, Channel 294C.

3. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Channel 269A at Twin Falls.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–27940 Filed 10–16–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–225, RM–9173, RM–9254]

Radio Broadcasting Services; Olney, Archer City, Denison-Sherman, and Azle, TX, Lawton, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 248C2 from Olney, Texas, to Archer City, Texas, and modifies the license of Station KRZB to specify operation on Channel 248C2 at Archer City. Also in response to the Petition for Rule Making filed by Texas Grace Communications, this document allots Channel 282C2 to Olney, Texas. See 62 FR 17512, November 19, 1998. In response to a counterproposal filed by Hunt Broadcasting, Inc., this document also substitutes Channel 269C for Channel 269C1 at Denison-Sherman, Texas, reallots Channel 269C to Azle, Texas, and modifies the license of Station KIKM to specify operation on Channel 269C at Azle. In order to accommodate this reallotment, this document substitutes Channel 267C1 for Channel 268C1 at Lawton, Oklahoma, and modifies the license of Station KLAW, Lawton, Oklahoma, to specify operation on Channel 267C1. The reference coordinates for Channel 248C2 at Archer City, Texas, are 33–35–36 and 98–37–31. The reference coordinates for Channel 282C2 at Olney, Texas, are 33–08–47 and 98–52–00. The reference

coordinates for Channel 269C at Azle, Texas, are 33–23–20 and 97–43–03. The reference coordinates for Channel 267C1 at Lawton, Oklahoma, are 34–32–31 and 98–31–40. With this action, the proceeding is terminated. A filing window for Channel 282C2 at Olney, Texas, will not be opened at this time. Instead the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order adopted September 23, 1998, and released October 2, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 268C1 and adding Channel 267C1 at Lawton.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 269C1 at Denison-Sherman, and adding Azle, Channel 269C.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 282C2 at Olney.

5. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 248C2 at Olney and adding Archer City, Channel 248C2.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–27939 Filed 10–16–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–67, RM–8996, RM–9079]

Radio Broadcasting Services; Freeport and Cedarville, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 295A to Freeport, Illinois, and Channel 258A to Cedarville, Illinois. See 62 FR 7984, February 21, 1997; The reference coordinates for Channel 295A at Freeport, Illinois, are 42–19–28 and 89–35–13. The reference coordinates for Channel 258A at Cedarville, Illinois, are 42–21–50 and 89–40–59. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 97–67, adopted September 23, 1998, and released October 2, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

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

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 295A at Freeport.

3. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Cedarville, Channel 258A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–27938 Filed 10–16–98; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980714174–8250–02; I.D. 061898B]

RIN 0648–AK60

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Precious Coral Fisheries; Amendment 3

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 3 to the Fishery Management Plan for the Precious Coral Fisheries of the Western Pacific Region (FMP). This rule establishes framework procedures enabling management measures to be established and/or changed via rulemaking rather than through FMP amendment. This action will allow the Western Pacific Fishery Management Council (Council) to respond quickly to rapid changes in the Western Pacific precious corals fisheries.

DATES: Effective November 18, 1998.

ADDRESSES: Copies of Amendment 3 may be obtained from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, Fishery Management Specialist, Pacific Islands Area Office, NMFS at (808) 973–2985 or Kitty Simonds at (808) 522–8220.

SUPPLEMENTARY INFORMATION: The FMP was approved in 1980 and governs the harvest of precious corals in the U.S. exclusive economic zone of the western Pacific region. This rule, which implements Amendment 3, establishes framework procedures enabling the Council and NMFS to change elements of the management regime governing the Western Pacific precious coral fisheries through rulemaking rather than by FMP amendment. The procedures specify how certain new management measures may be established through rulemaking if new information demonstrates that there are biological, social, or economic concerns in the precious coral permit areas. Also, the framework includes somewhat more streamlined procedures allowing adjustments to established management measures. Under the

framework, the Southwest Regional Administrator, NMFS, with the concurrence of the Council, could initiate rulemaking. Before taking an action under the framework process, the impacts of that action would be analyzed. Advance public notice, public discussion, and consideration of public comment on each framework action are required.

Amendment 3 describes the framework procedure in more detail than the regulatory text of this rule. The history of the development of Amendment 3 is summarized in the preamble to the proposed rule (63 FR 39064, July 21, 1998) and is not repeated here.

Comments

No comments were received from the public on the proposed rule.

Changes to the Proposed Rule

NMFS simplified the last sentence in section 660.89(d)(2) to read "If approved by the Regional Administrator, NMFS may implement the Council's recommendation by rulemaking." In the proposed rule the sentence ended with " ...and final rulemaking. In some instances, or if circumstances warrant, by proposed and final rulemaking." The word "rulemaking" alone should indicate NMFS will adhere to the Administrative Procedure Act, which generally requires a **Federal Register** notice giving advance notice and soliciting public comment before an agency issues a final rule.

Classification

The Administrator, Southwest Region, NMFS, determined that Amendment 3 is necessary for the conservation and management of the precious coral fisheries and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when the rule was proposed, that it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. Since the basis for this certification has not changed, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: October 13, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660 — FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. A new § 660.89 is added to subpart F to read as follows:

§ 660.89 Framework procedures.

(a) *Introduction.* Established management measures may be revised and new management measures may be established and/or revised through rulemaking if new information demonstrates that there are biological, social, or economic concerns in a precious coral permit area. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, quotas, season, or levels of catch and/or in effort.

(b) *Annual report.* By June 30 of each year, the Council-appointed Precious Coral Team will prepare an annual report on the fisheries in the management area. The report will contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(c) *Procedure for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) According to the framework procedures of Amendment 3 to the FMP, the Council may recommend to the Regional Administrator that established measures be modified, removed, or re-instituted. Such recommendation will include supporting rationale and analysis and will be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(d) *Procedure for new measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 3 to the FMP, the Council will publicize, including by a **Federal Register** document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** document summarizing the Council's deliberations, rationale, and analysis for the preferred action and the time and place for any subsequent Council meeting(s) to consider the new measure. At a subsequent public meeting, the Council will consider public comments and other information received before making a recommendation to the Regional Administrator about any new measure. If approved by the Regional Administrator, NMFS may implement the Council's recommendation by rulemaking.

[FR Doc. 98–27972 Filed 10–16–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 201
Monday, October 19, 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.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR part 1310

[DEA Number 137P]

RIN 1117–AA31

Exemption of Chemical Mixtures; Correction

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the proposed rule (DEA–137P) which was published Wednesday, September 16, 1998, (63 FR 49506). The proposed rule related to the implementation of those portions of the Domestic Chemical Diversion Control Act of 1993 [Pub. L. 103–200] that exempt from regulation under the Controlled Substances Act certain chemical mixtures that contain regulated chemicals.

FOR FURTHER INFORMATION CONTACT: Frank O. Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are subject to this correction make amendments to parts 1300 and 1310 of Title 21 of the Code of Federal Regulations to exempt from regulation, under the Controlled Substances Act, certain chemical mixtures that contain listed chemicals.

Need for Correction

As published, the proposed rule contains the following errors that may cause confusion: 1) reference is made to a nonexistent paragraph (g) in the amendatory language of 21 CFR 1310.12; 2) the amendatory language of 21 CFR 1310.13 (i) is incomplete; and 3) there are several typographical errors in the "Supplementary Information" section.

Accordingly, the publication on September 16, 1998 of the proposed rule (DEA–137P), which was the subject of FR Doc. 98–24293, is corrected as follows:

Supplementary Information—[Correction]

1. On page 49506, in the third column, twentieth line from the bottom correct "caused" to read "used".

2. On page 49508, first column, eighteenth line, correct "21 U.S.C. 802(39)(a)((v)" to read "21 U.S.C. 802(39)(A)(v)"

3. On page 49508, first column, first full paragraph, twenty third line correct "Methamphetamine Control Act of 1966" to read "Methamphetamine Control Act of 1996".

4. On page 49508, first column, eighth line from the bottom, correct "21 U.S.C. 802(39)(a)(iii)" to read "21 U.S.C. 802(39)(A)(iii)".

5. On page 49508, second column, eight line from the top, insert "appear" after "not".

6. On page 49508, second column, fourth line from bottom of last full paragraph correct "and" to read "or".

7. On page 49510, third column, eight line from the bottom, replace "grining" with "grinding".

8. On page 49512 on the first line of the first column replace "1998" with "1988".

§ 1310.12 [Corrected]

1. On page 49514, in the third column, in § 1310.12 paragraph (a) remove "(c), (d) and (g)" of the second line and add "(c) and (d)" in its place.

§ 1310.13 [Corrected]

2. On page 49517, in the second column, in § 1310.13, paragraph (i) remove the colon following "section" and add "and are exempted by the Administrator from application of sections 302, 303, 310, 1007, and 1008 of the Act (21 U.S.C. 822–3, 830, and 957–8):"

Dated: October 14, 1998.

Donnie R. Marshall,

Acting Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 98–27991 Filed 10–16–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 72 and 75

RIN 1219–AA74

Diesel Particulate Matter Exposure of Underground Coal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; notice of hearings; and close of record.

SUMMARY: MSHA is announcing public hearings regarding the Agency's proposed rule addressing diesel particulate matter exposure of underground coal miners, which was published in the **Federal Register** on April 9, 1998. These hearings will be held under section 101 of the Federal Mine Safety and Health Act of 1977. The rulemaking record will remain open until February 16, 1999.

DATES: All requests to make oral presentations for the record should be submitted at least 5 days prior to each hearing date. However, you do not have to give a written request to be provided an opportunity to speak. The public hearings are scheduled to be held at the following locations on the dates indicated:

November 17, 1998—Salt Lake City, Utah
November 19, 1998—Beaver, West Virginia (Beckley)
December 15, 1998—Mt. Vernon, Illinois
December 17, 1998—Birmingham, Alabama

Each hearing will last from 9:00 a.m. to 5:00 p.m., but will continue into the evening if necessary.

The record will remain open until February 16, 1999.

ADDRESSES: Send requests to make oral presentations to: MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203–1984.

The hearings will be held at the following locations:

November 17, 1998—Salt Palace Convention Center, 100 S. West Temple, Salt Lake City, Utah, 84101.

November 19, 1998—National Mine Health & Safety Academy, Auditorium, 1301 Airport Road, Beaver, West Virginia (Beckley) 25813–9426.

December 15, 1998—Ramada Inn, 405 S. 44th Street, Mt. Vernon, Illinois, 62864.

December 17, 1998—Radisson Hotel, 808 20th Street South, Birmingham, Alabama 35205.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director; Office of Standards, Regulations, and Variances; MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION: On April 9, 1998, (63 FR 17492), MSHA published a proposed rule to reduce the risks to underground coal miners of serious health hazards that are associated with exposure to high concentrations of diesel particulate matter (dpm). DPM is a very small particle in diesel exhaust. Underground miners are exposed to far higher concentrations of this fine particulate than any other group of workers. The best available evidence indicates that such high exposures put these miners at excess risk of a variety of adverse health effects, including lung cancer.

The proposed rule for underground coal mines would require that mine operators install and maintain high-efficiency filtration systems on certain types of diesel-powered equipment. Underground coal mine operators would also be required to train miners about the hazards of dpm exposure.

The comment period was scheduled to close on August 7, 1998. However, due to requests from the mining community, the Agency extended the comment period for an additional 60 days, until October 9, 1998.

MSHA will hold pubic hearings to receive additional public comment. The hearings will address any issues relevant to the rulemaking.

The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearings and may exclude irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel may ask questions of speakers. At the discretion of the presiding official, the time allocated to speakers for their presentations may be limited. In the interest of conducting productive hearings, MSHA will schedule speakers in a manner that allows all points of view to be heard as effectively as possible.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. Copies of the hearing transcripts will be make available for pubic review.

MSHA will accept additional written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of post-hearing comments, the record will remain open until February 16, 1999. This provides ten months from publication for the public to comment on this proposed rule.

Dated October 15, 1998.

Marvin W. Nichols, Jr.,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–27976 Filed 10–16–98; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SD–001–0002b; FRL–6175–5]

Clean Air Act Approval and Promulgation of State Implementation Plan for South Dakota; Revisions to the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve certain State implementation plan (SIP) revisions submitted by the designee of the Governor of South Dakota on May 2, 1997. The May 2, 1997 submittal included revisions to the Administrative Rules of South Dakota (ARSD) pertaining to the State's regulatory definitions, minor source operating permit regulations, open burning rules, stack testing rules, and new source performance standards (NSPS). This document pertains to the entire State SIP submittal with the exception of the revisions to the NSPS regulations and the new State provision regarding pretesting of new fuels or raw materials: EPA will act on those two regulations separately.

In the Rules section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before November 18, 1998.

ADDRESSES: Written comments may be mailed to Richard R. Long, 8P-AR, at the EPA Region VIII Office listed. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Air Quality Program, Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII,(303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register.**

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

Dated: September 24, 1998.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 98–27839 Filed 10–16–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6176–5]

National Emission Standards for Hazardous Air Pollutants for Manufacturing of Nutritional Yeast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules; notice of public hearing.

SUMMARY: The Environmental Protection Agency (EPA) is proposing standards to limit emissions from facilities that manufacture nutritional yeast and are major sources of hazardous air pollutant (HAP) emissions, particularly acetaldehyde. The proposed standards would carry out section 112 of the Clean Air Act, as amended November 15, 1990 (the Act), to protect the public health by

reducing these emissions from new and existing facilities. The Act requires these sources to achieve an emissions level consistent with installing and operating maximum achievable control technology (MACT). The proposed standards would eliminate approximately 43 percent of nationwide HAP emissions from these sources.

DATES: *Comments.* Comments must be received on or before December 18, 1998.

Public Hearing. Contact us by November 2, 1998 to request to speak at a public hearing. If we receive one or more requests, we will hold the hearing at 10:00 a.m. on November 16, 1998. If you wish to speak or to ask if a hearing will be held, contact the person named under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: *Public Hearing.* If a public hearing is requested it will be held at our Office of Administration's Auditorium in Research Triangle Park, North Carolina.

Comments. Send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–13, Room M–1500, U. S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. You may also send comments and data by electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. (See **SUPPLEMENTARY INFORMATION**, below, for more on file formats and so on.) Be sure to include the docket number, A–97–13, on your comment.

Docket. Docket No. A–97–13 contains information relevant to the proposed rule. You can read and copy it between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays), at our Air and Radiation Docket and Information Center (6102), 401 M Street, S.W., Washington, DC 20460; telephone (202) 260–7548. Go to Room M–1500, Waterside Mall (ground floor). The docket office may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Aston, Policy Planning and Standards Group, Emission Standards Division, (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–2363; facsimile number (919) 541–0942; electronic mail address "aston.michele@epamail.epa.gov."

SUPPLEMENTARY INFORMATION:

Regulated Entities

If your facility manufactures nutritional yeast, which we consider to be varieties of *Saccharomyces cerevisiae*, it may be a "regulated entity." In addition, the proposed rule would apply to your facility only if the yeast is made for the purpose of becoming an ingredient in dough for bread or any other yeast-raised baked product, or for becoming a nutritional food additive. Regulated categories and entities include sources listed in the main Standard Industrial Classification code for them (2099, Food Preparations Not Elsewhere Classified.)

This description is just a guide to entities likely to be regulated by final action on this proposal. It lists the types of entities we think may be regulated, but you should examine the applicability criteria in section II of this preamble and in § 63.2131 of the proposed rule to determine whether your facility is likely to be regulated by final action on this proposal. If you have any questions about whether your facility may need to meet the standards, call the person named under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access and Filing Addresses

You can get this notice, the proposed regulatory texts, and other background information in Docket No. A–97–13 by contacting our Air and Radiation Docket and Information Center (see **ADDRESSES**). Or go to our web site at "http://www.epa.gov/ttn/oarpg/ramain.html" for electronic versions of the proposal preamble and regulation, as well as other information. For assistance in downloading files, call the TTN HELP line at (919) 541–5384.

If you send comments by electronic mail (e-mail) to "a-and-r-docket@epamail.epa.gov," be sure they're in an ASCII file and don't use special characters or encryption. We will also accept comments and data on diskette in WordPerfect 5.1 or 6.1 or ASCII file format. You may file comments on the proposed rule online at many Federal Depository Libraries. Identify all comments and data in electronic form by the docket number (A–97–13). Don't send any confidential business information through electronic mail.

Outline

The information presented in this preamble is organized as follows:

I. What Is the Subject and Purpose of This Rule?

The Act requires EPA to establish standards to control HAP emissions from source categories selected under section 112(c) of the Act. An initial source category list was published in the **Federal Register** on July 16, 1992 (57 FR 31576). The "baker's yeast manufacturing" source category is under the "Food and Agriculture" industry group. To clarify the scope of the rule and distinguish it from regulation of bakeries, we changed the name of the source category to "manufacturing of nutritional yeast." Whenever we use "you" or "your" in this preamble or proposed rule, we mean the owner or operator of a facility that manufactures nutritional yeast. We have identified 10 existing facilities in the source category.

The purpose of the proposed rule is to reduce emissions of HAP from major sources that manufacture nutritional yeast. Under the Act, a major source is one with the potential to emit at least 9.1 megagrams per year (Mg/yr) (10 tons per year [tpy]) of any one HAP or 22.7 Mg/yr (25 tpy) of combined HAPs. We estimate at least 9 of these facilities may be major sources and that annual baseline emissions of acetaldehyde from this source category are 254 tpy. The proposed rule would eliminate approximately 43 percent of these emissions.

The HAP emitted from the nutritional yeast manufacturing process is acetaldehyde. The primary acute (short-term) effect of inhalation exposure to acetaldehyde is irritation of the eyes, skin, and respiratory tract and, at extremely high concentrations, respiratory paralysis and death. Data from animal studies suggest that acetaldehyde may be a potential developmental toxin, and an increased incidence of nasal tumors in rats and

laryngeal tumors in hamsters has been observed following inhalation exposure to acetaldehyde. Human health effects data do not currently exist, but we have classified acetaldehyde as a probable human carcinogen of low carcinogenic hazard.

On September 14, 1998, EPA published in the **Federal Register** a notice of draft integrated urban air toxics strategy to comply with section 112(k), 112(c)(3) and section 202(l) of the Clean Air Act. In that **Federal Register** document, acetaldehyde is included among the draft list of HAP that we believe pose the greatest threat to public health in urban areas, and manufacturing of nutritional yeast is included on the draft list of source categories for regulation under section 112(k). See 63 FR 49239, September 14, 1998.

We recognize that the degree of adverse effects to human health from exposure to acetaldehyde can range from mild to severe. The extent and degree to which the human health effects may be experienced is dependent upon (1) the ambient concentration observed in the area (as influenced by emission rates, meteorological conditions, and terrain), (2) the frequency of and duration of exposures, (3) characteristics of exposed individuals (genetics, age, pre-existing health conditions, and lifestyle), which vary significantly with the population, and (4) pollutant-specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence.)

Acetaldehyde comprises approximately 18 percent of the total volatile organic compounds (VOC) emitted from nutritional yeast manufacturing. We estimate the current nationwide emissions from nutritional yeast manufacturing facilities to be 1,400 tons per year of VOC. The proposed emission controls for HAP will reduce non-HAP VOC emissions as well. The proposed rule would reduce nationwide VOC emissions by approximately 43 percent, to estimated nationwide emissions of 800 tons per year VOC. Emissions of VOC have been associated with a variety of health and welfare impacts.

Volatile organic compound emissions, together with nitrogen oxides, are precursors to the formation of tropospheric ozone, or smog. Exposure to ambient ozone is responsible for a series of public health impacts, such as alterations in lung capacity; eye, nose, and throat irritation; nausea; and aggravation of existing respiratory disease. Ozone exposure can also damage forests and crops.

We do not expect any significant other environmental or energy impacts resulting from the proposed rule. Actual compliance costs will depend on each source's existing equipment and the modifications they make to comply with the standard. According to one estimate, up to half of existing facilities may face average capital costs of $385,000 and annual operating costs of $74,000. However, a source's capital costs could exceed $1.5 million if it has to replace a fermentation vessel to comply with the proposed standard. The remaining facilities would not require significant capital expenses, but they would face similar annual operating costs.

II. Does This Rule Apply to Me?

The proposed rule applies to you if you own or operate any nutritional yeast manufacturing facility that is located at a facility that is a major source of HAP emissions. You would also have to follow the proposed rule if your facility is a non-major (area) source but later increases its potential to emit HAP to major source levels.

If your facility is a major source under this regulation, each fermentation production line dedicated to production of *Saccharomyces cerevisiae* (nutritional yeast, also known as baker's yeast) would be required to meet the proposed emission limits. A "fermentation production line" means all fermenters exceeding 7,000 gallons capacity and used in sequence to produce a discrete amount of yeast. We chose 7,000 gallons as the defining capacity cutoff based on industry information indicating that the larger vessels are used exclusively for the fermentation stages we propose to regulate. This regulation limits the definition of "fermentation production line" to the collection of fermenters used in the last three fermentation stages, including the final batch. Other terms for fermentations include "stock, first generation, and trade" and "CB4, CB5, and CB6." A fermentation production line does not include flask, pure-culture, or yeasting-tank fermentation. A fermentation production line excludes all operations after the last dewatering operation, such as filtration.

The proposed regulation applies to you only if the yeast produced at your facility is made for the purpose of becoming an ingredient in dough for bread or any other yeast-raised baked product, or for becoming a nutritional food additive. The proposed rule does not apply to the production of:

(1) Specialty yeasts, such as those for wine, champagne, whiskey, and beer.

(2) Torula yeast (*Candida utilis*) using aerobic fermentation.

Section IV.B of this preamble discusses why we propose exempting specialty yeasts and Torula yeast.

III. What Procedures Did We Follow To Develop the Proposed Rule?

A. Source of Authority for Standards Development

Section 112(c) of the Act directs us to develop a list of all categories of major sources, plus appropriate area sources, that emit one or more of the 188 HAP listed under section 112(b). Nutritional yeast manufacturing (formerly baker's yeast manufacturing) is a listed source category because of its acetaldehyde emissions. Section 112 further directs us to impose technology-based standards on sources emitting HAP and allows us to revise these technology-based standards later to address risk remaining even with these emission limits.

B. Criteria for Developing Standards

We develop national emission standards for hazardous air pollutants (NESHAP) to control HAP emissions from new and existing sources according to section 112 of the Act. Section 112(d) of the Act requires the standards to reduce as much HAP emissions as achievable, considering the cost of achieving these reductions, effects on health or environment (other than air), and energy requirements.

A NESHAP may be based on measures, which: (1) reduce the volume or eliminate emissions of such pollutants by changing processes, substituting materials, or other modifications, (2) enclose systems or processes to eliminate emissions, (3) collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point, (4) are design, equipment, work practice, or operational standards (including requirements for training or certifying operators) as provided in section 112(h), or (5) combine these approaches (section 112(d)(2) of the Act).

To develop a NESHAP, we collect information about the industry, including characteristics of emission sources, control technologies, data from HAP emissions tests at well-controlled facilities, and emissions control costs and effects on energy use and the environment. Our information is provided by the sources, their State or local agencies, or it may be collected by us directly. We use this information to analyze possible regulatory approaches.

Although NESHAP typically contain numerical limits on emissions, we may need to use other approaches. For example, technological and economic limits may make measuring emissions

from a source impossible, or at least impracticable. Section 112(h) of the Act authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard—or a combination of these—whenever we can't prescribe or enforce an emissions standard.

C. Determining the MACT Floor

After we identify the specific categories of major sources to regulate under section 112, we must set MACT standards for each of them. Section 112 requires us to use a minimum statutory baseline ("floor") for standards. For new sources, the MACT standards for a source category or subcategory must be at least as stringent as the emission control achieved in practice by the best controlled similar source, as determined by the EPA Administrator (see section 112(d)(3) of the Act). The standards for existing sources can be less stringent than standards for new sources. But, for categories with fewer than 30 sources, the MACT standards must be at least as stringent as the average emission limit achieved by the best performing 5 sources (section 112(d)(3) of the Act).

D. Selecting MACT

Section 112(d)(2) says we must establish standards that require the maximum degree of reduction in emissions of HAP "that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable." These standards must be no less stringent than the new and existing source MACT floors. We may distinguish among classes, types, and sizes of sources within a category or subcategory (section 112(d)(1)). For example, we could establish two classes of sources within a category or subcategory based on size, and set a different emissions standard for each class, provided both standards are at least as stringent as the MACT floor for that class of sources.

Using the MACT floor as a starting point, we analyze information about the industry to develop model plant populations and project national effects, including HAP emissions reduction levels and compliance costs, as well as secondary energy effects. Then we evaluate various alternatives to select the most appropriate MACT level.

The selected alternative may be more stringent than the MACT floor, but if so, it must be technically and economically achievable. We try to reduce emissions as much as possible without unreasonable economic, environmental, or energy impacts (section 112(d)(2)). Regulatory alternatives and decisions may differ for new and existing sources because of different MACT floors and the range of beyond-the-floor control options.

Having selected a regulatory alternative, we translate it into a proposed regulation, which typically includes sections on applicability, standards, testing, showing compliance, monitoring, reporting, and recordkeeping. The preamble to the proposed regulation explains our proposed decision. We invite the public to comment on the proposed regulation during the public comment period, evaluate public comments and other information received after proposal, reach a final decision, and then publish the final standard.

E. History of the NESHAP for Nutritional Yeast Manufacturing

We developed the proposed rule in cooperation with Wisconsin's Department of Natural Resources and Maryland's Department of Environment. When we started gathering information, these two States had recently developed federally enforceable rules for controlling VOC emissions from this source category. The VOC rules were based on reasonably available control technology (RACT), and we believe they represent the most stringent control of VOC (and HAP) in the U.S. for this industry.

Our working relationship, called MACT Partnerships, involves States, industry, and environmental organizations and depends on the mutual interests of all major stakeholders in the air toxics program. We asked for public comments on these partnerships by notice in the **Federal Register** on March 29, 1995 (60 FR 16088).

Through MACT partnerships, each MACT standard involves two phases. In the first phase, we develop a "presumptive MACT," which isn't an emission standard. Instead, it states what is known about potential MACT and provides information on how to develop the emission standard. During the second phase, we develop a formal MACT standard for the source category, propose it, and promulgate it.

To develop the "presumptive MACT," we first met with State and local agencies, (the presumptive MACT meeting), and then consulted with industry. In the presumptive MACT meeting, we reviewed available information with the States to estimate presumptive MACT. This meeting took place on July 20, 1994 at Research Triangle Park, NC (RTP), and we extended it by conference call with other affected agencies on August 23, 1994. We based the presumptive MACT largely on three sources: (1) information Wisconsin and Maryland State environmental agencies collected as they developed VOC RACT standards, (2) our Control Technology Center's guidance document, "Assessment of VOC Emissions and their Control from Baker's Yeast Manufacturing Facilities," and (3) information we collected from State and local agencies and manufacturers. The summary of the July 20, 1994 meeting, which is available in the project docket, explains how we developed the presumptive MACT.

This draft presumptive MACT and summary were then presented at a meeting in RTP on September 22, 1994. The meeting's purpose was to get stakeholders' comments on the selected presumptive MACT. The summary of the September 22, 1994 meeting, which is available in the project docket, outlines the reactions and concerns stakeholders expressed at the meeting. Our presumptive MACT partner, Wisconsin, prepared a technical support document (also available in the project docket) for presumptive MACT.

The presumptive MACT presented in 1994 contained the following major elements: (1) suggested MACT floor for existing sources set as an acetaldehyde emission limit of 0.7 pounds per ton of liquid yeast produced (lb/ton LY); (2) suggested MACT floor for new sources set as an acetaldehyde emission limit of 0.2 lb/ton LY; (3) anticipated control of area and major sources; and (4) anticipated control of wastewater emissions resulting from the addition of add-on control technologies at some sources.

Following is a summary of the major comments made at the stakeholder meeting: (1) Some companies wanted to monitor their acetaldehyde emissions to verify the assumptions about their ability to comply with the standard and to verify that emissions from dry yeasts are comparable to cream yeast emissions; (2) Stakeholders asked for clarification that the new source standard would apply to complete new production lines, and that the existing source standard would apply to new units added to existing lines; (3) Stakeholders wanted to be kept informed about further development on how MACT would apply to wastewater emissions; (4) Stakeholders wanted exemptions for small area sources based on site-specific risk evaluations; (5) Stakeholders wanted an exemption for small quantity production of specialty yeasts; and (6) Stakeholders wanted flexibility in monitoring requirements

and greater certainty over what is required to establish site specific operating parameters.

After we developed the presumptive MACT, we consulted with the stakeholders, several of whom provided more data and analysis to help evaluate the standard's effects and ensure our requirements for monitoring, reporting, and recordkeeping are practical. We also did tests at two facilities to validate test methods considered for the MACT standard and to get more emissions data. Beginning in June of 1998, we held additional stakeholder meetings in RTP, NC and by teleconference, to which we invited representatives from the industry, States, and other stakeholders. During these meetings, we reviewed the findings from the presumptive MACT process, summarized our more recent testing results, described our intentions for proposing the MACT standard, and solicited input from the stakeholders. During the course of these meetings and teleconferences, representatives from the States and industry were given the opportunity to provide a great deal of input, and to submit supporting technical information, to assist us in the development of this proposed rulemaking. The rulemaking docket includes minutes from the stakeholder meetings and copies of written information that was provided by the States and industry representatives. Based on our review of the information used to develop the presumptive MACT and the additional information we collected since then, we've determined the MACT floor and selected MACT as described in this preamble. As discussed in the following section, we are co-proposing two MACT standards.

IV. What Are the Proposed Emission Standards?

With this notice, we are co-proposing two sets of emission limits and associated requirements. One set, which we will refer to within this preamble as the "RACT standard," relies on the concentration-based model used in Wisconsin's and Maryland's RACT rules; this is designated as "Option 1" in the proposed regulatory text. The second set, which we will refer to in this preamble as the "PMACT standard," relies on a production-based format, which is the same format considered in the 1994 presumptive MACT described in section III.E of this preamble; this is designated as "Option 2" in the proposed regulatory text. Both of the co-proposed regulatory options are printed as proposed standard following this preamble, and both are designated as subpart CCCC, §§ 63.2130 through 63.2229. In submitting comments, please specify whether the comment pertains to one or both options for the co-proposed standards. We will further evaluate these co-proposed standards based on our review of public comments and other information we may receive. The final rule will reflect either one of the co-proposed standards, a combination of the co-proposed standards, or a different approach altogether. We are accepting public comments on the co-proposed alternatives as well as on any other alternatives.

In addition to the standards that are specific to subpart CCCC, the 40 CFR part 63 General Provisions also would apply to you as outlined in Table 3 of the proposed rule. The General Provisions codify procedures and criteria we use to implement all NESHAP promulgated under the amended Act. The General Provisions contain administrative procedures, preconstruction review procedures, and procedures for conducting compliance-related activities such as notifications, recordkeeping and reporting, performance testing, and monitoring. The subpart CCCC proposed rule refers to individual sections of the General Provisions to highlight key sections that we believe will be of particular interest to you. However, unless specifically overridden in Table 3 of the rule, which establishes the applicability of the General Provisions to the subpart, you should assume that all of the applicable General Provisions requirements would apply to you.

A. What Are the Emission Limits?

RACT Standard. The proposed RACT standard would limit the allowable VOC concentration per fermentation stage during a single fermentation batch from exceeding the following levels: (1) the last fermentation stage (trade) must have emissions of VOC less than or equal to 150 parts per million (ppm), (2) the second-to-last stage (first generation) must have emissions of VOC less than or equal to 225 ppm, and (3) the third-to-last stage (stock) must have emissions of VOC less than or equal to 450 ppm. These limits would apply to new and existing sources and are equal to the existing RACT limits, where VOC is expressed as ethanol. (The State-implemented RACT standards are expressed as propane.)

Our proposed RACT standard includes alternate emission limits for each fermentation stage based on an equivalent concentration of acetaldehyde. You can comply with either the emission limit for VOC or the emission limit for acetaldehyde. Prior to your initial compliance demonstration, you would choose one of these two emission limit options. In your initial compliance certification, you would notify the Administrator of your choice, and thereafter you would monitor and report compliance results accordingly. The acetaldehyde monitoring limits are 18 percent of the VOC limits. We chose 18 percent because it is the average percentage of acetaldehyde in total VOC emissions at existing facilities in our MACT floor data base. For the last fermentation stage, the maximum allowable acetaldehyde concentration is 27 ppm. For the second-to-last fermentation stage, the maximum allowable acetaldehyde concentration is 41 ppm. For the third-to-last fermentation stage, the maximum allowable acetaldehyde concentration is 81 ppm.

The format of the State-implemented RACT rules is that the emission limits are never to be exceeded. Sources subject to rules of this format must design their control systems to achieve the emissions standard at all times, considering there are fluctuations in manufacturing processes. If the system is always in compliance, over time, the control system results in emission reductions greater than the standard requires. We are taking comment on whether the proposed emission limits should be more stringent, so that they more closely reflect the actual performance of facilities complying with State-implemented RACT standards.

Besides establishing concentration-based limits on emissions, the proposed RACT standard would require you to cap the flow rate for every fermenter subject to the standard. This air flow limit is based on the fermenter exhaust's average flow rate for the last 12 months. For fermenters built after October 19, 1998, you must cap the flow rate at the maximum flow rate per fermenter volume that our written guidance specifies. We plan to develop this guidance before publishing the final standard based on our survey of fermenter-to-air flow volumes. See section X.B for discussion on the need for a flow rate cap.

PMACT Standard. The proposed PMACT standard would limit VOC emissions from each existing fermentation production line to 9.4 lb/ton LY each calendar month. The proposed PMACT standard would limit VOC emissions from each new fermentation production line to 7.2 lb/ton LY each calendar month. Existing lines are those operating on the date this preamble is published. New fermentation production lines are those

you begin constructing or reconstructing after this date.

As with the RACT standard, you may choose to monitor acetaldehyde directly and show compliance with an equivalent limit. The acetaldehyde emission limits are 18 percent of the VOC limits. For existing sources, the equivalent acetaldehyde limit is 1.7 lb/ton LY. For new and reconstructed sources, the equivalent limit is 1.3 lb/ton LY.

Use of Add-on Control Technology. To comply with the proposed rules, you may decide to limit VOC emissions by using add-on control technologies such as incineration or biofiltration. More likely, you may decide to limit emissions by monitoring process conditions to reduce the formation of VOC while producing yeast. Process-control steps include timing when you add raw materials and optimizing the oxygen supply in the fermenter at critical stages.

Interaction with Other Regulations. Whatever the final format, you may have to follow both the NESHAP and other existing rules, such as RACT limits on VOC emissions. If an existing rule and the proposed rule don't conflict, you must comply with both rules. Conflicts would be resolved through your Title V permit, and the most stringent requirements would govern.

B. Does the Proposed Rule Have Exemptions?

The proposed rule has exemptions for specialty yeasts and Torula yeast produced using aerobic fermentation.

Specialty yeasts. This industry mainly produces varieties of nutritional yeast from different strains of *Saccharomyces cerevisiae.* However, this industry also can produce types of yeast commonly known as "specialty yeasts." Specialty yeasts include those for wine, champagne, whiskey, and beer. Most of these yeasts are varieties of *Saccharomyces cerevisiae*, but they're genetically diverse, so certain strains do certain things better than others. For example, a whiskey strain may be able to metabolize carbohydrates in an ethanol-rich environment, whereas others can't. But, their uniqueness also means they have narrow uses, so their production is limited compared to that of nutritional yeast.

Of all the specialty yeasts, wine yeast is most plentiful, and champagne and whiskey yeasts also make up a large part of the total. Only small amounts of beer yeast are produced. Overall, specialty yeasts usually account for less than 1 percent of a facility's total yeast production.

We propose exempting specialty yeast production from the RACT and PMACT standards because it is a small fraction of the total production. It can also be difficult to estimate emissions from this process. Specialty yeasts aren't often produced, so we have no process-control parameters and relevant data to correlate emissions and production. Thus, calculating emissions would be difficult and expensive.

Torula yeast. For the following reasons, we've decided not to propose regulating Torula yeast produced using aerobic fermentation. Torula yeast (*Candida utilis*) is a nutritional yeast, typically produced as an additional product at paper mills. The high sugar concentration of the spent sulfite liquor from the pulping process is an ideal carbon source for Torula yeast. The only possible source of acetaldehyde is the fermentation tank in which the Torula yeast grows. The rest of the processes are either washing, drying, or yeast-conditioning stages. Usually, the paper mill needs only one fermentation tank to produce Torula yeast. The tank typically holds 80,000 gallons, and it is aerated, well agitated, and open to the atmosphere. Because of these well aerated conditions, producing acetaldehyde anaerobically is unlikely. Also, *Candida utilis* can consume acetaldehyde and ethanol. We conclude that Torula yeast production, as described above, should not be in the national emission standards for nutritional yeast manufacturers because the anaerobic conditions for acetaldehyde production never occur in the fermentation tank.

There may be Torula yeast production at nutritional yeast manufacturing facilities. However, we don't have sufficient information on the potential for emitting acetaldehyde or other HAPs to justify exempting all production of Torula yeast. Therefore, we intend our exemption to apply to paper mill-type operations, which use aerobic fermentation. We request comment on whether this exclusion should apply to other sources that produce Torula yeast, if any such operations exist.

C. What Pollutants Are Proposed To Be Limited?

In both the RACT and the PMACT standards, we propose to limit VOC emissions from fermentation production lines. As discussed in section X.C of this preamble, we believe it is reasonable to use VOC as a surrogate for acetaldehyde, which is the HAP of concern in this source category. However, since some facilities may currently monitor acetaldehyde emissions from their fermenters, the proposed rules also allow you to meet equivalent acetaldehyde emission limits. See sections VI and XI of this preamble for more discussion of monitoring requirements and issues.

V. How Do I Show Initial Compliance With the Standard?

Under the proposed RACT and PMACT standards, existing sources would have to comply with the final standards within 3 years of publication in the **Federal Register.** New or reconstructed sources would have to comply upon startup of the affected fermentation production line.

RACT Standard. You would show compliance with the RACT emission limit if the average VOC (or equivalent acetaldehyde) concentration for the batch is no more than the concentration in the proposed emission limit for each fermenter and each stage. You must continuously monitor emissions and demonstrate that your monitoring system is operating properly.

You must also show that the average flow rate from each fermenter used in a batch is no more than the cap on flow rate established for it. You would monitor flow rate with a calibrated annubar or other approved alternative to determine the air flow in the fermenter's exhaust stack.

PMACT Standard. You would show compliance with the PMACT emission limit for each fermentation production line if, for a given calendar month, the average of total batch emissions per ton of liquid yeast produced divided by the number of batch operations is no more than the VOC or equivalent acetaldehyde standard. You must continuously monitor emissions and demonstrate that your monitoring system is operating properly. You must also continuously monitor the exhaust air flow from each fermenter to be able to calculate mass emissions. Finally, you must record the production data needed to determine the tons of liquid yeast produced per batch. Production, or batch yield, means the discrete amount of yeast produced from the last fermentation stage of a batch operation. It is expressed as tons of liquid yeast, based on 30 percent solids.

Add-on Control Technology. If you choose to limit emissions by using an add-on control technology, such as incineration or biofiltration, you must also meet the requirements described in section VII of this preamble.

VI. What Monitoring Must I Do To Show Ongoing Compliance?

You must meet the relevant requirements in 40 CFR 63.8 of the General Provisions, such as those

governing how to do monitoring, especially continuous emission monitoring, and how to request alternative monitoring methods. You also must continuously monitor the emissions concentration in every affected fermenter's exhaust stack. If you choose to monitor VOC, you would use Performance Specification 8 (PS 8), in appendix A of 40 CFR part 60, to show your system for continuous monitoring of emissions is operating properly. You would also use EPA Method 25A to do the relative accuracy test PS 8 requires. Or, if you choose to monitor acetaldehyde, you would use PS 9 or an approved alternative to show your monitoring system is operating properly. You'd record all data as 15-minute block values.

Both proposed rule formats would require you to continuously monitor the rate of air flow or a parameter of the blower that is correlated with the rate of air flow from each fermenter's exhaust stack. In the case of the RACT rule, this information itself directly measures compliance with the standard's required cap on flow rate. For the PMACT rule, you would combine data on flow rate with concentration data to calculate mass emissions from the stack. You would monitor flow rate with a calibrated annubar or other approved alternative to determine the air flow in the fermenter's exhaust stack. You'd record all data as 15-minute block values.

If you choose to limit emissions by using an add-on control technology, such as incineration or biofiltration, you must meet the added monitoring requirements described in section VII of this preamble.

VII. What if I Use an Add-On Control Technology To Comply With the Standards?

While we do not know of any facilities that intend to use add-on control technologies to meet the proposed emission limits, their use is technologically feasible. Therefore, we are proposing requirements for any facilities which choose this compliance option. Sections 63.2150 through 63.2151 of the proposed rule cover your use of incineration. Sections 63.2155 through 63.2156 of the proposed rule cover biofiltration. In both cases, you would have to test initial performance and show compliance with the limits on VOC emissions. These performance tests would establish monitoring values for the control device's ongoing performance, and you would need to meet this performance parameter. For an incinerator, the temperature in each combustion chamber must stay at or above the minimum temperature established during the performance test, based on 15-minute block values. For a biofiltration system, you must keep the pressure drop across the system within 5 percent and 1 inch of the water column of the complying pressure drop, or within the range of the complying values for pressure drop established during your initial test of performance.

VIII. What Notification, Recordkeeping, and Reporting Requirements Must I Follow?

Initial Notice. If the standards apply to you, you would need to send a notice to the Administrator within 120 days after the effective date of these standards for existing sources and within 120 days after the date of initial startup for new and reconstructed sources. As outlined in the General Provisions under 40 CFR 63.9, this report notifies the Administrator (or delegated agency under section 112(l) of the Act) that an existing facility must meet the proposed standards or that you've constructed a new facility. Thus it allows you and the Administrator to plan for compliance activities.

Notice of Performance Tests and Periods for Evaluating Continuous Emission Monitors. The General Provisions, 40 CFR 63.7 and 40 CFR 63.9(g), require you to notify the Administrator (or delegated agency under section 112(l) of the Act) before testing the performance of control devices and evaluating continuous emissions monitors.

Notice of Compliance Status. The General Provisions, 40 CFR 63.9(h), require you to send a notice of compliance status within 60 days after the final compliance date. This report must include your compliance certification, the results of performance tests and monitoring, and a description of how you'll determine continuing compliance as outlined under 40 CFR 63.9. Your notice must include the range of each monitored parameter for each affected source, information verifying this range shows compliance with the emission standard, and information indicating that each source has operated within its designated operating parameters. To comply with the proposed VOC or acetaldehyde emission limits, your compliance report must contain at least three months worth of complying data.

Periodic Reports. The following periodic reports are required under this proposal. You would have to send us reports every six months if any of the following were true:

- Your operation doesn't comply with the emission limits.
- A monitored value is exceeds its benchmark.
- A change occurs at your facility or within your process that might affect its compliance status.
- A change occurs at your facility or within your process that you must normally report in the initial notice.

See § 63.2165 of the proposed rules for more information.

Other Reports. The General Provisions, particularly sections 40 CFR 63.9 and 63.10, require certain other reports, including those you must do for periods of startup, shutdown, and malfunction. For example, you must develop a startup, shutdown, and malfunction plan. You would have to make the plan available for inspection if the Administrator requests to see it. It would stay in your records for the life of the affected source or until the source no longer must meet the standards in the proposed rule. If your procedures are consistent with your plan, you must say so in writing and deliver or postmark your report to us by July 30 and January 30. If your procedures are inconsistent with your plan, you must report what you're doing within two working days after starting these inconsistent actions, then send us a letter within seven working days after the event ends.

IX. What Is the Basis for Selecting the Level of the Proposed Standards?

A. What Is the Affected Source?

We define an affected source as a stationary source, group of stationary sources, or part of a stationary source regulated by the NESHAP. Within a source category, we select the emission sources (emission points or groupings of emission points) that will make up the affected source. To select these emission sources, we mainly consider the constituent HAP and quantity emitted from individual, or groups, of emission points.

In selecting the affected source for the NESHAP on nutritional yeast manufacturing, we identified the HAP-emitting operations at existing facilities. Manufacturers produce yeast in the following steps.

- Grow the yeast from the pure yeast culture in a series of fermentation vessels. Molasses, nutrients and vitamins are added along with oxygen to ensure optimal feed rates and aerobic conditions for maximizing yield of the final product.
- Recover the yeast from the final fermenter using centrifugal action to concentrate the yeast solids.
- Filter the yeast solids using a filter press or a rotary vacuum filter to concentrate the yeast further.

• Blend the yeast filter cake in mixers with small amounts of water, emulsifiers, and cutting oils.
• Extrude the mixed press cake and cut it.
• Wrap the cakes for shipment or dry them to form dry yeast.

Acetaldehyde, along with ethanol and other non-HAP VOC, form when conditions in the fermentation tank become anaerobic. The rate of VOC formation is higher in the earlier stages, but results in far less mass than in later stages because the earlier stages occur in smaller fermenters and the overall production rate is lower. One company recently showed that more than 99 percent of emissions from nutritional yeast manufacturing occur during the last three fermentation stages. Therefore, we decided to limit the NESHAP to these last three stages.

We also considered whether to treat the affected source as each piece of equipment (fermenter) or as a collection of equipment. Individual facilities differ in the structure of their fermentation lines. Also, even at the same facility, production processes can vary between products and batches. Because of the variability in the number, type, and use of individual fermenters, we're proposing to treat the affected source as the fermentation production line. We've defined the "fermentation production line" as the collection of fermenters used in the last three fermentation stages. This collection of fermenters would be required to meet the proposed rules for existing and new sources (i.e., under the proposed RACT approach, each of the fermenters in the last three stages would be required to comply with the applicable VOC/acetaldehyde emission limit, and under the proposed production-based approach, the total mass of VOC/acetaldehyde emissions from the fermenters in the last three stages of each batch must be below the applicable limit per ton LY produced in the batch).

Wastewater is another potential source of VOC/acetaldehyde emissions in the nutritional yeast manufacturing process. Wastewater comes from washing and drying the final yeast product. It may also come from using of an add-on control technology that reduces emissions from fermentation. For example, one facility, which is no longer operating, used biofiltration to remove VOC from the stack gas. It also installed a wet scrubber upstream of the biofilter to remove potassium and ammonia from the exhaust gas because these chemicals slow the growth of microorganisms used to remove the VOC. Although scrubbers can remove VOC/acetaldehyde from gas streams, they also produce wastewater that contains VOC and acetaldehyde. Our PMACT partner, Wisconsin, studied the wastewater emissions at two facilities, and determined that acetaldehyde concentration in wastewater was very low (less than 10 ppm). Though the concentration may be low, acetaldehyde emissions from wastewater could total more than 1 ton per year at a large facility. Therefore, we considered acetaldehyde emissions from wastewater as potentially being part of the affected source at facilities manufacturing nutritional yeast.

In addition to the operations whose primary purpose is the commercial production of nutritional yeast, large nutritional yeast facilities usually have research and laboratory areas for research and development. These areas may or may not be at the production site. They test new manufacturing protocols or develop new and improved yeast strains.

These areas normally have pilot plant sized fermenters to do lab-scale fermentations. The size of the fermenters can be as small as 5 gallons. Although the installations are used regularly, each fermentation batch may have different products and processes because it is experimental research. These types of facilities have no methodical or systematic production process, and the activity varies from day to day.

Based on this description of research and development facilities, we believe they should be excluded from the definition of the nutritional yeast manufacturing source category. If we later decide to regulate research and development facilities under a separately defined source category under section 112(c)(7) of the Act, the scope of these later rules might include research and development operations at nutritional yeast manufacturing facilities.

B. How Was PMACT Determined?

We developed the presumptive MACT (PMACT) for nutritional yeast manufacturing in 1994 with input from Federal, State, and local environmental agencies and industry representatives. The PMACT Technical Support Document, published in September 1994, summarizes emission data and analyzes the MACT floor. In 1994, our findings suggested that PMACT was 0.7 lb of acetaldehyde/ton LY for existing fermentation production lines and 0.21 lb of acetaldehyde/ton LY for new lines.

C. What Is the MACT Floor That Is the Basis for the Proposed Standard?

After developing the PMACT, we reviewed it, considering deficiencies identified later in certain tests and data analyses as well as test data gathered since that time. As a result, we determined that it may be appropriate to consider the MACT floor from two perspectives. One perspective is that available test data represent the floor—a refined PMACT approach. In considering this approach to setting the floor, we reviewed all available yeast production and emissions data for nutritional yeast manufacturers in the U.S Because this source category has fewer than 30 sources, we tried to identify the five best-performing sources to establish the MACT floor. We discarded some data because of questionable test methods, particularly in applying Method TO–5. We discarded some data because key variables, such as the fraction of acetaldehyde in the VOC, were not documented. We haven't included one recent test yet because we disagree with the facility on how to measure or estimate flow rates of the emission streams. Finally, we discarded one test because it represented only partial emissions from a facility equipped with an add-on control technology, and it is no longer operating. (See docket number A–97–13 for more information on emission test data and our analysis of the MACT floor.)

After deciding which data represented the five best-performing facilities, we revised the draft MACT floor determination for existing fermentation production lines to 1.7 lb acetaldehyde/ton LY. The best performing source can achieve an emissions rate of 1.3 lb acetaldehyde/ton LY, which represents the MACT floor for new fermentation production lines. This MACT floor is the basis for the emission limits proposed in the PMACT rule. As discussed in section IV.A of this preamble, we've proposed this level of performance both in terms of VOC and as an equivalent acetaldehyde limit.

We also considered basing the MACT floor on existing emissions standards, particularly RACT or limits derived from RACT. Of the 10 facilities we confirmed as operating, 5 are subject to RACT or RACT-derived limits. This approach has several advantages compared to the PMACT approach, in both the format of the final standards and the body of data available to support a MACT determination. Therefore, we are proposing that the MACT floor equals RACT.

As described in section II of this preamble, we are proposing that a "fermentation production line" means all fermenters exceeding 7,000 gallons capacity and used in sequence to produce a discrete amount of yeast. We chose the capacity cutoff of 7,000 gallons to define the fermentation production line, based on industry information that fermentation vessels larger than 7,000 gallons are used exclusively in the last three stages of yeast manufacturing. Essentially, we are using the capacity cutoff of 7,000 gallons to clearly define what we mean by the last three fermentation stages of yeast manufacturing. We are requesting comment on whether there are fermenters smaller than 7,000 gallons capacity that are used in the last three stages of yeast manufacturing. If your comments indicate that smaller fermentation vessels are used in the last three stages of yeast manufacturing, we may promulgate a capacity cutoff value that is smaller than 7,000 so that the capacity cutoff accurately defines the fermentation operations we intend to regulate under this MACT.

Wastewater at a nutritional yeast manufacturing facility is a potential source of VOC/HAP emissions. We tried to develop a MACT floor for wastewater emissions. Unconfirmed information gathered during development of the 1994 PMACT document suggests that all facilities send their wastewater to publicly owned treatment works and that there may be one facility that pretreats its wastewater. Because of the extremely limited nature of this information, we haven't been able to set a MACT floor for wastewater at this time. We're requesting comments on MACT floor for wastewater.

We will further consider setting a MACT floor for wastewater, based on your comments and data, and any other information that becomes available to us. Upon further consideration, we may set a MACT floor for wastewater based on pretreatment, air emission controls on wastewater units, treatment of wastewater off-site at a POTW, other technologies, or some combination of these options.

D. What Is Proposed MACT?

As described in our January 1992 document, "Assessment of VOC Emissions and Their Control from Baker's Yeast Manufacturing" (EPA–450/3–91–027), process control on the fermentation production line should be able to reduce 75 to 95 percent of emissions. Vessel design may also reduce emissions, but we can't determine at this point which designs may be most effective for the entire industry. Although using add-on control devices theoretically could reduce emissions 95 to 98 percent, the industry doesn't use them now. One facility that formerly used add-on control technology had enough problems to dissuade us from requiring it, even at new facilities, in the proposed standards. We believe no workable control options exist for the fermentation production line beyond the floor, which is represented by process control at facilities subject to RACT or RACT-like limits. Therefore, we are proposing that MACT equals the MACT floor for the fermentation production line.

As discussed in the PMACT approach to the MACT floor, we have identified the top five performing sources in the industry using available data. For this PMACT approach, we selected the average emissions level of these sources as the proposed emission limit for existing sources. We selected the performance of the best-performing source as the proposed emission limit for new sources.

The RACT approach is based on at least five existing sources already having to meet RACT or RACT-like limits. We believe these facilities are producing fewer emissions than RACT requires, based on rough analysis of production data and information from these facilities. Thus, although we are proposing the RACT limits as the MACT limits, we will consider comments and data that support a potentially lower MACT emission limit. This information should also allow us to determine if new sources can achieve an even more stringent MACT, based on the best-performing source.

For the same reasons we were unable to identify a MACT floor for wastewater emissions, we are not proposing a MACT standard for wastewater emissions at this time. We're requesting comments on regulating wastewater at manufacturers of nutritional yeast, and on appropriate MACT standards for wastewater. We will further consider setting a MACT requirements for wastewater, based on your comments and data, and any other information that becomes available to us. Upon further consideration, we may promulgate MACT requirements for nutritional yeast manufacturing wastewater that include pretreatment, air emission controls on wastewater units, treatment of wastewater off-site at a POTW, other technologies, or some combination of these options.

X. What Is the Basis for Selecting the Format of the Proposed Standards?

As discussed above, we are co-proposing two standards with different formats. The proposed PMACT standard would be expressed as a limit on the amount of VOC emitted in fermenter offgas for a given amount of yeast produced, in units of weight of VOC per weight of yeast produced. (We standardize yeast production as 30 percent solids.) The proposed RACT standard would be based on the concentration of VOC in fermenter offgas coupled with a limit on air flow from each fermenter. In this section, we will discuss the advantages and disadvantages of each format and request comment on the best format for the promulgated standards.

Section 112 of the Act requires us to prescribe emission standards for HAP control unless, in the Administrator's judgment, it is not feasible to prescribe or enforce them according to section 112(h) of the Act: (1) if the HAP can't be emitted through a conveyance designed and built to emit or capture the HAP, or (2) if measurement methodology isn't practicable because of technological or economic limitations. If we can't prescribe or enforce emission standards, we may establish an equipment, work practice, design, or operational standard, or a combination of these approaches.

In this case, we know an emission standard is workable for the fermentation production line because several of you are already complying with emission standards on the line, and test methods and monitoring methods are available to measure emissions. We then considered whether the limit should be based on production or on outlet concentration. Both formats have advantages and disadvantages, which we have summarized below.

A. Advantages and Disadvantages of a Production-Based Format

A production-based format, such as the proposed PMACT regulation, ensures that all regulated sources, even those with variable processes, must meet uniform standards. We do not know of any way that a source could meet a production-based standard by diluting emission streams with increased air flow; however, such dilution is a potential problem under a concentration-based format, such as the proposed RACT-like regulation.

A potential problem for the production-based format is that measuring production out of the fermenter is difficult and inexact. Several days' or even weeks' worth of

data may be needed to measure production accurately. Also, yields vary significantly, which would make it difficult to correlate the fermenter's yield with the final product delivered. Measuring inputs, such as the amount of sweetener added, is even more complex.

A significant concern commenters raised in stakeholder meetings was that a production-based format would require you to submit production information to show compliance, which could damage your competitiveness if the information became available to the public. A related concern is that you would be unable to review the data we used to develop the standard because it must remain confidential. Also, you have raised concerns about the cost and burden of monitoring and recordkeeping, which depend on the sum of emissions from each batch based on the ratio of fermentation stages, plus determining the yield from each batch of trade yeast. One company estimated initial investments of $500,000 to $1,000,000 per facility, and annual expenses of $50,000 to $100,000 per facility.

B. Advantages and Disadvantages of a Concentration-Based Format

A concentration-based limit, similar to the existing RACT format for VOC, avoids several problems of a production-based limit, such as the need for you to openly report production. This format could allow you and others to more thoroughly review data we use to set the MACT floor. Testing and monitoring costs are likely to be lower, especially if the standard allows you to comply with a VOC standard. Finally, this format allows a shorter averaging time, such as a batch cycle, to measure emissions.

One potential disadvantage of a concentration-based format is that sources could meet the standard by increasing air flow, and thus diluting the emission stream, rather than reducing acetaldehyde emissions. Some of you have suggested that this disadvantage should not be a regulatory concern, because the relative expense of air flow handling systems precludes you from installing systems that have excess air flow capacity. Essentially, you have indicated that most fermenter blowers are already operating at their full capacity, and this is not a practical concern for existing sources. However, we continue to consider the potential for dilution of emission streams to be a regulatory concern, particularly for new and modified sources, and are proposing to include a cap on air flow rate.

Depending on how we cap the flow rate, some of you expressed concern that you would lose the flexibility to vary the overall balance of flow rate and concentration. Setting a cap also could be difficult given that air flow varies by fermentation stage, product, and other variables. You would also need to show that the cap itself doesn't allow excessive air flow. Some of you also were concerned that reporting flow-rate data would harm confidentiality and competitiveness.

C. Why Does the Standard Allow Using VOC as a Surrogate for Acetaldehyde?

We propose to regulate VOC emissions as a surrogate for acetaldehyde. Acetaldehyde and ethanol are both undesirable by-products from the fermentation process, and controlling one controls the other. Using a VOC standard will reduce compliance costs, because monitoring VOC is less complex and expensive than monitoring acetaldehyde. We haven't received any evidence that sources can selectively control VOC at the expense of increased acetaldehyde, nor do we know of any incentive for sources to do so. Therefore, we're asking for comment on whether we should promulgate a final standard that allows the use of VOC as a surrogate for acetaldehyde.

XI. Why Did We Select the Proposed Monitoring Requirements?

The proposed monitoring requirements are consistent with our policy of developing them "top-down," with the most stringent tier representing continuous monitoring that directly measures compliance with the emission limits. We have published appropriate EPA monitoring methods, and several sources already do similar monitoring to show compliance with permit requirements.

XII. Why Did We Select the Proposed Test Methods?

The proposed rules would require emissions tests for cases in which a source decides to meet the emission limit by using an add-on control device. The test methods we propose to require are existing EPA methods that are familiar to the industry and readily available. Late in proposal development we identified two test methods developed by a voluntary consensus body that may be alternatives for EPA Method 2 and EPA Method 18. The first, ASTM D 3464–96, Standard Test Method for Average Velocity in a Duct Using a Thermal Anemometer, may be an equivalent alternative to EPA Method 2. The second, ASTM D 6060–96, Standard Practice for Sampling of Process Vents with a Portable Gas Chromatograph, is a possible alternative to EPA Method 18, but may lack sufficient quality assurance procedures to fully substitute for Method 18 in this rulemaking. We will further compare these two ASTM methods to EPA Methods 2 and 18, and evaluate the appropriateness of their use for the final subpart CCCC rule. We also request comments on the feasibility of using these or other methods to perform the necessary testing procedures to show compliance with the proposed standards. Because of the long history behind use of the EPA methods, we would need compelling evidence to convince us that other methods are better alternatives.

We have identified some concerns related to the use of EPA Method 2 for measuring volumetric flow rate due to unpredictably fluctuating pressures in the exhaust stacks of the fermenters. Under these conditions, it may not be possible to obtain reliable air flow data by using a pitot tube and manometer. We are considering whether we need to modify Method 2 or replace it with another method when we promulgate the final rules. We ask the public to comment and provide relevant information on this issue.

XIII. Why Did We Select the Proposed Notification, Reporting, and Recordkeeping Requirements?

The proposed rules require you to comply with the notification, recordkeeping, and reporting requirements in the General Provisions. They also establish reporting and recordkeeping requirements we must have to ensure you comply with requirements in subpart CCCC.

XIV. How Can I Comment on This Proposed Rule?

A. Written Comments

We want your participation before arriving at our final decisions and strongly encourage all comments, including complete supporting data and detailed analyses if possible so we can best use these comments. Send all comments to the Air and Radiation Docket and Information Center, Docket No. A–97–13 (see **ADDRESSES**) by December 18, 1998.

If you want to send proprietary information for consideration, clearly distinguish it from other comments and label it "Confidential Business Information." Send submissions containing such proprietary information directly to the following address to make sure the proprietary material doesn't go into the docket: Attention:

Michele Aston, c/o Ms. Melva Toomer, U.S. EPA Confidential Business Information Manager, OAQPS (MD–13); Research Triangle Park, North Carolina, 27711. Don't send it to the public docket or through electronic mail. We will disclose information you claim to be confidential only as allowed by 40 CFR part 2. If you don't claim confidentiality, we may make your information available to the public without further notice to you .

B. Public Hearing

If you want to provide verbal comments about the proposed standards, contact us (see **ADDRESSES**), and we will hold a public hearing. Anyone may file a written statement by December 18, 1998. Send written statements to the Air and Radiation Docket and Information Center (see **ADDRESSES**), and refer to Docket No. A–97–13. If a public hearing is held, we will place a verbatim transcript of the hearing and written statements in the docket, which you can read and copy at the Air and Radiation Docket and Information Center (see **ADDRESSES**).

XV. What Are the Administrative Requirements for This Proposed Rule?

A. Docket

The docket for this regulatory action is A–97–13. The docket is an organized and complete file of all the information we considered in developing this proposed rule. It's a dynamic file because we keep adding material throughout the rule's development. The docketing system allows you to readily identify and locate documents so you can participate in rulemaking. Along with the proposed and promulgated standards and their preambles, contents of the docket will serve as the record in case of judicial review (see section 307(d)(7)(A) of the Act).

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). The Executive 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.

(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.

Because the proposed rules will affect only 10 existing facilities, and because we expect no new facilities, we project the economic effects to be far less than $100 million nationwide. Nor do we anticipate any significant adverse effects to the facilities. Under Executive Order 12866, this action is not a significant regulatory action and is therefore not subject to OMB review.

C. Enhancing the Intergovernmental Partnership Under Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on State, local or tribal governments, because they do not own or operate any sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule. Nevertheless, in developing this rule, EPA consulted with States, as described in section III.E of this preamble, to enable them to provide meaningful and timely input in the development of this rule.

D. Consultation and Coordination With Indian Tribal Governments Under Executive Order 13084

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, we must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments because no known nutritional yeast manufacturing facilities are located within these governments' jurisdiction. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Paperwork Reduction Act

We've submitted to OMB requirements for collecting information associated with the proposed standards (those included in 40 CFR part 63, subpart A and subpart CCCC) for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* We have prepared an Information Collection Request (ICR) document (ICR No. 1886–01), and you may get a copy from Sandy Farmer, OP, Regulatory Information Division, U. S. Environmental Protection Agency (2137), 401 M Street, S.W., Washington, DC 20460, or by calling (202) 260–2740. A copy may also be downloaded off the interent at http://www.epa.gov/icr.

The total 3-year burden of monitoring, recordkeeping, and reporting for this collection is estimated at 19,135 labor hours, and the annual average burden is 6,379 labor hours for the affected facilities. Annual capital costs for VOC monitoring systems is estimated to be

$622,300 ($373,400 per facility for five facilities and annualized over three years). This estimate includes annual performance tests for some sources; ongoing monitoring for all sources; semiannual reports when someone doesn't follow a plan for startups, shutdowns, and malfunctions; quarterly and semiannual reports on excess emissions; maintenance inspections; notices; and recordkeeping.

Burden means the total time, effort, or financial resources people spend to generate, maintain, keep, or disclose to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems to collect, validate, and verify information; process, maintain, disclose, and provide information; adjust ways to comply with any previously applicable instructions and requirements; train people to respond to a collection of information; search data sources; collect and review information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person need not respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are in 40 CFR part 9 and 48 CFR Chapter 15.

Send comments on the Agency's need for this information, the accuracy of our burden estimates, and any suggested methods for lessening a respondent's burden (including automation) to the Director, OP Regulatory Information Division, U. S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503. Mark your comments "Attention: Desk Office for EPA." Include EPA's ICR number in any correspondence. The final rule will respond to all comments from OMB or the public on this proposal's information-collection requirements.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because few or none of the 10 facilities expected to be subject to the proposed rule are small entities, and because the regulatory impacts are anticipated to be insignificant. Therefore, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. 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, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome 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 us to adopt an alternative other than the least-costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling 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.

We have determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The proposed rule does not impose any enforceable duties on State, local, or tribal governments, i.e., they own or operate no sources subject to this proposed rule and therefore are not required to purchase control systems to meet the requirements of this proposed rule. Regarding the private sector, the proposed rule will affect only 10 existing facilities nationwide. We project that annual economic effects will be far less than $100 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, in developing this proposed rule, EPA consulted with States, as described in section III.E of this preamble, to enable them to provide meaningful and timely input in the development of this proposed rule.

We also have determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rule does not impose any enforceable duties on small governments, i.e., they own or operate no sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this proposed rule.

H. Protection of Children From Environmental Health Risks and Safety Risks Under Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines: (1) "economically significant" as defined under Executive Order 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 reasonable alternatives considered by the Agency.

The proposed rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus

standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. We propose to use longstanding EPA Reference test methods and procedures that show compliance with emission standards. Specifically, we require EPA test methods 1 through 4 and 25A, and Performance Specifications 8 and 9, as codified at 40 CFR part 60, appendix A. We identified two candidate voluntary consensus standards as being potentially applicable, and we are soliciting comment on them in this proposed rulemaking. These methods are discussed in more detail in section XII of this preamble.

XVI. What is the Statutory Authority for This Proposed Rule?

The statutory authority for this proposal is provided in sections 101, 112, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601). This rulemaking is also subject to section 307(d) of the Act (42 U.S.C. 7407(d)).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Nutritional yeast manufacturing, Reporting and recordkeeping requirements.

Dated: October 7, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, the U.S. Environmental Protection Agency proposes to amend 40 CFR part 63 as follows:

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

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

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

2. Part 63 is amended by adding subpart CCCC (Option 1 and Option 2) to read as follows:

[Option 1 for Subpart CCCC]

Subpart CCCC—National Emission Standards for Hazardous Air Pollutants for Manufacturing of Nutritional Yeast

What This Regulation Covers

Sec.

Subpart CCCC—National Emission Standards for Hazardous Air Pollutants for Manufacturing of Nutritional Yeast

What This Regulation Covers

§ 63.2130 What is in this regulation?

This regulation describes the actions you must take to reduce emissions if you own or operate a facility that manufactures nutritional yeast, also known as baker's yeast or *Saccharomyces cerevisiae*. The regulation establishes emission standards and states what you must do to comply. Certain requirements apply to all who must follow the regulation; others depend on the means you use to comply with an emission standard.

§ 63.2131 Does this regulation apply to me?

(a) This regulation applies to you if you own, operate, or build a facility that manufactures nutritional yeast and it falls under either of the following categories:

(1) It is located at a new or existing major source of hazardous air pollutant (HAP) emissions, meaning: "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants."

(2) It is located at a new or existing area source that increases its actual or potential HAP emissions enough to become a major source.

(b) Each individual fermentation production line is an affected source if it supports the industrial production of *Saccharomyces cerevisiae* and it fits the following descriptions.

(1) *Fermentation production line.* A "fermentation production line" means all fermenters that can hold more than 7,000 gallons and are used in sequence to produce yeast. This regulation limits the line to the last three fermentation stages, which may be referred to as "stock, first generation, and trade" and "CB4, CB5, and CB6." A batch combines these three fermentation stages to produce a single product. A fermentation production line excludes flask, pure-culture, or yeasting-tank fermentation, as well as all operations after the last dewatering operation, such as filtration.

(2) *Purposes of yeast production.* This regulation applies to your facility only if the yeast is made for the purpose of becoming an ingredient in dough for bread or any other yeast-raised baked product, or for becoming a nutritional food additive.

(c) This regulation also doesn't apply when you perform any of the following operations at your facility:

(1) Produce specialty yeasts, such as those for wine, champagne, whiskey, and beer.

(2) Produce torula yeast (*Candida utilis*) using aerobic fermentation.

Emission Standards and Compliance Dates

§ 63.2135 What emission standards must I meet?

(a) Unless you comply with the standard using equipment specified in paragraphs (c) or (d) of this section, you must meet the emission limits for volatile organic compounds (VOC) or acetaldehyde in the exhaust-gas stream from a fermenter during a fermentation batch.

(1) Prior to submitting your compliance certification under § 63.9(h) (initial compliance), you must select

whether you will monitor VOC or acetaldehyde. This selection will determine the applicable standards for your facility. Section 63.2165 contains additional information on the notification procedures you must follow in making your selection.

(2) If you monitor VOC, comply with the concentration limits of Table 1 of this section:

TABLE 1.—LIMITS ON VOC CONCENTRATIONS

Fermentation stage	Maximum allowable concentration of VOC, measured as ethanol (ppm)
Last stage (Trade)	150
Second-to-last stage (First generation)	225
Third-to-last stage (Stock)	450

(3) If you monitor acetaldehyde, comply with the concentration limits of Table 2 of this section:

TABLE 2.—LIMITS ON ACETALDEHYDE CONCENTRATIONS

Fermentation stage	Maximum allowable concentration of acetaldehyde (ppm)
Last stage (Trade)	27
Second-to-last stage (First generation)	41
Third-to-last stage (Stock)	81

(b) If you follow the procedures in paragraph (a) of this section, you must maintain the exhaust flow rate over a batch for every fermenter below the maximum flow rate set according to the following procedures.

(1) For an existing fermenter, set the flow rate cap based on the average exhaust flow rate for that fermenter over the last 12 months.

(2) For a fermenter constructed or reconstructed after October 19, 1998, you must cap the flow rate at the maximum flow rate per fermenter volume specified in our written guidance.

(c) If you use an incinerator to comply with the standard, you must maintain the minimum operating temperature established in § 63.2142(a).

(d) If you use a biofilter to comply with the standard, you must maintain the pressure drop within the complying pressure drop range established in § 63.2142(a).

§ 63.2136 When must I comply?

(a) If construction of your fermentation production line commenced on or before October 19, 1998, you must comply on and after [Insert date 3 years from publication of final rule in **Federal Register**.]

(b) If construction or reconstruction of your fermentation production line commenced after October 19, 1998, you must comply on and after [Insert date of publication of final rule in **Federal Register**] or on and after the date when you start operations, whichever is later.

(c) If your fermentation production line becomes an affected source after October 19, 1998, you must comply on and after the date 3 years following the day it became an affected source, as defined by § 63.2131.

(d) If you can't meet a deadline, you may ask to extend the compliance date by following the criteria and procedures in § 63.6(i).

(e) You must comply with the provisions in this subpart at all times except during periods of start-up, shutdown, and malfunction (as defined in § 63.2.)

General Requirements for Compliance With the Emission Standards and for Monitoring and Performance Tests

§ 63.2140 What general requirements must I meet to comply with the standard?

(a) *Process control.* You may use process control to reduce VOC and acetaldehyde emissions and comply with the emission standard. "Process control" means reducing emissions of VOC and acetaldehyde by manipulating the flow of raw material, supply of oxygen, or some other input, thereby controlling fermentation.

(b) *Add-on control technology.* As an alternative to process control, you may use an add-on control technology, such as incineration or biofiltration, to reduce VOC and acetaldehyde emissions and comply with the emission standard.

(c) *Showing compliance.* Whether you use process or add-on controls, you must show initial and ongoing compliance with the emission standards in § 63.2135. See the rest of this subpart for procedures you must follow.

(d) *Operation and maintenance.* You must comply with the operation and maintenance requirements in § 63.6(e).

(e) *General Provisions.* The General Provisions (40 CFR part 63, subpart A) apply to owners and operators of major sources of HAP emissions in all source categories, including nutritional yeast manufacturing. Table 1 of this section lists the General Provisions that apply to nutritional yeast manufacturing facilities:

TABLE 1 OF § 63.2140—GENERAL PROVISIONS THAT APPLY TO SUBPART CCCC

Reference, subpart A general provisions	Applies to subpart CCCC, §§ 63.2130–63.2229	Comment
63.1–63.5	Yes.	
63.6(a)–(g), (i)–(j)	Yes.	
63.6(h)(1)–(h)(6), (h)(8)–(h)(9)	Yes.	
63.7(h)(7)	No	§ 63.6(h)(7), using continuous opacity monitoring, doesn't apply.
63.7	Yes.	
63.8	Yes.	
63.9	Yes.	
63.10	Yes.	
63.11	No	Don't use flares to comply with the emission limits.
63.12–63.15	Yes.	

§ 63.2141 What monitoring must I do?

(a) You must meet the requirements of § 63.8.

(b) You must install, calibrate, operate, and maintain all monitoring equipment according to manufacturer's specifications and the plan for startup, shutdown, and malfunctions that you must develop and use according to § 63.6(e).

(c) If you choose to continuously monitor VOC emissions, you must use Performance Specification 8 (PS 8), in appendix A of 40 CFR part 60, to show that your continuous emission monitoring system (CEMS) is operating properly.

(1) Use EPA Method 25A, in appendix A of 40 CFR part 60, to do the relative-accuracy test PS 8 requires.

(2) Calibrate the reference method and the CEMS with ethanol.

(3) Collect a 1-hour sample for each reference-method test.

(4) Set the CEMS span at 1.5 to 2.5 times the relevant emission limit.

(d) If you choose to continuously monitor acetaldehyde emissions, you must use PS 9 or an approved alternative to show that your CEMS is operating properly.

(e) If you are subject to § 63.2135(b), you must continuously monitor either the air-flow rate or a parameter of the blower system correlated with the air-flow rate exiting each fermenter's exhaust stack. Use a calibrated annubar or other approved alternative to determine the air flow in the fermenter's exhaust stack. A "fermenter's exhaust stack" means the vent or ductwork that provides an outlet for gas from a fermenter.

§ 63.2142 What performance tests must I complete?

(a) *Testing frequency.* If you choose to comply with the standard using an add-on control technology, you must test its initial performance to show compliance with the emission limits in § 63.2135(a)(2) or (a)(3) and to establish baseline monitoring parameters that satisfy §§ 63.2150 and 63.2155, as applicable. You must test the control device's performance while manufacturing the product that comprises the largest percentage of average annual production. Test the device's performance within 180 days from the compliance date that applies to you and test it again at least every 3 years or when process conditions change that would require a new correlation.

(b) *Approved test methods.* You must follow the procedures in §§ 63.7 and 63.8 and use one of the following test methods. Unless changed in this subpart, all EPA methods are in appendix A of part 60 of this chapter.

(1) Use Method 1 to select the sampling port's location and the number of traverse points.

(2) Use Method 2 to measure volumetric flow rate.

(3) Use Method 3 for gas analysis to determine the dry molecular weight of the stack gas.

(4) Use Method 4 to determine moisture content of the stack gas. 40 CFR part 60.

(5) Use EPA Method 25A, or any alternative validated by EPA Method 301, to measure VOC as ethanol.

(c) *Additional requirements for performance tests.* Make sure you:

(1) Design the test to sample a complete batch. You must do three sampling runs for each of the three fermentation stages in a batch, as defined in this rule.

(2) Do the test at a point in the exhaust-gas stream before you inject any dilution air, meaning any air not needed to control fermentation.

(3) Record the results of each run of the performance test.

Requirements for Showing Compliance Using Process Control

§ 63.2145 If I use process control, how do I comply with the standard?

(a) If you monitor VOC using data obtained under § 63.2141(c), you must calculate the VOC concentration (measured as ethanol) from each fermentation stage of the batch. Record data as 15-minute block values. To be valid, your monitoring must meet the following requirements:

(1) Two 15-minute block values per hour.

(2) Eighteen or more hours per day.

(3) Eighteen or more days for each 30-day period.

(b) The VOC concentration of a stage is the average of all 15-minute block values recorded during that stage. You meet the emission standard in § 63.2135(a) if the VOC concentration is no more than the values in Table 1 for each fermenter.

(c) If you monitor acetaldehyde using data obtained under § 63.2141(d), you must calculate the acetaldehyde concentration from each fermentation stage of the batch. Record data as 15-minute block values. To be valid, your monitoring must meet the following requirements:

(1) Two 15-minute block values per hour.

(2) Eighteen or more hours per day.

(3) Eighteen or more days for each 30-day period.

(d) The acetaldehyde concentration of a stage is the average of all 15-minute block values recorded during that stage. You meet the emission standard in § 63.2135(a) if the acetaldehyde concentration is no more than the values in Table 2 for each fermenter.

(e) Using the data obtained under § 63.2141(e), you must calculate the flow rate from each fermenter for each batch. Record data as 15-minute block values. To be valid, your monitoring must meet the following requirements:

(1) Two 15-minute block values per hour.

(2) Eighteen or more hours per day.

(3) Eighteen or more days for each 30-day period.

(f) The flow rate of a stage is the average of all 15-minute block values recorded during that stage. You meet § 63.2135(b) if the flow rate recorded for each fermenter is no more than the maximum flow rate cap established under § 63.2135(b).

Requirements for Incinerators

§ 63.2150 If I use an incinerator, what monitoring must I do?

(a) You must monitor and record the temperature in the main chamber and afterburner at least once every 15 minutes.

(b) Make sure the monitoring equipment is installed and operating, and verify the data, before or during the performance test. To verify that your equipment is operating, you must meet at least one of the following standards:

(1) The manufacturer's written specifications or recommendations for installing, operating, and calibrating the system.

(2) Other written procedures that ensure reasonably accurate monitoring.

(c) Install, operate, and maintain the monitoring equipment so it gives you representative measurements of parameters from the regulated sources.

§ 63.2151 If I use an incinerator, how do I comply with the standard?

(a) First, you must establish the minimum operating temperature for each combustion chamber and afterburner with a performance test under procedures in § 63.2142. The minimum operating temperature is the average of the three test run values recorded under § 63.2142(c).

(b) Second, you must ensure that the temperature in each combustion chamber stays at or above the minimum operating temperature, based on 15-minute block values taken according to § 63.2150.

Requirements for Biofiltration

§ 63.2155 If I use biofiltration, what monitoring must I do?

(a) You must monitor and record the pressure drop across the biofiltration system at least once every 8 hours.

(b) You must maintain the pressure drop across the biofiltration system within 5 percent and 1 inch of the water column of the complying pressure drop, or within the range of the complying values for pressure drop established during your initial performance test. "Complying pressure drop" means the pressure drop at which your system meets an emission standard.

§ 63.2156 If I use biofiltration, how do I comply with the standard?

(a) You must establish the complying pressure drop across the system during a performance test, following procedures in § 63.2142.

(b) For each biofiltration system, you may establish either of the following:

(1) A range of complying pressure drops by conducting multiple compliance performance tests.

(2) One complying pressure drop as the average pressure drop measured over three test runs of a single performance test.

(c) The pressure drop across your system must stay within 5 percent and 1 inch of the water column of the complying pressure drop, or range established in your performance test.

Requirements for Other Means of Monitoring

§ 63.2160 How can I get approval for, and use, other means of monitoring?

(a) *Monitoring and recordkeeping.* (1) Request and receive approval from the Administrator to use other monitoring methods, following § 63.8(f).

(2) Use the approved alternate monitoring procedure so you continuously meet the emission standard that applies to you.

(3) Comply with monitoring and recordkeeping requirements the Administrator specifies.

(b) *Compliance demonstrations.* (1) Do an initial performance test to show you meet the emission standard.

(2) During any performance test, you must show that your monitoring method can determine whether your process controls or add-on controls meet the emission standard that applies to you.

(3) Unless the Administrator specifies another schedule, test performance once per year.

Reporting and Recordkeeping Requirements

§ 63.2165 Which reports must I prepare?

(a) You must follow the notification procedures in § 63.9 and the reporting requirements in § 63.10. If the Administrator hasn't delegated authority under subpart E of this part to your State, you must notify the EPA's appropriate regional office. If your State has delegated authority, notify your State and send copy of each notice to the appropriate EPA regional office. The regional office may waive this requirement.

(b) Following the procedures in § 63.9(h), within 60 days after completing the relevant compliance demonstration activity specified in §§ 63.2145, 63.2151, or 63.2156, notify the Administrator of your initial compliance status. In the case of § 63.2145, process control, you must report at least three months worth of complying data.

(c) Annually, certify your compliance by reporting the following information:

(1) How you determined compliance, including specific information about the parameters you monitored and the methods you used to monitor them.

(2) The results of your monitoring procedures or methods.

(3) How you will continue to comply including a description of monitoring and reporting requirements and test methods.

(4) A statement attesting to whether your facility has complied with this regulation, signed by a responsible official who shall certify its accuracy.

§ 63.2166 What records must I maintain?

(a) In addition to meeting the recordkeeping requirements under § 63.10, you must record the following information in a daily log:

(1) Operation time for all control devices and monitoring equipment.

(2) Details of all routine and other maintenance on all control devices and monitoring equipment, including dates and duration of any outages.

(3) The fermentation stage for which you're using each fermenter.

(b) You must also record the information required to support your compliance demonstrations under §§ 63.2145, 63.2151, and 63.2156.

§ 63.2167 How long do I have to maintain records?

You must keep all records available for inspection for at least 5 years—onsite for the most recent 2 years of operation. You may keep records for the previous 3 years off site.

Delegation of Authorities

§ 63.2170 What authorities may be delegated to the States?

(a) In delegating implementation and enforcement authority to a State under subpart E of this part, the Administrator will retain the authorities contained in paragraph (b) of this section.

(b) *[Reserved]*

§ 63.2171—63.2229 [Reserved]

[Option 2 for Subpart CCCC]

Subpart CCCC—National Emission Standard for Hazardous Air Pollutants for Manufacturing of Nutritional Yeast

What This Regulation Covers

Sec.

Subpart CCCC—National Emission Standards for Hazardous Air Pollutants for Manufacturing of Nutritional Yeast

What This Regulation Covers

§ 63.2130 What is in this regulation?

This regulation describes the actions you must take to reduce emissions if you own or operate a facility that manufactures nutritional yeast, also known as baker's yeast or *Saccharomyces cerevisiae*. The regulation establishes emission standards and states what you must do to comply. Certain requirements apply to all who must follow the regulation; others depend on the means you use to comply with an emission standard.

§ 63.2131 Does this regulation apply to me?

(a) This regulation applies to you if you own, operate, or build a facility that manufactures nutritional yeast and it falls under either of the following categories:

(1) It is located at a new or existing major source of hazardous air pollutant (HAP) emissions, meaning: "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants."

(2) It is located at a new or existing area source that increases its actual or potential HAP emissions enough to become a major source.

(b) Each individual fermentation production line is an affected source if it supports the industrial production of *Saccharomyces cerevisiae* and it fits the following descriptions.

(1) *Fermentation production line.* A "fermentation production line" means all fermenters that can hold more than 7,000 gallons and are used in sequence to produce yeast. This regulation limits the line to the last three fermentation stages, which may be referred to as "stock, first generation, and trade" and "CB4, CB5, and CB6." A batch combines these three fermentation stages to produce a single product. A fermentation production line excludes flask, pure-culture, or yeasting-tank fermentation, as well as all operations after the last dewatering operation, such as filtration.

(2) *Purposes of yeast production.* This regulation applies to your facility only if the yeast is made for the purpose of becoming an ingredient in dough for bread or any other yeast-raised baked product, or for becoming a nutritional food additive.

(c) This regulation also doesn't apply when you perform any of the following operations at your facility:

(1) Produce specialty yeasts, such as those for wine, champagne, whiskey, and beer.

(2) Produce torula yeast (*Candida utilis*) using aerobic fermentation.

Emission Standards and Compliance Dates

§ 63.2135 What emission standards must I meet?

(a) Unless you comply with the standard using equipment specified in paragraphs (b) or (c) of this section, you must meet the applicable emission limits in paragraphs (a)(2) through (a)(3) of this section for volatile organic compounds (VOC) or (a)(4) through (a)(5) of this section for acetaldehyde emitted from the fermentation production line.

(1) Prior to submitting your compliance certification under § 63.9(h) (initial compliance), you must select whether you will monitor VOC or acetaldehyde. This selection will determine the applicable standards for your facility. Section 63.2165 contains additional information on the notification procedures you must follow in making your selection.

(2) If you monitor VOC and construction of your fermentation production line commenced on or before October 19, 1998, you must limit VOC emissions from each line to 9.4 pounds per ton of liquid yeast produced (9.4 lb/ton LY) for each calendar month.

(3) If you monitor VOC and construction or reconstruction of your fermentation production line commenced after October 19, 1998, you must limit VOC emissions from each line to 7.2 lb/ton LY for each calendar month.

(4) If you monitor acetaldehyde and construction of your fermentation production line commenced on or before October 19, 1998, you must limit acetaldehyde emissions from each line to 1.7 lb/ton LY for each calendar month.

(5) If you monitor acetaldehyde and construction or reconstruction of your fermentation production line commenced after October 19, 1998, you must limit acetaldehyde emissions from each line to 1.3 lb/ton LY for each calendar month.

(b) If you use an incinerator to comply with the standard, you must maintain the minimum operating temperature established in § 63.2142(a).

(c) If you use a biofilter to comply with the standard, you must maintain the pressure drop within the complying pressure drop range established in § 63.2142(a).

§ 63.2136 When must I comply?

(a) If construction of your fermentation production line commenced on or before October 19, 1998, you must comply on and after [Insert date 3 years from publication of final rule in **Federal Register**.]

(b) If construction or reconstruction of your fermentation production line commenced after October 19, 1998, you must comply on and after [Insert date of publication of final rule in **Federal Register**] or on and after the date when you start operations, whichever is later.

(c) If your fermentation production line becomes an affected source after October 19, 1998, you must comply on and after the date 3 years following the day it became an affected source, as defined by § 63.2131.

(d) If you can't meet a deadline, you may ask to extend the compliance date by following the criteria and procedures in § 63.6(i).

(e) You must comply with the provisions in this subpart at all times except during periods of start-up, shutdown, and malfunction (as defined in § 63.2.)

General Requirements for Compliance With the Emission Standards and for Monitoring and Performance Tests

§ 63.2140 What general requirements must I meet to comply with the standard?

(a) *Process control.* You may use process control to reduce VOC and acetaldehyde emissions and comply with the emission standard. "Process control" means reducing emissions of VOC and acetaldehyde by manipulating the flow of raw material, supply of oxygen, or some other input, thereby controlling fermentation.

(b) *Add-on control technology.* As an alternative to process control, you may use an add-on control technology, such as incineration or biofiltration, to reduce VOC and acetaldehyde emissions and comply with the emission standard.

(c) *Showing compliance.* Whether you use process or add-on controls, you must show initial and ongoing compliance with the emission standards in § 63.2135. See the rest of this rule for procedures you must follow.

(d) *Operation and maintenance.* You must comply with the operation and maintenance requirements in § 63.6(e).

(e) *General Provisions.* The General Provisions (40 CFR part 63, subpart A) apply to owners and operators of major sources of HAP emissions in all source categories, including nutritional yeast manufacturing. Table 1 of this section

lists the General Provisions that apply to nutritional yeast manufacturing facilities:

TABLE 1 OF § 63.2140.—GENERAL PROVISIONS THAT APPLY TO SUBPART CCCC

Reference, subpart A general provisions	Applies to subpart CCCC, §§ 63.2130–63.2229	Comment
63.1–63.5	Yes.	
63.6(a)–(g), (i)–(j)	Yes.	
63.6(h)(1)–(h)(6), (h)(8)–(h)(9)	Yes.	
63.7(h)(7)	No	§ 63.6(h)(7), using continuous opacity monitoring, doesn't apply.
63.7	Yes.	
63.8	Yes.	
63.9	Yes.	
63.10	Yes.	
63.11	No	Don't use flares to comply with the emission limits.
63.12–63.15	Yes.	

§ 63.2141 What monitoring must I do?

(a) You must meet the requirements of § 63.8.

(b) You must install, calibrate, operate, and maintain all monitoring equipment according to manufacturer's specifications and the plan for startup, shutdown, and malfunctions that you must develop and use according to § 63.6(e).

(c) If you choose to continuously monitor VOC emissions, you must use Performance Specification 8 (PS 8), in appendix A of 40 CFR part 60, to show that your continuous emission monitoring system (CEMS) is operating properly.

(1) Use EPA Method 25A, in appendix A of 40 CFR part 60, to do the relative-accuracy test PS 8 requires.

(2) Calibrate the reference method and the CEMS with ethanol.

(3) Collect a 1-hour sample for each reference-method test.

(4) Set the CEMS span at 1.5 to 2.5 times the relevant emission limit.

(d) If you choose to continuously monitor acetaldehyde emissions, you must use PS 9 or an approved alternative to show that your CEMS is operating properly.

(e) If you are subject to § 63.2135(a), you must continuously monitor either the air-flow rate or a parameter of the blower system correlated with the air-flow rate exiting each fermenter's exhaust stack. Use a calibrated annubar or other approved alternative to determine the air flow in the fermenter's exhaust stack. A "fermenter's exhaust stack" means the vent or ductwork that provides an outlet for gas from a fermenter.

§ 63.2142 What performance tests must I complete?

(a) *Testing frequency.* If you choose to comply with the standard using an add-on control technology, you must test its initial performance to show compliance with the emission limits in § 63.2135(a)(2) and (a)(3), as applicable, and to establish baseline monitoring parameters that satisfy §§ 63.2150 and 63.2155, as applicable. You must test the control device's performance while manufacturing the product that comprises the largest percentage of average annual production. Test the device's performance within 180 days from the compliance date that applies to you and test it again at least every 3 years or when process conditions change that would require a new correlation.

(b) *Approved test methods.* You must follow the procedures in §§ 63.7 and 63.8 and use one of the following test methods. Unless changed in this subpart, all EPA methods are in appendix A of part 60 of this chapter.

(1) Use Method 1 to select the sampling port's location and the number of traverse points.

(2) Use Method 2 to measure volumetric flow rate.

(3) Use Method 3 for gas analysis to determine the dry molecular weight of the stack gas.

(4) Use Method 4 to determine moisture content of the stack gas. 40 CFR part 60.

(5) Use EPA Method 25A, or any alternative validated by EPA Method 301, to measure VOC as ethanol.

(c) *Additional requirements for performance tests.* Make sure you:

(1) Design the test to sample a complete batch. You must do three sampling runs for each of the three fermentation stages in a batch, as defined in this rule.

(2) Do the test at a point in the exhaust-gas stream before you inject any dilution air, meaning any air not needed to control fermentation.

(3) Record the results of each run of the performance test.

Requirements for Showing Compliance Using Process Control

§ 63.2145 If I use process control, how do I comply with the standard?

(a) If you monitor VOC using procedures under § 63.2141(c) and air flow using procedures under § 63.2141(e), you must record the VOC concentration and air-flow rate in every fermenter's exhaust stack (or a correlated parameter.) Record data as 15-minute block averages values. To be valid, your monitoring must meet the following requirements:

(1) Two 15-minute block values per hour.

(2) Eighteen or more hours per day.

(3) Eighteen or more days for each 30-day period.

(b) You meet the applicable emission standards in § 63.2135(a) if the calendar month average VOC emissions per ton of liquid yeast produced is no more than the limits in § 63.2135(a)(2) and (a)(3) for each batch. You must calculate emissions using the following procedures:

(1) Calculate emissions from each affected fermentation stage (E) using the following formula:

$$E = \int_{t_0}^{t_1} a(t)c(t)dt$$

where:

a(t)=air flow in the fermenter's exhaust stack at a particular time;

t_0 and t_1=the beginning and end, respectively, of the time period for the production of a batch; and
c(t)=the concentration of VOC in the fermenter's exhaust stack at a particular time.

(2) Calculate emissions from each batch (B) using the following formula:

$$B = \sum_{s=1}^{n} \frac{E_s}{Y}$$

where:

n=the number of fermentation stages;
E_s=emissions (measured in pounds) from stage s; and
Y=batch yield. "Batch yield" means a discrete quantity of yeast produced from the last fermentation stage of a batch operation and is expressed as tons of liquid yeast based on 30 percent solids.

(3) Calculate the calendar month average using the following formula:

$$A = \sum_{n=1}^{O_{month}} \frac{B_n}{O_{month}}$$

where:

O_{month}=the number of batch operations in a calendar month; and
B_n=emissions from batch n.

(c) If you monitor acetaldehyde using procedures under § 63.2141(d) and air flow using procedures under § 63.2141(e), you must record the acetaldehyde concentration and air-flow rate in every fermenter's exhaust stack (or a correlated parameter.) Record data as 15-minute block values. To be valid, your monitoring must meet the following requirements:

(1) Two 15-minute block values per hour.

(2) Eighteen or more hours per day.

(3) Eighteen or more days for each 30-day period.

(d) You meet the applicable emission standards in § 63.2135(a) if the calendar month average VOC emissions per ton of liquid yeast produced is no more than the limits in § 63.2135(a)(4) and (a)(5) for each batch. You must calculate emissions using the equations in paragraph (b) of this section, substituting acetaldehyde data for VOC data, where appropriate.

Requirements for Incinerators

§ 63.2150 If I use an incinerator, what monitoring must I do?

(a) You must monitor and record the temperature in the main chamber and afterburner at least once every 15 minutes.

(b) Make sure the monitoring equipment is installed and operating, and verify the data, before or during the performance test. To verify that your equipment is operating, you must meet at least one of the following standards:

(1) The manufacturer's written specifications or recommendations for installing, operating, and calibrating the system.

(2) Other written procedures that ensure reasonably accurate monitoring.

(c) Install, operate, and maintain the monitoring equipment so it gives you representative measurements of parameters from the regulated sources.

§ 63.2151 If I use an incinerator, how do I comply with the standard?

(a) First, you must establish the minimum operating temperature for each combustion chamber and afterburner with a performance test under procedures in § 63.2142. The minimum operating temperature is the average of the three test run values recorded under § 63.2142(c).

(b) Second, you must ensure that the temperature in each combustion chamber stays at or above the minimum operating temperature, based on 15-minute block values taken according to § 63.2150.

Requirements for Biofiltration

§ 63.2155 If I use biofiltration, what monitoring must I do?

(a) You must monitor and record the pressure drop across the biofiltration system at least once every 8 hours.

(b) You must maintain the pressure drop across the biofiltration system within 5 percent and 1 inch of the water column of the complying pressure drop, or within the range of the complying values for pressure drop established during your initial performance test. "Complying pressure drop" means the pressure drop at which your system meets an emission standard.

§ 63.2156 If I use biofiltration, how do I comply with the standard?

(a) You must establish the complying pressure drop across the system during a performance test, following procedures in § 63.2142.

(b) For each biofiltration system, you may establish either of the following:

(1) A range of complying pressure drops by conducting multiple compliance performance tests.

(2) One complying pressure drop as the average pressure drop measured over three test runs of a single performance test.

(c) The pressure drop across your system must stay within 5 percent and 1 inch of the water column of the complying pressure drop, or range established in your performance test.

Requirements for Other Means of Monitoring

§ 63.2160 How can I get approval for, and use, other means of monitoring?

(a) *Monitoring and recordkeeping.* (1) Request and receive approval from the Administrator to use other monitoring methods, following § 63.8(f).

(2) Use the approved alternate monitoring procedure so you continuously meet the emission standard that applies to you.

(3) Comply with monitoring and recordkeeping requirements the Administrator specifies.

(b) *Compliance demonstrations.* (1) Do an initial performance test to show you meet the emission standard.

(2) During any performance test, you must show that your monitoring method can determine whether your process controls or add-on controls meet the emission standard that applies to you.

(3) Unless the Administrator specifies another schedule, test performance once per year.

Reporting and Recordkeeping Requirements

§ 63.2165 Which reports must I prepare?

(a) You must follow the notification procedures in § 63.9 and the reporting requirements in § 63.10. If the Administrator hasn't delegated authority under subpart E of this part to your State, you must notify the EPA's appropriate regional office. If your State has delegated authority, notify your State and send copy of each notice to the appropriate EPA regional office. The regional office may waive this requirement.

(b) Following the procedures in § 63.9(h), within 60 days after completing the relevant compliance demonstration activity specified in §§ 63.2145, 63.2151, or 63.2156, notify the Administrator of your initial compliance status. In the case of § 63.2145, process control, you must report at least three months worth of complying data.

(c) Annually, certify your compliance by reporting the following information:

(1) How you determined compliance, including specific information about the parameters you monitored and the methods you used to monitor them.

(2) The results of your monitoring procedures or methods.

(3) How you will continue to comply including a description of monitoring and reporting requirements and test methods.

(4) A statement attesting to whether your facility has complied with this regulation, signed by a responsible official who shall certify its accuracy.

§ 63.2166 What records must I maintain?

(a) In addition to meeting the recordkeeping requirements under § 63.10, you must record the following information in a daily log:

(1) Operation time for all control devices and monitoring equipment.

(2) Details of all routine and other maintenance on all control devices and monitoring equipment, including dates and duration of any outages.

(3) The fermentation stage for which you're using each fermenter.

(b) You must also record the information required to support your compliance demonstrations under §§ 63.2145, 63.2151, and 63.2156.

§ 63.2167 How long do I have to maintain records?

You must keep all records available for inspection for at least 5 years—onsite for the most recent 2 years of operation. You may keep records for the previous 3 years off site.

Delegation of Authorities

§ 63.2170 What authorities may be delegated to the States?

(a) In delegating implementation and enforcement authority to a State under subpart E of this part, the Administrator will retain the authorities contained in paragraph (b) of this section.

(b) [*Reserved*].

§ 63.2171–63.2229 [Reserved]

[FR Doc. 98–27700 Filed 10–16–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–186, RM–9318]

Radio Broadcasting Services; Rio Grande City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Arturo Lopez and Eleazar Trevino, proposing the allotment of Channel 236A to Rio Grande City, Texas. The channel can be allotted to Rio Grande City with a site restriction 5.79 kilometers (3.6 miles) north of the community. The coordinates for Channel 236A are 26–25–47 and 98–49–25. Concurrence of the Mexican government will be requested for this allotment.

DATES: Comments must be filed on or before November 30, 1998, and reply comments on or before December 15, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lyndon H. Willoughby, Willoughby & Voss, P. O. box 701190, San Antonio, Texas 78270–1190.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–186, adopted September 30, 1998, and released October 9, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–27944 Filed 10–16–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–185, RM–9355]

Radio Broadcasting Services; Carlin and Ely, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by L. Topaz Enterprises, Inc., permittee of Station KHIX, Channel 244C1, Ely, NV, seeking the substitution of Chanel 244C for Channel 244C1, the reallotment of Channel 244C to Carlin, NV, as the community's first local aural service, and the modification of Station KHIX's construction permit to specify Carlin as its community of license. Channel 244C can be allotted to Carlin in compliance with the Commission's minimum distance separation requirements with a site restriction of 1 kilometer (0.6 mile) west, at coordinates 40–42–47 North Latitude and 116–07–18 West Longitude, to accommodate petitioner's desired transmitter site.

DATES: Comments must be filed on or before November 30, 1998, and reply comments on or before December 15, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dale A. Ganske, President, L. Topaz Enterprises, Inc., 5546–3 Century Avenue, Middleton, WI 53562 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–185, adopted September 30, 1998, and released October 9, 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. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–27943 Filed 10–16–98; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 574

[Docket No. NHTSA–98–4550]

RIN 2127–AH10

Tire Identification and Recordkeeping

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The tire identification and recordkeeping regulation requires new tire manufacturers and tire retreaders to label on one sidewall of each tire they produce a tire identification number that includes their manufacturer's or retreader's identification mark, a tire size symbol, an optional descriptive code, and the date of manufacture. The date of manufacture is expressed in the last 3 digits of the tire identification number.

In response to petitions for rulemaking submitted by the Rubber Manufacturers Association and the European Tyre and Rim Technical Organisation, the agency proposes to amend the regulation to require the date of manufacture to be shown in four digits instead of the currently-required three, and to reduce the minimum size of the digits from the current 6 millimeters (mm) (¼ inch) to 4 mm (5/32 inch). The agency believes that the four-symbol date code would, if adopted, permit better traceability of tires during recalls and would allow easier identification of older tires. NHTSA also believes that reducing the size of the date code from 6 mm to 4 mm would not affect the readability of the date code digits. In addition, adoption of these proposals would enhance international harmonization by bringing the U.S. tire date code requirements into harmony with the new United Nations' Economic Commission for Europe (ECE) regulation and the International Organization for Standardization (ISO) recommended practice.

DATES: Comment closing date: Comments on this notice must be received by NHTSA not later than December 18, 1998.

Proposed effective date: If adopted, the amendments proposed in this notice would become effective on or about January 1, 2000. Optional early compliance would be permitted on and after the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number for this rule noted above and be submitted to: Docket Management Room, PL–401, 400 Seventh Street, SW, Washington, DC 20590. Docket room hours are from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Mr. Joseph Scott, Safety Standards Engineer, Office of Crash Avoidance Standards, Vehicle Dynamics Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–8525, fax (202) 493–2739. *For legal issues.* Mr. Walter Myers, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–2992, fax (202) 366–3820.

SUPPLEMENTARY INFORMATION:

A. Background

Section 574.5 of Title 49, Code of Federal Regulations, Tire Identification Requirements, sets forth the methods by which new tire manufacturers and new tire brand name owners identify tires for use on motor vehicles. The section also sets forth the methods by which tire retreaders and retreaded tire brand name owners identify tires for use on motor vehicles. The purpose of these requirements is to facilitate notification to purchasers of defective or nonconforming tires so that purchasers can take appropriate action in the interest of motor vehicle safety.

Specifically, § 574.5 requires each new tire manufacturer and each tire retreader to mold a tire identification number (TIN) into or onto the sidewall of each tire produced, in the manner and location specified in the section and as depicted in Figures 1 and 2. The TIN is composed of four groups:

a. The first group of two or three symbols, depending on whether the tire is new or retreaded, represents the manufacturer's identification mark assigned to such manufacturer by this agency in accordance with § 574.6;

b. The second group of no more than two symbols represents the tire size for new tires; for retreaded tires, the second group represents the retread matrix in which the tire was processed or if no matrix was used, a tire size code;

c. The third group, consisting of no more than four symbols, may, at the option of the manufacturer, be used as a descriptive code for identifying significant characteristics of the tire. If the tire is produced for a brand name owner, the third grouping must identify such brand name owner; and

d. The fourth group, composed of three symbols, identifies the week and year of manufacture. The first two symbols identify the week of the year, starting with "01" to represent the first full week of the calendar year; the third symbol represents the year. For example, "218" represents the 21st week of 1998.

NHTSA originally proposed these requirements in response to the May 22, 1970 amendments to the National Traffic and Motor Vehicle Safety Act of 1966.[1] Those amendments, among other things, required manufacturers and brand name owners of new and retreaded motor vehicle tires to maintain records of the names and addresses of the first purchasers of tires (other than dealers or distributors) in order to facilitate notification to such purchasers in the event tires were found to be defective or not to comply with applicable Federal motor vehicle safety standards.

The agency believed that an essential element of an effective defect or noncompliance notification system to vehicle or tire purchasers was an effective method of tire identification. Accordingly, on July 23, 1970, NHTSA published a Notice of Proposed Rulemaking (NPRM) (35 FR 11800) proposing to establish a tire identification system to provide a means to identify the manufacturer of the tire, the date of manufacture, the tire size, and at the option of the manufacturer, additional information to further describe the type or other significant characteristics of the tire. The agency proposed a TIN composed of four groups of symbols: the first group would contain the manufacturer's identification mark which would be assigned by NHTSA; the second group would identify the tire size by a two symbol code; the third group of four symbols would identify the date of manufacture of the tire, the first two

[1] The National Traffic and Motor Vehicle Safety Act of 1966, Pub. L. 89–563, was originally codified at 15 U.S.C. 1581, *et seq.* However, it was recodified in 1995 and is now found at 49 U.S.C. 30101, *et seq.*

symbols of which would indicate the week, and the last two the year; and the fourth group would be the manufacturer's optional description of the tire. The symbols would be a minimum of 1/4 inch high and would appear on both sidewalls of the tire.

In a final rule published on November 10, 1970 (35 FR 17257), the agency revised the requirements proposed in the NPRM in response to the suggestions of various commenters. Specifically, NHTSA reversed the order of the manufacturer's optional information and the date of manufacture, so that the latter would appear in the fourth grouping and the manufacturer's optional information would appear in the third grouping. NHTSA also stated that the tire identification number need only appear on one sidewall, and that the symbols need only be 5/32 inch high on tires with a bead diameter of less than 13 inches. Many commenters requested that the date code be expressed in alpha-numeric form in order to reduce the date symbol to two digits. NHTSA declined to adopt the alpha-numeric system because it could be confusing to the public and because retreaders may not be able to easily determine the age of the casing to be retreaded. In order to shorten the stencil plate, however, NHTSA dropped one of the two digits representing the decade of manufacture, thereby reducing the date of manufacture group from four digits to three.

B. The Petitions

(1) *Rubber Manufacturers Association.* The Rubber Manufacturers Association (RMA) is the primary national trade association for the finished rubber products industry in the U.S. RMA petitioned the agency to amend 49 CFR 574.5 to permit a 4-digit date code and to reduce the size of the lettering from 1/4 inch to 5/32 inch.

RMA explained that at a recent meeting, the ISO Technical Committee 31 on tires recommended approval of a 4-digit date of manufacture code beginning in January 2000. RMA stated that ECE has also authorized the use of a 4-digit date code commencing in January 2000. RMA suggested that with a 4-digit date code, the first two would represent the week and the last two the year. For example, 0100 would mean the first week of January of the year 2000. RMA suggested that an appropriate phase-in period be allowed during which use of either the 3 or 4 digit code would be permitted. In order to avoid having to modify existing molds, RMA suggested that the addition of the fourth digit be offset by allowing the minimum size of the digits in the date code to be reduced to 4 millimeters (mm) (5/32 inch), regardless of tire size. Finally, RMA stated that such modification would bring these U.S. requirements into harmony with the ECE regulation and the ISO recommendation, and would allow better traceability and identification of older tires.

(2) *European Tyre and Rim Technical Organisation* (ETRTO). Based in Brussels, Belgium, the ETRTO is the European standardization authority for the establishment and promulgation of interchangeability standards for pneumatic tires, rims, and valves. ETRTO submitted a petition for rulemaking which cited the ECE regulations and the ISO agreements and suggested amending § 574.5 to permit a 4-digit date code effective in January 2000. The first two digits would represent the week and the latter two would represent the year of manufacture. Again, in order to avoid modification of existing tire molds, ETRTO requested reduction of the height of the digits from 6 mm (1/4 inch) to 4 mm (5/32 inch), regardless of tire size. ETRTO also sought to justify the requested amendments by stating that such amendments would bring U.S. requirements into line with the ECE regulations and ISO recommendations, and that the amendments would allow better traceability of tires and identification of old tires.

C. Discussion

As stated in the Background discussion above, the TIN originated with the May 22, 1970 amendments to the National Traffic and Motor Vehicle Safety Act of 1966. Prior to that time, there were no tire labeling requirements in effect, other than standard industry practices. When considering the TIN in its current form, the agency was persuaded by the commenters to the NPRM that economizing on limited space on tire sidewalls justified reducing the decade symbol in the date code from two digits to one. This presented no problem during the 1970s since the TIN was new, the lifecycle of tires from manufacture to disposal or recycling was shorter then, and the issue of tires manufactured in different decades seemed minor at most. The single-digit year code likewise presented no problem in the 1980s because the industry was making the transition from bias-ply to radial tires, and the public could easily distinguish between the bias-ply tires of the 1970s and the new radial tires of the 1980s. No problems appeared in this respect until the 1990s. At that time, the single-digit year code became inadequate because longer-lived radial tires became widely used and there was now no way for the agency or the public to determine for certain when the tire was manufactured. When the date code requirement was developed in 1970, it was not envisioned that tires manufactured in one decade would be taken out of storage and sold ten or more years later. That, however, has occurred in some cases.

Tire manufacturers recognized this as a concern and, in order to alleviate that concern without petitioning the government for additional rulemaking, the industry's voluntary standards organization issued a new recommended practice that provided that tires built in the 1990s display the symbol "Δ" after the TIN to indicate that the year of manufacture was in the decade of the 1990s. Not all tire manufacturers followed this recommended procedure, however, thereby diminishing its meaning and effectiveness. For tires without the mark, the public was still left with no way of knowing for certain whether the tire(s) they purchased were manufactured in the 1970s, 1980s, or 1990s.

The agency does not consider the industry voluntary practice to be a satisfactory solution to this problem. Presumably, different symbols would be needed to represent different decades. Ultimately, therefore, a proliferation of such symbols, and the interpretation problems they would present, would further confuse an already confusing situation. Rather, NHTSA tentatively concludes that the addition of a fourth digit to the date code to specifically identify the decade, as requested by the petitioners, would be a simpler and more practical solution.

NHTSA believes that as run-flat tires and high performance low-profile tires are developed and become more common, tire diameters will increase with consequent decrease in sidewall heights. That means that conservation of ever-more limited space on tire sidewalls will become even more important than before. The agency's proposal to add a digit to the date code that would still fit within the current size of the date code, while more clearly identifying the date of manufacture, would ensure that the TIN would not take any more space on the tire sidewall than before.

There was some concern within the agency that reducing the digits in the date code from 6 mm (1/4 inch) to 4 mm (5/32 inch) might make the numbers too small to be seen easily. To determine whether this would be the case, NHTSA

requested and received from RMA a sample piece of a tire sidewall with the numbers 4 mm in height. This sample was examined by various agency personnel who indicated that the 4 mm digits were clearly readable. The reduction of the size of the digits is so slight as to be barely perceptible. Moreover, 4 mm digits are currently permitted with no reported difficulties for tires with less than 6 inches cross section or with less than a 13-inch bead diameter. Further, NHTSA permits all the tire grading information required by the Uniform Tire Quality Grading Standards, 49 CFR 575.104, to be expressed in 4 mm letters and numbers, again without reported problems with readability. Accordingly, NHTSA believes that the tire date code could be reduced from 6 mm to 4 mm with no effect on the readability of the digits.

The tire industry's interest in reducing the size of the digits in a 4 mm date code is a matter of cost. Based on current requirements, the industry has developed date "plugs" of a standard size and width and that are changed weekly in the tire molds. To avoid the cost of modifying current tire molds or constructing new ones to accommodate an extra digit the same size as now required, the industry requests that it be permitted to reduce the size of the digits. NHTSA tentatively concludes that reducing the date code digit size to 4 mm would ensure that this rulemaking not result in any cost impacts to tire manufacturers, yet a 4-digit date code symbol would be more effective in fulfilling the purpose of part 574.

The agency emphasizes that 4 mm is the minimum size for the date code symbols. No maximum size is specified. Tire manufacturers would be free to make the digits larger, so long as other required labeling of the required size continues to appear on the tire sidewall. Where not otherwise specified, tire manufacturers typically adjust the size of tire labeling in accordance with trends in the consumer market. NHTSA has no reason to believe that manufacturers would do otherwise with the size of the date code symbols.

NHTSA tentatively agrees with the petitioners that the proposed 4-digit date code would result in better traceability of tires for defect and compliance purposes and for more accurate identification of older tires for consumers. NHTSA believes that traceability would be improved if the year were identified in 2 digits so that the tires produced in that week in that year can be more quickly and easily traced to a specific production lot. Moreover, requiring the specific year to appear in the date code can discourage the unscrupulous practice of selling old tires to unsuspecting consumers who think that they are buying recently-produced tires. NHTSA has tentatively concluded that aging diminishes the wear rates of tires by significant amounts, depending on the conditions and length of storage of the tires concerned. See Notice of Proposed Rulemaking, Uniform Tire Quality Grading Standards, 63 FR 30695, June 5, 1998. Since old tires will not provide the wear rates of newer tires, the 4-digit date code will make it simpler for prospective tire purchasers to know in advance the status of the tires they are purchasing.

NHTSA is a strong supporter of international harmonization in all cases where such harmonization is consistent with its statutory mandate to ensure motor vehicle safety. The adoption of the 4-digit date code in the TIN is consistent with the agency's harmonization efforts and would benefit U. S. tire manufacturers and exporters. The international tire industry has become truly global in manufacturing, marketing, and sales. In 1995, domestic tire manufacturers exported 22.3 million passenger car tires and 3.8 million light truck tires to foreign markets. In the same year, the U. S. imported 45 million passenger car tires and 5.4 million light truck tires from foreign sources. It is apparent, therefore, that maximum harmonization of tire requirements would benefit both U. S. and foreign vehicle and tire manufacturers.

Finally, NHTSA agrees with the petitioners that it would be advantageous to permit tire manufacturers to phase in the new requirements between the date of publication of the final rule, assuming the proposals herein are finally adopted, and the beginning of the year 2000. In that interim period, tire manufacturers would be permitted to continue to use the currently-required 3-digit date code or the new 4-digit date code, at their option. This should give manufacturers ample time to make the conversion to the new requirements, yet permit them to utilize the new date code as soon as they are ready to do so.

Agency Proposal

Based on the considerations discussed above, NHTSA proposes to amend 49 CFR 574.5 as follows:

a. Change the fourth grouping of the tire identification number, which shows the date of manufacture of the tire, from 3 to 4 digits. The first two digits would indicate the week of the year, starting with the numbers "01" to designate the first full week of the year, and the last two digits would indicate the year. Thus, the date code symbol "2198" would indicate the 21st week of 1998;

b. Reduce the minimum size requirement for the digits in the 4-digit date code, but not the size of the other symbols in the tire identification number, from 6 mm (¼ inch) to 4 mm (5/32 inch).

Rulemaking Analyses and Notices

a. Executive Order 12866 and DOT Regulatory Policies and Procedures

This document has not been reviewed under Executive Order 12866, *Regulatory Planning and Review.*

NHTSA has analyzed the impact of this rulemaking action and has determined that it is not "significant" within the meaning of the DOT's regulatory policies and procedures. This action proposes to amend the tire identification number currently required by 49 CFR 574.5 to be marked on all tires sold in the United States. Specifically, this proposal would increase the number of digits in the date of manufacture group of the tire identification number from 3 to 4, and would permit a reduction in the size of those digits so that the 4 digits would fit within the same "plug" in the tire molds in which the currently-required 3 digits fit. That would permit tire manufacturers to use the same molds that they do now, without having to absorb the costs of constructing new molds. Date codes are changed weekly by manufacturers and with a sufficient phase-in period, manufacturers would have ample opportunity to phase into the new 4-digit date code without having to redesign their tire molds. For these reasons, the agency estimates that implementation of the proposals herein would not result in any increased costs to tire manufacturers, distributors, dealers, or consumers. Accordingly, the agency has concluded that preparation of a full regulatory evaluation is not warranted.

b. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* I hereby certify that this notice of proposed rulemaking would not have a significant impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The amendments proposed herein would primarily affect manufacturers of motor vehicle tires. The Small Business Administration (SBA) regulation at 13 CFR part 121 defines a small business

as a business entity which operates primarily within the United States (13 CFR 121.105(a)).

SBA's size standards are organized according to Standard Industrial Classification (SIC) codes. SIC code No. 3711, *Motor Vehicles and Passenger Car Bodies*, prescribes a small business size standard of 1,000 or fewer employees. SIC code No. 3714, *Motor Vehicle Part and Accessories*, prescribes a small business size standard of 750 or fewer employees.

The amendments proposed in this rulemaking action would merely increase the number of digits in the date of manufacture symbol in the tire identification number from 3 digits to 4, and permit a reduction in the size of those digits from 6 mm (¼ inch) to 4mm (5⁄32 inch). The purpose of these changes is to harmonize U.S. requirements with those of the European community, to make tires more easily traceable in the event of a defect or noncompliance, and to allow easier identification of old tires. These proposed amendments were requested by the trade organizations that represent the major tire manufacturers in both the U.S. and Europe, in particular the reduction in size of the digits so that tire manufacturers would be spared the expense of designing and making new tire molds. The proposed amendments, if adopted, would not impose any increased costs or other burdens on tire manufacturers, most if not all of which would not qualify as small businesses under SBA guidelines. Neither would the proposed amendments result in any increase in costs for small businesses or consumers. Accordingly, there would be no significant impact on small businesses, small organizations, or small governmental units by these amendments. For those reasons, the agency has not prepared a preliminary regulatory flexibility analysis.

c. Executive Order No. 12612, Federalism

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria of E.O. 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

d. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act and has determined that implementation of this rulemaking action would not have any significant impact on the quality of the human environment.

e. Paperwork Reduction Act

The provisions of the proposed amendments herein requiring tire manufacturers to designate the date of manufacture of their tires in 4 digits instead of the currently-required 3 and to reduce the size of the digits from 6 mm to 4 mm are considered to be third-party information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The proposed amendments create no additional information collection requirements since the proposals, if adopted, would merely make a slight change to the format of existing requirements.

The information collection requirements for 49 CFR part 574 have been submitted to and approved by OMB pursuant to the provisions of the Paperwork Reduction Act , 44 U.S.C. 3501, *et seq.* This collection of information authority for tire information and recordkeeping has been assigned control number 2127–0503, which expires August 31, 2000.

f. Civil Justice Reform

The amendments proposed herein would not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision thereof may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard.

However, the United States government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. Section 30161 of Title 49, U.S. Code sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

Comments

Interested persons are invited to submit comments on the amendments proposed herein. It is requested but not required that any such comments be submitted in duplicate (original and 1 copy).

Comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in concise fashion. Necessary attachments, however, may be appended to those comments without regard to the 15-page limit.

If a commenter wishes to submit certain information under a claim of confidentiality, 3 copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address noted above, and 1 copy from which the purportedly confidential information has been deleted should be submitted to Docket Management. A request for confidentiality should be accompanied by a cover letter setting forth the information called for in 49 CFR part 512, *Confidential Business Information*.

All comments received on or before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available to the public for examination in the docket at the above address both before and after the closing date. To the extent possible, comments received after the closing date will be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on today's proposal will be available for public inspection in the docket. NHTSA will continue to file relevant information in the docket after the comment closing date, and it is recommended that interested persons continue to monitor the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rule docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 574

Labeling, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 574 would be amended as follows:

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

1. The authority citation for part 574 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 574.5 would be amended by revising paragraph (d) and Figures 1 and 2 to read as follows:

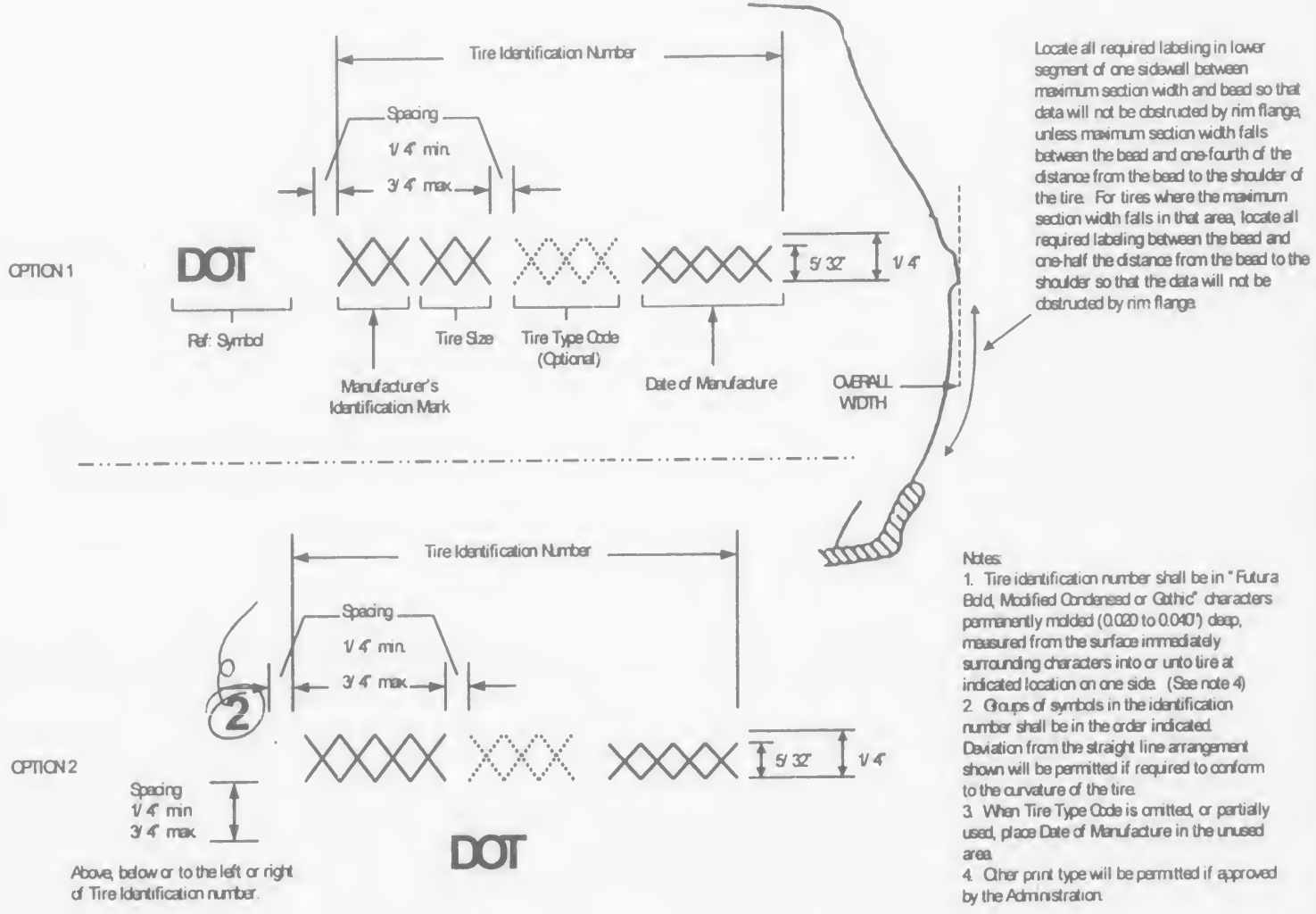
§ 574.5 Tire identification requirements.

* * * * *

(d) *Fourth Grouping.* The fourth group, consisting of four numerical symbols, shall identify the week and year of manufacture. The first two symbols shall identify the week of the year by using "01" for the first full calendar week in each year, "02" for the second full calendar week, and so on. The final week of each year may include not more than 6 days of the following year. The third and fourth symbols shall identify the year. **Example:** 3197 means the 31st week of 1997, or the week of August 3 through 9, 1997; 0198 means the first full calendar week of 1998, or the week of January 4 through 10, 1998. The symbols signifying the date of manufacture shall be not less than 4 mm (5/32 inch) in height and shall immediately follow the optional descriptive code (paragraph (c) of this section). If no optional descriptive code is used, the symbols signifying the date of manufacture shall be placed in the area shown in Figures 1 and 2 for the optional descriptive code.

* * * * *

BILLING CODE 4910–59–P



Notes:

1. Tire identification number shall be in "Futura Bold, Modified Condensed or Gothic" characters permanently molded (0.020 to 0.040") deep, measured from the surface immediately surrounding characters into or unto tire at indicated location on one side. (See note 4)
2. Groups of symbols in the identification number shall be in the order indicated. Deviation from the straight line arrangement shown will be permitted if required to conform to the curvature of the tire.
3. When Tire Type Code is omitted, or partially used, place Date of Manufacture in the unused area.
4. Other print type will be permitted if approved by the Administration.

FIGURE 1: IDENTIFICATION NUMBER FOR NEW TIRES

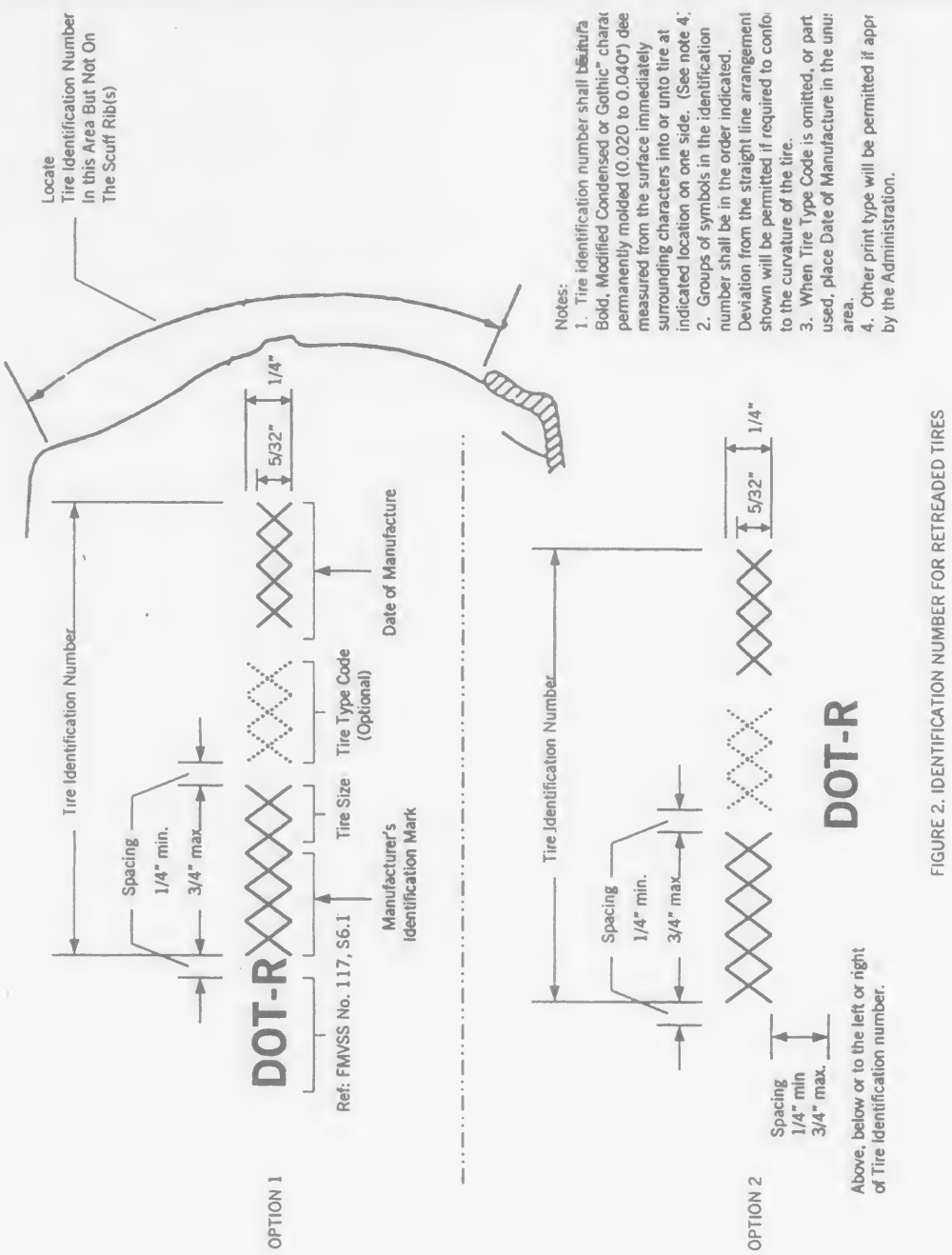


FIGURE 2. IDENTIFICATION NUMBER FOR RETREADED TIRES

Issued on October 13, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–27917 Filed 10–16–98; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To Delist Gray Wolves in Minnesota, Wisconsin, and Michigan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to delist the gray wolf (*Canis lupus*) under the Endangered Species Act of 1973, as amended (Act). The Service finds that the petition does not present substantial information indicating that delisting may be warranted.

DATES: The finding announced in this document was made on October 19, 1998. To be considered in the 12-month finding for this petition, information and comments should be submitted to the Service by December 18, 1998.

ADDRESSES: Questions, comments, or information concerning this petition should be sent to the Ecological Services Operations Supervisor, U.S. Fish and Wildlife Service, Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056. The separate petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. T.J. Miller; 612–713–5334 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and promptly published in the **Federal Register**. Following a positive finding, section 4(b)(3)(B) of the Act requires the Service to promptly commence a status review of the species.

The processing of this petition conforms with the Service's final listing priority guidance for fiscal years 1998 and 1999, published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance calls for giving highest priority to handling emergency situations (Tier 1); second highest priority to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions, and processing a limited number of delistings and reclassifications (Tier 2); and third priority to processing proposed and final designations of critical habitat (Tier 3). The processing of this petition falls under Tier 2.

The Service has made a 90-day finding on a petition to delist the gray wolf (*Canis lupus*) in Minnesota, Wisconsin, and Michigan. The petition, dated February 9, 1998, was submitted by Mr. Lawrence Krak and was received on February 13, 1998. The petition requested that the Service delist the gray wolf in these three states, because the wolf is improperly listed as a subspecies in that area. The petition alleged that the subspecies listing is invalid because the subspecies found in these three states freely mixes with wolves in adjacent portions of Canada. Thus, because the wolves in these three states do not constitute a valid and listable subspecies, the petition stated that the gray wolf should be delisted immediately. Mr. Krak sent a second letter, dated June 15, 1998, which enclosed additional information relevant to his petition.

A review of the petition and Mr. Krak's subsequent letter and enclosure indicates that the petition is based upon a misunderstanding of the scope of the current listing of the gray wolf and of the Service's Vertebrate Population Policy.

The gray wolf is currently listed throughout the coterminous 48 states and Mexico at the species level; this listing is not based in any way upon subspecific affiliation or validity. Thus, the claim that the listing is based upon an improper listing as a subspecies is invalid. While the subspecies *C. l. lycaon* was listed as endangered in Minnesota and Michigan in 1974 (U.S. Fish and Wildlife Service 1974), that listing was superseded by a 1978 listing (43 FR 9607) of the gray wolf, *C. lupus* (i.e., the full species), throughout the 48 coterminous states and Mexico.

Furthermore, the Service's Vertebrate Population Policy (61 FR 4722, February 7, 1996), promulgated to clarify the definition of "species" found in the Act, would allow a listing of a vertebrate species or subspecies in a portion of the United States even if it freely mixes with a larger population across an international border. This policy would allow the Service to list, as a distinct population segment, the U.S. portion of a wolf subspecies which has a much larger population in adjacent Canada. Thus, even if the current listing of the gray wolf was done at the subspecies level, the Vertebrate Population Policy would encompass it within the scope of the Service's listing authority.

The Service has reviewed the petition; the material submitted with, and subsequent to, the petition; and additional information in the Service's files. The Service also solicited comments and data from the States and Tribes within the area included in the petition and has reviewed the information received from those sources. On the basis of the best scientific and commercial data available, the Service finds that the petition does not present substantial information that delisting the gray wolf in Minnesota, Wisconsin, and Michigan may be warranted.

References Cited

U.S. Fish and Wildlife Service. 1974. United States list of endangered fauna, May 1974. U.S. Department of the Interior. Washington, D.C. 20240. 22 pp.

Author: The primary author of this document is Ronald L. Refsnider of the Service's Regional Office (U.S. Fish and Wildlife Service, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056; 612–713–5346).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: October 6, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–27977 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–

Endangered and Threatened Wildlife and Plants; Extension of Comment Period for Proposed Rule To List the Contiguous United States Distinct Population Segment of the Canada Lynx

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment period on the proposal to list the contiguous United States distinct population segment of the Canada Lynx is being extended. All interested parties are invited to submit comments on this proposal.

DATES: Comments will be accepted until November 16, 1998.

ADDRESSES: Written comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Montana Field Office, 100 N. Park Avenue, Suite 320, Helena, Montana 59601.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, Field Supervisor, Montana Field Office, (see **ADDRESSES** section) (telephone 406/449–5225; facsimile 406/449–5339).

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1998 (63 FR 36994), the U.S. Fish and Wildlife Service (Service) published a proposed rule to list the contiguous United States distinct population of the Canada lynx (*Lynx canadensis*) as threatened under the Endangered Species Act of 1973, as amended. This population segment includes the States of Washington, Oregon, Idaho, Montana, Utah, Wyoming, Colorado, Minnesota, Wisconsin, Michigan, Maine, New Hampshire, Vermont, New York, Pennsylvania, and Massachusetts. The contiguous United States population segment of the Canada lynx is threatened by human alteration of forests, low numbers as a result of past overexploitation, expansion of the range of competitors (bobcats (*Felis rufus*) and coyotes (*Canis latrans*)), and elevated levels of human access into lynx habitat. This rule also lists the captive population of Canada lynx within the coterminous United States (lower 48 States) as threatened due to similarity of appearance and permits the continued export of captive-bred Canada lynx.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments, or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are solicited.

The original comment period on this proposal was scheduled to close on September 30, 1998. To accommodate the Great Lakes Indian Fish and Wildlife Commission council meeting schedule, the Service extended the comment period to October 14, 1998. The Service is once again extending the comment period to accommodate a request from a variety of members of the Senate and the House of Representatives. Written comments may now be submitted until November 16, 1998, to the Service's Montana Field Office (see **ADDRESSES** section above). All comments must be received before the close of the comment period to be considered.

Author

The author of this notice is Lori Nordstrom, U.S. Fish and Wildlife Service, Montana Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 14, 1998.

Terry T. Terrell,

Regional Director, Denver, Colorado.

[FR Doc. 98–28028 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AE38

Migratory Bird Hunting; Temporary and Conditional Approval of Tungsten-Matrix Shot as Nontoxic for the 1998–99 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to amend its regulations and grant temporary and conditional approval of tungsten-matrix shot as nontoxic for the 1998–99 migratory bird hunting season, except in the Yukon-Kuskokwim (Y–K) Delta, Alaska, while reproductive/chronic toxicity testing is being completed. Tungsten-matrix shot has been submitted for consideration as nontoxic by Kent Cartridge Manufacturing Company, Ltd. (Kent), of Kearneysville, West Virginia.

DATES: Comments on the proposed rule must be received no later than November 18, 1998.

ADDRESSES: Copies of the draft EA are available by writing to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 1849 C Street, NW., ms 634–ARLSQ, Washington, D.C. 20240. Comments may also be forwarded to this same address. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert J. Blohm, Acting Chief, or James R. Kelley, Jr., Wildlife Biologist, Office of Migratory Bird Management (MBMO), (703) 358–1714.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, the Service has sought to identify shot that does not pose a significant toxic hazard to migratory birds or other wildlife. Currently, only steel and bismuth-tin shot are approved by the Service as nontoxic. On October 7, 1998 tungsten-iron (63 FR 54015) and tungsten-polymer (63 FR 54021) shot were given temporary conditional approval for the 1998–99 hunting season. Compliance with the use of nontoxic shot is increasing over the last few years. The Service believes that this level of compliance will continue to increase with the availability and approval of other nontoxic shot types. The Service is eager to consider these other materials for approval as nontoxic shot.

The revised procedures for approving nontoxic shot (50 CFR 20.134) consist of a three-tier process whereby existing information can minimize the need for full testing of a candidate shot. However, applicants still carry the burden of proving that the candidate shot is nontoxic. By developing the new approval procedure, it was the Service's intent to discontinue the practice of granting temporary conditional approval to candidate shot material. However, the application by Kent was initiated prior to implementation of the new protocol. To date, scientific information presented in the application suggests that tungsten-matrix is nontoxic under conditions for the proposed shot configuration. Therefore, the Service has agreed to grant temporary conditional approval for the 1998–99 hunting season. Permanent approval will not be granted until further testing is successfully completed; which is consistent with the previous nontoxic shot approval process.

Kent's original candidate shot was fabricated from what is described in their application as "* * * a mixture of powdered metals in a plastic matrix whose density is comparable to that of lead. All component metals are present as elements, not compounds. Tungsten-

matrix pellets have specific gravity of 9.8 g/cm3 and is composed of 88 percent tungsten, 4 percent nickel, 2 percent iron, 1 percent copper, and 5 percent polymers by mass" (63 FR 30044; June 2, 1998). After consultation with the Service, Kent subsequently changed the composition of their shot and removed nickel and copper. The new shot material being considered has a density of 10.7 g/cm^3 and is composed of approximately 95.9 percent tungsten and 4.1 percent polymers.

Kent Cartridge's updated application includes a description of the reformulated tungsten-matrix (TM) shot, a toxicological report (Thomas 1997), and results of a 30-day dosing study of the toxicity of the original formulation in game-farm mallards (Wildlife International, Ltd. 1998). The toxicological report incorporates toxicity information (a synopsis of acute and chronic toxicity data for mammals and birds, potential for environmental concern, and toxicity to aquatic and terrestrial invertebrates, amphibians and reptiles) and information on environmental fate and transport. The toxicity study is a 30-day dosing test to determine if the original candidate shot poses any deleterious effects to game-farm mallards. This will meet the requirements for Tier 2, as described in 50 CFR 20.134(b)(3). Because the reformulated shot contains no new components, and in fact has had components removed (nickel and copper), the Service believes that retesting of the reformulated shot in the form of a new 30-day dosing study is not required.

Toxicity Information

There is considerable difference in the toxicity of soluble and insoluble compounds of tungsten. Elemental tungsten, which is the material used in this shot, is virtually insoluble and is therefore expected to be relatively nontoxic. Even though most toxicity tests reviewed were based on soluble tungsten compounds rather than elemental tungsten (while the toxicity of the polymers is negligible due to its insolubility), there appears to be no basis for concern of toxicity to wildlife for the TM shot (metallic tungsten and polymers) via ingestion by fish, birds, or mammals (Wildlife International Ltd., 1998; Bursian et al., 1996; Gigiema, 1983; Patty, 1981; Industrial Medicine 1946; Karantassis 1924).

Environmental Fate and Transport

Tungsten is insoluble in water and, therefore, not mobile in hypergenic environments. Tungsten is very stable in acids and does not easily complex. Preferential uptake by plants in acid soil suggests that uptake of tungsten in the anionic form is associated with tungsten minerals rather than elemental tungsten (Kabata-Pendias and Pendias 1984).

Environmental Concentrations

Calculation of the estimated environmental concentration (EEC) of tungsten in a terrestrial ecosystem is based on 69,000 shot per hectare (Pain 1990), assuming complete erosion of material in 5 cm of soil. The EECs for tungsten and the 2 polymers in soil are 25.7 mg/kg, 4.2 mg/kg, and 0.14 mg/kg, respectively. Calculation of the EEC in an aquatic ecosystem assumes complete erosion of the shot in one cubic foot of water. The EECs in water for tungsten and the 2 polymers are 4.2 mg/L, 0.2 mg/L, and 0.02 mg/L, respectively. The TM shot is considered insoluble and is stable in basic, neutral, and mildly acidic environments. Therefore, erosion of shot is expected to be minimal, and adverse effects on biota are not expected to occur.

Effects on Birds

An extensive literature review provided information on the toxicity of elemental tungsten to waterfowl and other birds. Ringelman et al. (1993), orally dosed 20 8-week-old game-farm mallards with 12–17 (1.03g) tungsten-bismuth-tin (TBT) pellets and monitored them for 32 days for evidence of intoxication. No birds died during the trial, gross lesions were not observed during the postmortem examination, histopathological examinations did not reveal any evidence of toxicity or tissue damage, and tungsten was not detectable in kidney or liver samples. The authors concluded that TBT shot presented virtually no potential for acute intoxication in mallards.

Kraabel et al. (1996) assessed the effects of embedded TBT shot on mallards and concluded that TBT was not acutely toxic when implanted in muscle tissue. Inflammatory reactions to TBT shot were localized and had no detectable systemic effects on mallard health.

Nell et al. (1981) fed laying hens (Gallus domesticus) 0.4 or 1 g/kg tungsten in a commercial mash for five months to assess reproductive performance. Weekly egg production was normal and hatchability of fertile eggs was not affected. Exposure of chickens to large doses of tungsten either through injection or by feeding, resulted in an increased tissue concentration of tungsten and a decreased concentration of molybdenum (Nell et al. 1981). The loss of tungsten from the liver occurred in an exponential manner with a half-life of 27 hours. The alterations in molybdenum metabolism seemed to be associated with tungsten intake rather than molybdenum deficiency. Death due to tungsten occurred when tissue concentrations increased to 25 mg/g liver. At that concentration, xanthine dehydrogenase activity was zero.

The two plastic polymers used in TM shot act as a physical matrix in which the tungsten is distributed as ionically-bound fine particles. Most completely polymerized nylon materials are physiologically inert, regardless of the toxicity of the monomer from which they are made (Peterson, 1977). A literature review did not reveal studies in which either of the two polymers were evaluated for toxicity in birds. Montgomery (1982) reported that feeding Nylon 6 to rats at a level of 25 percent of the diet for 2 weeks caused a slower rate of weight gain, presumably due to a decrease in food consumption and feed efficiency. However, the rats suffered no anatomic injuries due to the consumption of nylon.

Kent's 30-day dosing study on the original formulation (Wildlife International Ltd., 1998) included 4 treatment and 1 control group of game-farm mallards. Treatment groups were exposed to 1 of 3 different types of shot: 8 #4 steel, 8 #4 lead, or 8 #4 TM; whereas the control group received no shot. The 2 TM treatment groups (1 group deficient diet, 1 group balanced diet) each consisted of 16 birds (8 males and 8 females); whereas remaining treatment and control groups consisted of 6 birds each (3 males and 3 females). All TM-dosed birds survived the test and showed no overt signs of toxicity or treatment-related effects on body weight. There were no differences in hematocrit or hemoglobin concentration between the TM treatment group and either the steel shot or control groups. No histopathological lesions were found during gross necropsy. In general, no adverse effects were seen in mallards given 8 #4 size TM shot and monitored over a 30-day period. Tungsten was found to be below the limit of detection in all samples of femur, gonad, liver, and kidney from treatment groups.

Based on the results of the toxicological report and the toxicity test of the original shot formulation (Tier 1 and 2), the Service concludes that TM shot, (approximately 95.9 percent tungsten and 4.1 percent polymer, by weight with <1 percent residual lead), does not appear to pose a significant danger to migratory birds or other wildlife and their habitats. However, the Service has some concern that absorption of tungsten into the femur,

kidney, and liver, as noted in a separate study on mallards, could potentially affect the spectacled eider (Somateria fischeri); a species already subject to adverse weather, predation, and lead poisoning on the Yukon-Kuskokwim (Y–K) Delta, Alaska. Until a reproductive/chronic toxicity test has been completed and the Service has reviewed the results, TM shot cannot be approved for the Y–K Delta.

The first condition of approval is toxicity testing. Candidate materials not approved under Tier 1 and/or 2 testing are subjected to standards of Tier 3 testing. The scope of Tier 3 includes chronic exposure under adverse environmental conditions and effects on reproduction in game-farm mallards, as outlined in 50 CFR 20.134(b)(4)(i)(A and B) (Tier 3), and in consultation with the Service's Office of Migratory Bird Management and the U.S. Geological Survey's Division of Biological Resources. This study includes assessment of long-term toxicity under depressed temperature conditions using a nutritionally-deficient diet, as well as a moderately long-term study that includes reproductive assessment. The tests require the applicant to demonstrate that TM shot is nontoxic to waterfowl and their offspring.

The second condition of final unconditional approval is testing for residual lead levels. Any TM shot with lead levels equal to or exceeding 1 percent will be considered toxic and, therefore, illegal. In the **Federal Register** of August 18, 1995 (60 FR 43314), the Service indicated that it would establish a maximum level for residual lead. The Service has determined that the maximum environmentally acceptable level of lead in any nontoxic shot is trace amounts of <1 percent and has incorporated this requirement (50 CFR 20.134(b)(5)) in the December 1, 1997, final rule (62 FR 63608). Kent documented that the TM shot had no residual lead levels equal to or exceeding 1 percent.

The third condition of final unconditional approval involves enforcement. In the August 18, 1995 **Federal Register** (60 FR 43314), the Service indicated that final unconditional approval of any nontoxic shot would be contingent upon the development and availability of a noninvasive field testing device. Several noninvasive field testing devices are under development to separate TM shot from lead shot. Furthermore, TM shot can be drawn to a magnet as a simple field detection method. This requirement was incorporated into regulations at 50 CFR 20.134(b)(6) in the December 1, 1997, final rule (62 FR 63608).

This proposed rule would amend 50 CFR 20.21(j) by conditionally approving tungsten-matrix shot as nontoxic for the 1998–99 migratory bird hunting season throughout the United States, except for the Y–K Delta in Alaska. It is based on the request made to the Service by Kent Cartridge on September 18, 1997 (subsequently modified), the toxicological reports, and the acute toxicity studies. Results of the toxicological report and 30-day toxicity test undertaken for Kent Cartridge indicate the apparent absence of any deleterious effects of tungsten-matrix shot when ingested by captive-reared mallards or to the ecosystem. The comment period for the proposed rule has been shortened to 30 days. This time frame will make it possible for tungsten-matrix shot, if temporarily approved, to be available for use by hunters during the 1998–1999 hunting season. This will increase the number of nontoxic shot options available to hunters.

References

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Thomas, V.G. 1997. Application for approval of tungsten-matrix shot as non-toxic for the hunting of migratory birds. 39 pp.

Wildlife International, Ltd. 1998. Tungsten-matrix shot: An oral toxicity study with the mallard. Project No. 475–101. 162 pp.

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR parts 1500–1508), the Service prepared a draft Environmental Assessment (EA) in October 1998. This EA is available to the public for comment at the location indicated under the **ADDRESSES** caption.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 et seq.), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *" The Service has initiated a Section 7 consultation under the ESA for this proposed rule. The result of the Service's consultation under Section 7 of the ESA will be available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. The approved shot will merely supplement nontoxic shot already in

commerce and available throughout the retail and wholesale distribution systems, therefore, this rule would have minimal effect on such entities. The Service anticipates no dislocation or other local effects with regard to hunters and others. This document is not a significant rule subject to Office of Management and Budget review under Executive Order 12866. This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S. C. 3501 et seq.

Unfunded Mandates Reform

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Authorship

The primary author of this proposed rule is James R. Kelley, Jr., Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife. Accordingly, Part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a– j.

2. Section 20.21 is amended by revising paragraph (j) introductory text, and adding paragraph (j)(4) to read as follows:

§ 20.21 Hunting methods.

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron ([nominally] 40 parts tungsten: 60 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 or 11 with <1 percent residual lead) shot, or tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead), or such shot approved as nontoxic by the Director pursuant to procedures set forth in 20.134, provided that:

(1) * * * .

(4) Tungsten-matrix shot (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 1998–1999 hunting season only, except for the Yukon-Kuskokwim Delta habitat in Alaska.

Dated: October 13, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–27906 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–65–P

Notices

Federal Register
Vol. 63, No. 201
Monday, October 19, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Renewal of Advisory Committee on Actuarial Examinations

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Renewal of advisory committee.

SUMMARY: The Joint Board for the Enrollment of Actuaries announces the renewal of the Advisory Committee on Actuarial Examinations.

FOR FURTHER INFORMATION CONTACT: Darryl Carter, 202–401–5845.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Joint Board on examinations in actuarial mathematics and methodology. The Joint Board administers such examinations in discharging its statutory mandate to enroll individuals who wish to perform actuarial services with respect to pension plans subject to the Employee Retirement Income Security Act of 1974. The Committee's advisory functions will include, but will not necessarily be limited to: (1) considering areas of actuarial knowledge that should be treated on the examinations; (2) developing examination questions; (3) recommending proposed examinations and pass marks; and (4), as requested by the Joint Board, making recommendations relative to the examination program.

Dated: October 2, 1998.

Paulette Tino,

Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. 98–27886 Filed 10–16–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

National Food and Agriculture Council; Request for Approval of a New Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), this notice announces the Department of Agriculture's (USDA) intent to request approval of a new information collection in support of the USDA's National Food and Agriculture Council's (FAC) customer service initiative.

DATES: Submit written comments on the collection of information by December 18, 1998, to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Leonard Covello, Quality Customer Service Team Leader, Service Center Implementation Team, Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, 1400 Independence Avenue, SW, Washington, D.C. 20250–0512, telephone (202) 720–7796; FAX (202) 690–3434; e-mail leonard—covello@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Generic Information Collection.

OMB Control Number: New submission.

Type of Request: Approval of a new information collection.

Abstract: President Clinton's Executive Order 12862, "Setting Customer Service Standards," September 11, 1993, requires agencies to annually survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. Executive Order 12862, and ensuing memoranda: "Improving Customer Service," March 22, 1995; and Conducting "Conversations with America" to Further Improve Customer Service, March 3, 1998, require, among other things, that agencies, on an ongoing basis, measure results achieved against published customer service standards and report the results annually. Agencies are directed to provide significant services directly to the public to make information, services, and complaint systems easily accessible, and to provide a means to address customer complaints. The proposed information will enable USDA Service Center and their partner agencies (Farm Service Agency (FSA), Natural Resources Conservation Service (NRCS), and Rural Development (RD)) to comply with Executive Order 12862 and the above referenced memoranda.

The types of information collection instruments the FAC Service Center Implementation Team plans to use for the next 3 years are written surveys, focus groups, comment and complaint cards, customer call backs, benchmarking studies, telephone surveys, and structured interviews.

FAC and the USDA Service Center partner agencies will use the information collected to meet requirements of the Government Performance and Results Act of 1993 (GPRA) and to improve USDA's Service Center operations. The proposed collections will provide current performance and trend data in support of GPRA performance requirements and USDA's National FAC's Strategic and Annual Performance Plans.

Survey data has been collected since 1994 and has been used for creating GPRA initiatives, to support the Service Center and the three partner agencies' strategic plans, and to obtain customer service baseline, as well as, to measure performance against established baselines.

Written and telephone surveys will be designed and conducted in accordance with appropriate sampling design principles. The design and implementation of the surveys will meet the requirements and guidelines of OMB as set forth in the OMB manuals, "The Paperwork Reduction Act of 1995: Implementing Guidance" and "Resource Manual for Customer Surveys."

Focus groups have and will continue to be a useful and productive data collection activity. They will be used to explore what our customers view as important service attributes. Focus groups are also very useful for getting customer views of new proposed ways of doing things. In 1996, USDA employees from the three partner agencies conducted 37 focus group meetings across the country. States were selected to insure a balance of programs and farming regions. The goal was to find out what kinds of service customers want and how USDA might best deal

with customer complaints. This qualitative data was compared with our quantitative data from our previous surveys. Customers' views were instrumental in developing USDA Service Center Customer Service Standards and in designing a nationwide comment and complaint process that is now in the pilot test phase. Both of these accomplishments implement mandates of Executive Order 12862 and the above referenced memoranda.

Comment/complaint card participation is voluntary. Cards are given to customers at time of service or are available at the service point of contact. Customers will be able to use the card to submit complaints, compliments, and comments. Use of comment cards was developed as a system for resolving complaints in the minimum amount of time and is an integral part of the comment/complaint process.

Customer callbacks (commonly called service quality calls) will be used to obtain continuous feedback from customers. Specially trained Service Center employees will place telephone calls to a random sample of customers who have received service within the past 24–48 hours. Customers' comments will be entered into a database and summarized. Reports will be produced for the service provider and management concerning the quality of service being provided. This data will also identify points in our work processes in need of review.

As part of the 3-year plan, benchmarking studies will be conducted when needed and appropriate to ensure that our customers get service that is equal to "best in business." These studies will examine business practices and performance in both the private sector as well as in other governmental entities. Such studies need not be restricted to companies that are in the same general business as the Federal Government.

Structured or personal (one-on-one) interviews will be conducted as needed to obtain information from potential or existing customers. This data will be used as an indicator of potential problems, areas of concern, or areas for improvement.

Information collection requests will be designed to produce valid results that will be generalized, when applicable, to the target participants. All collection instruments will collect reactions, recollections and opinions, not statistical or archival data.

No information collection activity will ask respondents to submit trade secrets or other confidential information. No information collection activity will contain questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The target population is customers who receive or might be eligible to receive service in, from, or through a USDA Service Center. Customers include, but are not limited to, all producers and participants in single and multi-family housing, business and community development, and water and waste programs. USDA will collect data mostly during off-season times, generally from December through early April. This will minimize interference with customers' crop planting and other concentrated agri-business activities, while hopefully, maximizing response rates. Burden estimations for the information collection are based on a 3-year timeframe.

The attached Table is an explanation of the various data collection instruments with regard to Estimate of Burden; Respondents; Estimated Number of Respondents; Estimated Number of Responses Per Respondent; and Estimated Total Annual Burden on Respondents.

Data collection instrument	Frequency	Estimated number of respondents	Estimated time for responses per respondent	Estimated total annual burden on respondents (hours)
Written surveys	Annual	27,000	15 minutes	6,750
State surveys (15 States)	As appropriate	57,000	15 minutes	14,250
Focus groups	As appropriate	500	120 minutes	2,400
State focus groups (6 States)	As appropriate	288	120 minutes	576
Comment and complaint cards (all States)	Ongoing	58,500	5 minutes	4,875
Customer call backs (6 States)	As appropriate	22,500	5 minutes	1,875
Benchmarking studies	As appropriate	120	4 hours	480
Telephone surveys (1 national)	As appropriate	500	10 minutes	84
Structured interviews (6 States)	As appropriate	4,500	30 minutes	2,250

Proposed topics for comments are: (1) whether the collection of information is necessary for the proper performance of the USDA Service Center function, including whether the information will have practical utility; (2) the accuracy of the USDA Service Center estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) 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 should be sent to Leonard Covello, Quality Customer Service Team Leader, Service Center Implementation Team, Farm Service Agency, Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW, Washington, D.C. 20250–0512.

OMB is required to make a decision concerning the collection contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB is best assured of having its full effect if it is received within 30 days of publication.

All responses to this notice will be summarized and included in the request for the OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on October 14, 1998.

Gregory L. Carnill,

Executive Officer, USDA, National Food and Agriculture Council.

[FR Doc. 98–28065 Filed 10–15–98; 1:09 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of recruitment for additional members for ETTAC.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) was rechartered on July 15, 1998, for two years pursuant to the provisions in Title IV of the Jobs through Trade Expansion Act, 22 U.S.C. 2151, and under the Federal Advisory Committee Act, 5 U.S.C. App.2. The ETTAC serves as an advisory body to the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, reporting directly to the Secretary of Commerce in his capacity as Chairman of the TPCC. Members of the ETTAC have experience in exporting the full range of environmental technologies products and services.

Under the Federal Advisory Committee Act, membership in a committee constituted under the Act must be balanced. To achieve balance the Department is seeking additional candidates from small, medium-sized, and large businesses from the following subsectors of the environmental industry:

(1) Analytic Services
(2) Financial Services
(3) Water and Wastewater Services and Equipment
(4) Air Pollution Control/Monitoring Equipment
(5) Process and Prevention Technologies
(6) Environmental Energy Sources
(7) Solid and Hazardous Waste Equipment and Management
(8) Engineering and Consulting

Committee members serve in a representative capacity, and must be able to generally represent the views and interests of a certain subsector. We are seeking CEO, President or Executive Vice President-level company candidates.

If you are interested in being considered as a candidate to serve on the ETTAC, please send a fact-sheet on your company that details your activity in the subsector as listed above, as well as a short biographical sketch on the executive who wishes to become a candidate. Materials can be faxed to the number listed below.

DEADLINE: This request will be open until close of business on November 9, 1998.

FOR FURTHER INFORMATION CONTACT: The Office of Environmental Technologies Exports, Room 1003, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; phone 202–482–5225. Materials may be faxed to 202–482–5665, attention Sage Chandler or Jane Siegel.

Dated: September 24, 1998.

Carlos M. Montoulieu,

Acting Deputy Assistant Secretary.

[FR Doc. 98–27893 Filed 10–16–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is a notice in accordance with 35 USC 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards of Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of an exclusive license world-wide to NIST's interest in the invention embodied in U.S. Patent Application 09/034,918 titled, "Method And Apparatus for Diffraction Measurement Using A Scanning X–Ray Source", filed March 4, 1998; NIST Docket No. 97–026US to Digiray Corporation, having a place of business at 2239 Omega Road, San Ramon, CA. The grant of the license would be for all fields of use.

FOR FURTHER INFORMATION CONTACT: J. Terry Lynch, National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The availability of the invention for licensing was published in the **Federal Register**, Vol. 63, No. 96 (May 19, 1998). NIST and Digiray Corporation have entered into a Cooperative Research and Development Agreement (CRADA) to further development of the invention.

U.S. Patent application 09/034,918 is jointly owned by the U.S. Government, as represented by the Secretary of Commerce, and Digiray Corporation. The present invention relates to x-ray diffraction measurement by using moving x-ray source x-ray diffraction. The invention comprises a raster-scanned x-ray source, a specimen, a collimator, and a detector. The x-ray source is electronically scanned which allows a complete image of the x-ray diffraction characteristics of the specimen to be produced. The specimen is placed remote from the x-ray source and the detector. The collimator is located directly in front of the detector. The x-rays are diffracted by the specimen at certain angles, which cause them to travel through the collimator and to the detector. The detector may be placed in any radial location relative to the specimen in order to take the necessary measurements. The detector can detect the intensity and/or the wavelength of the diffracted x-rays. All information needed to solve the Bragg equation as well as the Laue equations is available. The x-ray source may be scanned electronically or mechanically. The present invention is used to perform texture analysis and phase identification.

Dated October 14, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–27985 Filed 10–16–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100998E]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Red Snapper Advisory Panel (RSAP) and the Reef Fish Scientific and Statistical Committee (SSC).

DATES: The RSAP meeting will begin at 8:00 a.m. on Tuesday, November 3, 1998, and conclude by 3:30 p.m. The SSC will begin at 8:00 a.m. on Wednesday, November 4, 1998, and conclude by 3:30 p.m.

ADDRESSES: The meetings will be held at the Crowne Plaza New Orleans, 333 Poydras Street, New Orleans, LA 70130; telephone: 504–525–9444.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The RSAP, consisting of recreational and commercial red snapper fishermen, will review stock assessments of gag and vermilion snapper that were prepared by NMFS and reports from the Council's Reef Fish Stock Assessment Panel and Socioeconomic Panel that include biological, social, and economic information related to the range of acceptable biological catch (ABC). Based on these reports, the RSAP may recommend levels of total allowable catch (TAC) for red snapper in 1999 and appropriate management measures.

The SSC, consisting of economists, biologists, sociologists, and natural resource attorneys, will also review the above reports, comment on their scientific adequacy, and may make recommendations regarding red snapper TAC and management measures.

Although other issues not on the agenda may come before the RSAP and SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. The RSAP's and SSC's actions will be restricted to those issues specifically identified in the agenda listed as available by 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 Anne Alford at the Council (see **ADDRESSES**) by October 27, 1998.

Dated: October 13, 1998.

Richard W. Surdi,

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

[FR Doc. 98–27973 Filed 10–16–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100998D]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Precious Corals Plan Team.

DATES: The meeting will be held on November 9, 1998, from 9:00 a.m. to noon.

ADDRESSES: The meeting will be held at the NMFS Laboratory, 2570 Dole Street, Room 112, Honolulu, HI; telephone: 808–983–5300.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The Precious Corals Plan Team will discuss the findings of recent precious corals research conducted in the Northwestern Hawaiian Islands and other issues as required.

Although other issues not on the agenda may come before this Team for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in the agnda listed as available by 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 Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: October 9, 1998.

Richard W. Surdi,

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

[FR Doc. 98–27974 Filed 10–16–98; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 99–C0002]

The Neiman Marcus Group, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Flammable Fabrics Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with the Neiman Marcus Group, Inc., a corporation, containing a civil penalty of $112,500.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 3, 1998.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 99–C0002, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Trail Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626, 1351.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 14, 1998.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between The Neiman Marcus Group, Inc. (hereinafter, "Neiman Marcus" or "Respondent"), a corporation, and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), pursuant to the procedures set forth in 16 CFR 1118.20, is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent federal regulatory agency of the United States government established by Congress pursuant to section 4 of the Consumer Product

Safety Act (hereinafter, "CPSA"), as amended, 15 U.S.C. § 2053.

3. Respondent Neiman Marcus is a corporation organized and existing under the laws of the State of Delaware with its principal corporate offices located in Chestnut Hill, MA. Respondent is a retailer of women's and men's apparel and other products.

II. Allegations of the Staff

A. Violations of the FFA

4. Between December 1998 and February 1997, Respondent sold or offered for sale, in commerce, approximately 6,300 EGERIA cotton terry cloth bathrobes for men and women (hereinafter, the "robes" or "robe").

5. The robes identified in paragraph 4 above are subject to the Standard for the Flammability of Clothing Textiles (hereinafter, "Clothing Standard"), 16 CFR 1610, issued under section 4 of the Flammable Fabrics Act (FFA), 15 U.S.C. § 1193.

6. On or about February 19, 1997, Neiman Marcus, after receiving reports of several incident in which the robes identified in paragraph 4 above caught fire, tested samples of this robe model for compliance with the requirements of the Clothing Standard. *See* 16 CFR 1610.3, 1610.4. The test results showed that the robes did not comply with the requirements of the Clothing Standard and, therefore, were dangerously flammable and unsuitable for clothing because of their rapid and intense burning.

7. Respondent knowingly sold, or offered for sale, in commerce, the robes identified in paragraph 4 above, as the term "knowingly" is defined in section 5(e)(4) of the FFA, 15 U.S.C. 1194(e)(4), in violation of section 3 of the FFA, 15 U.S.C. § 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. § 1194(e)(1).

B. Violations of the CPSA

8. The allegations contained in paragraphs 4 through 7 above are repeated and realleged, as applicable.

9. Respondent is subject to section 15(b) of the CPSA, 15 U.S.C. § 2064(b), which requires a retailer of a consumer product who, inter alia, obtains information that reasonably supports the conclusion that the product contains a defect which would create a substantial product hazard, or creates an unreasonable risk of serious injury or death, to immediately inform the Commission of the defect or risk.

10. Between December 1988 and February 1997, Respondent sold certain robes through its retail stores nationwide. The robe is a "consumer product" and Neiman Marcus is a "retailer" of a "consumer product" which is "distributed in commerce" as those terms are defined in sections 3(a)(1), (6), (11) of the CPSA, 15 U.S.C. §§ 2052(a)(1), (6), (11).

11. The robes are flammable in nature as evidenced by the failing test results under the Clothing Standard and the incidents described in paragraph 12 below. If a robe were to ignite, it could cause serious burn injuries or death.

12. Between June 1996 and February 1997. Neiman Marcus received reports of five incidents in which the robes caught fire, including two incidents which resulted in minor burn injuries.

13. On March 5, 1997, when Neiman Marcus received the test results referenced in paragraph 6 above, it voluntarily filed a "Full Report" with the Commission pursuant to section 15(b) of the CPSA and 15 CFR 1115.13, which stated that the robes may present a flammability risk.

14. Although Neiman Marcus had obtained sufficient information to reasonably support the conclusion that the robes contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to immediately report such information to the Commission in a timely manner, as required by section 15(b) of the CPSA. This is a violation of section 19(a)(4) of the CPSA.

15. Neiman Marcus' failure to report to the Commission, as required by section 15(b) of the CPSA, was committed "knowingly," as that term is defined in section 20(d) of the CPSA, and Respondent is subject to civil penalties under section 20 of the CPSA.

III. Response of Neiman Marcus

16. Neiman Marcus specifically denies that it knowingly sold or offered for sale the robes described in paragraph 4 above in violation of the requirements of the Clothing Standard or reporting requirements of the Consumer Product Safety Act.

17. Neiman Marcus purchased the robes identified in paragraph 4 above subject to a provision contained on the back of the merchandise purchase order form which provides that such robes comply with all applicable government regulations including the Flammable Fabrics Act and the Consumer Product Safety Act.

18. Prior to the time of the first reported incident, Neiman Marcus sold the robes described in paragraph 4 above, supplied by the same vendor, or over 10 years without any flammability problem.

19. Immediately upon receipt of what Neiman Marcus perceived to be the first confirmed report of an unexplained flammability incident, Neiman Marcus tested the product for compliance with the Clothing Standard.

20. Immediately upon receipt of test results indicating that the robes described in paragraph 4 above did not meet the requirements of the Clothing Standard, Neiman Marcus suspended all sales of the garment, promptly filed a written report to the CPSC, and implemented a voluntary recall of the garments.

21. Neiman Marcus promptly and diligently assisted the Commission staff in its efforts to implement the voluntary recall or the robes described in paragraph 4 above.

22. Neiman Marcus has received no reports of serious consumer injury resulting from the use of any robes described in paragraph 4 above. The only injuries reported to Neiman Marcus involving these robes were two minor burns.

IV. Agreement of the Parties

23. The Commission has jurisdiction over this matter under the CPSA, 15 U.S.C. §§ 2051 *et seq.*, the FFA, 15 U.S.C. §§ 1191 *et seq.*, and the Federal Trade Commission Act (FTCA), 15 U.S.C. §§ 41 *et seq.*

24. Neiman Marcus agrees to pay to the Commission a civil penalty in the amount of one hundred twelve thousand five hundred dollars ($112,500), in settlement of this matter, payable within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement.

25. Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's Order, (3) to a determination by the Commission as to whether Respondent failed to comply with the FFA, as alleged, or the CPSA, as alleged, (4) to a settlement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

26. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept

the Settlement Agreement and order within 15 days, the Settlement Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register** in accordance with 16 CFR 1118.20(f).

27. This Settlement Agreement and Order becomes effective upon its final acceptance by the Commission and service upon Respondent.

28. For purposes of section 6(b) of the CPSA, 15 U.S.C. § 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicise the terms of the Settlement and Order.

(29) The provisions of this Settlement Agreements and Order shall apply to Respondent, its successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality.

30. Neiman Marcus agrees to immediately inform the Commission if it learns of any additional incidents or flammability information about the robes.

31. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or contradict its terms.

Dated: August 19, 1998.

Eric P. Geller,

Senior Vice President and General Counsel, The Neiman Marcus Group, Inc., Chestnut Hill, MA.

The Consumer Product Safety Commission.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: September 18, 1998.

Ronald G. Yelenik,

Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement between Respondent The Neiman Marcus Group, Inc., a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over The Neiman Marcus Group, Inc., and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, and it is

Ordered, that within 20 days of the service of the Final Order upon Respondent. The Neiman Marcus Group, Inc. shall pay to the order of the U.S. Treasury a civil penalty in the amount of one hundred and twelve thousand five hundred dollars ($112,500).

Further ordered, The Neiman Marcus Group, Inc. shall immediately inform the Commission if it learns of any additional incidents or flammability information about the products identified in the Settlement Agreement herein.

Provisionally accepted and Provisional Order issued on the 14th day of October, 1998.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–27990 Filed 10–16–98; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusion License to RSI Industries

AGENCY: U.S. Army Legal Services Agency, DoD.

ACTION: Notice of intent.

SUMMARY: In compliance with 37 CFR 404 et seq., the Department of the Army hereby gives notice of its intent to grant to RSI Industries and Pharmaceuticals, Inc., a corporation having its principal place of business at 5051 Edison Avenue, P.O. Box 1168, Chino, CA 91708, an exclusive license under U.S. Patent Number 5,714,515, issued February 3, 1998. This Patent relates to a food product for and a method for enhancing cellular phosphorylation potential.

FOR FURTHER INFORMATION CONTACT: Mr. Werten F.W. Bellamy, Intellectual Property Law Division, ATTN: JALS–IP, 901 North Stuart Street, Arlington, VA 22203–1837. Phone: (703) 696–8119.

SUPPLEMENTARY INFORMATION: Objections along with supporting evidence, if any, should be filed within 60 days from the date of this notice and submitted to the above address.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–27931 Filed 10–16–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR) for the Upper Newport Bay Environmental Restoration Feasibility Study; City of Newport, Orange County, CA

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of intent.

SUMMARY: Newport Bay is located on the southern California coast approximately 40 miles south of Los Angeles and 75 miles north of San Diego. The Pacific Coast Highway divides the Bay into two distinct bodies of water referred to as the "Upper" and "Lower" sections. Excessive sedimentation in the 752-acre Upper Newport Bay Ecological Reserve, and shoaling in navigation channels have resulted in habitat changes, disruption of boat traffic, and an overall decrease in water circulation in the Bay. Sediments and nutrients transported from the Newport Bay/San Diego Creek watershed to the bay will continue to degrade water quality and habitat quality within the bay. These conditions have caused a concern among local interest groups and resource agencies regarding the potential adverse impacts on the biota in the Bay ecosystem. The Corps is preparing a feasibility study to determine the Federal interest in restoring and enhancing the marine biological productivity of the Upper Bay and a long-term management plan to permit continued maintenance efforts in the Bay. The goal of the feasibility study is to preserve optimized structure, function, integrity and viability of the ecosystem.

ADDRESSES: Commander, U.S. Army Corps of Engineers, Los Angeles District, Environmental Planning Section, P.O. Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Mr. Russell L. Kaiser, Environmental Manager, phone (213) 452–3846.

SUPPLEMENTARY INFORMATION:

1. Authorization

This study was authorized by Section 841 of the Water Resources Development Act of 1986, Pub. L. 99–662.

2. Background

The Corps along with several other Federal, state and local agencies and interested parties representing different

environmental groups in the Orange County area have been meeting regularly over the last several years to discuss and develop a long term strategy for restoration, enhancement, conservation and preservation efforts for Newport Bay. This consortium of agencies and interested parties are formulating the preliminary concepts for restoration efforts. The Corps has held several public scoping meetings in association with this project. Discussion items have focused on the loss of native habitat and wildlife communities, the propagation of exotic vegetation and domestic predation, the loss of habitat supporting native sensitive species, the overall decrease in water quality, the increase in sediment build-up, the effects of development in the watershed and point/nonpoint discharges entering the bay.

3. Proposed Action

Preparation of a DEIS/EIR.

4. Alternatives

No-Action allows for continued sediment deposition in Upper and Lower Newport Bay, significantly reducing open-water areas, degrading existing marsh habitat, reducing tidal circulation, and shoaling navigation channels. A full array of alternatives will be developed to achieve both environmental restoration and sediment control. To refine alternatives and determine which are viable, project criteria will be developed to assess feasibility. A co-equal analysis will be conducted for the no action and each viable project alternative in the DEIS/EIR pursuant with the National Environmental Policy Act of 1969, 42 U.S.C. 4321, as amended. Project area maps will be available upon request.

5. Scoping Process

The Corps will evaluate potential impacts associated with the no-action and alternative plans. A public scoping meeting will be held to address baseline conditions, solicit public participation on significant environmental issues, and participation in the formulation of alternative measures. All interested parties and agencies are welcome to attend and encouraged to participate in the meeting. The Corps will briefly present the study to the public, review the environmental process and issues identified thus far, and outline the overall schedule for study completion, then request public input. Individuals and agencies may offer information or data relevant to the proposed study and/or request to be placed on the mailing list for future announcements. The DEIS/EIR is expected to be available for review and comment in July 1999.

Several years ago, the California Department of Fish and Game (CDFG) prepared a draft Upper Newport Bay Ecological Reserve (UNBER) management plan. The CDFG is revising the draft plan and will solicit public input at this meeting.

6. Location and Time

The public scoping meeting is scheduled for October 21, 1998 at 7:00 p.m., at the Newport Beach City Council Chambers, 3300 Newport Blvd., Newport Beach, California.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–27930 Filed 10–16–98; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice of meeting.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Global Positioning System (GPS) Vulnerability and Alternatives will meet to examine the vulnerabilities of the GPS on Navy and Marine Corps platforms and weapons systems. All sessions of the meeting will be devoted to executive sessions that will include discussions and technical examination of information related to GPS vulnerabilities; the Department of the Navy's mitigation plans for platforms, weapons, communications, and intelligence systems as related to the projected threat; GPS modernization; and research, development, test, acquisition, and training activities to improve GPS-related military readiness and precision navigation capabilities. All sessions of the meeting will be closed to the public.

DATES: The meeting will be held on Monday, October 19, 1998, through Friday, October 23, 1998, from 8:00 a.m. to 5:00 p.m. each day.

ADDRESSES: The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone number: (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meeting will be devoted to discussions involving technical examination of information related to vulnerabilities and deficiencies of the GPS on Navy and Marine Corps platforms and weapons systems. These discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1). Due to unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: October 7, 1998.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–27984 Filed 10–14–98; 2:55 pm]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 18, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Werfel__d@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office

Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J Sherrill at the address specified above.

Dated: October 13, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of the Under Secretary

Type of Review: Extension.
Title: Federal Interagency Coordinating Council: Family Member Suggested Application/Nomination Form.
Frequency: On occasion.
Affected Public: Individuals or households; Not-for-profit institutions; Federal Government; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 100.
Burden Hours: 200.

Abstract: Potential members will complete the application/nomination form in order to be selected as members on the Federal Interagency Coordinating Council (FICC). The law requires that at least 20% of the members of the FICC be parents of children with disabilities age 12 or under, of whom at least one must have a child with a disability under the age of 6. Three parent positions expired in the spring of 1998 and were extended for one year due to extensive changes in the staffing and functioning of the FICC. One resignation occurred resulting in an under representation of parents on the FICC and lack of compliance with the statute. Therefore, all positions are in the process of being replaced and the need for OMB clearance of the form was necessary. The collected data will be used to make selections for FICC members.

[FR Doc. 98–27904 Filed 10–16–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of the National Advisory Committee on Institutional Quality and Integrity. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend this public meeting.

DATES AND TIMES: December 7–9, 1998, 8:00 a.m. until 6:00 p.m.

ADDRESSES: The Embassy Suites Hotel, 1250 22nd Street, N.W., Washington, D.C. 20037.

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an accommodation to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested accommodations may not be available because of insufficient time to arrange them.

FOR FURTHER INFORMATION CONTACT: Bonnie LeBold, Executive Director, National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, 7th & D Streets, S.W., Room 3082, ROB–3, Washington, DC 20202–7592, telephone: (202) 260–3636. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800+877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA) as amended by Public Law 105–244 (20 U.S.C. 1145). The Committee advises the Secretary of Education with respect to the establishment and enforcement of the criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA, the recognition of specific accrediting agencies or associations, the preparation and publication of the list of nationally recognized accrediting agencies and associations, and the eligibility and certification process for institutions of higher education under Title IV, HEA. The Committee also develops and recommends to the Secretary standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies, in order to establish eligibility for such institutions on an interim basis for participation in Federally funded programs.

Agenda

The meeting on December 7–9, 1998 is open to the public. The following agencies will be reviewed during the December 1998 meeting of the Advisory Committee.

Nationally Recognized Accrediting Agencies

Petitions for Renewal of Recognition

1. Accrediting Bureau of Health Education Schools (Current scope of recognition: The accreditation of private, postsecondary allied health education institutions, private medical assistant programs, public and private medical laboratory technician programs, and allied health programs leading to the Associate of Applied Science and the Associate of Occupational Science degree. Requested expansion of scope: the accreditation of institutions offering

predominantly allied health education programs. "Predominantly" is defined by the agency as follows: at least 70 percent of the number of active programs offered are in the allied health area, and the number of students enrolled in those programs exceeds 50 percent of the institution's full-time equivalent (FTE) students, or at least 70 percent of the FTE students enrolled at the institution are in allied health programs).

2. National Environmental Health Science and Protection Accreditation Council (requested scope of recognition: The accreditation and preaccreditation ("Preaccreditation") of baccalaureate programs in environmental health science and protection).

3. National League for Nursing Accrediting Commission (requested scope of recognition: the accreditation of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs).

4. New York State Board of Regents (requested scope of recognition: the accreditation (registration) of collegiate degree-granting programs or curricula offered by institutions of higher education in the State of New York and of credit-bearing certificate and diploma programs offered by degree-granting institutions of higher education in the State of New York).

Interim Reports

(An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted initial or renewed recognition to the agency)—

1. Accrediting Commission of Career Schools and Colleges of Technology
2. American Academy for Liberal Education
3. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar

American Board of Funeral Service Education, Committee on Accreditation

5. American Dental Association, Commission on Dental Accreditation
6. American Psychological Association, Committee on Accreditation
7. American Veterinary Medical Association, Council on Education
8. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission
9. The Council on Chiropractic Education, Commission on Accreditation
10. Council on Education for Public Health
11. Liaison Committee on Medical Education
12. Montessori Accreditation Council for Teacher Education, Commission on Accreditation
13. Western Association of Schools and Colleges, Accrediting Commission for Schools

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petitions for Renewal of Recognition

1. Oklahoma State Board of Vocational and Technical Education
2. Utah State Board for Vocational Education

State Agencies Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. Iowa Board of Nursing
2. Maryland Board of Nursing

Federal Agency Seeking Degree-Granting Authority

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Master's Degree-Granting Authority

1. Air University, Montgomery, AL; Air War College (request to award the master's degree in Strategic Studies) and Air Command and Staff College (request to award the master's degree in Operational Military Art and Science)

A request for comments on agencies that are being reviewed during this meeting was published in the **Federal Register** on June 19, 1998.

This notice invites third-party oral presentations before the Advisory Committee. It does not constitute another call for written comment. Requests for oral presentation before the Advisory Committee should be submitted in writing to Ms. LeBold at the address above by November 6, 1998. Requests should include the names of all persons seeking an appearance, the organization they represent, and a brief summary of the principal points to be made during the oral presentation. Presenters are requested not to distribute written materials at the meeting or to send them directly to members of the Advisory Committee. Presenters who wish to provide the Advisory Committee with brief document (no more than 6 page maximum) illustrating the main points of their oral testimony may submit them to Ms. LeBold by November 6, 1998 (one original and 25 copies). Documents submitted after that date will not be distributed to the Committee. Presenters are reminded that this call for third-party oral testimony does not constitute a call for additional written comment.

At the conclusion of the meeting, attendees may, at the discretion of the Committee chair, be invited to address the Committee briefly on issues pertaining to the functions of the Committee, as identified in the section above on Supplementary Information. Attendees interested in making such comments should inform Ms. LeBold before or during the meeting.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 7th and D Streets, SW, room 3082, ROB 3, Washington, DC, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Authority: 5 U.S.C. Appendix 2.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–27916 Filed 10–16–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Restricted Eligibility in Support of Advanced Coal Research at U.S. Colleges and Universities

AGENCY: Federal Energy Technology Center (FETC), Pittsburgh, Department of Energy (DOE).

ACTION: Issuance of financial assistance solicitation.

SUMMARY: The FETC announces that pursuant to 10 CFR 600.8(a)(2), and in support of advanced coal research to U.S. colleges and universities, it intends to conduct a competitive Program Solicitation and award financial assistance grants to qualified recipients. Proposals will be subjected to a comparative merit review by a Peer Review/DOE technical panel, and awards will be made to a limited number of proposers on the basis of the scientific merit of the proposals, application of relevant program policy factors, and the availability of funds.

DATES: The Program Solicitation is expected to be ready for release by October 14, 1998. Applications must be prepared and submitted in accordance with the instructions and forms in the Program Solicitation and must be received by the DOE by November 25, 1998. Prior to submitting your application to the solicitation, check for any changes (i.e. closing date of solicitation) and/or amendments, if any.

FOR FURTHER INFORMATION CONTACT: Ms. Debra A. Duncan, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 10940 (MS 921–143), Pittsburgh, PA 15236–0940; (Telephone: 412–892–5700; Facsimile: 412–892–6216; E-Mail: duncan@fetc.doe.gov).

ADDRESSES: The solicitation will be posted on the internet at FETC's Home Page (http://www.fetc.doe.gov/business). The solicitation will also be available, upon request, in Wordperfect 6.1 format on 3.5" double-sided/high-density disk. Requests can be made via letter, facsimile, or by E-mail. Telephone Requests will not be Accepted for any format version of the solicitation.

SUPPLEMENTARY INFORMATION: Through Program Solicitation DE-PS26–99FT40479, the DOE is interested in applications from U.S. colleges and universities (and university-affiliated research centers submitting applications through their respective universities). Applications will be selected to complement and enhance research being conducted in related Fossil Energy programs. Applications may be submitted individually (i.e., by only one college/university) or jointly (i.e., by "teams" made up of: (1) three or more colleges/universities, or (2) two or more colleges/universities and at least one industrial partner. Collaboration, in the form of joint proposals, is *encouraged* but not required.

Eligibility. Applications submitted in response to this solicitation must address coal research in one of the solicitation key focus areas in the Core Program or as outlined in the Innovative Concepts Program.

Background. The current landscape of the U.S. energy industry, not unlike that in other parts of the world, is undergoing a transformation driven by changes such as deregulation of power generation, more stringent environmental standards and regulations, climate change concerns, and other market forces. With these changes come new players and a refocusing of existing players in providing energy services and products. The traditional settings of how energy (both electricity and fuel) is generated, transported, and utilized are likely to be very different in the coming decades. As market, policy and regulatory forces evolve and shape the energy industry both domestically and globally, the opportunity exists for university, government, and industry partnerships to invest in advanced fossil energy technologies that can return public and economic benefits many times over. One means of achieving these benefits is through the development of advanced coal technologies to better use domestic fossil resources in an environmentally responsible manner.

Energy from coal-fired powerplants will continue to play a dominant role as an energy source, and therefore, it is prudent to use this resource wisely and ensure it's a part of the sustainable energy solution. In that regard, our focus is on a relatively new concept we call Vision 21. Vision 21 is a pathway to clean, affordable energy achieved through a combination of technology evolution and innovation aimed at creating the most advanced fleet of flexible, clean and efficient power and energy plants (an "energy-plex") for the 21st century. Clean, efficient, competitively priced coal-derived products, and low cost environmental compliance and energy systems remain key to our continuing prosperity and our commitment to environmental challenges including climate change. It is envisioned that these energy-plexes can produce competitively low cost electricity at efficiencies more than 60% on coal. The class of facilities will be a near "zero discharge" energy complex—virtually no emissions will escape into the environment. Sulfur dioxide and nitrogen oxide pollutants would be removed and converted into environmentally benign substances, perhaps fertilizers or other commercial products. Carbon dioxide could be concentrated and either recycled or disposed of in a geologically permanent manner or perhaps converted into industrially useful products or by creating offsetting natural sinks for CO_2, that is, the ability to achieve *closure of the carbon fuel cycle.*

Clean coal-fired power plants remain the major source of electricity for the world while distributed generation, including renewables, will assume a growing share of the energy market. Technological advances finding their way into future markets could result in advanced co-production and co-processing facilities around the world, based upon Vision 21 technologies developed through universities, government, and industry partnerships.

This "Vision 21 Energy-plex Fleet" concept, in many ways is the culmination of decades of power and fuels research and development. Within the Energy-plex, the full energy potential of coal can be tapped through efficiency boosting combinations of state-of-the-art energy systems: coal gasifiers or advanced combustors, high-temperature cleanup systems, future-generation fuel cells and turbines, innovative carbon capture devices, and perhaps technologies that are just appearing on today's engineering drawing boards. Energy modules in the complex will be reconfigurable, allowing the systems to be customized to meet geographical and market requirements. These "built to order" modules can be integrated into any system configuration and sized to meet a range of market applications. They will have the capability of producing an array of products such as high value chemicals, high quality steam, liquid fuels, and hydrogen at competitive prices.

Vision 21 is the ultimate in the fossil fuel cycles—it allows fossil energy to achieve its full potential by being an integral part of enhancing the global environment while meeting the growing energy needs and sustaining economic prosperity. Vision 21 is the successful culmination of the advanced fossil-based power, environmental and fuels portfolio of technologies strategically integrated into an R&D roadmap for clean energy. The destination of this roadmap is the creation of opportunities for long-term, clean and efficient use of our nation's abundant coal resource to meet ever growing energy demands while meeting the climate change challenges. To accomplish the program objective, applications will be accepted in two subprogram areas: (1) the Core Program and (2) the Innovative Concepts Program.

University Coal Research (UCR) Core Program

To develop and sustain a national program of university research in fundamental coal studies, the DOE is

interested in innovative and fundamental research pertinent to coal conversion and utilization *limited* to the following six (6) focus areas under the UCR Core Program and six (6) technical topics under the Innovative Concepts Program. The focus areas under the UCR Core Program are listed numerically in descending order of programmatic priority. The DOE anticipates funding at least one proposal in each focus area; however, high quality proposals in a higher ranked focus area may be given more consideration during the selection process. The areas sought in the focus areas and the technical topics are not intended to be all-encompassing, and it is specifically emphasized that other subjects for coal research that fall within their scope will receive the same evaluation and consideration for support as the examples cited.

Focus Areas

1. Improved Hot Gas Contaminant and Particulate Removal Techniques

Integrated Gasification Combined Cycles plants currently rely on sorbents beds for gas cleanup, and barrier filters for particulate control. Both technologies have shortcomings and overall plant efficiencies are limited by restrictions placed on the peak operating temperatures of sorbents and filters. The DOE is interested in developing new approaches to hot gas cleanup and particulate removal and is not interested in fostering incremental improvements to current methods.

Grant applications are being sought for fundamentally-oriented studies seeking to explore new techniques for removing gaseous contaminants and/or particulate from gasifier exhaust streams having temperatures greater than 1500° F. Proposals must discuss these techniques and suggest ways in which they might be used as the nucleus of an industrial process and subsequently reduced to practice. Techniques that rely on one or more basic methodologies such as agglomeration, acoustics, electrostatics, electrochemistry, membrane technologies, phoresis, novel reaction chemistry, etc. are of interest.

2. Ambient $PM_{2.5}$ Sampling and Speciation

The measurement of the concentration, chemical composition, and physical characteristics of ambient, fine particles smaller than 2.5 microns [$PM_{2.5}$], is a necessary component of a national strategy to better understand linkages between emissions, receptors, and human-health and ecological impacts. It should be noted that "ambient $PM_{2.5}$" does not refer to particles of a single chemical composition, but to particles, either liquids or solids, that may be in a delicate equilibrium with the surrounding atmosphere and that consists of hundreds of chemical compounds. Slight changes in temperature or humidity that may occur during collection and sampling can significantly alter the characteristics, composition, and mass of the various species. This characteristic greatly confounds the collection and analysis of these components and makes cause-and-effect relationships difficult to understand.

Grant applications are being sought for the development and evaluation of new methods and technologies to accurately sample, measure, and analyze ambient $PM_{2.5}$ while maintaining original compositions. Research is especially needed in the following areas:

A. Improved technologies such as denuders, particle concentrators and post-filter media for capturing volatile and semi-volatile organics.

B. Improved methods to characterize the organic component of ambient aerosols.

C. Alternative collection methods and protocols that can prevent loss of volatile materials from the collection devices and their comparison with existing methods.

D. Research related to source sampling methodologies such as the development and evaluation of in-stack methods for direct measurement of $PM_{2.5}$ and dilution-type sampling systems that are representative of PM2.5 formation that can occur at the stack exit.

3. Production of Premium Carbon Products From Coal

The U.S. and global market for carbon and carbon products is increasing significantly. It is economically and strategically desirable to find processes that use coal, a low cost, abundant feedstock, for their production. Proposals are sought that would investigate methods that could produce premium carbon products from any of our domestic coals (anthracite, bituminous, sub-bituminous and other low-rank coals) as well as carbon derived from waste coals and waste carbonaceous products from coal combustion and gasification.

Examples of potential technologies that would be responsive to this topic area include, but are not limited to, technologies that produce premium carbon and graphite products from coal (including structural materials), catalytic graphitization, gas and liquid sorbents for emission control or separation technologies, hydrogen storage and separation applications, new coke production methods, electrical battery components, fuel cell applications, chemically tailored carbon molecular sieves, adsorption for water pollution control, and heat-resistant materials.

4. Advanced Diagnostics and Modeling Techniques for Three-Phase Slurry Reactors (Bubble Columns)

Fischer-Tropsch (F–T) synthesis reaction represents an important route to convert coal derived synthesis gas to hydrocarbon fuels. Slurry phase F–T processing is considered a potentially economic method to convert synthesis gas into liquid fuels, largely due to its relatively simple reactor design, improved thermal efficiency, and ability to process CO-rich synthesis gas. The application of three-phase slurry reactor system for coal liquefaction processing and chemical industries has recently received considerable attention. To design/scale-up and efficiently operate the three-phase slurry reactors, the hydrodynamic parameters, the chemistry of the F–T reaction, and a reliable model must be fully understood. Hydrodynamics includes the rate of mass transfer between the gas and the liquid, gas bubble size, gas, liquid and solids holdups, and their axial and radical distributions, velocity distributions and flow regimes. Measurement of these parameters must be made under reaction conditions, such as high temperature and pressure, and with the presence of reaction liquid medium and high gas and solids holdup. Therefore, the advanced diagnostic techniques are required to conduct the measurements under the reaction conditions. A reliable model must encompass all reaction engineering, hydrodynamic parameters and reaction kinetics (F–T). The model must be able to predict the phases holdup (gas, liquid, and solids), temperature and pressure profiles, and concentration profiles for individual reactants and products. The model is needed for better understanding of the design/scale-up of the three-phase slurry reactor.

Grant applications are sought for investigations of the advanced diagnostic techniques for the measurement of hydrodynamic parameters under F–T reaction conditions. Novelty and innovation coupled with the likely prospect of providing new insight on these long standing problems must be demonstrated in the successful application. Proposals based on

extensions of traditional methods or past results are strongly discouraged.

Grant applications are sought for investigations of the development of models for three-phase slurry reactor. The model must incorporate the hydrodynamic parameters and reaction kinetics. Novelty and innovation coupled with the likely prospect of providing new insight on these long standing problems must be demonstrated in the successful application.

5. Advanced Hydrogen Separation Technologies

Production and purification of hydrogen are an important part of the Vision 21 co-production concept. All proposed Vision 21 plant configurations produce hydrogen either as a product, for power production in a fuel cell, or as a reactant to produce fuels and chemicals. Better hydrogen separation technologies can significantly affect the economics of the plant and reduce downtime due to maintenance and failures. A gasifier using coal or coal-biomass feedstocks would produce a complex gas mixture that could contain CO_2, SO_2, COS, NH_3, and CH_4, in addition to CO and H_2.

Grant applications are sought to develop advanced hydrogen separation techniques that have the potential for substantial reductions in capital and operating costs compared to present separation technologies and that would result in improved overall process efficiencies. A process that would produce hydrogen of sufficient purity for use in solid oxide fuel cells would be looked on favorably. The proposed technologies should address the robustness of the process and its resistance to disruption by other gases present. Such technologies are not further defined but could include advanced molecular sieve membranes, advanced absorption technologies, or transport membranes. The proposed concept need not be a stand alone technology and those that require integration into specific processes to achieve the desired cost and efficiency improvements are acceptable.

6. Water Gas Shift with Integrated H_2/CO_2 Separation Process

Options currently under study to obtain deep reduction in CO_2 from power stations are mainly directed to removing CO_2 from power station's flue gases, i.e., post-combustion decarbonization. Pre-combustion decarbonization is an alternative approach to reducing green house gases from power generation. In this approach, a fossil fuel such as coal is gasified and the product gas is converted to a clean gaseous fuel with a minimal carbon content, e.g., hydrogen or hydrogen-rich gas mixtures.

Augmenting the water-gas shift reaction (WGS) via hydrogen separation technology offers the promise of making hydrogen from coal with zero pollution for fuel cell and other applications. One of the methods to circumvent thermodynamic equilibrium limitations is to move the equilibrium displacement to the product side. From the energy-efficiency viewpoint, this should be achieved by continuous removal of one of the product components directly at its place of formation.

A promising approach to reach the above is to demonstrate the feasibility of driving the WGS reaction toward higher levels of hydrogen production by removal of hydrogen from the product stream. This means that the WGS reaction must be driven far to the right, and that the hydrogen produced must be separated from the remaining gases at elevated temperatures and pressures. In order to achieve the goals of the concept, it is assumed that a hydrogen separation device is used to obtain a pure hydrogen product stream as well as to drive the shift reaction toward further hydrogen production.

The hydrogen separation device could be a catalytic membrane reactor, in which the WGS reaction is combined with hydrogen separation from the reaction mixture in one reactor, using membranes selectively permeable to hydrogen. Alternatively, capture or removal of CO_2 from the product gas following WGS, sorption/desorption, or other promising technology could be a viable option.

Grant applications are invited that addresses scientific issues emerging from the above concept as stated below:

A. There is a need to perform WGS studies, both experimental and theoretical, to ascertain that the driving force can be maintained without very high steam addition levels. In other words, will the shift reaction realistically and practically keep the H_2 partial pressure at the stated level, and correspondingly, a high H_2 product flux and H_2 product purity? Grant applications should propose research that would answer these questions.

B. The H_2-separation device or the CO_2-capture device should be capable of withstanding temperatures above 500° C. For example, some membranes are subject to pore coarsening, especially in the presence of steam. Grant applications should propose research addressing the stability of the device under the operating conditions while maintaining the selectivity of the device.

UCR Innovative Concepts Program

The goal of the Innovative Concepts program is to develop unique approaches for addressing fossil energy related issues. These approaches should represent significant departures from existing approaches not, simply, incremental improvements. The Innovative Concepts Program seeks "out-of-the-box" thinking, therefore, well-developed ideas, past the conceptual stage, are not eligible. Applications under the Innovative Concepts Program are invited from individual college/university researchers. Joint applications (as described under the Core Program) will also be accepted, although, no additional funds will be made available for joint versus individual applications. Unlike the Core Program, student participation in the proposed research project is strongly encouraged, however, not a requirement of the Innovative Concepts Program.

As the twenty-first century approaches, the challenges facing coal and the electric utility industry continue to grow. Environmental issues such as pollutant control, both criteria and trace, waste minimization, and the co-firing of coal with biomass, waste, or alternative fuels will remain important. The need for increased efficiency, improved reliability, and lower costs will be felt as an aging utility industry faces deregulation. Advanced power systems, such as a Vision 21 plant, and environmental systems will come into play as older plants are retired and utilities explore new ways to meet the growing demand for electricity.

Innovative research in the coal conversion and utilization areas will be required if coal is to continue to play a dominant role in the generation of electric power. Topics, like the ones that follow, will need to be answered.

Innovative Concepts Technical Topics

Novel CO_2 Capture and Separation Schemes

Concerns about Global Climate Change and the possibility of its stimulation by anthropogenic emissions of carbon dioxide CO_2 have begun to stimulate research on CO_2 capture. If carbon emission controls are mandated, options for capture and separation of CO_2 in a cost-effective manner will be necessary to minimize economic impacts. One area where CO_2 capture and separation would have a significant impact is in power generation. Vision 21 plants are able to take advantage of

integrated design to facilitate capture and separation but the retrofit of existing plants poses a greater challenge, yet. This challenge is problematic in that it would require a technology that would be able to capture CO_2 from a dilute flue gas stream containing nitrogen, sulfur oxides, nitrogen oxides, water vapor, oxygen, and particulate matter among others.

Grant applications are being sought for the exploration of novel processes, or the development of novel process chemistry, that offers the promise of cost-effective CO_2 capture and separation from power plant stack gases.

Computational Chemistry To Support Clean Liquid Fuels Production

The DOE is interested in the production of clean liquid fuels to meet the demands of tomorrow's transportation fleets. One important type of new fuel is produced by the F–T synthesis of alkanes from synthesis gas. Since synthesis gas is readily produced from domestic resources such as coal, such fuel production facilities can become integral parts of the Vision 21 concept. The production of clean diesel fuels in such a process now typically involves the synthesis of high molecular weight waxes which are then hydrocracked to form useable fuels in the diesel boiling range. The efficiency of the overall process could be improved by obtaining better control of the catalytic hydrocracking process. Computational chemistry now offers promise that progress toward optimizing the catalytic hydrocracking process could be accelerated by the generation of suitable models of the reaction kinetics. These models would define the top performance to be expected from available catalytic systems, specify the reaction parameters that lead to optimal productivity and selectivity, and identify critical barriers that need to be overcome by additional laboratory research. It is believed that computational chemistry will provide a powerful adjunct in devising more cost effective and less time consuming avenues to the improvement of catalytic processes.

Applications are sought for development of computational chemical approaches to modeling of catalytic hydrocracking of high molecular weight alkane waxes. The applications must include a clear route from available kinetic data to the calculation of global kinetics of conversion. Key results from this work include the ability to specify the results of changes in reaction parameters such as reaction time, temperature, and catalyst properties. The influences of catalyst activity and selectivity on a product distribution and reactor throughput are also key results desired from the model.

Development of Innovative, Protective Surface Oxide Coatings

Protection from corrosion and environmental effects arising from damaging reactions with gases and condensed products is required to exploit the potential of advanced high-temperature materials designed to improve energy efficiency fully and reduce deleterious environmental impact (e.g., to achieve the performance goals of the Vision 21 powerplants). The resistance to such reactions is best afforded by the formation of stable surface oxides that are slow growing, compact, and adherent to the substrate and/or by the deposition of coatings that contain or develop oxides with similar characteristics. However, the ability of brittle ceramic films and coatings to protect the material on which they are formed or deposited has long been problematical, particularly for applications involving numerous or severe high temperature thermal cycles or very aggressive environments. This lack of mechanical reliability severely limits the performance or durability of alloys and ceramics in many high-temperature utility and powerplant applications and places severe restrictions on deployment of such materials. The beneficial effects of certain alloying additions on the growth and adherence of protective oxide scales on metallic substrates are well known, but satisfactory broad understandings of the mechanisms by which scale properties and coating integrity (i.e., corrosion resistance) are improved by compositional, microstructural, and processing modifications are lacking.

Grant applications are sought for expanding the scientific and technological approaches to improving stable surface oxides for corrosion protection in high-temperature oxidizing environments. The needs are associated with developing innovative oxide coatings and characterizing oxide-metal interfaces and stress affects on scale growth as part of DOE's efforts to establish a sound technical basis for the formulation of specific compositions and synthesis routes for producing materials with tough, adherent, stable, slow growing oxide scales or coatings that exhibit the improved elevated temperature environmental resistance crucial to the success of many of Fossil Energy's advanced fossil energy systems.

Identification of Promising Vision 21 Configurations

The Vision 21 concept encompasses the idea of interchangeable modules that are capable of assembly into various configurations that may co-produce power and fuels, chemicals, or other high value products. Most of the proposed configurations include a gasifier and a power generating facility with a specific fuel or chemical production capability. These configurations, which appear to be most likely to be commercialized, at first, may not include all potential applications of the Vision 21 concept.

Novel Concept grant applications are being sought which seek to examine the feasibility of advanced central station or smaller distributed power plant configurations or cogeneration plant designs which are specifically intended to take advantage of common or complimentary industrial or agricultural process requirements. These processes may use, for example, internally generated wastes, combustion by-products, or low grade heat, in ways that improve process economics or environmental performance. The study should include mass and heat transfer calculations along with sensitivity studies of the economics of the proposed processes.

Efficient Power Cycles

The thermal efficiency of a conventional coal-fired steam (Rankine) cycle is 33–35% from coal's heating value to electricity. The other 65–67% of the energy is lost during the conversion process of power generation. By increasing the operating temperatures and pressures over the supercritical condition of steam, the cycle efficiency can be increased to 42–45% (based on coal's higher heating value). However, there are limitations in materials for high-temperature applications. On the other hand, a system with a binary working fluid of ammonia and water has shown an improved cycle efficiency of 45–50% by extracting heat from hot streams at variable boiling temperatures of the ammonia-water mixtures. The cost has been a concern for commercializing this binary system.

Grant applications are being sought for:

(A) Binary fluid cycles that demonstrate the potential for a higher cycle efficiency than the conventional system. Also, working fluids other than steam are of interest (i.e., CO_2 is an interesting possibility).

(B) Concepts for a bottoming cycle to extract the low temperature heat from

the flue gas of a coal-fired plant in an economical way. By reducing a typical stack gas temperature of 350–380 °F to 180–200 °F, the plant efficiency can be increased by 3–5%. The cost has been an issue for the low temperature heat recovery system.

(C) New concepts that could be drastically different from the conventional system using a gas or steam turbine (i.e., fuel cells) to generate electricity from coal.

Effect of Concentrated CO_2 Release on Ocean Biology

The effects of increased anthropogenic emissions of CO_2 into the atmosphere and its effects on marine life in the upper portion of the ocean is now under investigation. If, as a method of carbon sequestration, direct injection of CO_2 takes place in the middle to lower depths of the ocean, it is postulated that the liquid plume formed would have an adverse effect on marine life in the immediate vicinity of the release. This is of greater importance than it seems because of effects that may accrue all along the food chain. Unfortunately, little data is available on the subject as indicated in a study by MIT.

Grant applications are sought for controlled laboratory experiments on the effects of high concentrations of CO_2 on marine biota under simulated middle to lower ocean depth conditions.

Awards. DOE anticipates awarding financial assistance grants for each project selected. Approximately $2.9 million will be available for the Program Solicitation. An estimated $2.4 million is budgeted for the UCR Core Program and should provide funding for approximately one to three (1–3) financial assistance awards in each of the six (6) focused areas of research. The maximum DOE funding for individual colleges/universities applications in the UCR Core Program varies according to the length of the proposed performance period as follows:

Performance period	Maximum funding
0–12 months	$80,000
13–24 months	140,000
25–60 months	200,000

The maximum DOE funding for UCR Core Program joint applications is $400,000 requiring a performance period of 36 months.

Approximately $0.5 million is budgeted for the UCR Innovative Concepts Program and should provide support for approximately ten (10) financial assistance awards. The maximum DOE funding for UCR Innovative Concepts Program awards is $50,000 with 12-month performance periods.

Issued in Pittsburgh, Pennsylvania on October 9, 1998.

Raymond D. Johnson,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 98–27979 Filed 10–16–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 90–88–NG et al.]

Puget Sound Energy, Inc. (Formerly Washington Natural Gas Company) et al.; Orders Granting, Amending, Transferring and Vacating Authorizations To Import and/or Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending, transferring and vacating various natural gas, including liquefied natural gas, import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on October 13, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas and Petroleum Import and Export Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING, AMENDING, TRANSFERRING AND VACATING IMPORT/EXPORT AUTHORIZATION

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE Docket No.	Two-year maximum		Comments
			Import volume	Export volume	
469–A	09/03/98	Puget Sound Energy, Inc. (Formerly Washington Natural Gas Company) 90–88–NG.			Transfer of long-term authority.
607–A	09/03/98	Puget Sound Energy, Inc. (Formerly Washington Natural Gas Company) 91–91–NG.			Transfer of long-term authority.
664–C	09/03/98	Puget Sound Energy, Inc. (Formerly Washington Natural Gas Company) 92–18–NG.			Transfer of long-term authority.
444–A	09/03/98	Puget Sound Energy, Inc. (Formerly Washington Natural Gas Company) 90–68–NG.			Transfer of long-term authority.
324–A	09/03/98	Puget Sound Energy, Inc. (Formerly Washington Natural Gas Company) 89–23–NG.			Transfer of long-term authority.

APPENDIX—ORDERS GRANTING, AMENDING, TRANSFERRING AND VACATING IMPORT/EXPORT AUTHORIZATION—Continued

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE Docket No.	Two-year maximum		Comments
			Import volume	Export volume	
969–A	09/10/98	Westcoast Power Holdings Inc. (Formerly Westcoast Power Inc.) 94–55–NG.			Name change.
1235–A	09/10/98	Indeck-Oswego Limited Partnership and Indeck-Yerkes Limited Partnership 96–89–NG.			Vacate blanket import authority.
1136–A	09/10/98	Indeck-Yerkes Limited Partnership 95–112–NG.			Vacate long-term import authority.
425–B	09/10/98	Indeck-Yerkes Limited Partnership 89–21–NG.			Vacate long-term import authority.
425–C	09/10/98	Indeck-Oswego Limited Partnership 89–22–NG.			Vacate long-term import authority.
1409	09/10/98	Indeck-Yerkes Limited Partnership 98–60–NG.	9 Bcf		Import from Canada over a two-year term beginning on the date of first delivery.
1410	09/10/98	Indeck-Oswego Limited Partnership 98–61–NG.	9 Bcf		Import from Canada over a two-year term beginning on the date of first delivery.
1411	09/10/98	Arco Products Company, Division of Atlantic Richfield Company 98–62–NG.	25 Bcf		Import from Canada over a two-year term beginning on September 19, 1998, through September 18, 2000.
1412	09/15/98	Montana-Dakota Utilities Co., A Division of MDU Resources Group, Inc. 98–63–NG.	10 Bcf		Import from Canada over a two-year term beginning on December 1, 1998, and ending on November 30, 2000.
1413	09/18/98	CMP Natural Gas, L.L.C. 98–65–NG	100 Bcf		Import and export from and to Canada up to a combined total over a two-year term beginning on the date of first import or export.
1414	09/21/98	AMOCO Canada Marketing Corp. 98–64–NG.	300 Bcf		Import from Canada over a two-year term beginning September 24, 1998, through September 23, 2000.
1415	09/24/98	Hess Energy Services Company, LLC 98–67–NG.	60 Bcf		Import from Canada over a two-year term beginning on the date of first delivery.
1416	09/24/98	Hess Energy Services Company, LLC 98–68–NG.		60 Bcf	Export to Canada over a two-year term beginning on the date of first delivery.
1417	09/29/98	Intalco Aluminum Corporation 98–69–NG.	2 Bcf		Import from Canada over a two-year term beginning on September 29, 1998, through September 28, 2000.
1418	09/30/98	CoEnergy Trading Company 98–71–NG.	150 Bcf		Import from Canada over a two-year term beginning on first delivery after September 30, 1998.
1419	09/30/98	Ener-Son of U.S.A. 98–66–LNG		2.1 Bcf	Export LNG to Mexico over a two-year term beginning on date of first delivery.

[FR Doc. 98–27978 Filed 10–16–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2721–013]

Bangor Hydro-Electric Company; Notice Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

October 13, 1998.

The license for the Howland Hydro Project, FERC No. 2721, located on the Piscataquis River in Penobscot County, near Howland, Maine, will expire on September 30, 2000. On September 28, 1998, an application for new major license was filed. The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
January 30, 1999	Commission notifies applicant that its application has been accepted and specifies the need for additional information and due date.
January 30, 1999	Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protest.
March 31, 1999	Commission's deadline for applicant for filing a final amendment, if any to its application.
December 31, 1999	Commission notifies all parties and agencies that the application is ready for environmental analysis.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Ed Lee at (202) 219–2809.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–27899 Filed 10–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–128–011]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 13, 1998.

Take notice that on October 1, 1998, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet with a proposed effective date of February 1, 1998:

Second Substitute First Revised Sheet No. 231

Eastern Shore states that the purpose of this filing is to comply with the Director of Office of Pipeline Regulation's September 17, 1998 letter order in Docket No. CP96–128–009. Such letter order directed Eastern Shore to re-file Sheet No. 231 to restore deleted language related to how a negotiated rate will be considered with respect to Nominations and Scheduling of Transportation Services and Capacity Curtailment. The letter order stated that the deletion of such language was beyond the scope of the Director's previous June 12, 1998 letter order.

Eastern Shore states that copies have been mailed to all customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–27894 Filed 10–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–80–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 13, 1998.

Take notice that on October 8, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective November 2, 1998:

Second Revised Sheet No. 274, and
Second Revised Sheet No. 275.

Granite State states that its filing is made in compliance with Commission Order No. 587–H in Docket No. RM96–1–008 and the revised tariff sheets incorporate the intra-day nomination procedures prescribed by Order No. 587–H and certain conforming changes in the tariff.

Granite State further states that copies of its filing have been served on its firm and interruptible customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–27903 Filed 10–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–266–002]

Notice of Compliance Filing

October 13, 1998.

Take notice that on October 1, 1998, Ozark Gas Transmission L. L. C. (Ozark) filed its FERC Gas Tariff, Original Volume No. 1, consisting of Original Sheets 0 through 158, to become effective November 1, 1998. Ozark asserts that the purpose of this filing is to comply with the Commission's order in this certificate proceeding issued July 1, 1998. In addition, Ozark is submitting initial rates that are reflected in this tariff, also as required by the issued order.

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. All such motions or protests should be filed on or before November 3, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the

Protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–27895 Filed 10–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2494—Washington White River Project; Project No. 3721—Washington Noonsack Falls Project]

Puget Sound Energy, Inc.; Notice of Meeting

October 13, 1998.

In a letter dated October 2, 1998, Puget Sound Energy, Inc. (PSE) licensee and license applicant for the above listed projects requested a meeting with the Commission's staff to discuss the following issues.

White River Project

- To date PSE and other interested parties have not made much progress in addressing issues related to the proposed listing of White River chinook salmon under the Endangered Species Act (ESA). PSE asserts that ESA consultations could involve modifications of certain license conditions and that many issues that fall outside the purview of ESA remain unresolved and are of critical importance to the future viability of the White River Project. PSE would like to discuss what role (if any), Commission staff would be willing to play in facilitating a collaborative process designed to address ESA-related and other issues that may affect the viability of the project.

Noonsack Falls Project

- PSE will soon provide the Commission with an update of its analysis of project options and the future of the Noonsack Falls Project. PSE wishes to discuss the updated analysis, and identify an acceptable course of action.

The Commission's staff will meet with representatives of PSE to discuss only those issues described above. The meeting will convene on October 28, 1998, beginning at 1:30 p.m. EST at the Commission's headquarters, 888 First Street N.E., Washington, D.C. 20426, in Room 62–26. If you have any questions about the meeting or wish to participate via teleconference, please call John Smith at (202) 219–2460.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–27898 Filed 10–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–6–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

October 13 1998.

Take notice that on October 6, 1998, Tennessee Gas Pipeline Company (Applicant), 1001 Louisiana, Houston, Texas 77002, filed in Docket No. CP99–6–000 a request pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval to abandon by removal eight meters and associated piping and by blind flanging all of the associated side valves, located in Acadia, Allen, and Jefferson Davis Parishes, Louisiana, under Applicant's blanket certificate issued in Docket No. CP82–413–000, 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 states that the taps for which Applicant now seeks abandonment authorization had been used for the direct sale of natural gas for agricultural purposes and were placed in-service in the 1950's and 1960's. Applicant asserts that by certified mail served on the eight customers affected by the removal of these facilities, Applicant attempted to advise the affected customers: (1) of its intent to seek authorization to abandon the subject facilities, and (2) that if Applicant did not receive a response to its letter within ten days, Applicant would consider this lack of response to indicate the customers' acquiescence to the abandonment, and (3) that absent a response, Applicant would terminate the applicable sales contract thirty days from the date of receipt of the letter. Finally, Applicant asserts that it is providing, or attempting to provide, a copy of the aforementioned application to each of the affected customers to further advise them of Applicant's intent to abandon the eight farm taps and appurtenant facilities. Thus, Applicant asserts that the taps have been inactive for some time, and that no customer is currently being served by these farm taps.

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. 98–27896 Filed 10–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–428–001]

Tuscarora Gas Transmission Company; Notice of Tariff Filing

October 13, 1998.

Take notice that on October 8, 1998, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective November 2, 1998:

Second Revised Sheet No. 42B

Tuscarora asserts that the purpose of this filing is to comply with the Letter Order Pursuant to Section 375.307(e), issued on October 7, 1998, in Docket No RP98–428–000. Specifically, Tuscarora has revised Sheet No. 42B to be a Second Revised Sheet.

Tuscarora states that copies of this filing were mailed to customers of Tuscarora and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to

be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–27902 Filed 10–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–25–006]

West Texas Gas, Inc.; Notice of Compliance Filing

October 13, 1998.

Take notice that by filings dated October 2, 1998 and October 8, 1998, West Texas Gas, Inc. (WTG) submitted for filing revised tariff sheets implementing a May 18, 1998 Settlement approved by the Commission's September 17, 1998 letter order in this proceeding. In accordance with the Settlement and the Commission's order, the revised tariff sheets are to be effective May 1, 1998.

First Revised Volume No. 1

First Revised Sheet No. 1
Substitute Second Revised Sheet No. 2
Substitute Twenty-Sixth Revised Sheet No. 4
Substitute Second Revised Sheet No. 5
First Revised Sheet No. 6
Substitute Second Revised Sheet No. 7
First Revised Sheet No. 8
First Revised Sheet No. 10
First Revised Sheet No. 11
First Revised Sheet No. 12
Original Sheet No. 12A
First Revised Sheet No. 14
Third Revised Sheet No. 22
Substitute Third Revised Sheet No. 23
Original Sheet No. 23A
Original Sheet No. 23B
Substitute Third Revised Sheet No. 24
Substitute Third Revised Sheet No. 25
Substitute Third Revised Sheet No. 26
First Revised Sheet No. 33

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–27901 Filed 10–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2067–013]

Oakdale and South San Joaquin Irrigation Districts; Notice of Availability of Environmental Assessment

October 13, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order 486, 52 F.R. 47897), the Commission's Office of Hydropower Licensing has reviewed the application for amendment to the approved Reservoir Management Plan (RMP) for the Tulloch Hydroelectric Project, No. 2067–013. The Tulloch Project is located on the Stanislaus River in Calaveras and Tuolumne Counties, California. An Environmental Assessment (EA) was prepared, and the EA finds that approving the amendment applications would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. For further information, please contact Ms. Jean Potvin, at (202) 219–0022.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–27897 Filed 10–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4063–004]

Yolo County Flood Control and Water Conservation District; Notice of Availability of Environmental Assessment

October 13, 1998.

An environmental assessment (EA) is available for public review. The EA is for an application to amend the Clear Lake Hydroelectric Project. The application is to amend the project exemption to reflect excavation of debris and bedrock from the tailrace area below the powerhouse, and the resulting increases in hydraulic head and power output. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Clear Lake Project is located on Cache Creek in Lake County, California.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 2–A, 888 First Street, NE., Washington, DC 20426. Copies can also be obtained by calling the project manager, Pete Yarrington, at (202) 219–2939.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–27900 Filed 10–16–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6178–4]

Announcement of Stakeholders Meeting on the New Regulatory Impact Analysis Framework for Implementing the Safe Drinking Water Act Amendments of 1996

AGENCY: Environmental Protection Agency.

ACTION: Notice of stakeholders meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will be holding a two day public meeting on November 12 and 13, 1998. The purpose of this meeting is to have a dialogue with stakeholders and the public at large on EPA's progress in developing a new regulatory impact analysis framework for proposed drinking water regulations. The Safe Drinking Water Act Amendments of 1996 require that whenever EPA proposes a national primary drinking water regulation, EPA must publish a cost-benefit analysis. EPA would like to have a dialogue with stakeholders and the public at large on the various components of this analysis, including treatment design, unit treatment costs and national costs, model systems development, baseline estimates, and benefits analysis. EPA is seeking input from national, state, Tribal, municipal, and individual stakeholders and other interested parties. This meeting is a continuation

of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water Program. These meetings were initiated as part of the Drinking Water Program Redirection efforts to help refocus EPA's drinking water priorities and to support strong, flexible partnerships among EPA, states, Tribes, local governments, and the public. At the upcoming meeting, EPA is seeking input from state and Tribal drinking water programs, the regulated community (public water systems), public health organizations, academia, environmental and public interest groups, engineering firms, and other stakeholders on a number of issues related to developing the new regulatory impact analysis framework. EPA encourages the full participation of stakeholders throughout this process.

DATES: The stakeholder meeting on the new regulatory impact analysis framework for drinking water regulations will be held on Thursday, November 12, 1998, from 8:30 a.m. to 5:00 p.m. EST and Friday, November 13, 1998, from 8:30 a.m. to 5:00 p.m. EST.

ADDRESSES: To register for the meeting, please contact the Safe Drinking Water Hotline at 1–800–426–4791 between 9:00 am and 5:30 pm EST. Those registered for the meeting by Tuesday, November 3, 1998, will receive an agenda, logistics sheet, and background materials prior to the meeting. Members of the public who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline. Conference lines will be allocated on the basis of first reserved, first served. Members of the public who cannot participate but want to submit comments must do so in writing by December 13, 1998, in order for their comments to be included in the meeting summary. Submit comments to Ben Smith, at the U.S. Environmental Protection Agency, 401 M Street, SW (4607), Washington, DC, 20460 or smith.ben@epamail.epa.gov. The stakeholders meeting will be held in Suite 275, 1255 23rd Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, or for information on the activities related to developing the regulatory impact analysis framework and other EPA activities under the Safe Drinking Water Act, please contact the Safe Drinking Water Hotline at 1–800–426–4791.

SUPPLEMENTARY INFORMATION:

A. Background

Under the Safe Drinking Water Act (SDWA) Amendments of 1996, EPA must provide a thorough cost-benefit analysis, as well as comprehensive, informative, and understandable information to the public. The 1996 SDWA Amendments require new regulations be developed so as to ensure that they represent a meaningful opportunity for health risk reduction. Also required is a detailed analysis of the relationship between new regulations and health impacts, including those to sensitive subgroups; impacts of other contaminants; treatment objectives; and incremental impacts above a baseline that considers current regulations, uncertainty, and affordability. EPA must also consider the impact on the technical, financial, and managerial capacity of water systems. In so doing, EPA must also use the best available, peer reviewed science and methods. The Amendments provide EPA with flexibility to identify and incorporate new benefits, including willingness to pay. In addition, EPA has expanded information-gathering authority, and must consider point-of-use and point-of-entry devices. After first defining a maximum contaminant level (MCL), or treatment technique standard based on affordable technology, EPA must determine whether the costs of that standard would be justified by the benefits. If not, EPA may adjust an MCL to a level that maximizes health risk reduction benefits at a cost that is justified by the benefits. The authority to adjust the MCL has limits that also require evaluation. In addition to the Safe Drinking Water Act, the Unfunded Mandates Reform Act and the Small Business Regulatory Enforcement Fairness Act impose additional analytical and consultative requirements in connection with new rules.

The upcoming meeting will deal with the following topics: benefits-related projects of the Health Effects and Criteria Division (part of EPA's Office of Science and Technology); the National Drinking Water Advisory Council benefits working group; the Children's Health Guidance Project; model systems and industry subcategorization; barriers to migration towards life-cycle based technology costing; inter-rule impacts; cost-benefit analysis integration for upcoming and longer term goals; specific draft reports (Baseline, Phase I Treatment Costs, Cost of Capital); and, of course, time for stakeholder input and comments.

B. Request for Stakeholder Involvement

EPA has announced this public meeting to hear the views of stakeholders on EPA's emerging framework for regulatory impact analysis. The public is invited to provide comments on the issues listed above and other issues related to the framework for regulatory impact analysis during the November 12 and 13, 1998, meeting or in writing by December 13, 1998.

Dated: October 13, 1998.

William R. Diamond,

Acting Director, Office of Ground Water and Drinking Water, Environmental Protection Agency.

[FR Doc. 98–27928 Filed 10–16–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6177–8]

Meeting of the Small Community Advisory Subcommittee of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This meeting is the third for the Small Community Advisory Subcommittee of the Local Government Advisory Committee. The group takes up the work of an earlier advisory group known as the Small Towns Task Force. At this meeting, the subcommittee will hear presentations about the Small Community Activities Inventory Update and the small town Mayors' fact finding mission. Part of the meeting will also be devoted to consideration of the proposed mission statement. The group will also hear from Northampton County, Virginia officials on sustainable community development issues. Finally, the group will discuss issues concerning the relationship between state governments and small communities as they relate to environmental protection. Responsibility for the Small Community Advisory Subcommittee of the Local Government Advisory Committee rests with the Office of Administrator, Office of Congressional and Intergovernmental Relations (OCIR) under the leadership of Joseph R. Crapa, Associate Administrator for Congressional and Intergovernmental Relations and Linda B. Rimer, Deputy Associate Administrator for State and Local Relations. OCIR serves as the Agency's principal liaison with State and local

government officials and the organizations which represent them.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the Designated Federal Officer (DFO). Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first served basis.

This meeting will be conducted at the Sunset Beach Inn on U.S. Route 13 in Cape Charles, Virginia. Those individuals wishing to make a statement before the subcommittee are encouraged to submit a written statement. From 8:30–9:15 a.m. on November 6, the Committee will hear comments from the public. Each individual or organization wishing to address the Committee will be allowed at least five minutes. Please contact the DFO at the number listed below to schedule agenda time. Time will be allotted on a first come, first served basis.

DATES: The meeting will begin at 8:30 a.m. on Wednesday, November 4 and conclude at 4:30 p.m. on Friday, November 6, 1998.

ADDRESSES: The meeting will be held at the Sunset Beach Inn, 32246 Lankford Highway, U.S. Route 13, Cape Charles, Virginia 23310.

Requests for Minutes and other information can be obtained by writing to 401 M Street, SW (1305), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for this subcommittee is Steven R. Wilson. He is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–2294.

Dated: October 13, 1998.

Michelle A. Hiller,

Acting Designated Federal Officer, Small Community Advisory Subcommittee of the Local Government Advisory Committee.

[FR Doc. 98–27923 Filed 10–16–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6177–7]

National Drinking Water Advisory Council Small Systems Implementation Working Group; Notice of Open Meeting

Under section 10(a)(2) of Pub. L. 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Small Systems Implementation Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on November 4 and 5, 1998 from 8:30 am to 5:30 pm, at the Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC 20037. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to identify and discuss challenges faced by small water systems in complying with the Safe Drinking Water Act , as amended in 1996. The meeting is open to the public to observe. The working group members are meeting to gather information, analyze relevant issues and facts and discuss options. Statements will be taken from the public at this meeting, as time allows.

For more information, please contact, Peter E. Shanaghan, Designated Federal Officer, Small Systems Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606) , 401 M Street SW, Washington, DC 20460. The telephone number is 202–260–5813 and the email address is shanaghan.peter@epamail.epa.gov.

Dated: October 1, 1998.

Charlene Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 98–27922 Filed 10–16–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6177–6]

Alaska: Partial Program Adequacy Final Determination of State Class I and II Municipal Solid Waste Landfill Permit Program—and Partial Program Adequacy Tentative Determination of State Class III Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal landfill criteria. RCRA also requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for municipal landfills.

The Alaska Department of Environmental Conservation (ADEC) and its Division of Environmental Health (DEH) applied on February 12, 1996 for a partial determination of adequacy under RCRA. EPA reviewed Alaska's application and subsequent supplemental information provided during March through October 1996. In the **Federal Register** on November 25, 1996, EPA published its tentative determination of adequacy for those portions of ADEC's Municipal Solid Waste landfill (MSWLF) permit program that were adequate to assure compliance with the federal MSWLF criteria. Alaska's application for partial program adequacy determination was made available for public review during EPA's public comment period which ended on January 23, 1997.

During the period that EPA was evaluating the public comments, proposals were initiated by the Alaska Legislature that included eliminating the solid waste program or reducing ADEC's Solid Waste staff to less than half. The final budget reductions established in late May 1997, for the 1998 fiscal year (FY–98), were significant but not as severe as originally proposed. (Alaska's Fiscal years begin on July 1.) In its letter of May 30, 1997, ADEC states that the final dollar budget for FY–98 was set at 13% lower than for the FY–97 solid waste program. In particular, the State's program for its Class III municipal landfills has been significantly changed. Details on the budget reductions are discussed in Section B (State of Alaska) of this document. EPA believes that an additional EPA public comment period on the Class III program should be provided. Consequently, the agency is not including in today's final-partial approval the elements of its tentative determination of November 25, 1996, that applied to the State's Class III landfill program.

On August 9, 1997, the State of Alaska enacted its Environmental Audit Privilege and Immunity Law. Based on the information provided by the State on this law, and the State's application for program approval, EPA believes that Alaska has the authority necessary to administer a partially approved RCRA subtitle D permit program for municipal solid waste landfills. Today's partial approval does not reflect a position by the agency regarding the state's authority to administer any other federally authorized, delegated, or approved environmental program.

Today's document promulgates EPA's Final Partial approval of Alaska's program for the State's Class I and Class II municipal landfills—plus Alaska's criteria for disposal of hazardous wastes from Conditionally Exempt Small Quantity Generators (CESQG) at these two categories of municipal landfills exclusively. Second, this document withdraws the portions of the Tentative Partial approval published in **Federal Register** of November 25, 1996, that addressed the Class III elements of Alaska's program. Third, today's document introduces a new Tentative Partial approval of Alaska's Class III landfill program. It is based on Alaska's retaining the existing 2010 "sunset" date for upgrading Class III landfills to Class II status, and on Alaska's revised solid waste budgets and program revisions. This third component also acknowledges Alaska's announced intention to eliminate the 2010 deadline, provided this is done in accordance with the procedures and exemption authority established by the federal Land Disposal Program Flexibility Act of 1996. EPA's written comment on the procedural aspects of implementing Class III exemptions under ADEC's proposed changes (of August 1, 1997) to its municipal landfill regulation is discussed in Section B.

On and after the effective date of today's Final-Partial approval, the State Director will be able to allow Class I and Class II landfills to benefit from the site-specific flexibility elements that are contained in the 40 CFR Part 258 municipal landfill criteria. Alaska's sub-categories of permafrost landfills and MSW-ash monofills are being included in today's approval. EPA is also approving the State's regulatory requirement that Conditionally Exempt Small Quantity Generator (CESQG) hazardous-waste disposal must be placed solely in a Class I or Class II municipal landfill. Alaska's 18 AAC 60 rule is in accordance with EPA's recent regulatory changes that apply to CESQG wastes.

Financial assurance requirements, and one or more narrow inconsistencies versus Part 258 as listed in the Decision Section of this document, are not included in today's partial approval. Alaska has included the addition of financial assurance in its August 1997 proposed regulatory changes. (EPA finalized its own financial assurance for local governments on November 27, 1996.) ADEC plans to revise the remainder of its permit program and apply to EPA for full program approval.

The portions of the Alaska program in today's Final Partial approval for Class I and Class II municipal landfills, and the portions in today's Tentative Partial approval for Class III municipal landfills, are described in Section D (Decision) of this document.

DATES: The determination of partial adequacy for Alaska's Class I and Class II landfill program shall be effective October 19, 1998.

All Comments on today's new tentative partial determination of adequacy, of Alaska's application for a partial approval with respect to the State's Class III municipal landfill program, must be received by EPA Region 10 by the close of business on January 26, 1999, Tuesday. (There is no comment period on the Class I and Class II landfill portions of today's actions. That period was provided under EPA's Tentative Determination of November 25, 1996.)

If, and only if, sufficient interest in having a public hearing is requested on or before December 4, 1998, Friday, a public hearing to receive oral and written testimony on EPA's tentative determination will be held on January 26, 1999, Tuesday, from 1:30 p.m. until 3:30 p.m. If more time for receiving testimony is needed, EPA may extend the closing time up to 5:00 p.m. on this date. The hearing, if held, will be at the Federal Building, 222 West 7th Avenue, Anchorage, Alaska, 99513. Members of ADEC will attend EPA's public hearing.

Requests for a public hearing must be in writing and must be received by the EPA contact shown in this document before the close of business on December 4, 1998, Friday, and should include a statement on the writer's reason for wanting a public hearing. EPA will determine, within twelve calendar days of the date by which requests must be received, whether a public hearing is warranted. After the twelve days, anyone may contact the EPA person listed in the **CONTACTS** section to find out if a public hearing will be held.

ADDRESSES: Copies of Alaska's application for partial adequacy determination are available during normal working days at the following addresses for inspection and copying: three offices of the Alaska Department of Environmental Conservation from 8:00 a.m. to 4:30 p.m. at 410 Willoughby Avenue, Juneau, AK 99801, Attn: Ms. Susan Super, (907)–465–5350; at 555 Cordova Street, Anchorage, AK 99501, Attn: Ms. Laura Ogar (907)–269–7653; and at 610 University Avenue, Fairbanks, AK 99709, Attn: Ms. Kris McCumby, (907)–451–2108; and at the office of the Environmental Protection Agency from 9 a.m. to 4 p.m. at: U.S. EPA, Region 10 Library, 1200 Sixth Avenue, Seattle, WA 98101; library telephone 206–553–1259. All written comments on this tentative determination must be sent to U.S. EPA Region 10, 1200 Sixth Avenue, mail code (WCM–128), Seattle, WA 98101, Attn: Mr. Steven B. Sharp.

FOR FURTHER INFORMATION AND TO REQUEST A PUBLIC HEARING, CONTACT: Mr. Steven B. Sharp, mail code (WCM–128), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA, 98101; fax (206)–553–8509, telephone (206)–553–6517.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria (40 CFR Part 258) for municipal solid waste landfills (MSWLFs). Section 4005(c)(1)(B) of Subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop and implement permit programs to ensure that MSWLFs comply with the Federal Criteria under Part 258. Section 4005(c)(1)(C) requires that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria (40 CFR Part 258)—but does not mandate issuance of a rule for such determinations. EPA is currently developing an approval rule and published a proposed version in the 1/26/96 **Federal Register**. The relationship to Tribal programs is discussed later in this section.

Although not mandated by RCRA, EPA proposed in the **Federal Register** (61 FR 2584) on January 26, 1996, a rule that specifies the requirements which State (and Tribal) programs must satisfy to be determined adequate. The name of this rule was the State/Tribal Implementation Rule (STIR). The basis for EPA's inclusion of Tribal approvals in the STIR was discussed in the preamble to the proposal.

Subsequent to EPA's publishing the proposed STIR rule, the United States Court of Appeals for the District of Columbia Circuit issued its opinion on a petition from plaintiffs concerning EPA's approval of the solid waste program of the Campo Band of Mission Indians. In its opinion filed on October 29, 1996, the Court determined that EPA lacks authority under RCRA to approve the solid waste management plan [program] of an Indian Tribe. Consequently, EPA is currently limiting its solid waste program approvals to State programs. EPA expects to finalize the STIR rule in the near future with removal of the elements relating to

approval of Tribal programs. In the interim, EPA is now using the name "State Implementation Rule" (SIR) for reference to the proposed STIR rule of January 26, 1996, (Federal Register, 61 FR 2584) and for reference to the existing STIR guidance of 1993 that EPA has used in connection with State approvals. The Federal Court observed, in the Campo Band decision, that the Band could seek EPA approval/ruling for a site-specific regulation as a way of obtaining access to the flexibility that is available to approved States. EPA has developed a petition-procedure guidance for handling Tribal flexibility requests.

Since RCRA does not mandate that a rule must be in place, EPA has approved and will continue to approve adequate State MSWLF permit programs as applications are submitted. These approvals are not dependent on final promulgation of the SIR. Prior to the final promulgation of SIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States may use the proposed rule of January 26, 1996, as an aid in interpreting these requirements. EPA believes that early approvals have an important benefit. Approved State permit programs provide interaction between the State and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State permit program allows such flexibility.

EPA notes that regardless of the approval status of a state program and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities. The exemption authority in the Land Disposal Program Flexibility Act of 1996, that pertains only to certain-village landfills in Alaska, is discussed in Section B (State of Alaska) of this document.

EPA has allowed, and has also proposed in the SIR to allow, partial approvals if: (1) The Regional Administrator determines that the State permit program largely meets the requirements for ensuring compliance with Part 258; (2) changes to a limited part(s) of the State permit program are needed to meet these requirements; and, (3) provisions not included in the partially approved portions of the State permit program are a clearly identifiable and separable subset of Part 258. These requirements will address the potential problems posed by the dual State and Federal regulatory controls following the October 9, 1993, effective date, and amended dates thereof, of the Federal regulations. On each effective date. Federal rules covering any portion of a State's program that has not received EPA approval continues to be enforceable through the citizen suit provisions of RCRA 7002. Owners and operators of MSWLFs subject to such dual programs must understand the applicable requirements and comply with them. In addition, those portions of the Federal program that are in effect must mesh well enough with the approved portions of the State program to leave no significant gaps in regulatory control of MSWLF's. Partial approval would allow the EPA to approve those provisions of the State permit program that meet the requirements and provide the State time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

EPA has approved portions of over 46 State MSWLF permit programs prior to the promulgation of the final SIR. EPA interprets the requirements for States to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

All municipal solid waste in Alaska must be disposed in a landfill which meets these criteria. This includes ash from municipal solid waste incinerators that is determined to be non-hazardous. As provided in the October 9, 1991, municipal landfill rule, EPA's Subtitle D standards were set to take effect nationwide in October 1993. The effective dates for certain portions of the criteria were subsequently postponed, with most all of the EPA standards becoming effective as of, or before, October 9, 1997. On April 7, 1995, EPA issued a **Federal Register** Rule extending the effective date of the 40 CFR Part 258, Subpart G requirements relating to Financial Assurance until April 9, 1997, and for small MSWLFs that meet the conditions of § 258.1(f)(1) until October 9, 1997. Consequently, any portions of the Federal Criteria which are not included in an approved State program, by the applicable effective dates, would apply directly to the owner/operator without any approved State flexibility.

On November 27, 1996, EPA promulgated its rule for Financial Assurance Mechanisms for Local Government Owners and Operators of MSWLFs. This rule adds paragraph (c), as an amendment to § 258.70 of Subpart G. It allowed the director of an approved State to waive the financial assurance requirements of Subpart G up to April 9, 1998, for good cause if an owner or operator makes a satisfactory demonstration, per new paragraph (c), to the State Director.

EPA Regions will determine whether a State has submitted an "adequate" program based on the interpretation outlined above. EPA expects States to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. EPA also is requesting States seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA cites in the proposed SIR rule that submission of a schedule is mandatory.

B. State of Alaska

Over the past several years and earlier, Alaska has developed an extensive and practicable approach to management of many types of non-hazardous solid waste including municipal waste—and to increased protection of human health and the environment. During 1993 through 1995 the state revised a broad range of its disposal regulations. Concurrently, ADEC reorganized in a manner that by the summer of 1996 had already begun showing results in terms of greater communication with small landfills. The Alaska Department of Environmental Conservation (ADEC) has assigned solid waste management to its Division of Environmental Health (DEH), which oversees the entire program. Solid Waste receives assistance from other programs within DEH, and to a small extent from other Divisions of ADEC, for improving waste management in small and remote communities. An element of the regulatory upgrades was extensive revision of the criteria for municipal solid waste disposal facilities. Alaska went public with its proposed regulations in September 1993 and, after

the public comment period, issued a revised proposal in September 1994 with a second comment period. ADEC's new rule became effective on January 28, 1996. It was revised, primarily for addition of a new fee structure, on June 28, 1996. In autumn 1997, DEH filled the two vacancies that had been open for over a year, thus bringing its solid waste staff up to the level budgeted by the legislature in 1997 and 1998 and further assuring effective implementation of its program. Alaska's 18 AAC 60 also includes a requirement that all conditionally exempt small quantity generator (CESQG) waste must be disposed of in a Class I or Class II municipal landfill. In this respect (which is discussed in more detail below), Alaska is one of about twenty States that already have achieved this level of regulatory protection. Today's action on the portions being approved is an endorsement by EPA of the proficiency of Alaska's program for Class I and Class II municipal landfills in particular. It is also confirmation that EPA believes that the State, with its existing program for Class III landfills, is in the best position to administer solid waste disposal oversight and assistance for very small landfills in Alaska.

On February 12, 1996, Region 10 received Alaska's application for a partial program adequacy determination. EPA responded within the required 30 days that Alaska's application for approval of its municipal solid waste landfill permit program was administratively complete. Alaska provided clarifying written information, as additions to its application, during the period that EPA conducted its review. The agency published on November 25, 1996, in the **Federal Register** (61 FR 60000) its tentative determination that most portions (as noted in the discussions therein) of the State's municipal solid waste landfill (MSWLF) program would ensure compliance with the revised Federal Criteria. The MSWLF program is a component of the Solid Waste Management Program of ADEC that covers a wide range of non-hazardous solid wastes. Portions of the Alaska MSWLF program that do not currently meet the Federal requirements and can only be revised through their regulation revision process, which may require action by the State legislature, are not being requested by Alaska for EPA approval at this time.

In the Notice of tentative determination, EPA announced the availability of the application for public comment. Although not required by RCRA, EPA offered to hold a public hearing on January 23, 1997. EPA determined on January 6, 1997, that there was not sufficient interest to hold a public meeting. The public comment period ended on the January 23, 1997.

During the period that EPA was reviewing and evaluating the public comments, proposals were initiated by the Alaska Legislature in early 1997 either to eliminate the Solid Waste program or to reduce ADEC's Solid Waste staff to less than half. Region 10 of EPA officially suspended its review on March 14 pending the outcome of the deliberations. The final action, near the end of May, was not as severe. (EPA's review was recommenced on June 10.) However, the Legislature significantly reduced the budgeted dollar amounts and number of personnel for the 1998 Fiscal year (FY–98) that began on July 1, 1997. As a result, new planning was initiated by ADEC in May and changes were made to its solid waste program activities—some of which are significantly different from the program described in the application of 1996. In particular, the State's program for its Class III landfills has been changed, as described in the following paragraph. Consequently, EPA is withdrawing the elements of its tentative approval of November 25, 1996, that applied to the Class III landfill component of the application—and today is introducing a new tentative partial approval for the Class III program.

In its letters of May 30, 1997, and August 8, 1997, ADEC wrote EPA that, after reviewing the impact of the budget cuts, it is confident it can adequately administer the solid waste permit program in Alaska. The May 30 letter cites that the final budget reduced the solid waste program by 13% for FY–98, versus FY–97, and that the cuts will necessitate the loss of two positions. The August 8 letter clarified that the reduction of the two positions was split between two Divisions of ADEC—which resulted in the loss of only one position by the Solid Waste program. The two letters inform EPA that certain program elements, mostly with regard to very small landfills, will be postponed or converted to lower-cost methods in FY–98, such as limiting technical assistance to fact sheets or brochures and reducing its field activities. The Class III outreach program will now be centered in Fairbanks instead of Juneau. It will rely on phone calls and fact sheets to supplement field travel to small communities. The letters also cite that ADEC is not using the staff of the division of State Public Service (SPS) exactly the way it foresaw in the Memorandum of Agreement (MOA) between SPS and the Division of Environmental Health (DEH). However, ADEC does work with SPS to identify issues of local concern which can help make the permitting process smoother. ADEC points out that, in addition to SPS support, it has been successful in using Environmental Health Officers for doing inspections at Class III MSW landfills in remote locations. Solid waste also coordinates with staff of other ADEC programs that travel to remote villages. ADEC expects to eventually reduce the number of Class III landfills.

The May 30, 1997, letter also states that the total number of known Class II landfills is thirty two. This is twelve more than shown in the February 1996 application. However, the letter highlights that the new FY–98 program now specifically assigns eight full time employees to the Class I and Class II municipal solid waste component of its program. The letter also says that the positions to be eliminated are those that provide mostly technical assistance rather than permitting activities. The MSW landfill has been made a separate element in ADEC's solid waste budget, which will be funded by a mix of user fees and state general funds. In addition, the Legislature directed that the industrial and commercial solid waste landfill permit program shall be a separate, self supporting element funded almost entirely by user fees. In its proposed regulatory changes of August 1, 1997, ADEC included significant increases in user fees for industrial/commercial waste landfills.

Based on a compromise by EPA and ADEC in 1993 and 1994, Alaska's current regulation, 18 AAC 60, requires that all Class III landfills must, by October 9, 2010, upgrade to meet the requirements for Class II landfills. (Without this compromise, all active Class III landfills would have had to upgrade to the 40 CFR Part 258 standards by October 9, 1997, or stop receiving waste by that date.) On August 1, 1997, ADEC published its proposal to make changes to Alaska's 18 AAC 60 rule, which include elimination of the 2010 deadline. EPA submitted a letter of comment on September 30, 1997, which focused on the need to follow the procedures that the LDPF Act specifies for implementing exemptions—including, for example, removal of the 2010 sunset date. This was the only element of the proposed changes that EPA's letter commented upon. ADEC's other proposed changes that relate to the municipal solid waste program will maintain an equal or better level of adequacy, and environmental protection, with respect to review and approval of the State's solid waste

program. Elimination of the 2010 deadline, can be done at any time after the Governor of Alaska has issued certifications and ADEC has made Statewide exemptions from all 40 CFR Part 258 criteria which are more stringent than the 18 AAC 60 requirements for Class III village landfills—and still be in keeping with today's approval. The certification procedure and exemption authority was established by Congress as an amendment to the Solid Waste Disposal Act (SWDA), entitled the Land Disposal Program Flexibility Act of 1996 (LDPF ACT). The details of the act itself are described in the Small Landfills subsection below.

EPA has evaluated the public comments, as discussed in Section C, on its Tentative Partial determination of November 25, 1996, with respect to the program for Class I and Class II municipal landfills. (Comments that were received on the Class III component of that Notice will be evaluated, where applicable, together with comments that are received during the new comment period of today's action.) Region 10 has also reviewed ADEC's mid-1997 revisions to its program to accommodate the reduced budget. EPA believes that environmental protection in relation to needs and practicable capabilities will be achieved by promulgating final-partial approval of ADEC's program for Alaska's Class I and Class II categories of municipal landfills, and simultaneously proposing a new tentative approval of the Class III program. On and after the effective date of today's Final-Partial approval, the State Director will be able to allow Class I and Class II municipal landfills to benefit from the flexibility elements that are contained in the Part 258 federal criteria.

As cited in the Notice of Tentative Partial approval, EPA and ADEC concluded that a small number of additional portions (which are discussed below) of the ADEC program requirements do not mirror the federal solid waste program criteria of 40 CFR Part 258 or the guidance in the SIR manual and proposed rule. However, the state's practices or policies on these portions adequately meet the goals and standards of the SIR guidance and Part 258 on a performance basis.

Today's document contains three separate elements in the Decision section. It promulgates EPA's Final Partial approval of Alaska's program for the State's Class I and Class II municipal solid waste landfills—plus Alaska's criteria that all disposal of hazardous wastes from Conditionally Exempt Small Quantity Generators (CESQG) must go to these two Classes of municipal landfills exclusively. Second, this document withdraws the portions of the Tentative Partial approval published in the **Federal Register** of November 25, 1996, that addressed the Class III elements of Alaska's program. Third, today's document proposes a new Tentative Partial approval of Alaska's Class III landfill program based on the 1996 application with its subsequent modifying documents that relate to ADEC's revised budget and program changes to date. The third component of today's document also acknowledges Alaska's intention to eliminate the 2010 "sunset" date for Class III landfills, and to grant certain exemptions for Class II landfills, provided these changes are done in accordance with the procedures and exemption authority granted to the Governor by the LDPF Act.

The portions of the Alaska program that are included in today's final partial approval, and those portions not being approved, for Class I and Class II municipal landfills are listed in the Decision Section of this document. With respect to today's new tentative partial approval for Class III landfills, Alaska's application of February 1996 as updated through early November 1996, together with the 1997 changes and letters from ADEC to EPA, is available for public review and comment during the period announced in today's document. The locations where the State's application may be reviewed are listed above in the **ADDRESSES** section.

Alaska's schedule is to achieve final-full approval of its solid waste program within two years of EPA's promulgation of final-partial approval. In the cover letter of its application, ADEC cited that it will revise its regulations soon after EPA has promulgated the final version of its Local Government Financial Assurance rule and will then apply for full approval. EPA's final version of this rule was promulgated in the **Federal Register** on November 27, 1996. Therefore, Alaska expects it will finalize changes to its 18 AAC 60 criteria, that will include financial assurance mechanisms as a requirement for MSW landfills, in time to meet this schedule. In addition, the planned minor regulatory changes that are discussed in this document should also have been completed by ADEC before the state applies for full approval. EPA believes that the state's schedule is reasonable.

Sewage and Biosolids

In today's final partial approval of Alaska's Solid Waste Program, EPA is not proposing approval under the Clean Water Act, with respect to the treatment, storage, landspreading, or disposal of sewer solids, biosolids, sludge, and other wastes that are addressed in EPA's regulations under 40 CFR Part 503 and related parts. The SIR process for State approvals focuses on the municipal solid waste permit program—without expressing any opinion on the other programs that are addressed in Alaska's solid waste management rule (18 AAC 60) of June 28, 1996. With respect to sewage and biosolids wastes, the only criteria in Alaska's rule that are being approved today are those that correspond to EPA's 40 CFR Part 258 municipal landfill criteria.

Indian Country

In preparing and reviewing the Alaska application, ADEC and Region 10 have taken into consideration the needs and status of recognized Indian Tribes and Alaska Native Villages. Today's final partial approval of the State of Alaska's solid waste program does not extend to "Indian Country" located in Alaska, as defined in 18 U.S.C. 1151. Because the extent of Indian Country is currently unknown and in litigation, the exact boundaries of Indian Country have not been established. Lands acknowledged to be Indian Country include the Annette Island Reserve, and trust lands identified as Indian Country by the United States in Klawock, Kake, and Angoon. By approving Alaska's solid waste program, EPA does not intend to affect the rights of Federally recognized Indian Tribes in Alaska, nor does it intend to limit the existing rights of the State of Alaska, nor does it intend to modify the State's new exemption authority with respect to certain small villages in Alaska.

Small Landfills

Alaska defines Class II municipal landfills as those that receive twenty tons per day or less on an annual average and meet specifications that include the federal § 258.1(f)(1) arid or remote small-landfill qualifying criteria. Alaska defines its Class III landfills as those that receive five tons per day or less and meet the specifications in Alaska's 18 AAC 60.300(c)(3), which do not include all of the § 258.1(f)(1) qualifying criteria for small landfills. Alaska's 18 AAC 60 contains flexibility for Class III landfills that includes less stringent requirements than the Part 258 allows for small MSWLFs.

Over the recent past, two methods of addressing small landfills in Alaska have been developed. The first was a compromise between Region 10 and ADEC in 1993 and 1994, that agreed upon regulatory language in 18 AAC 60 that now says: "After October 9, 2010,

all MSWLFs must meet the standards applicable to either a Class I or Class II MSWLF or close in accordance with this chapter." The delay to 2010 for Class III landfills, versus the effective dates in 40 CFR Part 258, was based on the practicable capabilities of the small communities affected and on conditions that are unique in Alaska versus the rest of the nation. The State of Alaska, and also EPA via limited support directly to certain communities, has been working toward successive improvements at Class III landfills to the extent such compliance is economically and practicably achievable.

The second method was established when Congress passed a new statute after Alaska had finalized its solid waste rule and had submitted its application for program approval to EPA Region 10. Several elements of the new act address small landfills in Alaska. This federal statute, Public Law 104–119, entitled the "Land Disposal Program Flexibility Act of 1996" (LDPF Act), became effective on March 26, 1996, as an amendment to the Solid Waste Disposal Act (SWDA).

Note: This act is different than the "Regulatory Flexibility Act of 1996" that addresses economic impacts of a wide range of federal programs, and which is referred to near the end of this document.

Subsection (5) of Section 3(a) of the LDPF Act reads, verbatim, as follows: "ALASKA NATIVE VILLAGES—Upon certification by the Governor of the State of Alaska that application of the requirements described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 3 of the Alaska Native Claims Settlement Act (16 U.S.C. 1602)) or unit that is located in or near a small, remote Alaska village would be infeasible, or would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the State may exempt the unit from some or all of those requirements. This paragraph shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily on an annual average."

Note: The reference to "paragraph (1)" in the above text is to paragraph (1) of section 4010© of SWDA. The exemption authority in subsection (5) of the LDPF Act is granted to Alaska only.

Therefore, Class II and Class III landfills for which such certification is made by the Governor of Alaska and which are exempted by the State, under authority of this new amendment, from some or all portions of the Part 258 criteria will not be subject to the citizens suit provision of Section 7002 of RCRA as to those exemptions. Under this new Act, certain small village landfills could be exempted from the need to upgrade to the federal Part 258 standards until a time as established by the State of Alaska.

ADEC cited in the narrative summary of its application for program approval, and made reference in its letter of May 30, 1997, that the State's intention is to remove the 2010 deadline from its existing regulation. The May 30 letter pointed out that ADEC plans, with action by the Governor's office, to waive some requirements on a statewide basis—but only as needed to implement those provisions already included in the State's regulations. Any additional exemptions would be on a case-by-case basis and closely reviewed for appropriate justification. In follow-up to this plan, ADEC's newly proposed change to its solid-waste regulations, published on August 1, 1997, is deleting the existing 2010 sunset date requirement from the 18 AAC 60 rule of 1996.

At the time when all Class III landfills have either upgraded to Class II standards, or have been permanently exempted by the State under the LDPF Act from the elements of 40 CFR Part 258 that are more stringent than the Class III criteria in 18 AAC 60, the 2010 sunset date in Alaska's rule would become redundant and could be removed unilaterally by ADEC without affecting today's approval. Alaska's existing Class II landfill regulations meet, or exceed, the federal criteria in Part 258.

The exemption authority in subsection (5) of the LDPF Act is granted to the State of Alaska only. The State may be considering a broad short-term exemption to provide a bridge until a final plan is developed for ensuring environmental protection that is consistent with community resources and capabilities. EPA supports the State's approach to achieve continued improvement at village landfills that require more time. Standard factors such as climate, hydrogeological conditions, and risk are important considerations in determining improvement plans.

In addition, subsection (6) of the LDPF Act mandate that the EPA shall, within two years, promulgate revisions to Part 258 to provide additional flexibility to approved States with respect to qualifying landfills that receive an average of 20 tons per day or less. The areas of increased flexibility are limited to alternative frequencies of daily cover application, frequencies of methane gas monitoring, infiltration layers for final cover, and means for demonstrating financial assurance. This subsection includes a provision that such alternative requirements must take into account climatic and hydrogeologic conditions and be protective of human health and the environment. The Act intends that the additional flexibility mandated by this subsection (6) will become available in all approved States. EPA promulgated its rule that implements this mandate in the **Federal Register** of October 2, 1997, with an effective date of October 27, 1997.

On a nationwide basis, another section of the LDPF Act reinstates the exemption on ground-water monitoring for all facilities that receive an average of 20 tons per day or less and meet the qualifying criteria in the LDPF Act for small arid or remote municipal solid waste landfills. The act does not modify the existing Part 258 exemption on liner requirements for qualifying small MSWLFs. The liner exemption, promulgated in October 1991, is still in effect.

Unique Landfills and Special Criteria

Two special categories of landfills are included in ADEC's regulations: ash monofills that accept MSW ash and permafrost MSW landfills. EPA finds that Alaska's regulatory flexibility with respect to methane monitoring and daily cover at MSW ash monofills is in keeping with the new flexibility that EPA promulgated on October 2, 1997. Alaska's MSW ash monofills are handled under 18 AAC 60 Article 3 that sets ADEC's standards for landfill disposal of municipal solid wastes. EPA believes that Alaska's program meets EPA standards for monofills that receive only MSW-ash provided that the ash is non-toxic based on RCRA requirements.

The Alaska solid waste regulations also include flexibility provisions for permafrost landfills that is different and less stringent than the federal Part 258 requirements. Almost all permafrost landfills in Alaska are small and receive less than an average of 20 tons per day of municipal solid waste. EPA believes use of flexibility that is specific to permafrost landfills exclusively is in keeping with practicable capability considerations of RCRA.

With respect to the disposal of hazardous wastes from conditionally exempt small quantity generators (CESQG), EPA promulgated its final rule on disposal criteria for this category of solid waste after Alaska had submitted its application to EPA Region 10 for approval of its solid waste program. The final CESQG rule was published in the **Federal Register** on July 1, 1996. The rule modifies 40 CFR Part 261 of the hazardous waste regulations, and Part

257 of the solid waste regulations, to establish an additional category of landfills—by adding Sections 257.5 through 257.30 that allows certain non-municipal, non-hazardous waste landfills to receive CESQG wastes. In addition Section 261.5 is amended, per the same **Federal Register** of July 1996, such that CESQG wastes may be disposed of in a facility that is: permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Part 258 of Title 40. In anticipation of EPA's final CESQG rule, Alaska's 18 AAC 60 already requires that all CESQG wastes must go to Class I or Class II municipal landfills exclusively. Alaska's existing 18 AAC 60 Article 3 requires, with respect to CESQG wastes, that: A conditionally exempt hazardous waste from a small quantity hazardous waste generator may be disposed of only at a facility that meets the requirements for a Class I or a Class II municipal solid waste landfill. Since both classes meet or exceed the Part 258 municipal landfill criteria, Alaska is already meeting EPA's new CESQG disposal standards. Therefore, EPA is including Alaska's 18 AAC 60 criteria for disposal of CESQG solid wastes in today's final approval of Alaska's program.

An important corollary of the requirements of this amendment to 40 CFR 261, is that landfills which the State Governor has exempted from some or all of the Part 258 MSWLF criteria would not be eligible to accept CESQG wastes—based on Region 10's interpretation that the meaning of the text in the July 1996 **Federal Register** is that the landfill must be subject to the entire Part 258.

In the wetlands section of Alaska's landfill rule, Alaska has a stability requirement that applies only for "undisturbed" native wetland soils and deposits used to support the MSW landfill. Part 258 applies this stability requirement to all types, not only undisturbed, wetlands support. ADEC has assured EPA Region 10 that it will remove the word "undisturbed" from its section 18 AAC 60.315(3) during its next revision of the rule, even though this may not be finalized before a final-partial approval is promulgated by EPA. (This change has been included in the proposed regulatory revisions of August 1, 1997.) During the interim, ADEC expects to achieve equivalent stringency via its permitting activities and authority.

Administrative Elements and Criteria

Part 258 requires notification of the State Director under numerous specified circumstances, including under § 258.1(f)(3) with respect to small landfills. This subsection requires that if the owner/operator of a small, arid or remote, landfill has knowledge of ground-water contamination resulting from the unit, the owner/operator must notify the State Director. Alaska's regulation does not include the exact wording of this sub-section. However, ADEC believes that via ADEC's existing permitting and compliance-monitoring practices, and via the activities of other support agencies, ADEC will become aware of any ground-water contamination from a Class II landfill as rapidly as ADEC would by relying on the owner/operator to fulfill the notification requirement. In addition, Alaska's regulation requires that Class II landfills must perform groundwater monitoring unless a landfill demonstrates to the State Director that there is no practical potential for migration to an aquifer of resource value. However, even with these practices in effect, EPA concurs with the public comment (discussed in the next section) on the need for this ground-water notification requirement. (Therefore, the notification requirement either needs to be finalized in Alaska's rule before EPA implements a final-full approval, or it can be waived if an appropriate exemption is done under LDPF Act.) ADEC has added in its proposed changes of August 1, 1997, the requirement that a Class II or Class III must make the notification upon knowledge of groundwater contamination. Alaska's rule, like Part 258, does require compliance with Part 258's Subpart E ground-water monitoring and corrective action if contamination from the landfill becomes known.

With respect to public participation, Alaska cites in the narrative summary of its application that it has been and is ADEC's policy to provide additional public participation opportunities after a permit is issued, including for permit renewals and major modifications or variances, particularly if public interest was expressed at the time of the original permit or if there is any controversy surrounding the permit. The summary states that Alaska's current version of its 18 AAC 15.100(d) regulation does not require public notice or a public hearing on applications for renewal of a permit or amendment. As a means of formalizing ADEC's existing and on-going practices in this area, the Commissioner of ADEC issued a policy paper on October 9, 1996, entitled "Policy Regarding Public Notice Requirements for Solid Waste Renewals and Modifications". A copy has been placed in Alaska's application, and this policy is included in today's final partial approval, and also as a component of today's tentative partial approval.

Alaska has adequately described its staffing and implementation capabilities in its application to Region 10 for approval including the modifications of mid 1996—and the letters of May 30 and August 8, 1997. ADEC reorganized during 1995, established new fee structures in 1996, and after the budget cuts of May 1997 made additional changes to improve the administration of its solid waste program.

With respect to effective dates, a gap of one-quarter year existed between the dates contained in the regulations of Alaska versus EPA's Part 258 criteria with respect to closure of those existing landfills that do not meet the location restrictions regarding airports, floodplains, and unstable areas. This discrepancy was described in detail in the November 25, 1995, **Federal Register**. Today's final-partial approval is becoming effective after January 1998, by which time the gaps will already have occurred and ended.

Environmental Audit Privilege and Immunity Law

On August 9, 1997, the State of Alaska enacted its Environmental Audit Privilege and Immunity Law. EPA and ADEC worked together on analyzing this law, solely with respect to the solid waste program, and to the Agency's nationwide policies. Based on the information provided by the State on this law, and the State's application for program approval, EPA believes that Alaska has the authority necessary to administer a partially approved RCRA subtitle D permit program for municipal solid waste landfills. Today's partial approval does not reflect a position by the agency regarding the state's authority to administer any other federally authorized, delegated, or approved environmental program. The impact of the state's audit law on the requirements of other federal environmental programs (many of which have more comprehensive requirements than Subtitle D of RCRA) will require a separate review and analysis by EPA.

C. Public Comments

The EPA received comments from two parties on EPA's tentative determination of partial adequacy for Alaska's MSWLF permit program, that was published in the November 25, 1996, **Federal Register**. Both were in writing.

One commentor, a Borough with a population of over forty thousand and having several landfills, sent a letter that supports and endorses EPA's Tentative Partial determination of adequacy of Alaska's program as published. The Borough's letter states that Approval of Alaska's permit program will provide regulatory flexibility needed for rural landfills with limited development options and [approval] will eliminate some conflicts between the State and Federal programs.

The other commentor, an individual, had several comments which are summarized herein—together with EPA's conclusions on each element in the commentor's letter. One comment was that the Solid Waste Program of ADEC does not have full regulatory control over municipal waste management. This statement in itself is correct in that the Solid Waste program in DEH does rely on other offices within ADEC to provide services that are important for adequate solid waste management statewide. However, in its application for approval of adequacy, Alaska cited that it is the Department of Environmental Conservation (ADEC), i.e. its Commissioner, not the Solid Waste Program, that has the lead role in solid waste management. Alaska's regulation requires that requests for permission to utilize one or more elements of flexibility, of the types allowed in 40 CFR Part 258, must be approved by the Department. DEH, and its solid waste section that implements this program, now plans to rely primarily upon support from other programs within DEH. DEH is on the same level as the other ADEC Divisions upon which it may receive limited amounts of supplemental assistance.

Information that also relates to this comment is that ADEC has pointed out that it encourages, in numerous instances, certain activities and field improvements at small landfills "as an immediate step in the right direction" even though the state regulations make it necessary for DEH to deny, or not issue, a full permit. This practice enables incremental upgrading of village landfills while taking into consideration the practicable capabilities that exist in each community or area. As a corollary, the commentor states that the Memorandum of Agreement between DEH and the Statewide Public Services office has not yet been fully implemented; while, the commentor expects that whatever deficiencies existed in early 1997 can be corrected. While progress was made in 1996 with some support from Statewide Public Service, ADEC has now shifted to the use of Environmental Health Officers to achieve greater field assistance.

One comment questioned whether EPA has the legal authority to approve Class III landfills. EPA believes it does have the authority to establish a deadline for all small landfills to upgrade to Alaska's Class II standards by the year 2010—per the discussion in the Alaska section of this document.

One comment questioned whether EPA's approval would result in allowing practices with respect to sewage sludge that are not in compliance with the 40 CFR Part 503 promulgated under the Clean Water ACT (CWA). In today's action, EPA is only approving practices with respect to sewage and biosolids that are regulated specifically by 40 CFR Part 258. The Part 503 regulation and EPA's subsequent interpretive documents establish and discuss the dividing lines between when a sewage sludge falls under CWA and Part 503 versus under RCRA and Part 257 or Part 258. For example, at present, if commercial or industrial septage sludge is mixed with domestic septage sludge, the combined sludges fall under RCRA and 40 CFR Part 257, or Part 258, instead of under CWA and 40 CFR Part 503.

One comment recommended that the Alaska regulation should be changed to require that if an owner/operator of a small MSW landfill unit has knowledge of ground-water contamination resulting from the unit, the owner/operator must notify the State Director of such contamination. EPA also had concerns about the omission of this requirement. Protection of groundwater is a major component of RCRA. EPA agrees with the commentor. Today's document is not approving the less-stringent criteria that is now in 18 AAC 60 on this subject. Therefore small landfills will need to comply with the notification requirement that is in Part § 258.1(f)(3).

One comment challenges the inclusion of barges and any other form of water craft in ADEC's definition of surface transportation. EPA believes the definition is a State decision, not one that should be made by EPA. The commentor addressed the gap of one-quarter year and an element on public participation. Region 10 believes no EPA action is currently warranted, with respect to these two comments, for the following reasons. The gap of one quarter year in certain effective dates of the Alaska rule versus the federal rule, that was described in the November 25, 1997 **Federal Register**, has already taken place—before publication of today's document. On permit renewals and modifications, EPA believes that ADEC's written policy for public notice and public participation is already in practice and adequately meets the intent of the federal requirements. In addition, Alaska's application cites that the State is currently in the process of adding the policy to its Administrative Code.

D. Decision

This section of today's document contains three separate actions, which are (1) an EPA final partial approval, (2) withdrawal of an EPA tentative partial approval, and (3) publication of a new tentative partial approval. Today's final partial approval includes the State's sub-categories of MSW-ash monofills, permafrost landfills, and its criteria for disposal of CESQG wastes. A public comment period is provided with respect to the new tentative partial approval of the State's Class III program.

Class I and II and CESQG Final Partial

After reviewing the public comments, I conclude that the State's Class I and Class II municipal solid waste (MSW) landfill portions of Alaska's application for partial program adequacy determination, and Alaska's criteria for disposal of solid wastes from Conditionally Exempt Small Quantity Generators (CESQG), meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Alaska is granted a partial program determination of adequacy for the Class I and Class II MSW landfill portions, including ash mono-fills and permafrost landfills in these two classes, of its municipal solid waste landfill permit program that are listed below. Alaska is also granted a determination of adequacy, under 40 CFR 261.5 as amended per the **Federal Register** of July 1, 1996, of Alaska's program for hazardous wastes from Conditionally Exempt Small Quantity Generators that requires these wastes to be disposed of either in Class I municipal landfills—or Class II municipal landfills that are subject to (and not exempted by the State from any portion of) the entire 40 CFR Part 258.

The portions of 40 CFR Part 258 that are included in today's final partial determination of adequacy of the State's Class I and Class II municipal landfill program are:

Subpart A—General, but excluding 40 CFR Part 258.1(f)(3)—which contains notification and compliance criteria that apply when the owner or operator of a qualifying small landfill has knowledge of ground-water contamination resulting from the unit.

Subpart B—Location Restrictions;

Subpart C—Operating Criteria;

Subpart D—Design Criteria;

Subpart E—Ground-Water Monitoring and Corrective Action; and

Subpart F—Closure and Post-Closure Care.

Section 4005(a) of RCRA provides that citizens may use the citizens suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State, or Tribal, enforcement program. As explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the relevant portions of the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991). Today's determination of adequacy action takes effect on October 19, 1998.

Class III, Withdrawal of Tentative Partial Approval

Today's document withdraws the portions of the Tentative Partial approval published in **Federal Register** of November 25, 1996, which addressed the Class III municipal landfill components of Alaska's program. This is being done because of the major changes that were made by the State to its Class III MSW landfill program after EPA's public comment period had ended on January 23, 1997.

Class III, New Tentative Partial Approval

Today's document publishes a new EPA tentative determination of partial program adequacy for Alaska's Class III municipal solid waste landfill permit program. Like the prior proposal, today's tentative partial approval is based on Alaska's retaining the existing "sunset" date of October 9, 2010, for Class III landfills. A public comment period is being provided. In addition, today's document acknowledges that Alaska can remove the 2010 Class III upgrade date requirement, provided the removal is done via certification and exemption under the authority granted by the Land Disposal Program Flexibility Act of 1996.

The portions of 40 CFR Part 258 that are included in today's tentative partial determination of adequacy of the State's Class III municipal landfill program are:

Subpart A—General, including Alaska's 18 AAC Section 60.300(c) with respect to the October 9, 2010, criteria for upgrade of Class III landfills to Class II standards; but excluding 40 CFR Part 258.1(f)(3)—which contains notification and compliance criteria that apply when the owner or operator of a qualifying small landfill has knowledge of ground-water contamination resulting from the unit.

Subpart B—Location Restrictions;

Subpart C—Operating Criteria;

Subpart D—Design Criteria;

Subpart E—Ground-Water Monitoring and Corrective Action; and

Subpart F—Closure and Post-Closure Care.

Benefits of Partial Approvals

The flexibility elements in Part 258 are an important factor that becomes available to a State upon approval by EPA of its solid waste program. Not all existing State permit programs ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State from submitting its application until it could ensure compliance with the entirety of 40 CFR Part 258, many States would need to postpone obtaining approval of their permit programs for a significant period of time. This delay in determining the adequacy of the State permit program, while the State revises its statutes or regulations, could impose a substantial burden on owners and operators of landfills because the State would be unable to exercise the flexibility available to States with approved permit programs.

As State regulations and statutes are amended to comply with the Federal MSWLF landfill regulations, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State may submit an amended application to EPA for review, and an adequacy determination will be made using the same criteria used for the initial application. This adequacy determination will be published in the **Federal Register** which will summarize the Agency's decision and the portion(s) of the State MSWLF permit program affected. It will also provide for a public comment period. This future adequacy determination will become effective 60 days following publication if no significant adverse comments are received. If EPA receives adverse comments on its adequacy determination, another **Federal Register** document will be published either affirming or reversing the initial decision while responding to the public comments. EPA plans to keep ADEC posted on the timing, and progress, on these activities.

Requirements for Final Full Approval

To ensure compliance with all of the current Federal Criteria and to obtain final full approval of Alaska's entire permit program for the State's three Classes of municipal solid waste landfills, the Alaska Department of Environmental Conservation must:

1. Add financial assurance requirements for all types of Class I and Class II landfills, which meet one or more of the criteria in Subpart G of Part 258.

2. Add a requirement for Class II and Class III landfills, equivalent to the federal criteria, that an owner/operator of a small landfill that qualifies under § 258.1(f)(3) must notify the State Director upon knowledge of groundwater contamination resulting from the unit.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted today's action from the requirements of Section 6 of Executive Order 12866.

Compliance With Executive Order 12875

Under Executive Order 12875, Enhancing Intergovernmental Partnerships, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of the affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's action implements requirements specifically set forth by the Congress in Sections 4005(c)(1)(B) and (c)(1)(C) of Subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended, without the exercise of any discretion by EPA. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to today's action.

Compliance With Executive Order 13045

Today's action is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Compliance With Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the

preamble to today's action, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's action implements requirements specifically set forth by the Congress in Sections 4005(c)(1)(B) and (c)(1)(C) of Subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended, without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to today's action.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant adverse economic impact on a substantial number of small entities. By approving State municipal solid waste permitting programs, owners and operators of municipal solid waste landfills who are also small entities will be eligible to use the site-specific flexibility provided by Part 258 to the extent the State permit program allows such flexibility. However, since such small entities which own and/or operate municipal solid waste landfills are already subject to the requirements in 40 CFR Part 258 or are exempted from certain of these requirements, such as the groundwater monitoring and design provisions, this approval does not impose any additional burdens on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant adverse economic impact on a substantial number of small entities. It does not impose any new burdens on small entities; rather this approval creates flexibility for small entities in complying with the 40 CFR Part 258 requirements. Today's action, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing today's document and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of today's action in the **Federal Register**. Today's action is not a "major rule" as defined by section 804(2) of the APA as amended.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The Agency does not believe that approval of the State's program would result in estimated costs of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector, in any one year. This is due to the additional flexibility that the State can generally exercise (which will reduce, not increase, compliance costs). Thus, today's document is not subject to the written statement requirements in sections 202 and 205 of the Act.

As to section 203 of the Act, the approval of the State program will not significantly or uniquely affect small governments including Tribal small governments. As to the applicant, the State has received notice of the requirements of an approved program, has had meaningful and timely input into the development of the program requirements, and is fully informed as to compliance with the approved program. Thus, any applicable requirements of section 203 of the Act have been satisfied.

Authority: This document is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945 and 6949(a)(c).

Dated: October 8, 1998.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 98–27970 Filed 10–16–98; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Flood Insurance."

DATES: Comments must be submitted on or before December 18, 1998.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. All comments should refer to "Flood Insurance." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (FAX number (202) 898–3838; Internet address: comments@fdic.gov).

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Flood Insurance.

OMB Number: 3064–0120.

Frequency of Response: As needed.

Affected Public: Any depository institution whose borrower's loan requests were secured by a building located on property in a special flood hazard area.

Estimated Number of Respondents: 6,000.

Estimated Time per Respondent: 25.9 hours.

Estimated Total Annual Burden: 155,625.

General Description of Collection: Each supervised lending institution is currently required to provide a notice of special flood hazards to a borrower acquiring a loan secured by a building on real property located in an area identified by the Director of the Federal Emergency Management Administration as being subject to special flood hazards. The Riegle Community Development and Regulatory Improvement Act requires that each institution must also provide a copy of the notice to the servicer of the loan (if different from the originating lender).

Request for Comment

Comment are invited on: (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques of other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC this 13th day of October, 1998.

Federal Deposit Insurance Corporation.

Rober E. Feldman,

Executive Secretary.

[FR Doc. 98–27883 Filed 10–16–98; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98P–0086]

Determination That Sutilains Ointment USP Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that sutilains ointment USP (Travase® Ointment) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for sutilains ointment USP.

FOR FURTHER INFORMATION CONTACT: Andrea C. Masciale, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5648.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

On February 11, 1998, Hogan & Hartson, L.L.P. submitted a citizen petition (Docket No. 98P–0086/CP1) under 21 CFR 10.30 to FDA requesting that the agency determine whether sutilains ointment USP was withdrawn from sale for reasons of safety or effectiveness. Sutilains ointment USP (Travase® Ointment) is the subject of NDA 12–828. FDA approved NDA 12–828, held by Travenol Laboratories, on June 12, 1969. The right to market sutilains ointment USP was subsequently transferred to Boots Pharmaceuticals, Inc., which became part of Knoll Pharmaceuticals (Knoll) on April 1, 1995. Knoll stopped distribution of the drug product effective March 29, 1996.

FDA has reviewed its records and, under § 314.161, has determined that Knoll's decision not to market sutilains ointment USP was not for reasons of safety or effectiveness. Accordingly, the agency will move sutilains ointment USP to the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to sutilains ointment USP may be approved by the agency.

Dated: October 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–27889 Filed 10–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0864]

Privacy Act of 1974; Altered System of Records, Including Addition of Routine Use(s) to an Existing System of Records

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notification of an altered system of records, including the addition of a new routine use.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (Privacy Act), the Department of Health and Human Services (HHS) is publishing notice of a proposal to alter Privacy Act System of Records 09–10–0010 for the "Bioresearch Monitoring Information System, HHS/FDA," including the addition of a new routine use. The major purposes of the proposed alterations are to add the names of the Center for Food Safety and Applied Nutrition (CFSAN), and the Center for Veterinary Medicine (CVM), and related information regarding these Centers, to ensure that the system covers all of the Food and Drug Administration's (FDA's) Centers; update the relevant statutory and regulatory citations; and modify the routine uses section of the existing system notice by removing unnecessary routine uses, revising other routine uses to bring them in conformance with case law, and adding a new routine use providing for disclosure of covered records to sponsors and Institutional Review Boards (IRB's) involved with studies affected by a clinical investigator's violative or potentially violative conduct.

DATES: Submit written comments on the proposed alterations, including the new routine use, by November 18, 1998. HHS sent a Report of Altered System to the Congress and the Office of Management and Budget (OMB) on October 19, 1998. The alteration to the system of records will be effective 40 days from the date submitted to OMB unless HHS receives comments which would result in a contrary determination.

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: Regulatory Counsel (HFC–230), Office of Regulatory Affairs, Office of Enforcement, Division of Compliance Policy, Food and Drug Administration, 12720 Twinbrook Pkwy., suite 517, Rockville, MD 20852, 301–827–0412.

SUPPLEMENTARY INFORMATION: FDA proposes to alter Privacy Act System of Records 09–10–0010 for the "Bioresearch Monitoring Information System, HHS/FDA." The major purposes of the proposed alterations are to: (1) Add the names of CFSAN, and CVM, and related information regarding these Centers, to ensure that the system covers all of FDA's Centers; (2) update the relevant statutory and regulatory citations; and (3) modify the routine uses section of the existing system notice by removing unnecessary routine uses, revising other routine uses to bring them in conformance with case law, and adding a new routine use providing for disclosure of covered records to sponsors and IRB's involved with studies affected by a clinical investigator's violative or potentially violative conduct.

The records in this system will be maintained in a secure manner compatible with their content and use. All records are kept in secured areas, locked rooms, and locked buildings. Manual and computerized records will be maintained in accordance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13 of the Department's General Administration Manual, and the Department's Automated Information Systems Security Handbook. Data stored in computers will be accessed through the use of regularly expiring passwords and individual ID's known only to authorized users.

FDA staff will be required to adhere to the provisions of the Privacy Act (5 U.S.C. 552a) and the HHS Privacy Act regulations (45 CFR 5b). Only authorized users whose official duties require the use of such information will have regular access to the records in this system. Authorized users are FDA employees and contractors responsible for training the individuals who will inspect the facilities of the clinical investigators, who compile and analyze the inspectional data and information, or who, as a part of their official duties, routinely disclose information under the Freedom of Information Act (FOIA) or conduct other authorized sharing of FDA records. Users will be required to sign an agreement indicating their cooperation with FDA systems security and Privacy Act policies.

The proposed alteration contains a new routine use permitting disclosure of records in the system to sponsors and IRB's associated with the clinical investigator's studies. Under the altered system, FDA may disclose to sponsors and IRB's those records that on their face, or in conjunction with other records, indicate a violation or potential violation of the law by clinical investigators that have conducted or are conducting studies. Disclosure would be made either under a request from the sponsor or IRB or, in FDA's discretion, without the need for a request. The purpose of disclosure would be to alert these parties to inspectional findings indicating violations or potential violations of the laws enforced by FDA, including the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.*) and its implementing regulations. Such disclosure is compatible with the purpose of the system because the sponsors and IRB's play a significant role in ensuring that clinical investigators meet the applicable statutory and regulatory requirements. Disclosure also provides the sponsors and IRB's with information that is important to meeting their responsibilities under FDA's regulations, including their responsibility to monitor the data collected under the study.

In some cases, evidence of a violation or potential violation may implicate more than one of the clinical investigator's studies. Where more than one clinical study is involved, FDA may, where it deems appropriate, share information concerning a violation or potential violation with the sponsors and IRB's of any of the clinical investigator's studies.

In addition to creating a new routine use, the proposed alteration will delete as unnecessary two routine uses which provide for disclosure of records to certain employees of the agency for use in performance of their duties, thereby duplicating another Privacy Act exemption, 5 U.S.C. 552a(b)(1). The proposed alteration also will revise language in the remaining routine uses to bring them in conformance with recent case law. (See *Covert* v. *Harrington*, 876 F.2d 751 (9th Cir. 1989).) Minor editorial revisions also have been made throughout the system notice to enhance its clarity and specificity, and to accommodate normal updating changes.

Interested persons may, on or before (*insert date 30 days after date of publication in the* **Federal Register**), submit to the Dockets Management Branch (address above) written comments regarding the revised system notice. 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.

The following notice is written in the present, rather than the future tense, to avoid the unnecessary expenditure of public funds to republish the notice after the alteration and routine use has become effective. The revised system notice, including the proposed alterations, is set forth in full below.

Dated: October 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

Revised System Notice

09–10–0010

SYSTEM NAME:

Bioresearch Monitoring Information System, HHS/FDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Center for Biologics Evaluation and Research (CBER), Office of Compliance and Biologics Quality, Bioresearch Monitoring Team (HFM–650), 1401 Rockville Pike, Rockville, MD 20852.

Center for Devices and Radiological Health (CDRH), Office of Compliance, Division of Bioresearch Monitoring (HFZ–310), 2094 Gaither Rd., Rockville, MD 20850.

Center for Drug Evaluation and Research (CDER), Office of Compliance, Division of Scientific Investigations (HFD–340), 7520 Standish Pl., Rockville, MD 20855.

Center for Food Safety and Applied Nutrition (CFSAN), Office of Premarket Approval, Division of Product Policy (HFS–205), 200 C St. SW., Washington, DC 20204.

Center for Veterinary Medicine (CVM), Office of Surveillance & Compliance (HFV–234), Division of Compliance, Bioresearch Monitoring Staff, 7500 Standish Pl., Rockville, MD 20855.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Clinical investigators who are conducting, or have conducted, clinical studies of new drugs, biologics, and devices under investigational new drug and biologics, and investigational device exemption requests; clinical investigators who are conducting, or have conducted, studies on food or color additives, generally recognized as safe (GRAS) substances, or infant formula; and clinical investigators who are conducting, or have conducted, studies on new animal drugs under investigational new animal drug requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated file is maintained on all clinical investigators; contains name, education, professional qualifications and background, Program Oriented Data Systems (PODS) locator code, and information on studies conducted. Manual file contains, in addition to that same information, investigatory material collected by, or developed by, the Food and Drug Administration (FDA), during investigations of possible violations of statutes and regulations governing new drug, biologic, food or color additive, GRAS substance, infant formula, new animal drug, and/or device studies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 505(i)(3), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)(3)), 21 CFR part 312 (new drugs and biologics for investigational use); Section 520, Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j), 21 CFR part 812 (new devices for investigational use); Sections 512(j) and (l)(1), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j) and (l)(1)), 21 CFR part 511 (new animal drugs for investigational use); Sections 409 and 721, Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348 and 379e), 21 CFR part 71 (color additive petitions), 21 CFR part 171 (food additive petitions); Section 412, Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a) (infant formula requirements); and Section 351, Public Health Service Act (42 U.S.C. 262).

PURPOSE(S):

1. To provide controls to assure that investigators meet requirements of the relevant statutes and regulations governing new drug, biologic, food or color additive, GRAS substance, infant formula, new animal drug, and/or device studies.

2.To serve as a data base for the effective performance of activities necessary for the conduct of the bioresearch monitoring program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records that, on their face or in conjunction with other records, indicate a violation or potential violation of law, may be: (1) Referred for investigation and possible enforcement action under the applicable Federal, State, or foreign laws to the Department of Justice and other appropriate Federal agencies, an appropriate State food and drug enforcement agency or licensing authority, or the government of a foreign country where studies are being or have been conducted; or (2) disclosed to sponsors or IRB's responsible for initiating, approving, monitoring, or overseeing any studies affected by the violation or potential violation, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility of the receiving entity.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of that individual.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other adjudicative body, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof (where HHS determines that the litigation is likely to affect HHS or any of its components),

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other adjudicative body, is relevant and necessary to the litigation and would help in the effective representation of the governmental interest. provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files of investigatory materials are maintained in letter-size manila folders and on microfilm. Automated files are maintained on magnetic disk or tape.

RETRIEVABILITY:

Indexed by name or code number.

SAFEGUARDS:

1.*Authorized users:* Personnel in CBER's Bioresearch Monitoring Team and CBER Product Review Offices; Personnel in CDRH's Division of Bioresearch Monitoring; Personnel in CDER's Division of Scientific Investigations, Division of Drug Information Resources, Management and Data Systems Branch; Personnel in CFSAN's Division of Product Policy, Division of Health Effects Evaluation; and Personnel in CVM's Division of Compliance, Bioresearch Monitoring Staff.

2.*Physical safeguards:* Files are stored in secured areas, locked buildings, locked rooms, locked tape vaults, and lockable data media cabinets.

3.*Procedural (or technical) safeguards:* Limited access and computer password which is changed periodically.

4. *Implementation guidelines:* These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and the Department's Automated Information System Security Handbook.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the FDA Records Control Schedule transmittal number H:90–1, Departmental number B–331.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Inspections and Surveillance (HFM–650), Center for Biologics Evaluation and Research, Office of Compliance and Biologics Quality, 1401 Rockville Pike, Rockville, MD 20852.

Director, Division of Bioresearch Monitoring (HFZ–310), Office of Compliance, Center for Devices and Radiological Health, 2094 Gaither Rd., Rockville, MD 20850.

Deputy Director, Division of Scientific Investigation (HFD–341), Center for Drug Evaluation and Research, Office of Compliance, 7520 Standish Pl., Rockville, MD 20855.

Bioresearch Monitoring Project Manager (HFS–207), Center for Food Safety and Applied Nutrition, Office of Premarket Approval, Division of Product Policy, 200 C St. SW., Washington, DC 20204.

Manager, Bioresearch Monitoring Program (HFV–234), Center for Veterinary Medicine, Division of Compliance, 7500 Standish Pl., Rockville, MD 20855.

NOTIFICATION PROCEDURES:

An individual may learn if a record exists about him or her upon written request with notarized signature or certification of identification under penalty of perjury if request is made by mail, or with identification if request is made in person (see also 21 CFR 21.44), directed to:

FDA Privacy Act Coordinator (HFI–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Access to record systems which have been granted an exemption from the Privacy Act access requirement may be made at the discretion of the system manager. If access is denied to requested records, an appeal may be made to:

Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained. Some material is obtained from third parties, e.g., drug companies, publications, or is developed by FDA.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from access and contest and certain other provisions of the Privacy Act (5 U.S.C. 552a(c)(3), (d)(1) to (d)(4), (e)(3), (e)(4)(G) to (e)(4)(H) and (f)) to the extent that it includes investigatory material compiled for law enforcement purposes, where access would be likely to prejudice the conduct of the investigation.

[FR Doc. 98–27937 Filed 10–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0135]

Agency Information Collection Activities; Announcement of OMB Approval; OTC Test Sample Collection Systems for Drugs of Abuse Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "OTC Test Sample Collection Systems for Drugs of Abuse Testing" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 5, 1998 (63 FR 10792), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). 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. OMB has now approved the information collection and has assigned OMB control number 0910–0368. The approval expires on April 30, 2001.

Dated: October 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–27887 Filed 10–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0514]

Draft Guidance for Industry on ANDA's: Impurities in Drug Substances; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until November 23, 1998, the comment period for the draft guidance for industry entitled "ANDA's: Impurities in Drug Substances." FDA published a notice of availability of the draft guidance in the **Federal Register** of July 24, 1998 (63 FR 39880). FDA is taking this action in response to several requests for an extension.

DATES: Written comments on the draft guidance may be submitted by November 23, 1998. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft

guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Robert W. Trimmer, Office of Generic Drugs, Center for Drug Evaluation and Research (HFD–625), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855–2737, 301–827–5848.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 24, 1998 (63 FR 39880), FDA published a notice announcing the availability of a draft guidance for industry entitled "ANDA's: Impurities in Drug Substances." The draft guidance provides recommendations for including information in abbreviated new drug applications and supporting drug master files on the content and qualification of impurities in drug substances produced by chemical syntheses for both monograph and nonmonograph drug substances. Interested persons were given until September 22, 1998, to submit written comments on the draft guidance.

On August 4, 1998, FDA received a letter from Perrigo requesting that the agency extend the comment period on the draft guidance 120 days. On August 10, 1998, FDA received a letter from the National Association of Pharmaceutical Manufacturers requesting that the agency extend the comment period on the draft guidance 60 days. On September 4, 1998, FDA received a letter from the Generic Pharmaceutical Industry Association requesting that the agency extend the comment period on the draft guidance 60 days.

This draft guidance is complex and introduces a number of new issues. Therefore, the agency has decided to reopen the comment period on the draft guidance until November 23, 1998, to allow the public more time to review and comment on its contents.

Interested persons may, on or before November 23, 1998, submit to the Dockets Management Branch (address above) written comments on the draft guidance. 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. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–27888 Filed 10–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Opportunities for Cooperative Research and Development Agreements

National Cancer Institute: Opportunities for Cooperative Research and Development Agreements (CRADAs) for the identification of analogues of wnt ligands that bind a novel soluble Frizzled-related receptor discovered at the National Cancer Institute (NCI) (the "Technology"). Wnt proteins act as inducing agents during embryogenesis and have been implicated in the etiology of cancer. Frizzled proteins are integral membrane proteins that recently were shown to function as receptors for wnt signaling molecules. Currently, NCI has identified at least two applications for this Technology: research product and drug screening. The NCI is looking for a CRADA Collaborator with access to phage display peptide libraries for analogue screening to develop this Technology.

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. § 3710; Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer and Advancement Act of 1995), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHSS) seeks one or more CRADAs with pharmaceutical or biotechnology companies to develop this Technology.

Any CRADA for the biomedical use of this technology will be considered. The CRADA would have an expected duration of one (1) to five (5) years. The goals of the CRADA include the rapid publication of research results and the timely commercialization of products, diagnostics and treatments that result from the research. The CRADA Collaborator will have an option to negotiate the terms of an exclusive or nonexclusive commercialization license to subject inventions arising under the CRADA.

ADDRESSES: Proposals and questions about these CRADA opportunities may be addressed to Vasant T. Gandhi, Technology Development and Commercialization Branch, National Cancer Institute, Executive Plaza South, Room 450, 6120 Executive Blvd., Rockville, MD 20852. Telephone: (301) 496–0477, Facsimile: (301) 402–2117. Background information, including abstracts and reprints, is available. In addition, pertinent information not yet publicly disclosed may be obtained under a confidential disclosure agreement.

EFFECTIVE DATE: In view of the high interest for developing the Technology, interested parties should notify the NCI Technology Development and Commercialization Branch in writing no later than November 18, 1998. Respondents will then be provided an additional thirty (30) days for submitting formal CRADA proposals.

SUPPLEMENTARY INFORMATION: A novel Frizzled-related soluble receptor has been expressed recombinantly and used in an ELISA format to bind protein ligand. The NCI Laboratory of Cellular and Molecular Biology (LCMB) would like to identify peptide analogs of a natural wnt ligand by using the recombinant receptor to pan phage display peptide libraries. To this end, the NCI LCMB would like to establish a CRADA with a biotechnology company possessing phage display peptide libraries and interested in participating in the screening effort. Analogs identified in this manner would be tested for agonist or antagonist activity, and might serve as prototypes of reagents capable of modulating wnt signaling associated receptor pathways.

The role of the National Cancer Institute in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.

2. Planning research studies and interpreting research results.

3. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Possession of a phage display peptide library.

2. Planning research studies and interpreting research results.

3. Providing support for onging CRADA-related research in the development of the particular application of the Technology.

(a) Financial support to facilitate scientific goals;

(b) Technical or financial support for further design of applications.

4. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on further research and development of this Technology. This ability can be demonstrated through experience and expertise in this or related areas of Technology indicating the ability to contribute intellectually to ongoing research and development.

2. The ability to collaborate with NCI on further research and development of this Technology. This ability can be demonstrated through experience and expertise in this or related areas of Technology indicating the ability to contribute intellectually to ongoing research and development.

3. The demonstration of adequate resources to perform the research, development and commercialization of this technology (e.g. facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

4. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this Technology.

5. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of Technology.

6. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.

7. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

8. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

9. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: October 8, 1998.

Kathleen Sybert,

Acting Director, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 98–27963 Filed 10–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Agents That Bind To and Inhibit Cytochrome P450 2A6

HV Gelboin, FJ Gonzalez (NCI)
Serial No. 60/093,936 filed 23 Jul 98
Licensing Contact: Dennis Penn, 301/496–7056 ext. 211

The cytochrome P450 family of enzymes is primarily responsible for the metabolism of xenobiotics such as drugs, carcinogens and environmental chemicals, as well as several classes of endobiotics such as steroids and prostiglandins. Members of the cytochrome P450 family are present in varying levels and their expression and activities are controlled by variables such as chemical environment, sex, developmental stage, nutrition and age.

There are multiple forms of these P450 and each of the individual forms exhibit degrees of specificity towards individual chemicals of the above classes. Genetic polymorphisms of cytochrome P450 2A6 result in phenotypically distinct deficient subpopulations that differ in their ability to perform biotransformations of a particular drug and other chemical compounds.

This invention describes monoclonal antibody Mab 151–45–4, which is highly specific for human cytochrome P450 2A6 and does not cross react with 12 other human P450s. The inhibitory and immunoblotting monoclonal antibody that are described in this invention report is unique and is the only known inhibitory monoclonal antibody to human P450 2A6. Its inhibitory activity P450 2A6 is greater than 90%. This monoclonal antibody may be used as a diagnostic probe identifying the distribution of 2A6 in populations and thus identifying enzyme deficient individuals that are sensitive to 2A6 metabolized drugs. This Mab will also identify those drugs that are currently used and in the process of drug development which are substrates for 2A6. Metabolism of partner drugs by P450 2A6 may be the basis for drug-drug toxicity.

Agents That Bind To and Inhibit Human Cytochrome P450 1A2

HV Gelboin, FJ Gonzalez, TJ Yang (NCI)
Serial No. 60/093,913 filed 23 Jun 98
Licensing Contact: Dennis Penn, 301/466–7056 ext. 211

The cytochrome P450 family of enzymes is primarily responsible for the metabolism of xenobiotics such as drugs, food pyrolysate, carcinogens and environmental chemicals, as well as several classes of endobiotics such as steroids and prostaglandins. Members of the cytochrome P450 family are present in varying levels in human tissue.

There are multiple forms of these P450 and each of the individual forms exhibit metabolic activity, often overlapping, towards individual chemicals of the above classes. Genetic polymorphisms of cytochrome P450 result in phenotypically distinct subpopulations that differ in their ability to perform biotransformations of a particular drug and other chemical compounds.

This invention describes monoclonal antibodies Mab 26–7–5, Mab 951–5–1 and Mab 1812–2–4, which are highly specific for human cytochrome P450 1A2 and do not cross react with 11 other human P450s. These Mabs exhibit strong immunoblotting activity and enzyme inhibitory activity greater than 85%. The inhibitory and immunoblotting monoclonal antibody that are described in this invention report is unique and is the only known inhibitory monoclonal antibody to

human P450 1A2. Thus these Mabs may be used to identify drugs, carcinogens and other xenobiotics metabolized by P450 1A2 in human liver. The inhibitory properties can determine the quantitative metabolic contribution of P450 1A2 in human liver relative to that of other P450s that may also metabolize 1A2 substrates. These Mabs can identify drugs currently in use and in the process of drug development which are substrates for 1A2. The Mab can also identify partner drugs metabolized by 1A2 that may be a basis of drug-drug toxicity. The Mabs are also diagnostic probes identifying the distribution of 1A2 in populations and thus identifying enzyme deficient individuals that are sensitive to 1A2 metabolized drugs.

AAV5 Vector and Uses Thereof

JA Chiorini (NHLBI)
Serial No. 60/087,029 filed 28 May 98
Licensing Contact: Susan S. Rucker, 301/496–7056 ext. 245

The invention described and claimed in this patent application provides for novel vectors and viral particles which comprise adeno-associated virus serotype 5 (AAV5). AAV5 is a single-stranded DNA virus of either plus or minus polarity which, like other AAV serotypes (AAV4, AAV2) requires a helper virus for replication. AAV type 2 has the interesting and potentially useful ability to integrate into human chromosome 19 q 13.3-q ter. This activity is dependent on the non-structural, Rep, proteins of AAV2. The Rep proteins of AAV types 2 and 5 are dissimilar and are not able to substitute in DNA replication of the heterologous serotype. Based on preliminary fluorescent in situ hybridization (FISH) results, the integration of AAV type 5 occurs specifically, but at a different genetic locus to that of AAV type 2.

AAV5 offers several advantages which make it attractive for use in gene therapy: 1. increased production (10–50 fold greater than AAV2); 2. distinct integration locus when compared to AAV2; 3. Rep protein and ITR regions do not complement other AAV serotypes; 4. appears to utilize different cell surface attachment molecules than those of AAV type 2.

Variant Peptide Ligands That Selectively Induce Apoptosis

MJ Lenardo, RN Germain, B Combadiere, C Reis e Sousa (NIAID)
Serial No. 60/072,952 filed 29 Jan 98
Licensing Contact: Jaconda Wagner, 301/496–7735 ext. 284

This invention relates to selective modulation of specific T cell responses. Variant peptide ligands for the T cell receptor have been identified and characterized. These variant peptide ligands act as partial agonists. Specifically, the ligands induce apoptosis in T cells without the concomitant production and release of non-death inducing cytokines. These variant peptide ligands can be used to treat or prevent T cell associated disorders such as autoimmune diseases, allergic disorders, graft rejection and graft versus host disease by selectively eliminating specific T cell populations.

Method For Synthesizing 9-(2,3-Dideoxy-2-fluoro-β-D-threo-pentofuranosyl)adenine (β-Fdda)

VE Marquez, MA Siddiqui, JS Driscoll (NCI)
Serial No. 60/067,765 filed 10 Dec 97
Licensing Contact: J. Peter Kim, 301/496–7056 ext. 264

AIDS (acquired immunodeficiency syndrome), first reported in the United States in 1981, has become a worldwide epidemic, crossing all geographic and demographic boundaries. More than 475,000 cases of AIDS have been reported in the United States since 1981 and more than 295,000 deaths have resulted in the U.S. from AIDS. Over 1.5 million Americans are thought to be infected with HIV (human immunodeficiency virus),the causative agent of AIDS. One clinically useful anti-HIV nucleoside is 9-(2,3-Dideoxy-2-fluoro-β-D-threo-pentofuranosyl)adenine (β-Fdda.)

The subject invention relates to methods and compounds for a highly effective synthesis of clinically useful anti-HIV active nucleosides such as 9-(2,3-Dideoxy-2-fluoro-β-D-threo-pentofuranosyl) adenine (β-FddA), and analogues and prodrugs thereof.

Single-Shot Spiral Scanning Magnetic Resonance Imaging Using Trapezoidal Gradients

JH Duyn (CC)
Serial No. 60/067,670 filed 05 Dec 97
Licensing Contact: John Fahner-Vihtelic, 301/496–7735 ext. 270

The present application describes a magnetic resonance imaging (MRI) apparatus which employs trapezoidal gradients. This apparatus allows for fast MRI scanning with excellent signal to noise ratio that is relatively insensitive to motion. Single-shot spiral scanning places high demands on gradient hardware which creates a need for carefully designed gradient waveforms. Use of the trapezoidal wave forms embodied in this invention overcome problems such as large heat load to the pulse-width modulators. The present technology applies to cardiac imaging as well as functional neuroimaging using fMRI based on blood oxygenation (BOLD) dependent contrast.

Methods of Using CR3 and CR4 Ligands for Inhibiting IL–12 To Treat Autoimmune Disease

B Kelsall, W Strober, I Fuss, T Marth (NIAID)
Serial No. 60/066,238 filed 20 Nov 97
Licensing Contact: Jaconda Wagner, 301/496–7735 ext. 284

This invention provides a novel approach to downregulating the production of IL–12. Specifically, Marth and Kelsall have shown that IL–12 production can be modulated via the complement receptors CR3 and CR4. By binding a ligand, such as an antibody, to the complement receptors, an IL–12 induced inflammatory response can be modulated. This method can be used to treat various autoimmune diseases.

Real-Time Monitoring of Electrocardiogram During Magnetic Resonance Scanning

A Berson (NHLBI)
Serial No. 08/965,869 filed 07 Nov 97
Licensing Contact: John Fahner-Vihtelic, 301/496–7735 ext. 270

The present application describes an apparatus and method for monitoring an electrocardiogram (ECG) during magnetic resonance (MR) scanning. This device consists of a unique electrode system that allows the ECG to be obtained by a series of potential measurements between certain of the placed electrodes. Monitoring the ECG in patients undergoing MR scanning can be extremely important if the subject of the MR scan is a cardiac patient or is being stressed at the time of the scan. Interference of ECG by the magnetic field associated with MR scanning, gradient fields, RF sampling fields, and magnetohydrodynamics incidental to blood flow, can be overcome with this invention.

A Swine Hepatitis E Virus and Uses Thereof

Serial No. 60/053,069 filed 18 Jul 97; PCT/US98/14665 X–J Meng, RH Purcell, SU Emerson (NIAID)
Licensing Contact: Carol Salata, 301/496–7735 ext. 232

This invention is directed to a novel swine hepatitis E virus (swine HEV) and its partial sequence. This swine HEV is unique from other previously-described HEV strains but is both genetically and serologically related to human HEV. The putative capsid protein of HEV strains, when expressed as a recombinant protein in insect cells, is highly useful in the evaluation of infection of swine

as well as of humans with HEV. The recombinant HEV capsid protein may also be useful in the vaccination of humans and animals against infection with HEV strains.

Oligonucleotides Which Specifically Bind Retroviral Nucleocapsid Proteins

A Rein, J Casas-Finet, R Fisher, M Fivash, LE Henderson (NCI)
PCT/US97/08936 filed 19 May 97 (claiming priority of USSN 60/017,128 filed 20 May 96)
Licensing Contact: J. Peter Kim, 301/496–7056 ext. 264

The human immunodeficiency virus (HIV) is the causative agent of acquired immunodeficiency syndrome (AIDS). A retroviral protein species, the gag polyprotein, is involved in the assembly of retrovirus particles and capable of specific interactions with nucleic acids. After the virion is released from the cell, the polyprotein is cleaved by the virus-encoded protease. One of the cleaved products, the nucleocapsid (NC) protein, then binds to genomic RNA, forming the ribonucleoprotein core of the mature particle. The interaction between gag and genomic RNA is known to involve the NC domain of the polyprotein.

The present invention relates to retroviral proteins, such as NC and the gag precursor, and their ability to bind to specific nucleic acid sequences with high affinity. Accordingly, the invention provides for oligonucleotides which bind to nucleocapsids proteins with high affinity, molecular decoys for retroviral nucleocapsid proteins which inhibit viral replication, targeted molecules comprising high affinity oligonucleotides, assays for selecting molecules which inhibit the specific interaction between retroviral proteins and high affinity oligonucleotides, and related kits.

Compositions for the Prevention or Retardation Of Cataracts

JS Zigler Jr., P Russell, S Tumminia, C Qin, CM Krishna (NEI)
PCT/US97/01105 filed 24 Jan 97 (claiming priority of USSN 60/010,637 filed 26 Jan 96)
Licensing Contact: David Sadowski, 301/496–7735, ext. 288

Oxidative stress is becoming recognized as a major problem, and free radicals and activated oxygen species are recognized as agents of tissue damage associated with a number of conditions. Aging-related cataract is a disease of multifactorial origin involving many of the same processes which characterize the process of aging in other tissues. It appears that once cataractogenesis has begun, the process of cataract development may proceed via one or more common pathways or processes. The subject invention focuses on intervening at the level of these common pathways in hopes of stopping or slowing the progression of the disease process. The present invention provides methods and compositions for the prevention and treatment of cataract formation which comprise a nitroxide free radical compound or its hydroxylamine and a thiol reducing agent.

Methods for Enhancing Oral Tolerance and Treating Autoimmune Disease Using Inhibitors Of IL–12

W Strober, Brian Kelsall, T Marth (NIAID)
PCT/US96/16007 filed 11 Oct 96 designating AU, US, CA, JP (no rights in EPO); published as WO 98/16248 on 23 Apr 98
Licensing Contact: Jaconda Wagner, 301/496–7735 ext. 284

Oral tolerance is the immunologic mechanism by which the mucosal immune system maintains unresponsiveness to the myriad of antigens in the mucosal environment which might otherwise induce untoward immune responses. Recent studies have shown that it is mediated by several distinct, yet interacting mechanisms including the generation of suppressive T cells producing antigen nonspecific cytokines and the induction of clonal deletion and/or anergy. This invention provides two methods: 1) for enhancing oral tolerance to an antigen and 2) for treating an autoimmune disease. By orally administering an antigen associated with an autoimmune disease, allergic disease or graft versus host (GvH) disease along with an inhibitor of IL–12, oral tolerance can be enhanced. The diseases can also be treated using virtually the same method.

Method for Protecting Bone Marrow Against Chemotherapeutic Drugs Using Transforming Growth Factor Beta 1

JR Keller, FW Ruscetti, R Wiltrout (NCI)
U.S. Patent 5,278,145 issued 11 Jan 94
Licensing Contact: Jaconda Wagner, 301/496–7735 ext. 284

This invention provides a method for protecting hematopoietic stem cells from the myelotoxicity of chemotherapeutic drugs or radiation therapy. Chemotherapeutic agents destroy the body's ability to make granulocytes thereby exposing patients to potentially lethal microorganisms. Previous attempts to alleviate this problem focused on the use of growth factors to accelerate recovery from myelotoxicity. This invention details a method for administering TGF–β1 in conjunction with the administration of chemotherapeutic drugs in order to reduce the number of stem cells killed thereby reducing myelotoxicity which is an improvement to the previous method.

Dated: October 13, 1998.

Jack Spiegel, Ph.D.

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–27959 Filed 10–16–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.
ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. issued patents and patent applications listed below may be obtained by contacting Carol Salata, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057 ext. 232; fax: 301/402–0220; e-mail: SalataC@od.nih.gov. A signed Confidential Disclosure agreement will be required to receive copies of the patent applications.

Dimeric Naphthylisoquinoline Alkaloids and Synthesis Methods Thereof

G Bringmann, S Harmsen, MR Boyd (NCI)
Serial No. 08/279,339 filed 22 Jul 94 (U.S. Patent 5,571,919 issued 05 Nov 96) and Serial No. 08/674,359 filed 01 Jul 96 (U.S. Patent 5,789,594 issued 04 Aug 98)

This invention embodies the synthesis and novel compounds comprising homodimeric and heterodimeric napthylisoquinoline

alkaloids and derivatives. The methods presented in the invention are advantageous because they permit, for the first time, the *in vitro* synthesis of compounds for which the only known natural source is the rare tropical vine, *Ancistrocladus korupensis* of Central Africa. This class of compounds has been demonstrated to be effective in inhibiting the ability of HIV to replicate and infect cells. The compounds also have antimalaria activity. Therefore, the dimeric alkaloids appear to comprise a novel class of antiviral and antiparasitic drugs that may be very useful by themselves or in combination with other treatments.

Dimeric Arylisoquinoline Alkaloids and Synthesis Methods Thereof

G Bringmann, MR Boyd, R Gotz, TR Kelly (NCI)
Serial No. 08/363,684 filed 23 Dec 94 (U.S. Patent 5,578,729 issued 26 Nov 96) and Serial No. 08/721,084 filed 24 Sep 96 (U.S. Patent 5,786,482 issued 28 Jul 98)

The present invention relates to novel compounds and to a new method of chemical synthesis of known and new dimeric arylisoquinoline alkaloids. These compounds are members of a general class known as naphthylisoquinoline alkaloids. These dimeric alkaloids have been found to be effective inhibitors of HIV replication in human immune cells. The compounds also have antimalarial activity. The method of this invention provides access not only to known but also heretofore unknown medically useful compounds. The invention also provides for new dimeric arylisoquinoline compounds and derivative thereof.

Monomeric Naphthylisoquinoline Alkaloids and Synthesis Methods Thereof

G Bringmann, R Gotz, MR Boyd (NCI)
Serial No. 08/279,291 filed 22 Jul 94 (U.S. Patent 5,552,550 issued 03 Sep 96) and Serial No. 08/674,362 filed 01 Jul 96 (U.S. Patent 5,763,613 issued 09 Jun 98)

Monomeric naphthylisoquinoline alkaloids and their derivatives are medically useful for the treatment of parasitic infections including malaria. However, these particular alkaloids are available in a limited supply since they are obtained from scarce plants which have a limited geographic distribution. This invention embodies methods for the preparation of monomeric naphthylisoquinoline alkaloids, including the antiparasitic korupensamines and related compounds, as well as non-korupensamines. New, medically useful, naphthylisoquinoline compounds and derivatives are also described.

Monomeric and Dimeric Arylisoquinoline Alkaloids and Derivatives Thereof

G Bringmann, MR Boyd, M Wenzel (NCI)
Serial No. 09/001,801 filed 31 Dec 97

The present invention provides new monomeric derivatives of the C-8′-7 linked naphthylisoquinoline alkaloid dioncophylline D. The invention also provides new C–4 substituted monmeric arylisoquinoline alkaloid derivatives. The present invention furthermore provides novel dimeric arylisoquinoline alkaloids comprised of coupled first and second arylisoquinoline monomers, wherein either or both of said monomer(s) is (are) monomeric compound(s) of the present invention.

Monomeric and dimeric compounds of the present invention have medically useful properties, such as antimicrobial properties, more specifically antimalarial and antiviral properties. Monomeric compounds of the present invention are also useful as building blocks or intermediates for synthesis of novel dimeric arylisoquinoline alkaloids.

Michellamine Antiviral Agents, Compositions, and Treatment Methods

MR Boyd, JH Cardellina, KP Manfredi, JW Blunt, LK Pannell, JB McMahon, RJ Gulakowski, GM Cragg, G Bringmann, D Thomas, J Jato (NCI)
Serial No. 08/049,824 filed 19 Apr 93 (U.S. Patent 5,455,251 issued 03 Oct 95) and Serial No. 08/457,677 filed 01 Jun 95 (U.S. Patent 5,654,432 issued 05 Aug 97)

Michellamines, structurally novel naphthalene tetrahydroisoquinoline alkaloids, are a new class of antiviral compounds present in the plant *Ancisrocladus korupensis*. The *Ancitrocladaceae* is a small paleotropical family, with 20 species known from Asia and tropical Africa. *A. korupensis* contains three distinct michellamines, A, B, and C. Michellamine B, the most prevalent and potent of the three, is capable of inhibiting two distinct stages of the HIV life cycle. the compound is able to inhibit HIV-induced cell killing of infected cells but has to effect on HIV virons or initial binding of HIV to target cells. In addition, michellamine B inhibits the enzymatic activity of both the normal HIV reverse transcriptase and the activity of several mutant transcriptases which are resistant to several nonnucleoside inhibitors. The claims of this invention relate to michellamine compounds and derivatives, methods for the isolation of the michellamines from *A. korupensis*, and methods for the administration of these antiviral compounds for treating patients infected with HIV. Licenses of this invention will be required to comport with all applicable federal and country-of-collection policies relating to biodiversity.

Antimalarial Korupensamines and Pharmaceutical Composition and Medical Uses Thereof

MR Boyd, G Francois, G Bringmann, YF Hallock, KP Manfredi, JH Cardellina (NCI)
Serial No. 08/195,260 filed 14 Feb 94 (U.S. Patent 5,409,938 issued 25 Apr 95)

The class of compounds known as korupensamines exhibit in vitro and in viro antimalarial activity and offer a potent new means for treating and controlling this devastating disease. As many as 2–3 million people worldwide die from malaria each year, and many more suffer from long-term chronic infection. The deadliest malarial parasites have become resistant to previously effective antimalarial drugs such as chloroquine and other clinically useful agents; therefore, effective new antimalarial drugs are urgently needed. These korupensamine compounds, which are isolated from a new species of the plant genus *Ancistrocladus* which is found in tropical Africa and southern and southeast Asia, effectively inhibit the growth, reproduction, and pathologic effects of a broad spectrum of *Plasmodia* parasites when given alone or in conjunction with previously available antimalarial agents. Licensees of this invention will be required to comport with all applicable federally and country-of-collection policies relating to biodiversity.

Antimalarial Napthylisoquinoline Alkaloids and Pharmaceutical Compositions and Medicinal Uses Thereof

G Francois, G Bringmann, JD Phillipson, MR Boyd, LA Assi, G Dochez, C Schneider, G Timperman (NCI)
Serial No. 08/195,547 filed 14 Feb 94 (U.S. Patent 5,639,761 issued 17 Jun 97) and Serial No. 08/843,582 filed 16 Apr 97

This is a new class of napthylisoquinoline alkaloid compounds, present in plant species of the *Ancistrocladaceae* and *Dionocophyllaceae* plant families which

are found in tropical Africa and southern and southeast Asia, that exhibit effective antimalarial properties and offer important new weapons in the treatment of this devastating disease. The deadliest malarial parasites have become resistant to previously effective antimalarial drugs; therefore, effective new antimalarial drugs are urgently needed. These new naphthylisoquinoline compounds effectively inhibit the growth, reproduction, and pathologic effects of a broad spectrum of *Plasmodia* parasites, including drug-resistant strains.

Dated: October 13, 1998.

Jack Speigel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–27960 Filed 10–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings 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 of 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 Cancer Institute Special Emphasis Panel, Health Communications in Cancer Control.

Date: November 4–6, 1998.

Time: 7:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, Gaithersburg, MD 20878.

Contact Person: C.M. Kerwin, PhD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–609, Rockville, MD 20892–7405, 301/496–7421.

Name of Committee: National Cancer Institute Special Emphasis Panel, Regional Variation in Breast Cancer Rates in the United States.

Date: November 9, 1998.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North–Conference Room D, 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: Lalita D Palekar, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–622B, Rockville, MD 20892–7405, 301/496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–27950 Filed 10–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel, Oncogenes in Cancer Etiology and Progression.

Date: November 4–5, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Crown Plaza Philadelphia Center City, 1800 Market Street, Philadelphia, PA 19103.

Contact Person: David Irwin, PhD, Research Programs Review Section Chief, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN—Room 635E, MSC 7405, Rockville, MD 20892–7405, (301) 402–0371, di4knih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–27951 Filed 10–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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, National Cancer Institute.

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 Cancer Institute, including consideration of personnel qualifications 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, National Cancer Institute, Subcommittee B—Basic Sciences.

Date: November 1–2, 1998.

Time: November 1, 1998, 7:00 pm to 10:30 pm.

Agenda: To review and evaluate administrative confidential matters.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Time: November 2, 1998, 8:00 am to 5:30 pm.

Agenda: To review and evaluate administrative confidential matters.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Florence E. Farber, PhD, Executive Secretary, Office of Advisory Activities, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN 609, Rockville, MD 20892, 301/496–2378.

(Catalogue of Federal Domestic Assistance Program Nos 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention

Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–27952 Filed 10–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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.

Nome of Committee: National Cancer Institute Initial Review Group, Subcommittee E—Prevention and Control.

Date: November 30–December 2, 1998.

Time: 7:00 a.m. to 2:00 p.m.

Agendo: To review and evaluate grant applications.

Ploce: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Mary C. Fletcher, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN—Room 643D, Rockville, MD 20892–7405, 301/496–4964.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–27953 Filed 10–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Initial Review Group, Subcommittee C—Basic and Preclinical.

Date: November 30–December 2, 1998.

Time: 7:30 am to 5:00 pm.

Agendo: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Virginia P. Wray, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6130 Executive Boulevard—Room 635, Rockville, MD 20895–7405, 301/496–9236.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–27954 Filed 10–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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.

Nome of Committee: National Cancer Institute Initial Review Group, Subcommittee G—Education, National Cancer Institute Initial Review Group—Subcommittee G.

Date: November 11–13, 1998.

Time: 7:00 am to 6:00 pm.

Agendo: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Harvey Stein, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, 301–496–7481.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–27955 Filed 10–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel, Regional Variation in Breast Cancer Rates in the United States.

Date: November 9, 1998.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North—Conference Room D, 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: Lalita D Palekar, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–622B, Rockville, MD 20892–7405, 301/496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–27956 Filed 10–16–98; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings 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: Training Grant and Career Development Review Committee.

Date: November 4–6, 1998.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Portofino Hotel, 260 Portofino Way, Redondo Beach, CA 90277.

Contact Person: Alfred W. Gordon, Phd, Scientific Review Branch, National Institute of Neurological Disorders and Stroke, National Institutes of Health, PHS, DHHS, 7550 Wisconsin Avenue, Rm 9C10, Bethesda, MD 20892, 301–496–9223, aw38x@nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: November 5, 1998.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Portofino Hotel, 260 Portofino Way, Redondo Beach, CA 90277.

Contact Person: Lillian M. Pubols, Phd, Chief, Scientific Review Branch, Scientific Review Branch, Division of Extramural Activities, NINDS, National Institutes of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892–9175, 301–496–9223, lp28e@nih.gov.

(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: October 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–27949 Filed 10–16–98; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

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 Mental Health Special Emphasis Panel.

Date: October 28, 1998.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Victoria S. Levin, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

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.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 13, 1998.

Time: 11:00 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Mary Sue Krause, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 18, 1998.

Time: 1:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Call).

Contact Person: Victoria S. Levin, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 20, 1998.

Time: 9:30 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Jack D. Maser, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

(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: October 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–27957 Filed 10–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings 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: Pathophysiological Sciences Initial Review Group, General Medicine A Subcommittee 2.
Date: October 19–20, 1998.
Time: 8:30 AM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW, Washington, DC 20037.
Contact Person: Mushtaq A. Khan, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7818, Bethesda, MD 20892, (301) 435–1778, khanm@drg.nih.gov.
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.

Name of Committee: Oncological Sciences Initial Review Group, Experimental Therapeutics Subcommittee 2.
Date: October 19–21, 1998.
Time: 8:30 AM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pile, Rockville, MD 20852.
Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.
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.

Name of Committee: Genetic Sciences Initial Review Group, Genome Study Section.
Date: October 19–20, 1998.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Ramada, 8400 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Cheryl M. Corsaro, PHD,. Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7890, Bethesda, MD 20892, (301) 435–1045.
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.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Epidemiology and Disease Control Subcommittee 1.
Date: October 21–23, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Scott Osborne, PHD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.
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.

Name of Committee: Biochemical Sciences Initial Review Group, Physiological Chemistry Study Section.
Date: October 22–23, 1998.
Time: 8:00 AM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: St. James Hotel, 950 24th Street, N.W., Washington, DC 20037.
Contact Person: Richard Panniers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.
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.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Biophysical Chemistry Study Section.
Date: October 22–23, 1998.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Ramada, 8400 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Donald Schneider, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.
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.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Metallobiochemistry Study Section.
Date: October 22–23, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.
Contact Person: John L. Bowers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 22–23, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW, Washington, DC 20037.
Contact Person: Nancy Pearson, PHD, Chief, Genetic Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7890, Bethesda, MD 20892, (301) 435–1047.
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 22–23, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: State Plaza Hotel, 2117 E Street, Washington, DC 20037.
Contact Person: Joe Marwah, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.
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.

Name of Committee: Immunological Sciences Initial Review Group, Immunobiology Study Section.
Date: October 22–23, 1998.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.
Contact Person: Betty Hayden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223.
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 22, 1998.
Time: 11:00 AM to 2:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mushtaq A. Khan, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive,

Room 4124, MSC 7818, Bethesda, MD 20892, (301) 435–1778, khanm@drg.nih.gov.

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.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Orthopedics and Musculoskeletal Study Section.

Date: October 26–27, 1998.

Time: 8:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Daniel F. McDonald, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215.

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. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 9, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–27958 Filed 10–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-Exclusive License: erbB–2/HER2/neu Gene Segments, Probes, Recombinant DNA and Kits for Detection

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a co-exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial Number 08/475,035, entitled "erbB–2 Gene Segments, Probes, Recombinant DNA and Kits for Detection" filed June 7, 1995, and U.S. Patent Application Serial Number 07/110,791, entitled "Human Gene Related To But Distinct From EGF Receptor", filed October 21, 1987 to Oncor, Inc., having a place of business in Gaithersburg, MD. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before December 18, 1998 will be considered.

ADDRESSES: Requestgs for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Susan S. Rucker, J.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 245; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: In an effort to identify genes which are associated with cancer, the invention described in these patent applications includes a gene, related to the epidermal growth factor, now known as erbB-2/HER/neu. Research related to this gene has indicated that the gene is implicated in breast and other cancers. While the amplification of this gene has been demonstrated to have prognostic value with respect to breast cancer additional development is needed to determine whether or not the gene has value as a prognostic indicator for other types of cancer or may serve as an indicator which can be used to select the proper course of treatment for breast and other cancers.

The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the development of nucleotide-based diagnostic and prognostic uses, regulated by the Food and Drug Administration, of the invention for cancers other than breast cancer including prostate, ovarian, and bladder cancers.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 13, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–27962 Filed 10–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: 21 Substituted Progesterone Derivatives as New Anti-Progestational Agents

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial No. 60/016, 628, filed May 1, 1996 entitled, "21 Substituted Progesterone Derivatives as New Anti-Progestational Agents" to Zonagen, Inc., having a place of business in Houston, TX. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before December 18, 1998 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Dennis H. Penn, Pharm.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 211; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: In an effort to develop an efficacious treatment for human reproductive disorders this invention describes 21 progesterone analogs possessing potent antiprogestational activity with minimal antiglucocorticoid activity. These compounds may have utility in treating human reproductive disease and certain hormone sensitive tumors.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective

exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH received written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the use of the invention for the development of pharmaceutical compounds to treat drug human reproductive disorders and hormone sensitive tumors.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 13, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–27961 Filed 10–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

TE003872–0

Applicant: U.S. Army Corps of Engineers, Rock Island District, Rock Island, Illinois; Dudley M. Hanson, Chief, Planning, Programs, and Project Management Division.

The applicant requests a permit to take (capture and release; collect dead specimens) fat pocketbook [*Potamilus (=Proptera) capax*] and Higgins' eye pearlymussel (*Lampsilis higginsi*) in Pools 11 to 22 of the Upper Mississippi River, river miles 615 to 300 in the states of Illinois, Iowa, Missouri, and Wisconsin for biological survey purposes. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, 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, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056. Telephone: (612/713–5332); FAX: (612/713–5292).

Dated: October 8, 1998.

T.J. Miller,

Acting Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 96–27881 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–65–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Fourth Amendment to the April 6, 1992 Agreement between the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana concerning Video Keno, Poker and Bingo Games, Simulcast Racing and Other Class III Gaming which was executed on August 6, 1998.

DATES: This action is effective October 19, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: October 2, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–27933 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment I to the Tribal-State Compact for Regulation of Class III Gaming Between The Burns-Paiute Tribe and the State of Oregon, which was executed on July 29, 1998.

DATES: This action is effective October 19, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: September 30, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–27932 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated

authority, has approved the Tribal-State Gaming Compact between the State of California and the Redding Rancheria, which was executed on August 11, 1998.

DATES: October 19, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: October 7, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–27934 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Notice of approved Tribal-State Compact

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Winnebago Tribe of Nebraska and the State of Iowa Gaming Compact between the Winnebago Tribe of Nebraska and the State of Iowa, which was executed on August 6, 1998.

DATES: October 19, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066 .

Dated: October 7, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–27935 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–00]

Notice of Availability of Plan Amendment; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management, Winnemucca Field Office, has completed the Final Environmental Assessment/ Finding of No Significant Impact of the Proposed Plan Amendments to the Paradise-Denio and Sonoma-Gerlach Management Framework Plans (MFPs). The proposed plan amendments reflect changes in management policy and guidelines regarding the retention, acquisition, and disposal of public lands, managed by the Winnemucca Field Office, over the past 16 years.

DATES: The protest period for these Proposed Plan Amendments will commence with the date of publication of this notice and last a minimum of 30 days. Protests must be received on or before December 1, 1998.

ADDRESSES: Protests must be addressed to the Director, Bureau of Land Management, Attn: Ms. Brenda Williams, Protests Manager (WO 210), 1849 C Street N.W./LS–1075, Washington, D.C. 20240, within 30 days after the date of publication of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, or Gerald Moritz, Planning/Environmental Coordinator, Winnemucca District Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445, (702) 623–1500.

Copies of the Environmental Assessment and Proposed Plan Amendments are available for review at the Winnemucca District Office.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202 (a) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The Proposed Amendments are subject to protest from any party who has participated in the planning process. Protests must be specific and contain the following information:

The name, mailing address, phone number, and interest of the person filing the protest.

A statement of the issue(s) being protested.

A statement of the part(s) of the proposed amendment being protested and citing pages, paragraphs, maps etc., of the Proposed Amendment.

A copy of all documents addressing the issue(s) submitted by the protestor during the planning process or a reference to the date when the protester discussed the issue(s) for the record.

A concise statement as to why the protester believes the BLM State Director is incorrect.

Upon resolution of any protests, and Approved Plan and Decision Record will be issued. The approved Plan/ Decision Record will be mailed to all individuals who participated in this planning process and all other interested publics upon their request.

Dated: October 6, 1998.

Michael R. Holbert,

Acting District Manager.

[FR Doc. 98–27966 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–063–1010–00]

Extension of Public Comment Period in Connection With Notice of Intent To Amend the California Desert Conservation Area Plan, 1980, To Address Management of Three Grazing Allotments in the Eastern Mojave Desert, San Bernardino County, CA

AGENCY: Bureau of Land Management, California Desert District Office.

ACTION: Extension of public comment period.

SUMMARY: Notice is hereby given of an extension to the initial public comment period under the Notice of Intent (63 FR 49133, September 14, 1998). This extension is in response to a request from the public.

DATES: Comments must be received by BLM at the following address by November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Larry Morgan, Rangeland Management Specialist, U.S.D.I., Bureau of Land Management, California Desert District Office, 6221 Box Springs Blvd., Riverside, California 92507–0714, tel: (909) 697–5388.

Dated: October 12, 1998.

Jim Williams,

Acting District Manager.

[FR Doc. 98–27915 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Advisory Council Meeting

AGENCY: Lower Snake River District, Bureau of Land Management, Interior.

ACTION: Meeting notice.

SUMMARY: The Lower Snake River District Resource Advisory Council will meet in Boise to discuss implementation of standards and guidelines for administering livestock grazing and a

long-term strategy to restore wildlife habitat in the Snake River Birds of Prey National Conservation Area.

DATES: November 9, 1998. The meeting will begin at 9:00 a.m. Public comment periods will be held at 9:30 a.m. and 4:00 p.m.

ADDRESSES: The meeting will be held at the Lower Snake River District Office, located at 3948 Development Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office (208–384–3393).

Katherine Kitchell,

District Manager.

[FR Doc. 98–27965 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–00; GP9–0009]

Notice of Change of Location for Meeting of Hells Canyon Subgroup of the John Day Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Prineville District Office, Interior.

ACTION: Change of location for the meeting of Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council.

SUMMARY: A meeting of the Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council will be held on October 23 and 24 at the Wallowa Mountains Ranger District, Forest Service Conference Room, 88401 Hwy 82, Enterprise, Oregon. This is a change in location from a previous **Federal Register** Notice dated September 17, 1998. The meeting will be from 9:00 a.m. to 5:00 p.m. on October 23, and 8:00 a.m. to 3:00 p.m. on October 24. The meeting is open to the public. Public comments will be received at 1:00 p.m. on October 23. The meeting will include information and processes concerning administrative procedures for the subgroup, election of officers, and development of the program of work and education needs of the group.

FOR FURTHER INFORMATION CONTACT: Karyn Wood, Wallowa-Whitman National Forest, P.O. Box 907. 1550 Dewy Avenue, Baker City, Oregon 97814, or call 541–523–6391.

Dated: October 9, 1998.

Harry R. Cosgriffe,

Acting District Manager.

[FR Doc. 98–27967 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1430–00; –N–56125]

Notice of Realty Action: Assignment and Change of Use of Lease/ Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Assignment and change of use for lease N–56125 recreation and public purpose lease/conveyance.

SUMMARY: The subject lease N–56125, was originally issued to St. Judes Ranch for Children, for the development and operation of a Good Shepard Campus. An assignment and change in use of the lease to the City of Las Vegas for a public park and ballfield complex is now being proposed.

The following public lands in Clark County, Nevada, have been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands are needed for development of a public park and ballfield complex.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 20, NE¼NE¼.

Containing 40 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued/assigned, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and well be subject to:

1. Easements in favor of Clark County/ the City of Las Vegas for roads, public utilities and flood control purposes.

2. Those rights for road purposes granted to Clark County by Permit No. CC–018138 under the Act of November 9, 1921.

3. Those rights for highway purposes granted to the Nevada Department of Transportation by Permit No. N–46063 under the Act of August 27, 1958.

4. Those rights for distribution and telephone lines granted to Nevada Power Company by Permit No. N–58721, and those rights for water main purposes granted to Las Vegas Valley Water District by Permit No. N–55369 pursuant to the Act of October, 21, 1976.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

By publication in the **Federal Register** on May 27, 1994, the above described land was segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed assignment and change of use of the lands to the Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada, 89108.

Comments: Interested parties may submit comments involving the suitability of the land for the public park and ballfield complex. Comments on the proposal are restricted to whether the land is physically 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.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for a public park and ballfield complex.

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.**

Dated: October 7, 1998.

Rex Wells,

Assistant Field Office Manager, Division of Lands.

[FR Doc. 98–27964 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–320–1020–00]

Resource Management Plan Amendment

AGENCY: Bureau of Land Management, Alturas Field Office, Alturas, California.

ACTION: Resource Management Plan Amendment.

SUMMARY: Pursuant to the authorities in National Environmental Policy Act (Pub. L. 91–190) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U. S. Bureau of Land Management's Alturas Field Office is proposing to amend the Alturas Resource Area Resource Management Plan (RMP) through finalization of a Tablelands Integrated Resource Management Plan (TIRMP).

SUPPLEMENTARY INFORMATION: The proposed TIRMP has been developed over the last several years with input from a steering committee made up of a variety of local interests. The Tablelands Planning Area is located in Northeastern California approximately 7 miles to the southeast of the town of Alturas, and extends south approximately 17 miles to the town of Likely. This 56,000 acre planning area consists primarily of public lands administered by the Bureau of Land Management (85%). Disciplines represented in development of the proposed TIRMP include: wildlife biology, fisheries, recreation, range management, hydrology, fire management, botany, archaeology and forestry. Specific aspects of the RMP proposed for amendment include: land disposal actions, livestock grazing in the Fitzhugh Creek corridor, livestock grazing season-of-use, establishment of a new grazing allotment, and recreation, transportation and timber management. Copies of the proposed TIRMP are available for review at the Alturas Field Office.

DATES: Comments and recommendations will be received on or before November 18, 1998. The environmental assessment will be available within 45 days from the date of this notice. Comments on the environmental assessment should be submitted within 75 days of this notice.

FOR FURTHER INFORMATION CONTACT: Contact Field Manager, Alturas Field Office, 708 W. 12th St., Alturas, CA 96101. (530) 233–4666. tburke@ca.blm.gov.

Timothy J. Burke,

Alturas Field Manager.

[FR Doc. 98–27891 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Guide to Royalty Information

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Minerals Management Service (MMS) recently published the *Guide to Royalty Information* (Guide) to assist the public in obtaining mineral royalty information from the Royalty Management Program (RMP) and other sources. This notice informs you about where the *Guide* can be obtained.

DATES: The *Guide* was published on August 17, 1998, and is currently available.

ADDRESSES: See For Further Information Contact Section for addresses.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory K. Kann, RMP Freedom of Information Act Officer, Minerals Management Service, P.O. Box 25165, MS–3062, Denver, CO 80225–0165, telephone number (303) 231–3013, fax number (303) 231–3781, e-mail: gregory.kann@mms.gov.

SUPPLEMENTARY INFORMATION: MMS recently published the *Guide to Royalty Information* to explain:

- How to obtain the types of information that RMP regularly publishes and distributes through paper and/or electronic media.
- How to obtain information from sources other than RMP.
- How to file a request under the Freedom of Information Act (FOIA).
- How RMP will process your FOIA request.

The *Guide* can be viewed and printed from the Internet at http://www.rmp.mms.gov/custserv/pubserv/PublcnServ.htm. A paper copy can be obtained by contacting Mr. Gregory Kann at the address listed above.

Dated: October 5, 1998.

R. Dale Fazio,

Acting, Associate Director for Royalty Management.

[FR Doc. 98–27905 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans, dated April 30, 1993, and revised and renamed in September 1996, to Criteria for Evaluating Water Management Plans (Criteria). The Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water management plans developed by Central Valley Project contracts in the MP Region. The Criteria were developed and the plans evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination of the adequacy of each contractor's water management plan in the **Federal Register** and to allow the public a minimum of 30 days to comment on its preliminary determinations.

DATES: All public comments must be received by November 18, 1998.

ADDRESSES: Please mail comments to Lucille Billingsley, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento, California 95825. You may also write Ms. Billingsley to be placed on a mailing list for any subsequent information.

FOR FURTHER INFORMATION CONTACT: Lucille Billingsley at (916) 978–5215 [TDD (916) 978–5608].

SUPPLEMENTARY INFORMATION: Under provision of Section 3405(c) of the CVPIA (Title 34 Public Law 102–575), "The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform act of 1982." Also, according to Section 3405(c)(1), these

criteria will be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonable achievable by project contractors using best available cost-effective technology and best management practices."

The MP Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contracts over 2,000 irrigable acres) will prepare water management plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor, and update their water management plans. The steps are:

1. Describe the district.
2. Inventory water resources available to the District.
3. Best Management Practices (BMP's) for Agricultural Contractors.
4. BMP's for Urban Contractors.
5. Exemption Process.

The MP contractors listed below have developed water management plans which Reclamation has evaluated and preliminarily determined to meet the requirements of the Criteria. The districts are:

- Hills Valley Irrigation District,
- Ivanhoe Irrigation District,
- Lower Tule River Irrigation District,
- Pixley Irrigation District,
- Porterville Irrigation District,
- Saucelito Irrigation District,
- Southern San Joaquin Municipal Utilities District,
- Stone Corral Irrigation District,
- Terra Bella Irrigation District.
- Public comment on Reclamation's preliminary (i.e., draft) determinations is invited at this time. Copies of the plans listed above will be available for review at Reclamation's MP Regional office and MP's Area Office. If you wish to review a copy of the plans, please contact Ms. Billingsley to find the office nearest you.

Dated: October 8, 1998.

Robert F. Stackhouse,

Regional Resources Manager Mid-Pacific Region.

[FR Doc. 98–27914 Filed 10–16–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 30, 1998, and published in the **Federal Register** on July 9, 1998, (63 FR 37137), Damocles10, 3529 Lincoln Highway, Thorndale, Pennsylvania 19372, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Heroin (9200)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Hydromorphone (9150	II
Morphine (9300)	II

The firm plans to manufacture the listed controlled substances for the purpose of deuterium labeled internal standards for distribution to analytical laboratories.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Damocles10 to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Damocles10 on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 6, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–27971 Filed 10–16–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95–47]

Roxane Laboratories, Inc.; Intent To Allow the Importation of a Schedule II Substance, Grant of Registration To Import a Schedule II Substance

I. Introduction

A. History

On February 15, 1995, Roxane Laboratories, Inc. (hereinafter Roxane) applied to the Drug Enforcement Administration (DEA) for registration as an importer of the Schedule II substance cocaine pursuant to 21 U.S.C. 958(i)(1993). On June 8, 1995, DEA published notice of this application in the **Federal Register**, 60 FR 30,320 (1995). This notice advised that any manufacturer holding or applying for registration as a manufacturer of this basic class of controlled substance could file written comments or objections to the application and could also file a written request for a hearing on the application in accordance with 21 CFR 1301.43.[1]

In response to this publication, Stepan and Noramco submitted written comments, and by letter dated July 7, 1995, Mallinckrodt Chemical, Inc. (hereinafter Mallinckrodt) file a timely request for a hearing. Following prehearing procedures, a hearing was held in Arlington, Virginia, on February 5 through 9 and March 4 through 7, 1996, before Chief Administrative Law Judge Mary Ellen Bittner. Roxane, Mallinckrodt and DEA all participated in the hearing and were represented by counsel. At the hearing, all parties called witnesses to testify and introduced documentary evidence. After the hearing, all parties filed proposed findings of fact and conclusions of law and briefs. Roxane filed a rejoinder brief On September 23, 1997, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that the Acting Deputy Administrator issue a regulation permitting the importation of bulk cocaine by hydrochloride and that he grant Roxane's application for registration as an importer of bulk cocaine hydrochloride. On November 7,

[1] Subsequent to the hearing in this matter, DEA's Federal regulation citations were changed by final order. 65 FR 13,938 (March 24, 1997). Regulatory citations in the record and in the Administrative Law Judge's Opinion and Recommended Ruling, Findings of Fact, Conclusion of Law and Decision use the previous numbering system. This decision uses the current numbering system.

1997, Mallinckrodt and Romaine filed exceptions to the findings of fact and conclusions of law of the Administrative Law Judge.

On December 10, 1997, the Administrative Law Judge certified and transmitted the record to the Acting Deputy Administrator of DEA. The record included the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, the findings of fact and conclusions of law proposed by all parties, the exceptions filed by the parties, motions filed by all counsel, all the exhibits and affidavits, and all of the transcripts of the hearing sessions.

B. Regulatory Context

In accordance with the DEA Statement of Policy and Interpretation on registration of importers, 40 FR 43,745 (1975), the Acting Deputy Administrator will not grant Roxane's application unless Roxane establishes that the requirements of 21 U.S.C. 958(a) and 823(a) and of 21 CFR 1301.34(b)–(f) are met. Also, because DEA will not maintain a "contingency reserve" of registrants, Roxane must establish that cocaine may be imported pursuant to 21 U.S.C. 952(a)(2)(B), as a prerequisite to its registration as an importer of cocaine hydrochloride. As a result, this proceeding is inherently a combined rulemaking on whether the Schedule II controlled substance cocaine hydrochoride may lawfully be imported into the United States pursuant to 21 U.S.C. 952, and an adjudication on Roxane's application for registration as an importer of cocaine pursuant to 21 U.S.C. 958(a).

C. The Record

In the adjudication, the Acting Deputy Administrator will issue his final order based on the record made before the Administrative Law Judge. However, there is not requirement that the decision regarding the issuance of a regulation to allow the importation of a cocaine hydrochloride be made on the record. Hence, in the rulemaking the Acting Deputy Administrator may consider information or submission in addition to those contained in the record created by the Administrative Law Judge. After the hearing, Mallinckrodt and Roxane filed separate motions to reopen the record and introduce additional evidence, which the Administrative Law Judge denied. The Acting Deputy Administrator had reviewed the record, and makes the following decision regarding these motions.

In the adjudication, the Acting Deputy Administrator has the authority to request that the Administrative Law Judge reopen the record and admit evidence that was not introduced in the hearing. However, the standard for doing so is that the party seeking to introduce such evidence must show that the new evidence was previously unavailable and is material and relevant to the matters in dispute. *Immigration and Naturalization Service* v. *Abudu*, 485 U.S. 94 (1988); *Robert M. Golden, M.D.*, 61 FR 24,808, 24,812 (1996). The only information sought to be introduced after the hearing that is relevant to the issues to be resolved in the adjudication aspect of this case is the information regarding whether Germany has used seized materials in manufacturing cocaine hydrochloride that Roxane sought to introduce by its motion dated May 29, 1996. However, the issue raised by Mallinckrodt in these proceedings is limited to whether the bulk cocaine hydrochloride that Roxane will import into the United States is manufactured from seized materials. Therefore, the Acting Deputy Administrator finds that evidence regarding Germany's use of seized materials in general is irrelevant to these proceedings. The Acting Deputy Administrator also agrees with the Administrative Law Judge's finding that this information could have been obtained by Roxane earlier in the proceedings if Roxane had exercised due diligence. For these reasons, the Acting Deputy Administrator finds that Roxane has failed to make the requisite showing for reopening the record.

The general purpose of the rulemaking procedure is to gather information, and when making a rule the agency wants to have access to as much information as possible. As a result, the informal rulemaking proceeding does not end with the same degree of finality as does a formal adjudication. Charles H. Koch, Jr., *Administrative Law and Practice*, § 4.84 (1985). The agency may want to consider information obtained after the close of the comment period, and the courts have generally supported this practice. *See Sierra Club* v. *Costle*, 657 F.2d 198 (D.C. Cir. 1981); *Hoffman-La Roche, Inc.* v. *Kleindienst*, 478 F.2d 1, 13–15 (3d Cir. 1973). Nonetheless, at some point the agency must make a decision, and it is free to ignore comments that were filed late. *Personal Watercraft Industry Ass'n, et al.* v. *Dept. of Commerce*, 48 F.3d 540, 542–43 (D.C. Cir. 1995). In this case, the most logical point to close the rulemaking record is December 10, 1997, when the record was transmitted from the Administrative Law Judge to the Acting Deputy Administrator for a final decision. By this date, interested persons wishing to make comments on whether the importation of cocaine hydrochloride should be permitted pursuant to 21 U.S.C. 952(a)(2)(B) had more than two years to submit comments to this agency. Furthermore, it was at this point in the proceeding that the Acting Deputy Administrator began his final review of the record.

The only information received prior to December 10, 1997 that is relevant to the rulemaking aspects of this case and was excluded by the Administrative Law Judge is the information Mallinckrodt sought to introduce regarding its cocaine sales and pricing for fiscal years 1996 and 1997, the rebuttal evidence offered by Roxane, and the comments submitted by Noramco, Inc. For the foregoing reasons, the Acting Deputy Administrator has included this information in the record on which he relied in making a final determination on the rulemaking aspect of this case. The comments of Mallinckrodt and Roxane that were submitted to the Acting Deputy Administrator subsequent to December 10, 1997 were not included in the rulemaking record.

D. The Protective Order

On December 1, 1995, the Administrative Law Judge issued a Protective Order which limited access to any information introduced in the hearing that was designated "Confidential and Protected". Both Mallinckrodt and Roxane filed Motions to Add to the Confidential and Protected Designations in this matter after the Administrative Law Judge certified and transmitted the record to the Acting Deputy Administrator. All parties to the proceeding were provided with copies of these motions and had ample time to make their objections known. However, no party has objected to Mallinckrodt's and Roxane's motions, and the subject matter of those items sought to be designated as Confidential and Protected is within the scope of original Protective Order issued February 5, 1996. Therefore, Mallinckrodt's and Roxane's filings, both dated December 29, 1997, are granted. However, as the parties were informed in the original Protective Order, this agency is bound by the provisions of the Freedom of Information Act, 5 U.S.C. 552(b), and pursuant to the Protective Order, "the DEA will afford the producing party sufficient advance notice prior to any such disclosure to allow that party to pursue appropriate remedies to preserve the information's protected status."

The Acting Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final rule as prescribed by 21 CFR 1316.67, and final order as prescribed by § 1301.46, based upon the following findings and conclusions. The Acting Deputy Administrator adopts the Findings of Fact, Conclusions of Law, and Recommended Ruling of the Administrative Law judge, with specifically noted exceptions, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law. Further, all exceptions to the Administrative Law Judge's decision have been considered by the Acting Deputy Administrator.

II. Rulemaking

A. Threshold Issues

As stated above, Roxane cannot be registered as an importer of cocaine hydrochloride pursuant to 21 U.S.C. 958(a) and 823(a) and 21 CFR 1301.34(b)–(f) unless the Acting Deputy Administrator finds that cocaine hydrochloride may be imported pursuant to 21 U.S.C. 952(a)(2)(B). Because Roxane is the proponent of the issuance of such a rule, it must establish by a preponderance of the credible evidence that such a rule can be issued.

Section 952(a) of the Controlled Substances Act prohibits the importation of cocaine hydrochloride into the United States, except in three narrow circumstances. Section 952(a)(2) allows for the importation of:

> [S]uch amount of any controlled substance in schedule I or II * * * that the Attorney General finds to be necessary to provide for the medical, scientific, or other legitimate needs of the United States— (A) during an emergency in which domestic supplies of such substance or drug are found by the Attorney General to be inadequate, (B) In any case in which the Attorney General finds that competition among domestic manufacturers of the controlled substance is inadequate and will not be rendered adequate by the registration of additional manufacturers under section 823 of this title, or (C) in any case in which the Attorney General finds that such controlled substance is in limited quantities exclusively for scientific, analytical, or research uses.

Roxane proposes that competition in the domestic cocaine hydrochloride manufacturing market is inadequate and therefore, the Acting Deputy Administrator should issue a rule allowing importation of cocaine hydrochloride pursuant to 21 U.S.C. 952(a)(2)(B).

Mallinckrodt argues that the Acting Deputy Administrator cannot promulgate such a rule because importation of cocaine hydrochloride is not necessary, with the meaning of the statute, as Mallinckrodt is able to meet all the legitimate needs of the domestic market. Mallinckrodt also argues that Roxane has not carried its burden of establishing that there is inadequate competition in the domestic market or that the registration of additional manufacturers would not render competition adequate.

1. Relevance of Domestic Manufacturers Ability To Supply the Market

Whether a finding that domestic manufacturers are unable to supply the legitimate market is a condition precedent to important pursuant 21 U.S.C. 952(a)(2) is a threshold issue, as it is undisputed that Mallinckrodt is currently able to manufacture a sufficient amount of bulk cocaine hydrochloride to meet the legitimate needs of the United States.

An extensive reading of the legislative history reveals that the protection of the American consumer was of primary importance to Congress, and such protection was its intent in drafting the inadequate competition exception to the general ban on importation of Schedule I and II controlled substances. The Acting Deputy Administrator finds that it would be inconsistent with Congress' intent to interpret the statue as Mallinckrodt suggests, as such an interpretation would prevent the agency from protecting the American consumer when a domestic manufacturer is able to meet the legitimate needs of the United States, even where an egregious state of inadequate competition results in a tremendous cost to the consumer.

The Acting Deputy Administrator also agrees with the Administrative Law Judge that Mallinckrodt's interpretation of section 952(a)(2) would render the inadequate competition exception superfluous because a finding that domestic needs were not being met would constitute an emergency, in which case importation would be permitted pursuant to 21 U.S.C. 952(a)(2)(A). The Acting Deputy Administrator also finds Mallinckrodt's reliance upon a Memorandum of Law issued by former Administrative Law Judge Francis L. Young to be misplaced. As Administrative Law Judge Bittner suggests, this Memorandum of Law was never incorporated into a final order, and therefore, is not precedent. Further, the Acting Deputy Administrator does not agree with Administrative Law Judge Young's analysis regarding the necessity of finding that domestic needs were not being met before importation could be permitted pursuant to 21 U.S.C. 952(a)(2)(B). Administrative Law Judge Young apparently believed that Congress did not intend the Controlled Substances Act to be a substitute for the antitrust laws. However, as previously stated, the legislative history as a whole indicates that it was the intent of Congress to combine the Attorney General's antitrust responsibilities with those designed to control the illicit drug market, for the protection of the consumer who has a therapeutic need for these substance.

2. Treaty Obligations

Mallinckrodt also argues that as long as it is able to supply the domestic market, issuing a regulation which allows the importation of cocaine hydrochloride would be a violation of this country's obligations under the Multilateral Single Convention on Narcotic Drugs of 1961. However, the Acting Deputy Administrator finds that as long as the amounts imported and manufactured are controlled through the import permit procedures and the quota system to avoid an excess supply of cocaine hydrochloride that would require warehousing, this country's obligations under the treaty will be satisfied.

For the foregoing reasons, the Acting Deputy Administrator agrees with the finding of the Administrative Law Judge that there is no requirement in the statute that the agency may not permit importation of cocaine hydrochloride because Mallinckrodt is able to supply the licit domestic market. Rather, if the Acting Deputy Administrator finds that importation is permitted pursuant to 21 U.S.C. 952(a)(2)(B), the specific amounts to be imported will be determined through the import permit procedures of 21 CFR 1312.11–.19.

3. Level of Production at Which To Analyze Competition

Federal regulations specify the factors that must be considered when making the determination whether competition is inadequate within the meaning of the statute. See 21 CFR 1301.34(d), (e) and (f). However, before turning to those factors, it must be determined at which level of production competition is to be analyzed. Mallinckrodt asserts that any analysis of the degree of competition among domestic manufacturers of cocaine must include dosage form manufacturers, such as Roxane. Roxane, on the other hand, argues that competition must be reviewed only at the level of production at which it is alleged to be inadequate. In this case, it is alleged that competition is inadequate at the level of where bulk cocaine hydrochloride is manufactured.

The Acting Deputy Administrator finds unpersuasive the testimony of Walter Vandaele, Ph.D., an economic expert, that competition should be analyzed at the level of dosage form manufacturers because it is at that level where cocaine competes with other products. Dosage form manufacturers do not manufacture cocaine; they purchase it in bulk from Mallinckrodt, package it in a variety of forms, and market it to the consumer. Dr. Vandaele offers no further explanation of this statement, and it seems disingenuous as the statute requires that competition among manufacturers, not between products, be analyzed. The Acting Deputy Administrator does find persuasive the testimony of another economic expert, Keith Leffler, Ph.D., that inadequate competition at the bulk cocaine stage of production affects all levels of production. At a minimum, it is clear that the pricing effects of inadequate competition at the bulk cocaine level will affect the minimum price that the dosage form manufacturers can charge for their cocaine products. As a result, no degree of competition among the dosage form manufacturers will protect the consumer from the pricing effects of inadequate competition among the bulk cocaine manufacturers. Therefore, the Acting Deputy Administrator finds that the appropriate level of production at which to measure the adequacy of competition is that level where bulk cocaine is manufactured.

B. Adequacy of Competition

1. Scope of Market in Which Competition To Be Analyzed

In turning to the factors of 21 U.S.C. 1301.34 that are to be considered in analyzing competition, it seems most appropriate to begin with 21 U.S.C. 1304.34(e). This section provides that in determining the scope of the market in which the degree of competition is to be analyzed, the Acting Deputy Administrator must consider substitute products which are reasonably interchangeable with cocaine in terms of price, quality and use. There is a considerable amount of disagreement between the parties as to whether any such substitutes exist, and a significant amount of the evidence and testimony was directed toward this issue.

It is undisputed in the record that no single drug produced by any manufacturer can duplicate the vasoconstrictive and anesthetic effects of cocaine. All parties agree that cocaine is pharmacologically unique.

Nonetheless, Mallinckrodt asserts that there are four products which are substitutes for cocaine, within the meaning of 21 U.S.C. 1304.34(e). These products, according to Mallinckrodt, are the following combinations of drugs: lidocaine-adrenaline-tetracaine; oxymetazoline-lidocaine; xylometazoline-lidocaine; and lidocaine-phenylephrine. However, no pharmaceutical company or manufacturer of pharmaceutical drugs manufactures a combination of these drugs in a single product. Rather, it is up to the consumer to formulate a solution, using two or more of these drugs, to emulate the effects of cocaine. In fact, the record reveals that at one hospital, the pharmacy refuses to mix such formulas for different practitioners in the operating room because it is time-consuming and it increases the hospital's liability. For these reasons, the Acting Deputy Administrator finds that none of the combinations of drugs that have been promoted as substitutes for cocaine are "products" within the meaning of 21 U.S.C. 1304.34(e).

However, assuming that these drug combination are products for purposes of the regulation, it is also clear from the record that Mallinckrodt's assertion that these combinations have the same effects as cocaine is only correct to a limited extent. The medical literature submitted by Mallinckrodt does support its assertion that the consumer is looking to replace cocaine. Nonetheless, this literature also demonstrates that although these alternatives may be replacing cocaine with respect to some procedures, the evidence does not support a finding that there are alternatives to cocaine when performing all procedures with a local anesthetic and vasoconstrictor. Most notably, there is no evidence that the medical profession views these alternatives to cocaine as viable options when performing procedures that cause deep periosteal pain or are relatively long in duration.

In this regard, the Acting Deputy Administrator find particularly persuasive Mallinckrodt's exhibit that reports the results of an intensive program aimed at reducing the use of cocaine solution at the Medical Center Hospital of Vermont. *See Mallinckrodt Exhibit 105.* Mallinckrodt and its experts refer to the results of this effort often, asserting that the resulting sixty six percent reduction in the use of cocaine is strong evidence that a lidocaine-phenylephrine solution is a substitute for cocaine. However, the article detailing the results of this study reports that despite this intense effort to eliminate the use of cocaine, the otolaryngology department only used the lidocaine-phenylephrine solutions for examinations, minor procedures and minor trauma, and reserved cocaine for major trauma and surgical procedures. Therefore, while this study indicates that some combinations of drugs that consumer have formulated have replaced cocaine in some applications, it also further supports the finding that the medical profession does not consider these combinations to be substitutes for cocaine in all procedures where the use of a topical anesthetic and vasoconstrictor is indicated.

A significant amount of the evidence and argument also related to whether or not any of the drug combinations were economic substitutes for cocaine. The Administrative Law Judge found this issue particularly important, as she found that although there are alternatives to cocaine, these alternatives are not substitute products within the meaning of the statute because they are not economic substitutes for cocaine, and more importantly, because there is no quantitative evidence that these alternatives have impacted on the market for cocaine. Mallinckrodt contends that this finding of the Administrative Law Judge is erroneous, as it limits the term "substitute" in a way that is not supported by the plain language of the regulation or the relevant case law. Mallinckrodt argues that the most important factor in determining whether or not two products are substitutes for each other is whether the products are used interchangeably by the consumers.

The Acting Deputy Administrator finds that language of 21 CFR § 1304.34(e) is not so limiting as to require that products be economic substitutes that impact on the relevant market to be considered substitutes, but evidence of this nature is relevant. The statute clearly states that products are substitutes if they are reasonably interchangeable in terms of price, quality and use. If products are interchangeable in this manner, it logically follows that temporary fluctuations in the price, quality or availability of one product will temporarily impact on the market for the other product.

However, the Acting Deputy Administrator finds that the combinations of various drugs that are being promoted as substitutes for cocaine are not being used interchangeably with cocaine by the consumer. The medical evidence in the record indicates that cocaine is being permanently replaced by certain combinations of drugs with respect to certain procedures. There is no shifting back and forth between products. Mallinckrodt's own medical experts

testified that there has been a "conversion" to these alternative drug combinations, and they could conceive of no reason why they would return to using cocaine.

The word "interchangeable" is a term of art in the field of antitrust law. Where products are interchangeable, consumers shift back and forth between them based upon a variety of economic and quality based factors. The Acting Deputy Administrator agrees with Roxane that it is exactly this type of dynamic shifting between products that indicates that they are reasonably interchangeable. Furthermore, the case law that the parties rely on, as well as the Department of Justice and FTC Merger Guidelines (1992), contemplate this type of shifting of demand in response to changes in the competitiveness of any given product in the relevant market. The Acting Deputy Administrator finds that the record establishes that there is no such shifting of demand between cocaine and the drug combinations promoted as being substitutes for it.

For the foregoing reasons, the Acting Deputy Administrator finds that none of the drug combinations offered as alternatives to cocaine are "products" within the meaning of 21 U.S.C. 1304.34(e). However, even if these drug combinations are "products" within the meaning of the regulation, they are not reasonably interchangeable with cocaine in terms of price, quality or use, and thus do not quality as "substitutes". Having found that the relevant market for the purposes of 21 CFR 1304.34(e) is limited to cocaine, the Acting Deputy Administrator will confine has analysis of competition to the manufacturers of cocaine hydrochloride in bulk form.

2.21 CFR 1304.34(f)

Having determined the parameters within which competition is to analyzed, it is now appropriate to turn to that analysis. At the outset, the Acting Deputy Administrator questions whether competition can ever be considered adequate under 21 U.S.C. 952(a)(2)(B) when less than two firms manufacture the product in question. The Acting Deputy Administrator acknowledges that 21 CFR 1304.34(f) directs that "the fact that the number of existing manufacturers is small shall not demonstrate, in and of itself, that adequate competition among them does not exist". It is also noted that with no discussion, the Administrative Law Judge found that this section clearly prohibited a finding that competition is inadequate based solely on the fact that there is only one domestic manufacturer or bulk cocaine hydrochloride. However, the Acting Deputy Administrator notes that 21 U.S.C. 952(a)(2)(B) and 21 CFR 1304.34(f) clearly contemplate that there are at least two manufacturers of the controlled substance in question. Both provisions use plural language when referring to a relationship between manufacturers. Furthermore, the word "competition" is defined as being "a struggle between rivals for the same trade at the same time". Black's Law Dictionary 284 (Th ed. 1990). It is a "contest between two rivals". *Id.* (emphasis added).

3. The Factors of 21 CFR 1304.34(d)

Nonetheless, proceeding on the assumption that competition can exist for the purposes of 21 U.S.C. 952(a)(2)(B) when there is only one manufacturer, the Acting Deputy Administrator will analyze the adequacy of competition in the relevant market by considering the five factors enumerated in 21 CFR 1304.34(d).

a. 21 CFR 1304.34(d)(1): Price Rigidity. Title 21 of the CFR 1304.34(d)(1), directs the Acting Deputy Administrator to consider the "extent of price rigidity in light of changes in (i) raw materials and other costs and (ii) conditions of supply and demand" in determining the adequacy of competition. The only evidence in the record regarding Mallinckrodt's total actual costs are estimates prepared by Professor Leffler. Professor Leffler calculated "upper bound" and "lower bound" costs for Mallinckrodt. The "lower bound" costs were based upon Mallinckrodt's statement that the price it paid for crude cocaine was more than the price that Roxane's supplier (hereinafter Exporter) had committee to selling bulk cocaine hydrochloride to Roxane for importation. The "upper bound" costs were based upon the assumption that Mallinckrodt's crude cocaine costs equaled approximately eighty percent of its price. Professor Leffler based this assumption on his knowledge of profits in the pharmaceutical industry and that Roxane's profit as a percentage of total sales equaled approximately twenty percent. The remaining twenty percent represents Mallinckrodt's other costs, and its profit.

Using this methodology, Professor Leffler obtained an "upper bound" and "lower bound" estimate for the price Mallinckrodt paid for crude cocaine in 1983. Then, using Mallinckrodt's index of its cost for crude cocaine between 1983 and 1995, Professor Leffler obtained an estimate for the price Mallinckrodt paid for crude cocaine in subsequent years, ending in 1995. Professor Leffler than analyzed the available data to obtain estimates for all other costs Mallinckrodt would incur in its production and sale of bulk cocaine. In making this analysis, Professor Leffler assumed that in 1983, Mallinckrodt earned a ten percent profit rate on sales, a conservative figure that he arrived at based upon his knowledge of the generic drug business. He then inflated the estimates of these other costs over the subsequent years by using a price index for medical and botanical chemicals.

Professor Leffler's "upper bound" estimates reveal that between 1983 and 1995, the total costs incurred by Mallinckrodt in manufacturing crude cocaine rose 643 percent. Over the same period, Mallinckrodt's prices rose 2355 percent, resulting in a 30,796 percent increase in profit.

Professor Leffler's "lower bound" estimates demonstrate that between 1983 and 1995, the total cost incurred by Mallinckrodt in manufacturing crude cocaine rose at a rate of 359 percent. Over this same period, Mallinckrodt's prices rose 2355 percent, resulting in a 35,216 percent increase in profit.

The estimated costs and profits of Mallinckrodt, testified to by Professor Leffler, were not rebutted by Mallinckrodt. Mallinckrodt offered no cost or profit evidence into the record, other than the index of its cost for crude cocaine that Professor Leffler used in making his calculations. Upon motion of Roxane, the Administrative Law Judge drew and adverse inference that Mallinckrodt's costs and profits were at the midpoint of the range calculated by Professor Leffler in his "lower bound" and "upper bound" cost estimates, because Mallinckrodt refused to provide information regarding its costs and profits. The Acting Deputy Administrator has reviewed all arguments of the parties regarding the drawing of these adverse inferences and agrees with the findings of the Administrative Law Judge with respect to this issue. However, even if the drawing of these adverse inferences were improper, the Acting Deputy Administrator finds that Mallinckrodt has offered no credible evidence to rebut this testimony of Professor Leffler. Therefore, even without the adverse inferences, the Acting Deputy Administrator finds that the record establishes that between the years 1983 and 1995, Mallinckrodt's costs increased no more than 643 percent. During this same period, Mallinckrodt's prices increased 2,355 percent, resulting in a profit increase of no less than 30,796 percent.

Based upon this evidence, the Acting Deputy Administrator finds that Mallinckrodt's prices are rigid in light of changes in its costs.

Section 1304.34(d)(1) requires that prices be analyzed not only in light of changes in costs, but also in light of changes in supply and demand. The evidence in the record clearly supports a finding that there was a period in the late of 1980's when the demand for licit cocaine exceeded the supply. However, there is no evidence that this shortage continued after 1990. Rather, the evidence suggests, and Mallinckrodt has repeatedly argued, that the legitimate demand for cocaine has steadily declined. The United Nations International Narcotics Control Board's (UN) statistics reveal that legitimate consumption of cocaine in the United States declined approximately 36 percent from 1988 to 1995, and 13.5 percent between 1990 and 1995. Mallinckrodt's own witness testified that the United States' licit cocaine consumption declined from 500 kilograms to 300 kilograms between 1988 and 1995. In the face of this significant decline in legitimate demand for cocaine, Mallinckrodt's continued to increase its prices despite the end of the cocaine supply shortage of the late 1980's.

After the hearing before the Administrative Law Judge concluded on March 7, 1996, Mallinckrodt sought to introduce additional evidence regarding its sales and pricing of cocaine for fiscal year 1996 and 1997. The Administrative Law Judge declined to reopen the record to admit this evidence. However, as explained above, the Acting Deputy Administrator has decided that this information would be included in the rulemaking record.

Mallinckrodt's additional evidence demonstrates that in fiscal year 1996, its total sales of bulk cocaine declined 29% from 1995, resulting in a price decrease 12.9%. For fiscal year 1997, Mallinckrodt states that its total sales of bulk cocaine declined 36% from 1996, resulting in a price decrease of 16%. Mallinckrodt argues that it decreased its prices in 1996 and 1997 because of a decline in the legitimate demand for cocaine. The Acting Deputy Administrator finds this argument unpersuasive. As previously noted, the evidence received during the hearing revealed that the legitimate demand for cocaine has declined steadily since at least 1986. In the face of this decade-long decline in demand, Mallinckrodt took no action to reduce it prices. To the contrary, it drastically increased its prices, resulting in an extraordinary increase in profits. As decreasing demand did not impact on Mallinckrodt's pricing for the five years prior to the hearing on Roxane's application to be registered as an importer of cocaine, the Acting Deputy Administrator finds it more likely that Roxane's application, not the continued decline in the legitimate demand for cocaine, was the major impetus behind Mallinckrodt's decision to decrease its prices in 1996 and 1997.

Furthermore, Mallinckrodt would not sell cocaine at a loss. Therefore, the Acting Deputy Administrator also finds that the fact that Mallinckrodt is able to reduce its price for cocaine 27%, when there is no indication of decling costs, is further evidence that the overwhelming percentage of Mallinckrodt's price is profit.

Based upon the foregoing, the Acting Deputy Administrator finds that the evidence, when analyzed within the context of 21 CFR 1304.34(d)(1), heavily favors a finding that there is inadequate competition among the domestic manufacturers of bulk cocaine.

b.21 CFR 1304.34(d)(2): Shifting Market Share. Section 1304.34(d)(2) requires that the Acting Deputy Administrator consider "[t]he extent of service and quality competition among the domestic manufacturers for share of the domestic market including (i) shifts in market shares and (ii) shifts in individual customers among domestic manufacturers." It is undisputed in the record that Mallinckrodt is the only domestic manufacturer of bulk cocaine. Hence, its share of the market has been one hundred percent since it entered the bulk cocaine market in 1983, and there has been no shifting of market share of individual customers.

Based upon the foregoing, the Acting Deputy Administrator finds that the evidence, when analyzed within the context of 21 CFR 1304.34(d)(2), favors a finding that there is inadequate competition among the domestic manufacturers of bulk cocaine.

c.21 CFR 1304.34(d)(3): Price Differentials: Section 1304.34(d)(3) requires that the Acting Deputy Administrator consider:

> The existence of substantial differentials between (i) domestic prices and (ii) the higher of prices generally prevailing in foreign markets or the prices at which the applicant for registration to import is committed to undertake to provide such products in the demos tic market in conformity with the Act. In determining the existence of substantial differentials hereunder, appropriate consideration should be given to any additional costs imposed on domestic manufacturers by the requirements of the Act and such other cost-related and other factors as the Administrator may deem relevant. In no event shall an importer's offering prices in the United States be considered if they are lower than those prevailing the foreign market or markets from which the importer is obtaining his supply.

The parties disagree as to whether Roxane could establish the "prevailing prices" in foreign markets without offering evidence of prices charged by more than one manufacturer of bulk cocaine in these markets. Mallinckrodt argues that because Roxane only provided evidence of the prices that Exporter charged in foreign markets, it failed to establish "prevailing prices". Roaxane argues that Exporter has competition from other manufacturers in the foreign markets and therefore, as testified to by its witness, its pricing must be comparable to that of the other manufacturers.

The record establishes that there is competition among manufacturers of bulk cocaine in these foreign markets. Roxane's witness, an officer of Exporter, testified that because of this competition, the price charged by Exporter for bulk cocaine in the relevant foreign markets is comparable to the price charged by other manufacturers of bulk cocaine. This is logical, and no evidence was submitted to rebut this statement. Therefore, after careful review of both arguments, the Acting Deputy Administrator agrees with the conclusion of the Administrative Law Judge and finds that the prices charged by Exporter in other countries are those generally prevailing in the countries in which it markets bulk cocaine.

Having determined that Roxane can establish prevailing prices by presenting evidence regarding one manufacturer's prices, it must now be determined if those prices, or the price at which Exporter has offered to sell Roxane bulk cocaine, is the appropriate one to compare with the domestic price of $31,000/kilogram of bulk cocaine. Roxane argues that it does not intend to "offer" bulk cocaine in the domestic market and therefore, the only comparison possible under 21 U.S.C. 1304.34(d)(3) is between the domestic price and the prices generally prevailing in the foreign market. The Acting Deputy Administrator finds Roxane's argument to have merit, and will compare domestic prices with those prices generally prevailing in foreign markets.

Two witnesses employed by Exporter testified to its prices for bulk cocaine in several countries. However, the prices testified to by one witness are higher than the prices testified to by the other witness. The difference is attributed to the fact that the first witness' figures were calculated using the sales of smaller size packages of cocaine, i.e.,

one, five and twenty-five grams, which are offered for sale at a higher price per kilogram than the larger packages. The second witness testified that his figure represented the average price per kilogram for cocaine sold in packages of one hundred grams or greater. No evidence was presented to rebut either the price testimony of these witnesses, or their testimony explaining the differences in those prices. As Roxane seeks to import bulk cocaine in one kilogram quantities, the Acting Deputy Administrator finds that it is most appropriate to use the schedule of prices for a kilogram of cocaine that was prepared using only the sales of cocaine in packages of one hundred grams or greater.

Using that schedule, the record establishes that the prevailing prices in foreign markets are between thirteen and twenty two percent of the domestic price for a kilogram of cocaine. Based upon these figures, the Acting Deputy Administrator finds that there is a substantial differential between the prices generally prevailing in the foreign markets and the domestic price. Alternatively, even if the Acting Deputy Administrator compared the price at which Exporter was committed to providing Roxane with bulk cocaine with domestic prices, he would still find a substantial differential existed between the two prices.

The significance of this substantial differential must be viewed in light of any additional costs imposed upon domestic manufacturers by the requirements of the Controlled Substances Act. Mallinckrodt, the only domestic manufacturer of bulk cocaine, had ample opportunity to provide evidence regarding costs which would mitigate the substantial differential between its prices and those generally prevailing in foreign markets, but no such evidence was submitted. Therefore, the Acting Deputy Administrator finds that based upon the record, the domestic manufacturer of cocaine does not incur any costs in complying with the Controlled Substances Act that would explain the extraordinary differential between its prices and those prevailing in foreign markets.

Mallinckrodt argues that it should not be penalized for refusing to disclose its confidential cost data, particularly when Exporter was not compelled to produce such information. However, the regulation specifically states that the domestic manufacturers' prices should be credited with regulatory or other costs when determining the significance of a substantial price differential. The costs of the foreign manufacturer would only be relevant to this analysis if the domestic manufacturers offered evidence of such costs. It would then be incumbent upon the foreign manufacturer to provide such cost data if it wanted to rebut this evidence, or mitigate its significance, by showing that it incurred similar costs.

Therefore, based upon the foregoing, the Acting Deputy Administrator finds that the evidence, when analyzed within the context of 21 CFR 1304.34(d)(3), favors a finding that there is inadequate competition among the domestic manufacturers of bulk cocaine.

d. 21 CFR 1304.34(d)(4): Competitive Restraints. Section 1304.34(d)(4) requires that the Acting Deputy Administrator consider "[t]he existence of competitive restraints imposed upon domestic manufacturers by governmental regulations" when analyzing the state of competition in the domestic market. The only such competitive restraint on domestic manufacturers of bulk cocaine is the general prohibition against importing coca paste contained in 21 U.S.C. 952(a). Mallinckrodt argues that this prohibition requires it to obtain its raw materials from Stepan, whose price for coca paste is greater than the price that Exporter has committed itself to providing Roxane with bulk cocaine. However, there is nothing in the record to suggest that Mallinckrodt could not file an application for registration to import coca paste pursuant to 21 U.S.C. 952(a)(2)(B).

Based upon the foregoing, the Acting Deputy Administrator finds that the evidence, when analyzed within the context of 21 CFR 1304.34(d)(4), favors a finding that there is inadequate competition among the domestic manufacturers of bulk cocaine.

e. 21 CFR 1304.34(d)(5): Other Relevant Factors. Finally, 21 CFR 1304.34(d)(5) provides that the Acting Deputy Administrator shall consider "[s]uch other factors may be relevant to the determinations under this paragraph". A review of the record reveals that there are several additional issues that need to be addressed.

First, Mallinckrodt has strenuously argued that the determination as to whether competition is adequate requires a balancing between the risks of diversion and the benefits of competition. In support of this argument, Mallinckrodt's economic expert testified that "the adequate level of competition must represent an optimal balancing between the price reduction benefits of competition to patients and the diversion cost of competition to society, such that the public interest is maximized."

It is reasonable to infer from an extensive review of the legislative history that Congress has already factored the risk of diversion into the statute by prohibiting the importation of certain controlled substances, except in very narrowly defined circumstances. One of the exceptions, of course, is where competition is inadequate among the domestic manufacturers of a particular controlled substance. Furthermore, where the risk of diversion is a relevant factor, it is specifically mentioned in the Controlled Substances Act and the regulations promulgating it. For example, 21 U.S.C. 823(a), and 21 CFR 1304.34(b)(1) and (5)(c) clearly mandate that the risk of diversion be considered in determining the "public interest". For these reasons, the Acting Deputy Administrator finds that Congress did not intend for the risk of diversion to be a factor in determining the adequacy of competition for purposes of 21 U.S.C. 952(a)(2)(B).

It has also been argued that allowing importation in this case would frustrate longstanding U.S. policy against the importation of finished controlled substances. In furthering this argument, the following passage from a Department of State monograph by Donald E. Miller, entitled "Licit Narcotics Production and Its Ramifications for Foreign Policy", dated August 1, 1980 was cited:

> The U.S. has been a traditional "manufacturing" country for about 75 years, whereby finished narcotics are manufactured by U.S. companies from imported raw materials. Economic and industrial patterns have developed in accordance with that practice, substantial funds, equipment and personnel have been committed by U.S. companies, and there is no good reason why the U.S. should jeopardize its industrial capability and financial interests.

Id. at 56.

Testimony of this nature by former and present employees of this agency was also offered to evidence this policy against the importation of finished narcotics.

At the outset, the Acting Deputy Administrator finds the reliance upon Mr. Miller's monograph as evidence of this policy to be misplaced. Mr. Miller was presenting an argument against amending 21 U.S.C. 952(a) to allow the importation of finished narcotics without having to make a showing that there is either an emergency situation or that competition among domestic manufacturers is inadequate.

Nonetheless, it is clear that Congress intended there to be a preference for the domestic manufacture of Schedule II controlled substances. This preference is embodied in the prohibition against

the importation of these substances contained in 21 U.S.C. 952(a)(1). It is equally clear, however, that Congress did not want to completely preclude the importation of these substances. Rather, it provided in 21 U.S.C. 952(a)(2) that under certain conditions, importation would be allowed. To argue that a policy against the importation of finished narcotics should take precedence over the statute is a request that this agency ignore the law. For this reason, the Acting Deputy Administrator finds that the preference for the domestic manufacture of Schedule II controlled substances is overcome if importation is warranted under 21 U.S.C. 952(a)(2).

It was also argued that allowing Roxane to import bulk cocaine would cause Mallinckrodt to exit the market, which would thwart this preference for the domestic manufacture of controlled substances. The Acting Deputy Administrator finds this argument unpersuasive. As already discussed, the Acting Deputy Administrator believes that this preference must give way when the conditions of 21 U.S.C. 952(a)(2)(B) are satisfied. Further, the evidence suggests that there is a significant amount of room for Mallinckrodt to reduce its prices and still make a profit. Finally, as mentioned earlier in this decision, there is nothing preventing Mallinckrodt from applying to be registered to import coca paste pursuant to 21 U.S.C. 952(a)(2)(B).

Based upon the foregoing, the Acting Deputy Administrator finds that none of these additional issues, considered pursuant to 21 CFR 1304.34(d)(5), warrant precluding the importation of bulk cocaine pursuant to 21 U.S.C. 952(a)(2)(B) if competition is deemed to be inadequate.

C. Decision Regarding the Adequacy of Competition Among the Domestic Manufacturers of Bulk Cocaine

The Acting Deputy Administrator has reviewed the entire record within the context of 21 CFR 1304 (d), (e) and (f), and has made the findings discussed above. As a result of these findings, the Acting Deputy Administrator concludes that competition among the domestic manufacturers of cocaine is inadequate.

D. Can Competition Be Rendered Adequate by Registering Additional Domestic Manufacturers of Bulk Cocaine

Mallinckrodt has argued that even if competition is found to be inadequate, it could be rendered adequate by the registration of additional domestic manufacturers because the process, equipment and raw materials are readily available, there are no regulatory barriers to entry, and there are numerous possible entrants.

Roxane argued that competition cannot be rendered adequate by the registration of additional domestic manufacturers because there are not current manufacturers of bulk cocaine other than Mallinckrodt, no other companies have "formally" applied for registration as manufacturers of bulk cocaine, and other producers of bulk narcotics have expressed no interest in becoming registered. Roxane further argues that DEA's prior interpretation of 21 U.S.C. 952(a)(2)(B) is that "an importer need only address a current manufacturer's competition and that of any applicants to manufacture which have formally applied for registration".

At the outset, the Acting Deputy Administrator believes that he is not only bound by the prior interpretation of this section by this agency, but that it is also the most reasonable interpretation. Besides Mallinckrodt, there is only one additional manufacturer registered to manufacture cocaine. However, the record indicates that this manufacturer is bankrupt and is not likely to manufacture cocaine in competition with Mallinckrodt.

Even if the Acting Deputy Administrator were to consider potential applicants as candidates for the manufacturing of bulk cocaine, the barriers to entry would preclude them from actually competing with Mallinckrodt. The Acting Deputy Administrator finds persuasive Professor Leffler's testimony that the necessary investment of several million dollars in manufacturing equipment and storage facilities would be a sufficient barrier in and of itself to the entry of a rational manufacturer into what Mallinckrodt has described as being a "flat to declining market". Furthermore, the evidence in the record clearly establishes that the manufacture and sale of bulk cocaine has been extremely profitable for Mallinckrodt. Despite the prospect of these tremendous profits, no other manufacturer has entered the market. This is further evidence that substantial barriers to their entry exist.

For the foregoing reasons, the Acting Deputy Administrator finds that the registration of additional manufacturers will not render competition in the domestic manufacturing market for bulk cocaine adequate.

III. The Adjudication

A. Introduction

Having determined that market conditions warrant the importation of cocaine hydrochloride pursuant to 21 U.S.C. 952(a)(2)(B), the remaining issue is whether Roxane's application for registration as an importer of cocaine hydrochloride should be granted. The Controlled Substances Act provides that the Acting Deputy Administrator shall register an applicant to import a schedule II substance if it is determined that such registration is in the public interest. 21 U.S.C. 958(a); 21 CFR 1304.34(b). In determining the public interest, the Acting Deputy Administrator must consider the factors listed in 21 U.S.C. 823(a)(1)–(6) and 21 CFR 1304.34(b)(1)–(5).

B. Public Interest Determination

1. Risk of Diversion v. Benefits of Competition

Pursuant to 21 U.S.C. 823(a)(1) and 21 CFR 1304.34(b)(1), the Acting Deputy Administrator is required to consider:

> (M)aintenance of effective controls against diversion of particular controlled substances * * *, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes.

a. Adequacy of Competition. Consistent with his conclusion in the rulemaking aspect of this case, the Acting Deputy Administrator finds that the number of domestic manufacturers of bulk cocaine is insufficient to produce bulk cocaine under adequately competitive conditions, and cannot be rendered adequate by the registration of additional manufacturers. Therefore, the registration of an importer of cocaine is warranted under 21 U.S.C. 823(a)(1) and 21 CFR 1304.34(b)(1), if it is found that the applicant for registration will maintain effective controls against diversion.

b. Maintenance of Effective Controls Against Diversion. In making this determination, the Acting Deputy Administrator must consider whether the applicant complies with "security requirements of 21 CFR 1301.71–1301.76". and employs "security procedures to guard against in-transit losses within and without the jurisdiction of the United States". 21 CFR 1304.34(c).

The Government and Roxane both presented evidence that Roxane complies with the security requirements of 21 CFR 1301.71–1391,76. This evidence is credible and was unrebutted in the hearing. Therefore, the Acting Deputy Administrator finds that Roxane is in compliance with these security requirements. The Acting Deputy

Administrators agrees with the finding of the Administrative Law Judge that the current system of importing coca leaves for processing into cocaine in the United States is less susceptible to diversion that the importation of cocaine. However, the record establishes that Roxane and Exporter intend to employ security procedures sufficient to guard against in-transit losses.

Roxane and Exporter presented evidence of two plans that developed for transporting cocaine hydrochloride from Exporter's country to the United Stats. One method would utilize an established international delivery service, which would transport the cocaine from an airport in Exporter's country to an airport in the United States. Once in the United States, the cocaine would be transported by air to the airport closest to Roxane's facilities. The delivery service would then transport the cocaine by truck to Roxane's facilities. Utilizing this method, it would take approximately three days to transport the cocaine from Exporter to Roxane, including time for the package to clear U.S. Customs and possibly be subjected to inspection by the Food and Drug Administration.

In the second plan, Exporter will transport the cocaine from its facilities to the nearest international airport, under armed guard. Exporter's personnel will remain with the cocaine to witness its loading onto the aircraft and the taxiing of the aircraft away from the terminal. The aircraft will fly directly to one of three airports within driving distance of Roxane's facilities. The cocaine will be met by Roxane's personnel and be accompanied by them to U.S. Customs. This personnel will then witness the loading of the cocaine onto a truck, for nonstop transportation to Roxane's facilities. Utilizing this method, it would take approximately eighteen hours to transport the cocaine from Exporter to Roxane. This is Roxane and Exporter's preferred method of transportation.

In addition to the transportation plans, Roxane presented unrebutted evidence that there will be only one shipment a year, and this shipment will be scheduled to avoid having the cocaine in transit over a weekend or holiday. Further, packaging of the cocaine will be done in compliance with the agency's requirements.

Finally, both Roxane and Exporter have a vast amount of experience in dealing with controlled substances and preventing their diversion, and have excellent records of performance in this regard. Also, they are committed to working with this agency in implementing a plan which will minimize the risk of diversion while the cocaine is transit. For these reasons, the Acting Deputy Administrator finds that although no final plan has been settled upon for transporting the cocaine from Exporter to Roxane, Roxane and Exporter are committed to employing security procedures to guard against diversion of the cocaine shipments within and without of the jurisdiction of the United States.

2. Compliance With Applicable State and Local Law

Pursuant to 21 U.S.C. 823(a)(2) and 21 CFR 1304.34(b)(2), the Acting Deputy Administrator must consider whether the applicant for registration as an importer is in "[c]ompliance with applicable State and local law" in determining if granting the application will be in the public interest. Roxane officials testified that it is in compliance with all applicable laws, and no evidence was presented to rebut this testimony. Therefore, the Acting Deputy Administrator finds that Roxane has carried its burden with respect to this factor.

3. Promotion of Technical Advances

The Acting Deputy Administrator is required to consider the applicant's "promotion of technical advances in the art of manufacturing these substances and the development of new substances" in determining the public interest, pursuant to 21 U.S.C. 823(a)(3) and 21 CFR 1304.34(a)(3). Roxane put on uncontested evidence that it was the first manufacturer to market cocaine in a premixed topical solution. Prior to this, cocaine was marketed in flake and powder form, and the consumers were required to formulate their own solutions. Roxane's introduction of cocaine in premixed topical solutions provided the consumer with a more consistent quality in the product, and lowered the amount of waste and risk of diversion. For this reason, the Acting Deputy Administrator finds that Roxane has also carried its burden with respect to this factor.

4. Prior Conviction Record of Applicant

In determining the public interest, the Acting Deputy Administrator is required to consider the prior conviction record of the applicant for registration "under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances". It is undisputed in the record that Roxane has no such convictions, and therefore, the Acting Deputy Administrator finds that Roxane has carried its burden with respect to this factor.

5. Past Experience in the Manufacture of Controlled Substances and Controls Against Diversion

The record indicates that Roxane has been in the business of manufacturing controlled substances for years, and has an exceptional record for maintaining effective controls against the diversion of these substances, above and beyond what is required by law. Roxane's record in this regard is sufficient to find that it has met its burden with respect to this factor, despite Mallinckrodt's argument that Roxane has no experience in handling the international shipment of bulk cocaine.

6. Other Factors Relevant to Public Health and Safety

The only remaining issue in the determination as to whether granting Roxane's application to be registered as an importer of cocaine would be in the public interest is whether Exporter will be manufacturing the cocaine it will sell to Roxane from seized materials. This agency has a policy against the introduction of seized materials into the licit narcotics market, and the issue is one which must be given serious consideration.

A report from the United Nations stated that coca paste imported to Exporter's country from Peru in 1992 and 1993 was manufactured from seized materials. In the hearing, Mallinckrodt argued that this report illustrates that there is a serious risk that Roxane will be importing cocaine manufactured from seized materials. Therefore, granting Roxane's application to be registered as an importer of cocaine would be contrary to the public interest and violate long-standing policy against the use of seized materials for licit consumption.

In response, Roxane offered a letter that Exporter obtained from its supplier of coca paste regarding this issue. In this letter, Exporter's supplier certifies that it will provide Exporter with coca paste manufactured from coca leaves that are legally cultivated. However, the Acting Deputy Administrator agrees with the Administrative Law Judge that this letter is not sufficient to establish that all crude cocaine supplied to Exporter will be manufactured from legally cultivated materials.

Nonetheless, there is evidence in the record that a comprehensive forensic analysis can determine if cocaine is lawfully manufactured. Mallinckrodt argues that even if Roxane can determine if a certain shipment of cocaine is illicit, it cannot identify unknown impurities and eliminate them. However, as the Administrative

Law Judge suggests, this agency will require Roxane to certify that the cocaine it seeks to import is licit as a part of the import permit process. Therefore, the Acting Deputy Administrator finds that since chemical analysis can differentiate between licit and illicit cocaine, this agency will be able to prevent the introduction of cocaine manufactured from illicit materials into the licit domestic market for cocaine.

For the above-stated reasons, The Acting Deputy Administrator finds that granting Roxane's application to be registered as an importer of cocaine will not violate this agency's policy against the use of seized materials to satisfy the legitimate market for narcotics in this country.

7. Conclusion

Based upon the foregoing, the Acting Deputy Administrator finds that it is in the public interest, as defined by 21 U.S.C. 823 (a)(1)–(6) and 21 CFR 1304.34(b)(1)–(5), to grant Roxane's application to be registered as an importer of cocaine hydrochloride.

IV. Conclusion

As stated above, the Acting Deputy Administrator has determined that competition among the domestic manufacturers of bulk cocaine hydrochloride is inadequate, and will not be rendered adequate by registering additional domestic manufacturers under 21 U.S.C. 823. Therefore, the importation of cocaine hydrochloride, a Schedule II controlled substance, is hereby permitted, in amounts to be determined through the import permit procedures of 21 CFR part 1312.

Furthermore, the Acting Deputy Administrator has determined that Roxane's application to be registered as an importer of cocaine hydrochloride is in the public interest. As a result, the application is hereby granted. This decision is effective November 18, 1998.

Dated: October 6, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

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NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 135th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on October 30, 1998 from 9:00 a.m. to 4:30 p.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

The meeting will be open to the public on a space available basis. Topics for discussion will include: Application Review (Creation & Presentation, Literature Fellowships, Leadership Initiatives, Policy Research & Technology), a presentation on Open Studio, a Congressional update, Guidelines (FY 99 ArtsREACH Initiative, FY 2000 Grants to Organizations; and FY 2000 Literature Fellowships), the FY 2000 budget, an update on the Endowment's Revised Strategic Plan 1999–2004, and general discussion.

If, in the course of discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, D.C. 20506, at 202/682–5570.

Dated: October 13, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 98–27968 Filed 10–16–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel (Millennium/Media section) to the National Council on the Arts will be held on October 19, 1998. The panel will meet via teleconference from 4:00 p.m. to 5:00 p.m. in Room 729 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection(c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: October 15, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 98–28134 Filed 10–16–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Civil and Mechanical Systems Special Emphasis Panel

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting. In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: November 2 and 3, 1998; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Rooms 530 and 580, Arlington, Virginia 22230.

Contact Person: Dr. Alison Flatau, Control, Materials and Mechanics Cluster, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230. 703/306–1361, x5069.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Aganda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information

concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: October 14, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–27975 Filed 10–16–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974: Revisions to System of Records

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation (NSF) is providing notice of revisions to two existing systems. Revisions to the current system NSF–64 "Project Participant File" are being made to delete references to data that will not be collected. NSF–65 "Vendor File" is being renamed to more accurately reflect the records contained therein, and one new routine use is added. The revised systems are reprinted in their entirety.

EFFECTIVE DATE: Sections 552a(e)(4) and (11) of Title 5 of the U.S. Code require that the public have thirty days to comment on the routine uses of systems of records. The new routine uses that are the subject of this notice will take effect on November 18, 1998, unless modified by a subsequent notice to incorporate comments received from the public.

COMMENTS: Written comments should be submitted to Leslie Crawford, NSF Privacy Act Officer, National Science Foundation, Office of the General Counsel, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230.

Dated: October 13, 1998.

Leslie Crawford,

Privacy Act Officer.

NSF–64

SYSTEM NAME:

Project Participant File.

SYSTEM LOCATION:

Central electronic data system of the National Science Foundation. Excerpts may be extracted or printed and held in separate files maintained by individual NSF offices and programs. National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual participants who do work under NSF-supported projects, other than principal investigators or project directors. Includes, for example, other investigators, post-doctoral associates, graduate and undergraduate assistants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information gathered primarily through reporting on funded projects about those who are supported by NSF awards or otherwise involved in projects supported by NSF awards. The information includes: Name; project identity or identities; involvement in project—nature and description of involvement, level of effort, whether financially supported by NSF; and demographic data—information on gender, race/ethnicity, disability status, and citizenship. Submission of demographic data is voluntary. The individual participant may report "Do not wish to provide".

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSE(S):

Supplements other information gathered via project reporting on projects funded by NSF. The primary purpose is to enable NSF to identify outcomes of projects funded under NSF awards for management evaluation and for reporting to the Administration and Congress, especially under the Government Performance and Results Act, 5 U.S.C. 306 and 39 U.S.C. 2801—2805. Information on participants will normally be aggregated, usually statistically, to identify outcomes of NSF programs. On occasion non-sensitive information might be used to identify persons who have achieved distinction in science, engineering, education, or the like (for example, by award of a prize) as beneficiaries of NSF support. The information in the system may also be used secondarily for compatible purposes including to (1) identify and contact scientists, engineers, or educators who may be interested in applying for support, in attending a scientific or similar meeting, in applying for a position, or in taking advantage of some similar opportunity; or (2) identify and contact possible candidates to serve as reviewers in the peer review system or for inclusion on a panel or advisory committee (information from this system may be entered in the NSF's reviewer databases, NSF–51 and NSF–54, for this purpose);

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

An individual participant's name; the identity of any project on which the participant worked; and information on the nature and extent of the individual's involvement, level of effort, and NSF support may be publicly released.

Demographic data pertaining to any individual may be released only to:

1. Contractors who perform a service to or work on or under a contract with the Federal government in pursuit of a purpose described above. Individuals will be given access only if needed for their specific job. The contractors are subject to the provisions of the Privacy Act.

2. A Federal agency so that it can identify and contact persons who might be interested in a scientific, technical, or educational program, meeting, vacancy, or similar opportunity.

3. A Federal agency, or a researcher with appropriate scholarly credentials, to use the data for scholarly studies or for Federal program management, evaluation, or reporting only after scrutiny of research protocols and with appropriate controls. Information from this system may be merged with other computer files to complete such studies or evaluations. The results of such studies or evaluations are statistical in nature and do not identify individuals.

4. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

5. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Primary storage is in centralized electronic data tables. Extracts or paper printouts may be maintained in computers or paper files in individual program offices.

RETRIEVABILITY:

Information can be retrieved electronically using participant names.

SAFEGUARDS:

NSF employees, contractors, advisers, and others will have access only after entering the NSF data system using a personal identifier and password only

as needed for their specific assignments. Principal investigators will have access only to information about their own awards, and only after identifying themselves using a personal identifier and personal identification number. Even then, they will not have access through this system to demographic data on individuals other than themselves. Persons covered by the system will have access only to information about themselves.

RETENTION AND DISPOSAL:

The file is cumulative and is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information other than demographic data is entered by the principal investigator on the relevant award. Demographic data is obtained either by having the individual participant enter it directly (preferred) or by having the principal investigator enter it on the participant's behalf.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NSF–65

SYSTEM NAME:

NSF Electronic Payment File.

SYSTEM LOCATION:

National Science Foundation, Division of Financial Management, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, other individuals and vendors who will or do receive electronic payment from the National Science Foundation for goods or services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security Number, and payee banking information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Debt Collection Improvement Act of 1996 provides authority for the National Science Foundation to implement mandatory electronic payments for all obligations.

PURPOSE(S):

This system enables NSF to comply with the electronic payment provisions of the Debt Collection Act of 1996.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be disclosed to:

1. The Department of the Treasury for the purpose of issuing the payment directly to the financial account of the payee, and reporting income paid in accordance with reporting requirements.

2. Financial institutions for the purpose of direct deposit.

3. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected, and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

4. Contractors, experts, and other individuals who perform a service to or work on or under a contract, or other arrangement with or for the Federal government, as necessary to carry out their duties.

5. Another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

6. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained electronically.

RETRIEVABILITY:

These records are retrieved by Social Security Number or vendor institution number.

SAFEGUARDS:

These records are available only to those persons whose official duties require access. A password is required for access to the computer system. Printed reports of the data have restricted access and are treated as confidential information.

RETENTION AND DISPOSAL:

Updated information automatically replaces the old information. File is cumulative and maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Financial Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See "Notification" procedures above.

CONTESTING RECORD PROCEDURES:

See "Notification" procedures above.

RECORD SOURCE CATEGORIES:

Information in this system of records obtained from the individual or payees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–27911 Filed 10–16–98; 8:45 am]
BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Energy Corporation; Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 184 to Facility Operating License No. NPF–9 and Amendment No. 166 to Facility Operating License No. NPF–17 issued to Duke Energy Corporation (the licensee), which revised the Technical Specifications for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina. The amendments are effective as of the date of issuance and shall be implemented within 90 days of issuance.

The amendments implement a full conversion of the McGuire Nuclear Station Technical Specifications (TS) to a set of TS based upon NUREG–1431, "Standard Technical Specifications—Westinghouse Plants," Revision 1, April 1995, and on guidance provided in the

Commission's "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors," published on July 22, 1993 (58 FR 39132), and Title 10 of the Code of Federal Regulations, Section 50.36, as amended July 19, 1995 (60 FR 36953). The amendments also grant requests for the following additional ITS items: (a) May 6, 1998 (63 FR 25108) (two notices); (b) May 6, 1998 (63 FR 25107); (c) May 20, 1998 (63 FR 27761); (d) July 29, 1998 (63 FR 40554); and (e) August 26, 1998 (63 FR 45524). In addition, the amendments add license conditions to the newly-created Appendix C (Unit 1) and Appendix D (Unit 2) of the operating licenses that require (1) the relocation of certain requirements to licensee-controlled documents, and (2) the first performance of new and revised surveillance requirements for the new improved TS to be related to the implementation date of the improved TS. The implementation of the amendments and the license conditions will be completed no later than 90 days after the date of the amendments, as stated in the amendments.

The application for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on July 15, 1997 (62 FR 37940). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendments will not have a significant effect on the quality of the human environment (63 FR 51626 dated September 28, 1998). For further details with respect to the action see (1) the application for amendments dated May 27, 1997, as supplemented by letters dated March 9, March 20, April 20, June 3, June 24, July 7, July 21, August 5, September 8, and September 15, 1998, (2) Amendment No. 184 to License No. NPF–9 and Amendment No. 166 to License No. NPF–17, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Dated at Rockville, Maryland, this 14th day of October 1998.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–27945 Filed 10–16–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Duke Energy Corporation, et al.; Docket Nos. 50–413 and 50–414 Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 173 to Facility Operating License No. NPF–35 and Amendment No. 165 to Facility Operating License No. NPF–52 issued to Duke Energy Corporation, et al. (the licensee), which revised the Technical Specifications for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina. The amendments are effective as of the date of issuance and shall be implemented by January 31, 1999.

The amendments implement a full conversion of the Catawba Nuclear Station Technical Specifications (TS) to a set of TS based upon NUREG–1431, "Standard Technical Specifications—Westinghouse Plants," Revision 1, April 1995, and on guidance provided in the Commission's "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors," published on July 22, 1993 (58 FR 39132), and Title 10 of the Code of Federal Regulations, Section 50.36, as amended July 19, 1995 (60 FR 36953). The amendments also grant requests for the following additional ITS items: (a) May 6, 1998 (63 FR 25106); (b) May 20, 1998 (63 FR 27760); and (c) July 29, 1998 (63 FR 40553). In addition, the amendments add license conditions to Appendix D (Unit 1 and Unit 2) of the operating licenses that require (1) the relocation of certain requirements to licensee-controlled documents, and (2) the first performance of new and revised surveillance requirements for the new improved TS to be related to the implementation date of the improved TS. The implementation of the amendments and the license conditions will be completed by January 31, 1999, as stated in the amendments.

The application for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on July 14, 1997 (62 FR 37628). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendments will not have a significant effect on the quality of the human environment (63 FR 49139, September 14, 1998).

For further details with respect to the action see (1) the application for amendments dated May 27, 1997, as supplemented by letters dated March 9, March 20, April 20, June 3, June 24, July 7, July 21, August 5, September 8, and September 15, 1998, (2) Amendment No. 173 to License No. NPF–35 and Amendment No. 165 to License No. NPF–52, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 30th day of September 1998.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–27946 Filed 10–16–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–259, 50–260 and 50–296]

Tennessee Valley Authority; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted a request by the Tennessee Valley Authority (the licensee) to withdraw its December 30, 1997, application for an amendment to Facility Operating License Nos. DPR–33, DPR–52 and DPR–68 issued to the licensee for operation of the Browns Ferry Nuclear Plant (BFN), Units 1, 2 and 3, respectively, located in Limestone County, Alabama. Notice of consideration of issuance of this amendment was published in the **Federal Register** on February 11, 1998 (63 FR 6999).

The purpose of the licensee's amendment request was to revise the BFN Custom Technical specifications (CTS) to remove an identified non-conservatism concerning the number of residual heat removal system service water (RHRSW) pumps required for multi-unit operation. This change also proposed to reduce the number of RHRSW pumps required to be operable after a unit has been in the cold shutdown condition for more than 24 hours.

On July 14, 1998, NRC issued Amendment Nos. 234, 253, and 212 to Facility Operating License Nos. DPR–33, DPR–52, and DPR–69 for BFN Units 1, 2, and 3, respectively, which approved conversion of CTS to Improved Technical Specifications (ITS). These license amendments also approved the licensee's December 30, 1997 proposed CTS change relating to the RHRSW pumps operation. As a result, by letter dated September 18, 1998, the licensee informed the staff that it no longer requires staff action relating to its December 30, 1997 application for CTS change relating to RHRSW pump operation. Thus the licensee's December 30, 1997 application is considered withdrawn by the licensee.

For further details with respect to this action, see the application for amendments dated December 30, 1997, the licensee's September 18, 1998 letter and the staff's letter dated October 8, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the local public document room located at the Athens Public Library, 405 E. South Street, Athens, Alabama.

Dated at Rockville, Maryland, this 8th day of October 1998.

For the Nuclear Regulatory Commission.

L. Raghavan,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–27948 Filed 10–16–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213; License No. DPR–61]

Connecticut Yankee Atomic Power Company; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by petition dated September 11, 1998, Citizens Awareness Network (Petitioner) has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the Haddam Neck Plant. Petitioner requests that the NRC (1) immediately revoke or suspend the Connecticut Yankee Atomic Power Company (CYAPCO) operating license for the Haddam Neck Plant, (2) hold an informal public hearing on the petition in the vicinity of the site, and (3) consider requiring CYAPCO to conduct decommissioning activities under 10 CFR Part 72.

As the bases for these requests, Petitioner states that CYAPCO (1) demonstrates incompetence in creating and maintaining a safe work environment and an effective well-trained staff and (2) is not conducting its decommissioning activities in accordance with its Post Shutdown Decommissioning Activities Report (PSDAR) and therefore poses an undue risk to public health.

With regard to the Petitioner's request for immediate revocation or suspension of CYAPCO's operating license, under the provisions of 10 CFR 50.82(a)(2), HNP is no longer authorized to operate or place fuel in the reactor. The permanently shutdown and defueled status of the plant substantially reduces the risk to public health and safety. The decommissioning activities at Haddam Neck have not resulted in radiation exposure to any individual or effluent releases to the environment in excess of regulatory limits. Based on these facts, the Petitioner's request to immediately revoke or suspend the operating license for Haddam Neck has been denied.

With regard to the Petitioner's request for an informal public hearing, the staff reviewed the PSDAR and found that CYAPCO has followed the sequence of activities included in the PSDAR as Figure 1, "CY Decommissioning Schedule." Additionally, CYAPCO committed to controlling radiation exposure to offsite individuals to levels less than both the Environmental Protection Agency's Protective Action Guides and NRC regulations. Both radiation exposures to individuals and effluents to the environment due to decommissioning activities have been within regulatory limits. Based on these facts, the staff found that no undue risk to public health and safety is present. The staff also determined that the Petitioner neither provided new information that raised the potential for a significant safety issue (SSI) nor presented a new SSI or new information on a previously evaluated SSI. Therefore, the criteria for an informal public hearing, contained in Part III (c) of Management Directive 8.11, are not satisfied and the Petitioner's request for an informal public hearing has been denied.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided for by Section 2.206, action will be taken on this request within a reasonable time. A copy of the petition is available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington DC, and at the Local Public Document Room at the Russell Public Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland this 7th day of October 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–27947 Filed 10–16–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26926]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 9, 1998.

Notice is hereby giving that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) and any amendment is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 3, 1998, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 3, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Energy Group, et al. (70–9139)

Columbia Energy Group ("Columbia"), a registered holding company, Columbia's service company subsidiary, Columbia Energy Group Service Corporation, Columbia's liquified natural gas subsidiaries, Columbia LNG Corporation and CLNG Corporation, Columbia's trading subsidiary, Columbia Atlantic Trading Corporation, Columbia's energy services and marketing subsidiaries, Columbia Energy Services Corporation, Columbia Assurance Agency, Inc., Columbia Energy Marketing Corporation, Columbia Energy Power Marketing Corporation, Columbia Service Partners, Inc., Energy.COM Corporation, Columbia Deep Water Services Company, and Columbia Energy Group Capital Corporation, all located at 13880 Dulles Corner Lane, Herndon, Virginia 20171–4600, Columbia's exploration and production subsidiaries, Columbia Natural Resources, Inc., Alamco, Inc., Alamco-Delaware, Inc., Hawg Hauling & Disposal, Inc., and Columbia Natural Resources Canada, Ltd., all located at 900 Pennsylvania Avenue, Charleston, West Virginia 25302, Columbia's gas transmission subsidiaries, Columbia Gas Transmission Corporation, 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, and Columbia Gas Gulf Transmission Company, 2603 Augusta, Suite 125, Houston, Texas 77057, Columbia's network services subsidiaries, Columbia Network Services Corporation and CNS Microwave, Inc., both located at 1600 Dublin Road, Columbus, Ohio 43215–1082, Columbia's propane distribution subsidiary, Columbia Propane Corporation, 9200 Arboretum Parkway, Suite 140, Richmond, Virginia 23236, Columbia's captive insurance subsidiary, Columbia Insurance Corporation, Ltd., Craig Appin House, 8 Wesley Street, Hamilton HM EX, Bermuda, and Columbia's other subsidiaries, Columbia Electric Corporation, Tristar Pedrick Limited Corporation, Tristar Pedrick General Corporation, Tristar Binghamton Limited Corporation, Tristar Binghamton General Corporation, Tristar Vineland Limited Corporation, Tristar Vineland General Corporation, Tristar Rumford Limited Corporation, Tristar Georgetown General Corporation, Tristar Georgetown Limited Corporation, Tristar Fuel Cells Corporation, TVC Nine Corporation, TVC Ten Corporation and Tristar System, Inc., all located at 13880 Dulles Corner Lane, Herndon, Virginia 20171–4600, have filed an application-declaration under sections 6(a)(2), 7, 9(a), 10, and 12(c) under the Act and rules 42, 43, 46, and 54 under the Act.

Columbia requests authorization to acquire the securities of, or an interest in, one or more entities primarily engaged in the exploration, development, production, manufacture, storage, transportation or supply of natural gas or synthetic gas within the United States and for these entities to receive an exemption from the Act under rule 16 under the Act. Columbia represents that each of the entities it proposes to acquire (as stated in rule 16): (1) will not be a "public utility company" as defined in section 2(a)(5) of the Act; (2) will be or has been organized to engage primarily in the exploration, development, production, manufacture, storage, transportation or supply of natural or synthetic gas; and (3) will not have more than 50% of its voting securities or other voting interests owned, directly or indirectly, by one or more registered holding companies. Columbia further represents that its investments will be limited to entities which satisfy the definition of "gas-related company" for purposes of rule 58 under the Act.

Columbia's nonutility subsidiaries [1] propose to amend their certificates of incorporation to change the par value of equity securities directly or indirectly held by Columbia, and to declare and pay dividends to Columbia out of capital thus created or otherwise existing, to the extent permitted by state law.

[1] Columbia's nonutility subsidiaries are all subsidiaries other than its gas distribution subsidiaries, namely, Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Virginia, Inc.

Montaup Electric Co., et al. (70–9357)

Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachusetts 02107, and Eastern Edison Company ("Eastern Edison"), 750 West Center Street, West Bridgewater, Massachusetts 02379, each an electric utility subsidiary company of Eastern Utilities Associates ("EUA"), a registered holding company, have filed a declaration under section 12(c) of the Act and rules 42, 46, and 54 under the Act.

Montaup proposes, from time to time through December 31, 2003, to redeem or acquire and retire up to an aggregate amount of $235 million of its outstanding debenture bonds, preferred stock, or common stock ("Montaup Securities") from Eastern Edison. The redemption price for debenture bonds will be the principal amount plus accrued interest. The repurchase price for Montaup's preferred stock and common stock will be their original purchase price. All of the Montaup Securities are issued in the name of, and beneficially owned by, Eastern Edison.

Montaup proposes to finance these redemptions and repurchases with: (1) Proceeds from the divestiture of its generation assets which are being sold in accordance with applicable orders of the Federal Energy Regulatory Commission, the Massachusetts Department of Telecommunications and Energy, and the Rhode Island Public Utilities Commission; (2) proceeds from a possible securitization financing or conventional financing; (3) cash flow; and (4) borrowings under other available credit facilities.

Eastern Edison proposes, from time to time through December 31, 2003, to repurchase and retire, in one or more transactions, up to an aggregate amount of $50 million of its outstanding common stock from EUA. The repurchase price for Eastern Edison's common stock will be the original issue price. Eastern Edison currently has outstanding 2,891,357 shares of common stock, all of which are owned by EUA.

Eastern Edison proposes to finance these acquisitions with: (1) Cash flow; (2) the proceeds from credit facilities; and (3) the proceeds from the redemption and repurchase of the Montaup Securities. The proceeds from the redemption and repurchase of Montaup Securities are initially required to be deposited with the Trustee under the Indenture of First Mortgage and Deed of Trust of Eastern Edison dated September 1, 1948 ("Eastern Indenture"). To the extent these proceeds are not used to redeem

first mortgage bonds issued under the Eastern Indenture, Eastern Edison will obtain their release through the use of available bond credits, as defined in Section 8.03 of the Eastern Indenture, or by the use of available net additions, as defined in Section 8.02 of the Eastern Indenture.

In addition, Eastern Edison requests authorization to pay dividends up to an aggregate amount of $50 million out of capital and unearned surplus, and Montaup requests authorization to pay dividends up to an aggregate amount of $30 million out of capital and unearned surplus.

GPU, Inc. (70–9351)

GPU, Inc. ("GPU"), 300 Madison Avenue, Morristown, New Jersey 07962, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rules 42 and 54 under the Act.

GPU proposes to adopt a stockholder rights plan ("Plan") and to enter into a Rights Agreement ("Agreement") with Chase Mellon Shareholder Services, Inc. ("Rights Agent"). Under the Plan, GPU's Board of Directors ("Board") proposes to declare a dividend of one right ("Right") for each outstanding share of GPU common stock, $2.50 par value ("Common Stock"), payable to stockholders of record on the tenth business day after the Commission has issued an order requested by this application-declaration ("Record Date"). Each Right would entitle the holder to purchase one-tenth of a share of Common Stock at a price of $120 per whole share of Common Stock, subject to adjustment ("Purchase Price"). Under the Agreement, the Rights will be created and issued to stockholders by the Rights Agent.

Initially under the Agreement, the Rights will not be exercisable and will be evidenced by, and traded with, the Common Stock certificates outstanding on the Record Date. They may be exercised on the Distribution Date, which is defined in the Agreement as the earlier of: (1)(ten days after the first public announcement that any person or group has acquired beneficial ownership of 10% or more of Common Stock ("Acquiring Person"), without Board approval ("Acquisition Event") and (2) ten business days, unless extended by the Broad, after any person or group has commenced a tender or exchange offer which would, upon its consummation, result in the person or group becoming an Acquiring Person (this event together with an Acquisition Event, "Triggering Events"). On the occurrence of either Triggering Event, each Right will be evidenced by a Right Certificate, which may then be traded independently of the Common Stock.

In the event that a person becomes an Acquiring Person, Right holders will have the right to receive Common Stock (or, in certain circumstances, cash, property or other GPU securities) having a value equal to two times the effective Purchase Price ("Discount Purchase Price"). If after the occurrence of an Acquisition Event, GPU is acquired by another person or entity not controlled by GPU or 50% of GPU's consolidated assets or earning power are sold or transferred to another person or entity not controlled by GPU, each Right holder may exercise a Right and receive for each Right the common stock of the acquiring company at the Discount Purchase Price. If a Triggering Event occurs, all Rights that are, and under certain circumstances were, held by an Acquiring Person become null and void.

The terms of the Rights may be amended by the Board without the consent of Right holders prior to the Distribution Date in any manner. After the Distribution Date, the Board generally may amend the terms to cure ambiguities and alter the Agreement to correct or conform defective provisions consistent with the interests of holders. The Purchase Price payable, and the number of shares of Common Stock or other securities issuable, on the exercise of the Rights may be adjusted by the Board from time to time to prevent dilution under particular circumstances. With certain exceptions, no adjustment in the Purchase Price will be required unless the adjustment would result in a one percent or more change in the Purchase Price.

GPU may redeem the Rights, as a whole, at an adjustable price of $.001 per Right, at any time prior to the date that any person has become an Acquiring Person or the Right's expiration date, August 6, 2008. At any time after any person or group becomes an Acquiring Person and before any other person or group, other than GPU and certain related entities, becomes the beneficial owner of 50% or more of the outstanding shares of Common Stock, the Board may direct the exchange of shares of Common Stock for all or any part of the Rights. The exchange rate would be the lesser of (i) three shares of Common Stock per Right, as adjusted and (ii) a *pro rata* portion of the total number of shares of Common Stock then available for issuance.

American Electric Power Co., et al. (70–8779)

American Electric Power Company, Inc. ("AEP"), a registered holding company, its nonutility subsidiary, American Electric Power Service Corporation, both of 1 Riverside Plaza, Columbus, Ohio, 43215, and AEP's eight wholly owned electric utility subsidiary companies, Appalachian Power Company and Kingsport Power Company, both of 40 Franklin Road, SW, Roanoke, Virginia 24011, Columbus Southern Power Company, 215 North Front Street, Columbus, Ohio, 43215, Indian Michigan Power Company, One Summit Square, P.O. Box 60, Fort Wayne, Indian, 46801, Kentucky Power Company, 1701 Central Avenue, Ashland, Kentucky, 41101, Ohio Power Company, 301 Cleveland Avenue, S.W., Canton, Ohio, 44701, AEP Generating Company, 1 Riverside Plaza, Columbus, Ohio, 43215, Wheeling Power Company, 51 Sixteenth St., Wheeling, West Virginia, 26003 and AEP Energy Service, Inc., a nonutility subsidiary company of AEP ("AEP Energy") 1 Riverside Plaza, Columbus, Ohio, 43215, have filed a post-effective amendment to an application-declaration filed under section 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 54 90 and 91 under the Act.

By orders dated September 13, 1996 (HCAR No. 26572) and September 27, 1996 (HCAR No. 26583) ("September Orders"), AEP was authorized to form one or more direct or indirect nonutility subsidiaries ("New Subsidiaries") to broker and market electric power, natural and manufactured gas, emission allowances, coal, oil, refined petroleum products and natural gas liquids ("Energy Commodities"). As a result of the authorization granted in the September Orders, AEP formed AEP Energy. The Commission also authorized AEP to guarantee through December 31, 2000 up to $50 million of debt and up to $200 million of other obligations of the New Subsidiaries ("Guarantee Authority"). Subsequently, by order dated May 2, 1997 (HCAR No. 26713) ("May Order") the Commission expanded the Guarantee Authority so that AEP could guarantee the debt and other obligations of the New Subsidiaries for all energy-related company activities and the debt and other obligations of any subsidiary acquired or established.

Applicants now purpose to extend the period of the Guarantee Authority authorization through December 31, 20001 and to increase the Guarantee Authority of debt from $50 million up to $100 million under the terms and conditions stated in the September Orders and May Order. Additionally, Applicants seek authority for AEP Energy and the New Subsidiaries to broker and market Energy Commodities at wholesale and retain in Canada.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–27910 Filed 10–16–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 19, 1998.

An open meeting will be held on Wednesday, October 21, 1998, at 10:00 a.m. A closed meeting will be held on Thursday, October 22, 1998, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, October 21, 1998, at 10:00 a.m., will be: The Commission will consider whether to adopt rules 3b-12, 3b-13, 3b-14, 3b-15, 11a1–6, 15a-1, 15b9–2, 15c3–4, 17a-12, 36a1–1, and 36a1–2 under the Securities Exchange Act of 1934 ("Exchange Act") and amendments to Rule 30–3 and Exchange Act rules 8c-1, 15b1–1, 15c2–1, 15c2–5, 15c3–1, 15c3–3, 17a-3, 17a-4, 17a-5, 17a-11, and Form X–17A–5 (FOCUS report). The rules and rule amendments tailor capital, margin, and other broker-dealer regulatory requirements to a class of registered dealers, called OTC derivatives dealers, that are active in over-the-counter derivatives markets. Registration as an OTC derivatives dealer is an alternative to registration as a fully regulated broker-dealer, and is available to entities that engage in dealer activities in eligible OTC derivative instruments and that meet certain financial responsibility and other requirements. For further information, please contact Catherine McGuire, Chief Counsel, Division of Market Regulation at (202) 942–1161, or Michael Macchiaroli, Associate Director, Division of Market Regulation at (202) 942–0132.

The subject matter of the closed meeting scheduled for Thursday, October 22, 1998, at 11:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 14, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–28056 Filed 10–15–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40543; File No. SR–NASD–98–70]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a Logon Identification Fee for Nasdaq's Mutual Fund Quotation System

October 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 18, 1998 the National Association of Securities Dealers, Inc. ("NASD") through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. On October 1, 1998, the NASD submitted Amendment No. 1 to the proposed rule change.[2] 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 NASD and Nasdaq are proposing to amend NASD Rule 7090 to add a logon identification fee for subscribers to Nasdaq's Mutual Fund Quotation System ("MFQS" or "Service") that use the MFQS to transmit to Nasdaq fund-pricing and other required information. Below is the text of the proposed rule change. Additions are italicized.

* * * * *

7090. Mutual Fund Quotation Service

(a) Funds included in the Mutual Fund Quotation Service *("MFQS")* shall be assessed an annual fee of $275 per fund authorized for the News Media Lists and $200 per fund authorized for the Supplemental List. Funds authorized during the course of an annual billing period shall receive a proration of these fees but no credit or refund shall accrue to funds terminated during an annual billing period. In addition, there shall be a one-time application processing fee of $250 for each new fund authorized.

(b) Funds included in the MFQS and pricing agents designated by such funds ("Subscriber"), shall be assessed a monthly fee of $75 for each logon identification obtained by the Subscriber. A Subscriber may use a logon identification to transmit to Nasdaq pricing and other information that the Subscriber agrees to provide to Nasdaq.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

1. Purpose

The NASD and Nasdaq are proposing to amend NASD Rule 7090 to establish a $75 monthly logon identification fee

[1] 15 U.S.C. 78s(b)(1).

[2] *See*, letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Commission (Oct. 1, 1998). In Amendment No. 1, Nasdaq clarified its position that the proposed logon identification fee is designed to cover only the cost of administering and maintaining the Internet security system.

for Nasdaq's Mutual Fund Quotation Service.

Currently, MFQS collects daily price and related data for open-end funds and money market funds, and publicly disseminates the information to the news media and market data vendors. Recently, Nasdaq amended its rules to add closed-end funds to the MFQS.[3] Previously, closed-end funds could not be included because the Nasdaq Special Service Network ("SSN") on which the MFQS currently resides does not accommodate some of the data attributes needed for closed-end funds. Nasdaq recently re-designed and upgraded the MFQS to include closed-end funds and as part of Nasdaq's plan to eliminate the outdated and outmoded SSN.

The upgraded MFQS was developed using web-based technology. The MFQS, which is scheduled to begin operation on or about October 26, 1998, will permit funds included in the Service or a pricing agent designed by such funds ("Subscribers") to transmit directly to Nasdaq via an Internet connection the following: net asset value, offer price, closing market price, as well as other information that Subscribers agree to provide to Nasdaq.[4] Nasdaq developed a multi-pronged Internet security system to ensure the safety and integrity of the information transmitted by Subscribers to Nasdaq. Specifically, Nasdaq will assign to a Subscriber a logon identification(s) and will also provide the Subscriber with "certificate" software. The certificate software, when loaded onto a Subscriber's personal computer, will allow the Subscriber to interface with the MFQS and to transmit data securely to Nasdaq. A logon identification will allow one user at a Subscriber to access the MFQS at a time.[5] Each logon identification will be unique and will allow a subscriber to review and update only the Subscriber's pricing information.

Nasdaq estimates that the MFQS's share of the on-going costs to administer and maintain the Internet security system will be $239,000.[6] In order to recover the costs related to the administration and maintenance of the MFQS's portion of the Internet security system, the NASD and Nasdaq are proposing to establish a logon identification fee for those who use the Service to report pricing information. As proposed, a Subscriber will be assessed $75 per month for each logon identification a Subscriber orders. Nasdaq will permit a Subscriber to order a single or multiple logon identifications, each of which will be unique to the Subscriber.

2. Statutory Basis

The NASD and Nasdaq believe that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[7] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The NASD and Nasdaq believe that the logon fee is a fair means of recovering the cost of providing security for the MFQS because the fee is imposed directly and only on those who use the MFQS and who benefit from the Internet security system that the fee is intended to fund. Moreover, the proposed fee is designed to cover only the administrative and maintenance costs of the MFQS security system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD and Nasdaq do not believe that the proposed rule change will result in 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 were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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 NASD. All submissions should refer to File No. SR–NASD 98–70 and should be submitted by November 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–27907 Filed 10–16–98; 8:45 am]

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[3] *See* Securities Exchange Act Rel. No. 40519 (Oct. 5, 1998).

[4] Each fund that is included in the MFQS signs an agreement with Nasdaq pursuant to which the fund agrees to provide the aforementioned information (as applicable) to Nasdaq on a daily basis. *See* NASD Rule 6800(b)(2). Additionally, if a fund designates a pricing agent to report pricing information to Nasdaq on behalf of the fund, the pricing agent also signs the aforementioned agreement.

[5] That is, the same logon identification cannot be use simultaneously by more than one user at the Subscriber at a time, although a logon identification may be used by more than one user at a Subscriber so long as it is done on a non-simultaneous basis. Thus, while more than one user at a Subscriber can share a logon identification to update pricing information, Nasdaq's system will not permit multiple users to logon simultaneously to the MFQS using the same logon identification. A Subscriber may order multiple logon identifications, each of which will be unique and which may be used simultaneously with one another to access the MFQS.

[6] At present, the security system is sized (hardware and personnel) to handle only the users of the MFQS and the NasdaqTrader.com web sites. (NasdaqTrader.com will be employing this Internet security system, as this website soon will be adding additional services that will provide members with certain proprietary or sensitive information.) The administrative and maintenance costs of the Internet security system will be allocated between the MFQS and NasdaqTrader.com, based on the services' proportionate cost. In the future, Nasdaq may use the Internet security system with several NASD web-based services. *See*, Securities Exchange Act Release No. 34–40542, (Oct. 9, 1998) SR–NASD–98–71.

[7] 15 U.S.C. 78o–3.

[8] In Nasdaq's 19(b)(4) filing, Nasdaq asked for accelerated approval. The Commission, however, has decided the proposed rule should be subjected to the notice and comment period found in Section 19(b)(2) of the Act.

[9] *See* 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40542; File No. SR–NASD–98–71]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Establishment of a Pilot Program To Provide Proprietary Trading Data via Nasdaq Trader.com

October 9, 1998.

On September 29, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] The proposed rule change is described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

Nasdaq is proposing to amend Rule 7010 of the Rules of the NASD, to establish a pilot program to provide proprietary trading data via Nasdaq's NasdaqTrader.com web site. Below is the text of the proposed rule change. Proposed new language is in italics.

(o) Nasdaq Trader.com Proprietary Data Fee

The charge to be paid by the subscriber for each entitled user receiving Nasdaq Proprietary Data via NasdaqTrader.com is $100 per month (monthly maximum of 25 Historical Research Reports) or $150 per month (monthly maximum of 100 Historical Research Reports). The Proprietary Data Package includes:

(1) For NASD Member Firms:

(a) Daily Share Volume Report for a Broker/Dealer (Subscriber's information only)

(b) Daily Share Volume Reports for a Security

(c) Monthly Summaries

(d) Monthly Compliance Report Cards (Subscriber's information only)

(e) Historical Research Reports

(i) Market Maker Price Movements Report

(ii) Equity Trade Journal (Subscriber's information only)

(2) For Non-Member Qualified Institutional Buyers:

(a) Daily Share Volume Reports for a Security

(b) Monthly Summaries

(c) Historical Research Reports

(i) Market Maker Price Movement Report

The Association may modify the contents of the Proprietary Data Package.

* * * * *

II. Self-Regulatory Organization's Statement of The Purpose of and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing to establish a pilot proprietary trading data distribution facility accessible to NASD members and qualified institutional buyers through its NasdaqTrader.com web site. Under the proposal, NASD member firms will be able to obtain data, verified for accuracy by Nasdaq's Automated Confirmation Transaction Service ("ACT"), regarding their trading volume in securities in which they report volume as well as disseminate some or all of that information to other users of the system. Fees from system subscribers will be used to offset the costs associated with the maintenance and marketing of the secured content as well as the product's portion of the ongoing maintenance and administration of the Nasdaq web security infrastructure.[3]

Specifically, NASD member firms who elect to receive Nasdaq's Proprietary Data Package (NPDP") will be able to obtain the following: (1) Daily Share Volume Reports displaying the firm's own T+1 daily trading volume for each issue in which the firm reports volume; (2) Daily Share Volume Reports for a Security containing voluntarily-posted daily share volumes in individual issues traded by other NASD member firms; (3) Monthly Summaries providing monthly trading volume statistics for the top 50 market participants broken down by industry sector, security, or type of trading (*e.g.* block or total); (4) Monthly Compliance Report Cards outlining the firm's own compliance status in the areas of trade reporting, firm quote compliance and best execution obligations; and (5) Historical Research Reports consisting of Market Maker Price Movement Reports ("MMPMR") which show all of a Market Maker's quote updates (price, size and inside quote at time of update) for a security on a specified date, and, Equity Trade Journals ("ETJs") which detail all trades reported through ACT by the NASD member firm for a selected security and date.[4] With the exception of the individual Daily Share Volume Reports for a Broker/Dealer, Compliance Report Card, and ETJ reports, non-NASD member Qualified Institutional Buyers ("QIBs")[5] who subscribe to the system will also be able to obtain the NPDP. Due to capacity restrictions, NPDP users seeking Historical Research Reports will be limited to either 25 or 100 monthly reports depending on the subscription fee paid.

The NPDP pilot proposal is a direct response to requests from professional Nasdaq market participants to increase the availability of Nasdaq-verified trading data through NasdaqTrader.com. Sell-side traders use share volume to display their trading activity in specific Nasdaq issues while buy-side representatives utilize similar data to determine which sell-side firm to select for execution of their orders. NPDP attempts to create a secure, controlled mechanism to allow these parties to display and view such data and make informed choices regarding their trading partners.

Nasdaq also recognizes, however, that the data contained in the NPDP is proprietary and confidential. As such, Nasdaq has established a secure information display and retrieval environmental through the combined use of User IDs, passwords and digital certificates.[6] To further protect NASD

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Rel. No. __ (October __, 1998) (File No. SR–NASD–98–70), n.4.

[4] For a trial period, an individual firm's proprietary data described in numbers 1, 4 and 5 above are currently being made available through NasdaqTrader.com without charge. Upon SEC approval of the proposed fee, Nasdaq will begin to assess the proposed monthly fee for the entire data package.

[5] For purposes of this service, Nasdaq will rely on the definition of "Qualified Institutional Buyer" found in Rule 144A of the Securities Act of 1933.

[6] A digital certificate is an electronic code or computer file assigned by Nasdaq to each user to

Continued

member firms' proprietary data, the service is designed so that firm-specific reports regarding daily trading volume figures will only be made available to the member firm itself, unless that member determines voluntarily to submit the information to the Daily Share Volume Report for a Security for dissemination to other NPDP subscribers.[7] Additional firm specific reports such as the Monthly Compliance Report Cards and the ETJ will also be restricted so that NASD member firms will only be allowed to view their own information.

Concerns for data protection, and the system security requirements needed to encourage greater disclosure of proprietary trading statistics, also shaped Nasdaq's determination to make NPDP available only to NASD member firms and QIBs. Nasdaq believes that these groups contain the largest number of market participants who may benefit from the availability of the voluntarily-disclosed, Nasdaq-verified, trading volumes and related information available via the NPDP service. At the same time, these participants are also the most likely to possess the requisite staff and resources to comply with NPDP system security mandates. Moreover, the QIBs defined in Rule 144A consist of entities registered with various regulatory bodies which Nasdaq believes provides an additional layer of protection against the improper use of its members' proprietary trading data. Finally, the Rule 144A QIB definition sought to be relied on by Nasdaq has already been adopted by the Commission as a standard delineating the characteristics of institutional market participants. As such, Nasdaq believes that this standard is an appropriate starting point to evaluate the commercial viability of its new data package during the pilot program.[8]

Given the commercial uncertainties associated with the launching of any new data product, Nasdaq will be establishing this new service as a 12 month pilot program to evaluate user interest. As part of that evaluation, Nasdaq may experiment with the mix of information available in the NPDP by adding and deleting various components of the package based on user feedback.

identify the person accessing its system and to verify that the user is accessing the correct database.

[7] Daily Share volume Reports for a Security, available for viewing by all system users, will be compiled based on voluntarily-submitted daily figures.

[8] Nasdaq will monitor requests for the NPDP from institutes not meeting the QIB standard of Rule 144A with a view to expanding the availability of the data package to those institutions consistent with Nasdaq Trader.com's security limitations.

Nasdaq believes the proposed rule change is consistent with the provisions of Section 15A(b)(6)[9] of the Act. Nasdaq believes that the NPDP pilot fosters cooperation and coordination with persons engaged in facilitating transactions in securities and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in 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 were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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 NASD. All submissions should refer to the file number in the caption above and should be submitted by November 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–27908 Filed 10–16–98; 8:45 am]

BILLING CODE 8010–01–M

[9] Section 15A(b)(6) requires the Commission to determine that the rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers, and in general, to protect investors and the public interest.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40540; File No. SR–NSCC–98–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Expanding the Annuities Processing Service

October 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 24, 1998, the National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. 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 proposed rule change will amend NSCC's rules to implement the second phase of its Annuity Processing Service ("APS").

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On September 19, 1997, the Commission approved NSCC's rule filing establishing APS.[3] APS provides a centralized communication link that connects participating insurance carriers with their multiple distribution channels, including broker-dealers, banks, and the broker-dealers' or banks' affiliated insurance agencies where appropriate (collectively, "distributors"). Phase one of APS provides NSCC's participants with the ability to send and receive daily information regarding underlying assets, and settlement of commission monies.[4]

The purpose of the proposed rule change is to implement phase two of APS. Phase two will provide distributors the ability to transmit to insurance carriers information concerning annuity applications and subsequent premium payments and to settle initial and subsequent premiums. In addition, insurance carriers will be able to transmit to distributors information relating to events and transactions occurring with respect to existing annuity contracts that have been issued by the insurance carriers.

The initial application and initial premium components of APS will allow distributors to transmit information related to annuity applications and will allow settlement of the initial premium payments through NSCC's money settlement process. Distributors will submit application information to NSCC, and NSCC will forward the application information to the insurance carrier designated as recipient by the distributor.

The subsequent premium component will allow distributors to transmit to insurance carriers information related to subsequent premium payments made by annuity contract owners. Distributors will submit subsequent premium information to NSCC, and NSCC will forward the subsequent premium information to the insurance carrier designated as recipient by the distributor.

The proposed rule change will provide that a distributor who has submitted application information or subsequent premium information to NSCC may also include date with respect to the annuity contract owner's initial premium payment or subsequent premium payment. If the information regarding the initial or subsequent premium payment is included with the application information or subsequent premium information, distributors and carriers will settle these payments through NSCC's money settlement system.

Distributors will initiate initial and subsequent premium payment settlement by submitting instructions to NSCC. All initial and subsequent premium payments submitted on a business day prior to that day's cutoff time (2:00 pm Eastern time) will settle on that day. Payments submitted on a business day after the cutoff time will settle on the next business day. Distributors will have the ability to cancel a previously submitted transaction on a business day as long as the cancel instruction is initiated prior to 2:00 pm Eastern time.

If a distributor submits an instruction to NSCC to withdraw application information and an initial premium payment had been originally submitted with that application information, then NSCC will not settle the initial premium payment. A distributor will not have the ability to cancel a subsequent premium payment that has been included with previously submitted subsequent premium information.

The financial activity reporting component will allow insurance carriers to transmit to distributors information and details about transactions and events that have occurred with respect to existing annuity contracts. An example of a transaction that may occur with respect to an annuity contract is a contract owner initiated transfer of underlying annuity contract assets from one subaccount to another subaccount. An example of an event is a dividend declared by an underlying fund. Distributors often use financial activity information for the monthly account statements they send to their customers.

The proposed rule change will provide that if the application information submitted by a distributor to NSCC appears to contain the information required by NSCC but does not appear to contain the information required by the designated insurance carrier, NSCC will nevertheless transmit the application information to the designated insurance carrier but will not settle any initial premium payments submitted with such information. However, if the information contains four or more errors, NSCC will reject all of the submitted information and will not settle any initial premium payments submitted with such information.

NSCC believes the proposed rule change is consistent with Section 17A of the Act because phase two of APS will facilitate the prompt and accurate clearance and settlement of securities transactions and will in general protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 NSCC 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

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 39096 (September 19, 1997), 62 FR 50416 [order approving the establishment of APS and the implementation of phase I of APS].

[4] *Id.*

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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–98–07 and should be submitted by November 9, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–27909 Filed 10–16–98; 8:45 am]

BILLING CODE 8010–01–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of (1) promulgation of temporary, "emergency" guideline amendment increasing the penalties for (A) fraud offenses involving sophisticated means; and (B) offenses involving a large number of vulnerable victims; and (2) final action regarding amendments to sentencing guidelines and policy statements effective November 1, 1998.

SUMMARY: The United States Sentencing Commission hereby gives notice of the following actions: (1) Pursuant to the Telemarketing Fraud Prevention Act of 1998, Pub. L. 105–184, the Commission has promulgated temporary, emergency amendments to §§ 2F1.1 (Fraud and Deceit) and 3A1.1 (Hate Crime Motivation and Vulnerable Victim) and accompanying commentary; (2) pursuant to its authority under 28 U.S.C. 994(a) and (p), the Commission has promulgated amendments to commentary and the statutory index.

SUPPLEMENTARY INFORMATION: The Telemarketing Fraud Prevention Act of 1998 directed the Commission generally to provide for substantially increased penalties for persons convicted of an offense described in section 2326 of title 18, United States Code, in connection with the conduct of telemarketing fraud. The temporary, emergency amendments set forth in this notice implement this general directive in a broader form and also respond to a number of specific requirements in the Act.

DATES: The Commission has specified an effective date of November 1, 1998 for the emergency amendments increasing the penalties for fraud offenses involving sophisticated means and offenses involving a large number of vulnerable victims, and the amendments to the commentary and the statutory index.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 273–4590.

Authority: 28 U.S.C. 994(a) and (p).

Richard P. Conaboy,

Chairman.

1. Amendment: Section 2F1.1(b) is amended by striking subdivision (3) and all that follows through the end of the subsection and inserting the following:

"(3) If the offense was committed through mass-marketing, increase by 2 levels.

(4) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency; or (B) violation of any judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines, increase by 2 levels. If the resulting offense level is less than level 10, increase to level 10.

(5) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(6) If the offense involved (A) the conscious or reckless risk of serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 13, increase to level 13.

(7) If the offense—

(A) Substantially jeopardized the safety and soundness of a financial institution; or

(B) Affected a financial institution and the defendant derived more than $1,000,000 in gross receipts from the offense, increase by 4 levels. If the resulting offense level is less than level 24, increase to level 24".

The Commentary to § 2F1.1 captioned "Application Notes" is amended by striking Application Note 14 and all that follows through the end of the Application Notes and inserting the following:

"15. For purposes of subsection (b)(5)(B), 'United States' means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

For purposes of subsection (b)(5)(C), 'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction would ordinarily indicate sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore bank accounts also ordinarily would indicate sophisticated means.

The enhancement for sophisticated means under subsection (b)(5)(C) requires conduct that is significantly more complex or intricate than the conduct that may form the basis for an enhancement for more than minimal planning under subsection (b)(2)(A).

If the conduct that forms the basis for an enhancement under subsection (b)(5) is the only conduct that forms the basis for an adjustment under § 3C1.1 (Obstruction of Justice), do not apply an adjustment under § 3C1.1.

16. 'Financial institution,' as used in this guideline, is defined to include any institution described in 18 U.S.C. 20, 656, 657, 1005–1007, and 1014; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the federal government. 'Union or employee pension fund' and 'any health, medical, or hospital insurance association,' as used above, primarily include large pension funds that serve many individuals (*e.g.*, pension funds of large national and international

[5] 17 CFR 200.30–3(a)(12).

organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (*e.g.*, medical or hospitalization insurance) to large numbers of persons.

17. An offense shall be deemed to have 'substantially jeopardized the safety and soundness of a financial institution' if, as a consequence of the offense, the institution became insolvent; substantially reduced benefits to pensioners or insureds; was unable on demand to refund fully any deposit, payment, or investment; was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or was placed in substantial jeopardy of any of the above.

18. 'The defendant derived more than $1,000,000 in gross receipts from the offense,' as used in subsection (b)(7)(B), generally means that the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000. 'Gross receipts from the offense' includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. See 18 U.S.C. 982(a)(4).

19. If the defendant is convicted under 18 U.S.C. 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the 'continuing financial crimes enterprise.'

20. If subsection (b)(7)(A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.' ".

The Commentary to § 2F1.1 captioned "Application Notes" is amended by redesignating Notes 3 through 13 as Notes 4 through 14, respectively; and by inserting after Note 2 the following new Note 3:

"3. 'Mass-marketing,' as used in subsection (b)(3), means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (A) purchase goods or services; (B) participate in a contest or sweepstakes; or (C) invest for financial profit. The enhancement would apply, for example, if the defendant conducted or participated in a telemarketing campaign that solicited a large number of individuals to purchase fraudulent life insurance policies.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 1 by striking "§ 2F1.1(b)(3)" and inserting "§ 2F1.1(b)(4)"; in redesignated Note 5 (formerly Note 4), by striking "(b)(3)(A)" and inserting "(b)(4)(A)"; and in redesignated Note 6 (formerly Note 5), by striking "(b)(3)(B)" and inserting "(b)(4)(B)".

The Commentary to § 2F1.1 captioned "Background" is amended by inserting after the fifth paragraph the following new paragraph:

"Subsection (b)(5) implements, in a broader form, the instruction to the Commission in section 6(c)(2) of Public Law 105–184.".

Section 3A1.1(b) is amended to read as follows:

"(b)(1) If the defendant knew or should have known that a victim of the offense was a vulnerable victim, increase by 2 levels.

(2) If (A) subdivision (1) applies; and (B) the offense involved a large number of vulnerable victims, increase the offense level determined under subdivision (1) by 2 additional levels.".

The Commentary to § 3A1.1 captioned "Application Notes" is amended in Note 2 in the first paragraph by striking "'victim" includes any person" before "who is" and inserting "'vulnerable victim" means a person (A)"; and by inserting after "(Relevant Conduct)" the following:

"; and (B) who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct".

The Commentary to § 3A1.1 captioned "Application Notes" is amended in Note 2 in the second paragraph by striking "where" each place it appears and inserting "in which".

The Commentary to § 3A1.1 captioned "Application Notes" is amended in Note 2 in the third paragraph by striking "offense guideline specifically incorporates this factor" and inserting "factor that makes the person a vulnerable victim is incorporated in the offense guideline".

The Commentary to § 3A1.1 captioned "Background" is amended by adding at the end the following additional paragraph:

"Subsection (b)(2) implements, in a broader form, the instruction to the Commission in section 6(c)(3) of Public Law 105–184.".

The Commentary to § 2B5.1 captioned "Application Notes" is amended in Note 1 by inserting "United States" before "Virgin Islands".

Reason for Amendment: This amendment implements, in a broader form, the directives to the Commission in section 6 of the Telemarketing Fraud Prevention Act of 1998, Pub. L. 105–184 (the "Act").

The Act directs the Commission to provide for "substantially increased penalties" for telemarketing frauds. It also more specifically requires that the guidelines provide "an additional appropriate sentencing enhancement, if the offense involved sophisticated means, including but not limited to sophisticated concealment efforts, such as perpetrating the offense from outside the United States," and "an additional appropriate sentencing enhancement for cases in which a large number of vulnerable victims, including but not limited to [telemarketing fraud victims over age 55], are affected by a fraudulent scheme or schemes."

This amendment responds to the directives by building upon the amendments to the fraud guideline, § 2F1.1, that were submitted to Congress on May 1, 1998. (*See* Amendment #2 in the Report of the Commission entitled "Amendments to the Sentencing Guidelines" and submitted to Congress on May 1, 1998.) Those amendments added a specific offense characteristic for "mass-marketing," which is defined to include telemarketing, and a specific offense characteristic for sophisticated concealment.

This amendment broadens the "sophisticated concealment" enhancement to cover "sophisticated means" of executing or concealing a fraud offense. In addition, the amendment increases the enhancement under the vulnerable victim guideline, § 3A1.1, for offenses that impact a large number of vulnerable victims.

This amendment also makes a conforming amendment to § 2B5.1 in the definition of "United States".

In designing enhancements that may apply more broadly than the Act's above-stated directives minimally require, the Commission acts consistently with other directives in the Act (e.g., section 6(c)(4) (requiring the Commission to ensure that its implementing amendments are reasonably consistent with other relevant directives to the Commission and other parts of the sentencing guidelines)) and with its basic mandate in sections 991 and 994 of title 28, United States Code (e.g., 28 U.S.C. 991(b)(1)(B) (requiring sentencing policies that avoid unwarranted disparities among similarly situated defendants)).

2. Amendment: The Commentary to § 2C1.4 captioned "Background" is amended by striking the last sentence.

The Commentary to § 2J1.1 captioned "Application Notes" is amended in Note 2 in the third sentence by inserting "(a)(1) and to any offense under 18 U.S.C. 228(a)(2) and (3)" after "228"; and in the fourth sentence by inserting "(a)(1)" after "228".

Reason for Amendment: This is a two-part amendment. First, this amendment updates and corrects the background commentary of § 2C1.4, the guideline that covers offenses involving unlawful compensation for federal employees and bank officials. Currently, the background commentary states that 18 U.S.C. 209 (involving the unlawful supplementation of the salary of various federal employees) and 18 U.S.C. 1909 (prohibiting bank examiners from performing any service for compensation for banks or bank officials) both are misdemeanors for which the maximum term of imprisonment is one year. In fact, however, as a result of enacted legislation, the maximum term of imprisonment for violations of 18 U.S.C. 209 is now five years if the conduct is willful. The amendment deletes the sentence of the commentary that describes the maximum term of imprisonment for these offenses.

Second, this amendment amends the commentary in the contempt guideline, § 2J1.1, pertaining to offenses under 18 U.S.C. 228 involving the willful failure to pay court-ordered child support. The commentary notes that the contempt guideline applies to second and subsequent offenses under 18 U.S.C. 228 because a first offense is a Class B misdemeanor not covered by the guidelines.

However, in the Deadbeat Parents Punishment Act of 1998, Pub. L. 105–187, Congress amended 18 U.S.C. 228 to add two new violations of that section (found at 18 U.S.C. 228(a)(2) and (3)) and to make even the first offense under those new violations a felony that would be subject to the guidelines. Accordingly, the commentary in the contempt guideline is amended to reflect that it is only the first offense under a violation of 18 U.S.C. 228(a)(1) that is not covered by the guideline.

3. Amendment: Appendix A (Statutory Index) is amended in the line referenced to "18 U.S.C. 924(i)" by striking " 2A1.1, 2A1.2" and inserting "2K2.1";

by striking:

"18 U.S.C. 924(j)–(n) ..... 2K2.1",

and inserting:

"18 U.S.C. 924(j)(1) ..... 2A1.1, 2A1.2",
"18 U.S.C. 924(j)(2) ..... 2A1.3, 2A1.4",
"18 U.S.C. 924(k)–(o) .... 2K2.1";

and by inserting, after the line referenced to "18 U.S.C. 2252" the following new line:

"18 U.S.C. 2252A ..... 2G2.2, 2G2.4".

Reason for Amendment: This amendment updates the Statutory Index by adding a reference to a recently created offense (pertaining to the use of a computer to commit certain child pornography offenses) and by correcting the references to a number of firearms offenses in response to congressional redesignations of those offenses.

Specifically, Congress recently enacted 18 U.S.C. 2252A, which makes it unlawful to traffic in, receive, or possess child pornography, including by computer. The amendment references this offense to § 2G2.2 (trafficking in child pornography) and § 2G2.4 (possession of child pornography).

In addition, in the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, and the Economic Espionage Act of 1996, Pub. L. 104–294, Congress redesignated a number of firearms provisions in 18 U.S.C. 924. The amendment changes the references in the Statutory Index to a number of these offenses in response to the congressional redesignations.

[FR Doc. 98–27982 Filed 10–16–98; 8:45 am]
BILLING CODE 2210–40–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1509).

TIME AND DATE: 9 a.m. (CDT), October 21, 1998.

PLACE: Legislative Plaza Room 16, 19 Legislative Plaza, Union and 6th Streets, Nashville, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on September 23, 1998.

New Business

A—Budget and Financing

A1. Fiscal year 1998 Tax-Equivalent Payments.

C—Energy

C1. Abandonment of surface rights overlying coal and associated right to mine and remove such coal affecting approximately 176.84 acres of Koppers Coal Reserve in Campbell County, Tennessee (Tract No. EKCR–10).

C2. Contract with Crisp & Crisp, Inc., for initial clearing, restoration, and reclamation of right-of-way areas to support construction of new transmission lines for the eastern TVA region.

C3. Contract with Southeastern Construction and Equipment Company, LLC, for the initial clearing, restoration, and reclamation of right-of-way areas to support construction of new transmission lines for the central TVA region.

C4. Contract with ASEA Brown Boveri Power Transmission and Distribution Company, Inc., for the supply of power transformers.

C5. Contract with Ecolochem, Inc., to provide chemical management of industrial chemical needs, for example, boiler cleaners, laboratory supplies, herbicides, and pesticides, for all TVA locations.

E—Real Property Transactions

E1. Abandonment of a portion of TVA's Athens-Pulaski and Pulaski-Fayetteville transmission line easements and right-of-way in Giles County, Tennessee, affecting approximately 8.16 acres designated in TVA's records as Parcels A and B of Tract No AP–104, Parcels A and B of Tract No. AP–105, and Parcels A, B, and C of Tract No. PF–3.

E2. Grant of permanent easement to the State of Tennessee affecting approximately 34 acres of land on Cherokee Lake in Grainger County, Tennessee, for improvements of Highways 11W and 25E (Tract No. XTCK–61H).

F—Unclassified

F1. Filing of condemnation cases to acquire easements and right-of-way for an expansion to an existing electric power substation affecting the following transmission lines: Charleston District-Riceville, Bradley County, Tennessee; East Cleveland-Charleston District, Bradley County, Tennessee; Johnsonville-West Nashville Tap to Pomona and Burns, Dickson, Tennessee. The expansion of the Pinhook, Tennessee, Substation involves land, road, and right-of-way easements in Davidson County, Tennessee.

Information Items

1. Medical contribution plan for certain employees, retirees, and dependents not eligible for the TVA Retirement System supplement benefit, future access to retiree medical coverage, future access to contributions toward retiree health coverage costs for Civil Service and Federal Employees Retirement System retirees.

2. Approval of land exchange by the United States Department of Agriculture, Forest Service, affecting approximately 3.7 acres of former TVA land on Fontana Lake in Swain County, North Carolina (Tract No. XTFR–3).

3. Approval to file a condemnation case affecting the New Albany-Holly Springs Loop to Hickory Flat Transmission Line (Tract No. THSHF–2).

4. Approval to award a fixed-price contract with General Electric Company

for the manufacture and turnkey installation of eight combustion turbine generating units for operation beginning June 2000.

5. Approval of land exchange by the United States Department of Agriculture, Forest Service, affecting approximately 2.93 acres of former TVA land on Watauga Lake in Carter County, Tennessee (Tract No. XTWAR–30).

6. Ratification and confirmation of interpretation of the TVA Act respect in revenues from exchange power arrangements and Section 13 in-lieu-of-tax payments.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: October 14, 1998.

Edward S. Christenbury,

General Counsel Secretary.

[FR Doc. 98–28027 Filed 10–15–98; 10:43 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements: Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collections was published on May 29, 1998 [63 FR 29468–29470].

DATES: Comments must be submitted on or before November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Robinson, NHTSA Information Collection Clearance Officer at (202) 366–9456.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration (NHTSA)

(1) Title: 49 CFR Part 512, Confidential Business Information.

OMB No.: 2127–0025.

Type of Request: Extension of a currently approved Collection.

Affected Public: Vehicle manufacturers and equipment manufacturers.

Abstract: NHTSA's statutory authority at 49 CFR chapter 301 prohibits, with certain exceptions, the agency from making public confidential information which it obtains. On the other hand, the Administrative Procedure Act requires all agencies to make public all non-confidential information upon request. (5 U.S.C. section 552) and all agency rules to be supported by substantial evidence in the public record (5 U.S.C. section 706). It is therefore very important for the agency to promptly determine whether or not information it obtains should be accorded confidential treatment. NHTSA therefore promulgated 49 CFR part 512 Confidential Business Information to establish the procedure by which NHTSA will consider claims that information submitted to the agency, or which it otherwise obtains, is confidential business information. Because of part 512, both NHTSA and the submitters of information for which confidential treatment is requested are now able to ensure that confidentiality requests are properly substantiated and expeditiously processed. Confidential information is obtained by the agency for use in all of its activities. These include investigations, rulemaking actions, program planning and management, and program evaluation. The confidential information is needed to ensure the agency has all the relevant information for decision making in connection with these activities. If part 512 were not in existence, the agency would still get this confidential information, either provided voluntarily by the manufacturers or through its information gathering powers. The only difference would be that the determinations of whether the information should be accorded confidential treatment would be more expensive and time consuming.

Estimated Annual Burden Hours: 600 hours.

(2) Title: 49 CFR Part 557, Petitions for Hearings on Notifications and Remedy on Defects.

OMB Control Number: 2127–0039.

Affected Public: Persons (petitioners) who believe that a manufacturer has been deficient in notifying owners of the existence of a safety related defect or noncompliance, and that the manufacturer has not remedied the problem in accordance with statutory requirements, and who wish redress.

Abstract: NHTSA's statutory authority at 49 U.S.C. sections 30118(e) and 30120(e) specifies that, on petition of any interested person, NHTSA may hold hearings to determine whether a manufacturer of motor vehicles or motor vehicle equipment has met its obligation to notify owners, purchasers, and dealers of vehicles or equipment of a defect or noncompliance and to remedy a defect or noncompliance for Federal Motor Vehicle Safety Standards for some of the products the manufacturer produces. To address these areas, NHTSA has promulgated 49 CFR part 557, Petitions for Hearings on Notification and Remedy of Defects, which adopts a uniform regulation that establishes procedures to provide for submission and disposition of petitions, and to hold hearings on the issue of whether the manufacturer has met its obligation to notify owners, distributors, and dealers of safety related defects or noncompliance and to remedy the problems by repair, repurchase, or replacement. NHTSA never requires any person to file a petition under Part 557. Filing a petition, and providing the information is done entirely at the discretion of the petitioner.

Estimated Annual Burden Hours: 21.

(3) Title: 49 CFR Part 552, Petitions for Rulemaking, Defect and Noncompliance Orders.

Affected Public: Any person has a statutory right to petition the agency to issue an order under section 30162.

Abstract: 49 U.S.C. section 30162 specifies that any interested person may file a petition with the Secretary of Transportation requesting the Secretary to begin a proceeding to prescribe a motor vehicle safety standard under 49 U.S.C. chapter 301, or to decide whether to issue an order under 49 U.S.C. section 30118(b). 49 U.S.C. 30111 gives the Secretary authority to prescribe motor vehicle safety standards. 49 U.S.C. section 30118(b) gives the Secretary authority to issue an order to a manufacturer to notify vehicle or equipment owners, purchasers, and dealers of the defect or noncompliance and to remedy the defect or noncompliance. Section 30162 further specifies that all petitions filed under its authority shall set forth the facts which it is claimed establish that an order is necessary and briefly describe the order the Secretary should issue. To implement these statutory provisions, NHTSA promulgated part 552 according to the informal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553 *et seq.*) This regulation allows the agency to ensure that the petitions filed under section 30162 are both properly substantiated and efficiently processed. Under Part 552, any person has a statutory right to petition the agency to issue an order under section 30162. When NHTSA

receives such a petition, the agency's technical staff reviews the petition to determine whether there is a reasonable possibility that the requested order will be issued at the end of the appropriate proceeding. If the agency reaches such a conclusion, the petition is granted and NHTSA promptly commences the appropriate proceeding to issue the order. The petition is denied if NHTSA cannot conclude that there is a reasonable possibility that the order will be issued at the end of the appropriate proceeding. NHTSA is required to grant or deny any petitions within 120 days after agency receipt of the petition (49 U.S.C. 30162(d)). NHTSA uses the information in the petition, together with other information it may have or obtain, to decide whether to grant or deny the petition. Absent part 552, any person would still have a statutory right to file a petition requesting the agency to issue an order. The difference would be that the person preparing the petition would not know how to properly file such a petition and what information should be included in the petition. Further, without part 552, it would take the agency much longer to evaluate these petitions. Some of the petitions for rulemaking filed under part 552 ask for complex technical changes to our safety standards that require the agency to conduct testing or other research to learn if the petitions' allegations are accurate. If these petitions were not filed in accordance with some specified uniform procedures, the agency would not be able to meet the 120 day statutory deadline for granting or denying the petitions.

Estimated Annual Burden Hours: 100.

Addresses: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. *Comments are invited on:* whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 13, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–27919 Filed 10–16–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending October 9, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4542
Date Filed: October 5, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC12 NMS–ME 0064 dated September 29, 1998
North Atlantic-Middle East expedited Resos
r-1—002x
r-2—044b
r-3—054b
r-4—064b
r-5—070mm
r-6—070rr
r-7—084mm
r-8—092mm
Intended effective date: November 15, 1998.

Docket Number: OST–98–4543
Date Filed: October 5, 1998
Parties: Members of the International Air Transport Association
Subject:
COMP Telex Mail Vote 957
Group/Individual Fares for Ship Grews
r1—087aa
r2—090
Intended effective date: November 1, 1998.

Docket Number: OST–98–4544
Date Filed: October 5, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC12 MATL–EUR 0033 dated October 2, 1998
Mid Atlantic-Europe Expedited Resos
r1—002y
r2—015v
r3—076e
Intended effective date: November 15, 1998.

Docket Number: OST–98–4563
Date Filed: October 9, 1998
Parties: Members of the International Air Transport Association
Subject:
(1) PTC3 Telex Mail Vote 960, r1-002r, Reso 016a Excluded in Australia/New Zealand
(2) PTC2 Telex Mail Vote 961, r2-070ca, Excursion Fares within Africa
Intended effective date: (1) December 1, 1998; (2) March 31, 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–27980 Filed 10–16–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33663]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption— Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) between Beaumont, TX, in the vicinity of UP's milepost 30.17 and West Port Arthur, TX, in the vicinity of UP's milepost 12.7 (Sabine Branch); between West Port Arthur, TX, in the vicinity of UP's milepost 0.00 (Sabine Branch milepost 12.7) and Port Arthur, in the vicinity of UP's milepost 3.21 (Port Arthur Lead); and between Chaison Jct., TX, in the vicinity of milepost 0.0 (Sabine Branch milepost 26.1) and Chaison, TX, in the vicinity of UP's milepost 3.3 (Chaison Spur), for a total distance of 10.58 miles.

The transaction was expected to be consummated on or after October 6, 1998.[1]

The purpose of the overhead trackage rights is to obtain competitive access to additional industries.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or

[1] Under 49 CFR 1180.4(g)(1), a trackage rights exemption is effective 7 days after the notice is filed. Although applicant indicated that the proposed transaction would be consummated on October 1, 1998, the notice was not filed until September 29, 1998, and thus the proposed transaction could not be consummated before the October 6, 1998 effective date. BNSF's representative has acknowledged by telephone that the transaction may not be consummated prior to October 6, 1998.

misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33663, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Yolanda M. Grimes, The Burlington Northern and Santa Fe Railway Company, P. O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 9, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–27867 Filed 10–16–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–289 (Sub–No. 4X)]

The Central Railroad Company of Indianapolis—Discontinuance of Service Exemption—in Clinton, Howard and Tipton Counties, IN

On September 29, 1998, The Central Railroad Company of Indianapolis (CERA) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–10905 [1] to discontinue service over two segments of railroad (the Kokomo Lines) owned by Norfolk and Western Railway Company (NW) extending from milepost I–41.0 near Tipton to milepost I–51.8 at Kokomo, and extending from milepost TS–183.7 at Kokomo to milepost TS–206.44 at Frankfort, a total distance of approximately 33.54 miles in Clinton, Howard and Tipton Counties, IN. As part of the exemption, CERA also seeks to discontinue incidental trackage rights (used at various points for interchange only) over approximately 4.54 miles of NW's trackage between milepost TS–206.44 and milepost TS–207.80 near Frankfort, between milepost I–39.76 and milepost I–41.0 near Tipton, and between milepost SP–209.28 and milepost SP–211.22 near Tipton, in Clinton and Tipton Counties, IN.[2] The Kokomo lines traverse U.S. Postal Service Zip Codes 46039, 46047, 46057, 46067, 46068, 46072, 46902, 46979 and 46995. The lines include the stations of West Middleton, Russiaville, Forest, Michigantown, Tipton, Jackson, Sharpsville, Fairfield and Marshall, IN.

The lines do not contain federally granted rights-of-way. Any documentation in NW's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 15, 1999

Unless an exemption is granted from the OFA provisions of 49 U.S.C. 10904, any OFA to subsidize continued rail service under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. See 49 CFR 1002.2(f)(25).

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 1105.8(b).

All filings in response to this notice must refer to STB Docket No. AB–289 (Sub–No. 4X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Karl Morell, Ball Janik, LLP, Suit 225, 1455 F Street, NW, Washington, DC 20005.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 9, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–27866 Filed 10–16–98; 8:45 am]

BILLING CODE 4915–00–P

[1] CERA seeks exemption from the offer of financial assistance (OFA) subsidy provision of 49 U.S.C. 10904. This exemption request will be addressed in the final decision. CERA also seeks exemption from the public use provisions of 49 U.S.C. 10905. However, because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not applicable.

[2] CERA desires to terminate service because NW has terminated its lease with CERA effective July 31, 1998. NW resumed providing all rail service on the lines as of August 1, 1998.

Corrections

Federal Register
Vol. 63, No. 201
Monday, October 19, 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 ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-432-000]

Crossroads Pipeline Company; Notice of Compliance Filing

Correction

In notice document 98–27129, appearing on page 54463 in the issue of Friday, October 9, 1998, the docket number is corrected to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-806-000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

Correction

In notice document 98–27126 beginning on page 54470, in the issue of Friday, October 9, 1998, the docket number was omitted and the heading is corrected to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-27-AD; Amendment 39-10713; AD98-17-11]

RIN 2120-AA64

Airworthiness Directives; Textron Lycoming and Teledyne Continental Motors Reciprocating Engines

Correction

In rule document 98–22240 beginning on page 44545 in the issue of Thursday, August 20, 1998, make the following corrections:

§ 39.19 [Corrected]

1. On page 44547, in the second column, in § 39.13, in the airworthiness directive, in the 7th line, "O–360A1A" should read "O–360–A1A".

2. On page 44548, in the fourth column of table 1, in the same section, in the 6th entry, "L–160015–15" should read "L–16005–15".

3. On the same page, in the third column of table 1, in the same section, in the 35th entry, "5/13/95" should read "5/3/95".

4. On the same page, in the same column, in the same section, in the 38th entry, "1/8/95" should read "1/8/96".

5. On the same page, in the same column, in the same section, in the 13th entry from the bottom, "3/1/06" should read "3/1/96".

6. On page 44549, in the third column, in the same section, in the 15th entry from the bottom, "2/27/96" should read "2/7/96".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106177–97]

RIN 1545–AV18

Qualified State Tuition Programs

Correction

In proposed rule document 98–22465 beginning on page 45019 in the issue of Monday, August 24, 1998, make the following correction:

§ 1.529–1 [Corrected]

On page 45026, in the second column, in § 1.529–1(c), in definition paragraph (2)(i), in the eighth line, "20 U.S.C. 108711" should read "20 U.S.C. 1087ll".

BILLING CODE 1505-01-D

federal register

Monday
October 19, 1998

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 65

Revision of Certification Requirements: Aircraft Dispatchers; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 65

[Docket No. FAA–1998–4553; Notice No. 98–14]

RIN 2120–AG04

Revision of Certification Requirements: Aircraft Dispatchers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend existing regulation that prescribe the eligibility and certification requirements for aircraft dispatchers. Current regulations prescribing these requirement do not reflect the significant technological advances that have occurred in the aviation industry and the enhancements in training and instructional methods that have affected all aircraft dispatchers. The proposed rule would consolidate and clarify eligibility, knowledge, experience, and skill requirements for aircraft dispatchers and would enhance the technical capabilities and increase the level of professionalism among aircraft dispatchers. This proposal is based on the work of the Dispatch Working Group of the FAA's Aviation Rulemaking Advisory Committee.

DATES: Comments must be received on or before February 16, 1999.

ADDRESSES: Comments on this NPRM should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1998–4553, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may also be submitted electronically to the following Internet address: 9–NPRM–CMTSfaa.dot.gov. Comments must be marked Docket No. FAA–1998–4553. Comments may be filed and/or examined in Room Plaza 401 weekdays between 10:00 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Harold Johnson, DFW Flight Standards District Office, DFW Business Center, P.O. Box 619020, Federal Aviation Administration, DRW Airport, TX 75261; telephone (817) 222–5259.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of this proposed rule by submitting written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates, if appropriate.

Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date for comments will be considered by the Administrator before taking action on this rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available both before and after the closing date, in the Rules Docket for examination by interested persons.

A report summarizing each substantive contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: 'Comments to Docket No. FAA–1998–4553." The postcard will be date stamped and mailed to the commenter.

Availability of the NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by mail by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independent Avenue, SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the FAA's Office of Rulemaking a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

In keeping with the FAA's policy of reviewing and upgrading regulations to ensure that they are consistent with changes in the aviation environment, the FAA, with the assistance of the Aviation Rulemaking Advisory Committee (ARAC) has reviewed part 65, subpart C, and appendix A of 14 CFR part 65 which pertain to aircraft dispatchers. In the preceding 30 years few changes have been made to the dispatcher certification requirements, although numerous technological advances in the aviation industry and concerns over changes in operational practices and training methods have occurred.

In October 1993, an industry task force concluded an initial investigation of part 65, subpart C. The task force's objective was to determine whether part 65, subpart C, needed to be updated, what specific sections required updating, and whether industry, training schools, and FAA examiners were of the same opinion. The task force was comprised of representatives of airlines, associations, unions, academia, and interested parties. The Airline Dispatch Federation (ADF) coordinated these activities. The task force found that technology had outpaced the current regulations. The task force also found that various designated examiners and FAA regional offices were interpreting several of the regulations in a manner inconsistent with each other and FAA headquarters. The results of this informal task force study were presented at several ADF quarterly meetings.

On September 27, 1993, the Transport Workers Union Local 542 of Euless, TX, petitioned the FAA to request a regulatory review of part 65, subpart C, and appendix A. On November 10, 1993, the FAA requested the ARAC to review the initial certification training requirements of aircraft dispatchers. The ARAC formed a "Dispatch Working Group" to complete this assignment (59 FR 3155, Jan. 20, 1994). The ARAC tasked this working group to conduct a review of the certification requirements for aircraft dispatchers.

All of the proposals in this NPRM have been extensively researched for the FAA by the Dispatch Working Group, and all proposals made in this NPRM are based on the ARAC's recommendations.

General Discussion of the Proposal

The proposals developed during the part 65, subpart C, and appendix A regulatory review are set forth in this NPRM and cover a broad range of issues

affecting the certification of aircraft dispatchers. The proposals included in this NPRM would accomplish the following:

1. Establish a minimum age to be eligible to take the knowledge test required by current § 65.55.

2. Update the experience requirements in current § 65.57 for an aircraft dispatcher certificate.

3. Allow the equivalent experience finding under current § 65.57(a)(6) to be made only by the Administrator's representative who is a certificated aircraft dispatcher.

4. Retain the current basic dispatch certificate without introducing a system of ratings or limitations.

5. Eliminate duplication of certain educational requirements by relocating them from current subpart C to proposed appendix A.

6. Relocate information concerning initial and continued eligibility for dispatcher certification courses, training facilities, instruction, and records from current appendix A to proposed subpart C of part 65. The goal of relocating information as described in this item and item 5 is to include all requirements other than course content in proposed subpart C and all course content and related details in proposed appendix A.

7. Add an "overview" paragraph to appendix A that contains general information about aircraft dispatcher training courses.

9. Revise appendix A to include a new training outline that would add new subjects, e.g. "emergency and abnormal procedure."

9. Eliminate sub-category training hour requirements from appendix A while retaining total course hour requirements.

10. Introduce "human factors" training during initial certification (proposed paragraph VIII A of appendix A).

11. Introduce in appendix A a training outline that would allow training to change as technology changes, without the need for a rule change, by making the following changes:

(a) State the training outline in general terms so that future technological enhancement or changes in operational practices could be readily added.

(b) Link appendix A to the Practical Test Standards (PTS) Guide, thus allowing training requirements to be revised.

Principal Issues

Revision of § 65.53 Eligibility Requirements; Establishment of a Minimum Age for the Knowledge Test

Section 65.53 would be revised to add a minimum age requirement of 21 years to be eligible to take the knowledge test. The minimum age requirement to be eligible for an aircraft dispatcher certificate would still be 23 years of age. The FAA is adding this provision to clear up confusion among training centers and to provide a standard policy. Currently, confusion among training centers exists when prospective dispatchers take both the knowledge and practical exams prior to reaching their 23rd birthday. Some training centers find this practice acceptable and delay certificate issuance until the age requirement is met. Other training centers find this practice unacceptable and do not allow an applicant to take the knowledge test until the applicant is 23 years of age. As a practical matter adding a minimum age requirement of 21 years would not be a substantive change since under current § 65.55(b) a passing grade on a written test is only valid for 24 months after the date the test is given.

In addition, the term "knowledge test" replaces "written test" because the FAA believes the term "knowledge test" is a more inclusive term, referring to either test administered with pencil and paper or by computer.

Finally, the FAA is proposing to clarify the English language requirements for flight dispatchers. The FAA has determined, for safety concerns, that operations in the National Airspace System (NAS) require a basic command of the English language. The FAA, however, recognizes that some individuals have a command of the English language, but due to medical reasons may not be able to read, speak, or write the English language, e.g., deaf individuals. Therefore, to accommodate these individuals, the FAA is providing a provision that would permit limitations to the placed on the individuals' flight dispatcher certificate based on medical conditions if the Administrator determines it is in the interest of safety. This would also standardize this provision with other parts of this chapter, e.g., part 61.

Revision of § 65.57 Experience or Training Requirements

Section 65.57 is reorganized to provide more clarity to the eligibility requirements. The proposed regulation would separate military experience from part 121 air carrier operations experience. This would require that specific experience be delineated to the appropriate category.

In addition, air carrier operations would be changed from "scheduled air carrier" to "part 121 operations" to ensure that experience is verifiable and applicable. Experience as a radio operator would not longer be accepted because the FAA has determined that radio operators do not have sufficient experience in such subject areas as meteorology, weight and balance, emergency procedures, the applicable regulations, aeronautical charts, and flight planning. In addition, the FAA has determined that the experience for air traffic controllers would be expanded to include "Flight Service Specialist", since as a job requirement Flight Service Specialist are required to have knowledge and perform in the following areas: meteorology, air traffic control, pilot briefings, flight planning, aeronautical charts and emergency procedures.

Current § 65.57(a) allows the Administrator to find that where other duties, in addition to those listed in § 65.57(a) (1)–(5), provide equivalent experience, an applicant is eligible for an aircraft dispatcher certificate without attending a dispatcher course. In evaluating equivalent experience, as proposed, the Administrator's representative must be aircraft dispatcher certificated. This proposed requirement would ensure that the evaluator has the appropriate knowledge base to make a qualified determination.

Knowledge and Skill Requirements

Currently subpart C contains information that is duplicated in the appendix. Redundancy would be eliminated by moving detailed training requirements set out in current §§ 65.66(a) (1) through (8) and 65.59 (a) through (e) to appendix A. This reorganization would make the rules more clear and easier to follow.

Realignment of Regulatory Requirements and Training Material

Regulatory materials on obtaining approval of an aircraft dispatcher certification course covering required training facilities, instructions and records currently at the end of appendix A would be included in subpart C. This material would be relocated to proposed §§ 65.61, 65.63, 65.65, 65.67, and 65.70. Since this material contains what are in fact eligibility requirements, it is more appropriate in the text of the regulation than in an appendix. Section 65.63, 65.65, 65.67, and 65.70 would be new.

As previously mentioned, training material from the Knowledge and Skill Requirements regulations that describe a detailed course curriculum would be moved into appendix A. With this realignment, all mandatory eligibility requirements would be contained in subpart A. One exception is that the minimum number of 200 course hours is included in proposed § 65.61(a) rather than in appendix A as it now is.

Appendix A Revision

As mentioned above, an appendix A overview would be added in this proposal and would contain information regarding course topic information, use of state of the art technologies and techniques, and air carrier specific training. While all of the listed material must be taught, the course order is flexible and an integrated training approach may be used. Currently, blocks of material are taught separately, yet the material is interrelated, so an integrated training approach is desirable. In addition, the proposed appendix would clarify that, while, upon certification under this subpart a new dispatcher would meet all requirements necessary to exercise privileges of the aircraft dispatcher certificate, air carrier specific training also may be required by the applicable operating rules.

Appendix A would be completely revised based on technological advances from the preceding 30 years and those that may be anticipated in the future. A specific detailed documentation of proposed changes in listed below in the "section by section" analysis.

Subcategory Elimination of Minimum Training Times

This NPRM proposes a minimum course hour content of 200 training hours (the current minimum is 198 hours) (see proposed § 65.61(a)). Although the NPRM proposes to eliminating the subcategory hour requirements the two hour increase in training would accommodate the addition of new topics. In addition the training centers and schools suggested that the minimum hours be increased. Appendix A would be divided into eight main subject areas but would not include a minimum hour requirement for each subject area as it now does. By eliminating the sub-category hour requirement an integrated training approach can be more readily used. This also would allow training centers to change curriculum as needs change in the future. Training centers that wish to modify the curriculum as their needs change would submit the proposed changes to their principle operations inspectors for review and approval.

Human Factors Training

An innovative concept in initial certification training for aircraft dispatchers includes the introduction of human factors training. This type of training is based on a number of human performance variables, such as communication, decision-making, teamwork, and leadership. Human factors training for cockpit crewmember personnel has been conducted for years and has recently been made mandatory for dispatchers as well as for flight crewmembers (see "Air Carrier and Commercial Operator Training Programs," 60 FR 65940, December 20, 1995). Today, human factors experts agree that the cockpit crewmember is just one part of the transportation system. Experts agree that Crew Resource Management (CRM) training is important because it includes all members of the operational team (see Advisory Circular (AC) 121–32, "Dispatch Resource Management Training" and AC 120–51B, as amended, "Crew Resource Management Training"). Rather than wait until actively dispatching flights, it is better to begin human factors training during the certification process. This would provide maximum benefit and retention level to the airman. In this regard, human factors training can be established prior to actively working flights. Of central importance to human factors training is communications and decision making. Aircraft dispatchers are the communications nexus in the air transportation system. Dispatchers routinely communicate with and obtain information from over 25 groups of aviation professionals that have responsibility for some portion of the air transportation system. Then dispatchers must analyze, prioritize, and disseminate information as appropriate. Much of this information can be considered critical to the safety of flight. Therefore, the FAA strongly believes human factors training should be required and conducted during initial certification for maximum air transportation safety.

Basic Certificate vs. Endorsements and Ratings

The ARAC, after an extensive analysis, determined that it would be better to retain the current certificate structure without introducing a system of rating or endorsements. The ARAC discussed adding an "international" endorsement; however, this was deemed unwarranted due to the complexity and unique qualities of international operators. It was felt that airline or equipment-specific training was best left to the airlines so that it could be tailored to specific requirements. Examples of specific types of training include twin engine extended range operations, operations in areas of magnetic unreliability, and high altitude operations at airports in several South American airports.

Future Technological Advancements

Technology and new operational practices often outpace training and the regulations associated with training. This subpart, for example, has not been updated for over 30 years. With this in mind the ARAC's Dispatch Working Group explored ways to write a training outline that would not quickly become obsolete.

General vs. Specific

The proposed training outline in appendix A is written in general terms. If very specific terms were used in the representation of technology it could become obsolete within several years. Specific automated observations currently include AWOS (automated weather observing system), ASOS (automated surface observing system), etc. These observations may not be used in the future, therefore, the proposed training outline lists "automated" weather observations.

Practical Test Standards Guide (PTS)

Proposed appendix A contains language that references the PTS guide prepared and published by the FAA. Through the PTS guide, the FAA is able to give examiners general guidance on which subjects are appropriate for testing. From the PTS guide, an examiner is able to determine those specific subject areas that are appropriate for testing the knowledge and skills of a candidate for an aircraft dispatcher certificate. Since it is virtually impossible to theorize what technological advancements are in store for the aviation community in the future and to reflect those advancements specifically in part 65, subpart C and appendix A, it appears to be desirable to link the training outline in appendix A to a document like the PTS guide that can be easily revised but that is exposed to public review and participation.

Section-by-Section Analysis

Part 65—Certification: Airmen Other Than Flight Crewmembers

The proposed revision to part 65, subpart C, would update eligibility, knowledge, experience and skill requirements for initial certification of aircraft dispatchers. The proposal would

revise and relocate regulatory material from appendix A to subpart C.

Section 65.51 Certificate Required

Current § 65.51 contains the basic requirements for an aircraft dispatcher certificate and also requires each person who holds an aircraft dispatcher certificate to present it for inspection upon request of the Administrator or other authorized official. This section remains unchanged.

Section 65.53 Eligibiiity Requirements: General

Current § 65.53 contains eligibility requirements for aircraft dispatcher certification. The proposed section is mostly based on current § 65.53. The proposed section would: (1) establish a minimum age requirement of 21 years for taking the knowledge test; and (2) clarify the English language requirements. These changes are more fully discussed above under the Principle Issues portion of this preamble.

Section 65.55 Knowledge Requirements

Proposed § 65.55 would replace the term "written test" with the term "knowledge test." The FAA believes the term "knowledge test" is a more inclusive term, referring to either tests administered with pencil and paper or by computer. This change is also consistent with changes that have been made in other parts of this chapter (e.g. 14 CFR part 61).

In addition, the proposal would move detailed subject matter from § 65.55 to appendix A of this part. This proposed change would eliminate redundancy that is currently in §§ 65.55(a) (1) through (8) and 65.59 (a) through (e). Also, the detailed subject matter would be described in more general terms, allowing training to change as technology changes without the need for a rule change.

Finally, the proposed changes to this section would clarify that a copy of the knowledge test with the student's documented results would be "provided" to the applicant rather than "sent" to the applicant. This change is needed to address computer testing centers where test results are immediately available and do not need to be mailed to the applicant.

Section 65.57 Experience or Training Requirements

Under this proposal, acceptable experience, which can be substituted for completion of an aircraft dispatcher certification course, would be limited to experience obtained in military operations, in part 12 operations, as an air traffic controller, or as a flight service specialist, unless an equivalency finding is made under proposed § 65.57(a)(4). This would eliminate as acceptable experience any pilot, meteorologist, or dispatch experience obtained in any operation other than military or part 121 operations, thus, for example, excluding experience obtained under part 135 operations. (dispatch system is not required under part 135.)

This proposal would also eliminate flight or ground radio operator experience from being considered as acceptable experience for aircraft dispatcher eligibility as previously discussed under the Principle Issues portion of this preamble.

Finally, this proposed section would change the number of years of experience an assistant aircraft dispatcher may use to meet the experience requirements for an aircraft dispatcher certificate. Under the current rule, an applicant for an aircraft dispatcher certificate may meet the experience requirements for an aircraft dispatcher certificate by demonstrating that he or she has worked as an assistant in dispatching aircraft while under the direct supervision of a certificated aircraft dispatcher for a total of at least one out of the two years before the date he or she applies for the certificate. Under this proposal, the number of years of assistant aircraft dispatcher experience would change to two out of the last three years before the date the applicant applies for the certificate. This change is being proposed to standardize the number of years of experience required for all accepted areas of experience and to give the assistant aircraft dispatcher an additional opportunity to gain experience in a variety of program areas similar to those areas taught in a certificated dispatcher school curriculum.

The ARAC recommended the changes described above to the current experience requirements because of its determination that only the proposed experience requirements warrant being considered equivalent to the instruction received at an approved school. If an applicant receives instruction at an approved school, the course must be successfully completed within 90 days before the date of application.

The ARAC recommended that the Administrator's representative hold an aircraft dispatcher certificate in order to ensure that the representative has the appropriate knowledge base to make a determination regarding equivalent experience for an aircraft dispatcher certificate without attending a dispatcher course.

Sectior 65.59 Skill Requirements

The current regulation outlines specific topics and publications to be covered during the test, however, as proposed, specific topics would be deleted to reduce redundancy within regulatory and appendix sections. Instead, proposed § 65.59 would state that the test must be based on the Aircraft Dispatcher Practical Test Standards published by the FAA on the items outlined in appendix A of part 65. No substantive changes to the requirements have been made.

Section 65.61 Aircraft Dispatcher Certification Courses: Content and Minimum Hours

Current § 65.61 contains the general requirements for obtaining approval of an aircraft dispatcher certification course. The requirements of current § 65.61 are in this proposal divided between proposed § 65.61(a) and proposed § 65.63(a). In addition, proposed § 65.63 would contain several requirements now in appendix A.

Proposed § 65.61(a) would require, as does current § 65.61, that each aircraft dispatcher certification course must provide instruction on those areas of knowledge and topics listed in appendix A. It would also include the proposed 200 course hour minimum hours. Currently the minimum hours are contained in appendix A on a subject-by-subject basis.

Proposed § 65.61(a) would require a course outline as does the current rule but, in addition, would require that the outline indicate the number of hours proposed for major topics and subtopics to be covered since these hours would no longer be stated in appendix A. Proposed § 65.61(b) would also include a requirement, now in appendix A, paragraph (a), that additional subject headings can be included, but that the hours proposed for any subjects not listed in appendix A must be in addition to the minimum 200 required course hours.

Proposed § 65.61(c) would contain a provision now in paragraph (f) of appendix A that allows a student to receive credit for a portion of the required 200 hours of instruction by substituting previous experience or training. As is currently the case, the proposed rule would require that the basis for any allowance and the total hours credited must be incorporated in the student's records.

Section 65.63 Aircraft Dispatcher Certification Courses: Application, Duration, and Other General Requirements

Proposed § 65.63 is a new section that would include in proposed paragraph (a) the letter application requirements currently contained in § 61.61 and in proposed paragraphs (b) through (e), requirements currently in appendix A that are more appropriate for the operating rule. An applicant would be required to submit only two copies of the course outline, in place of the three copies currently required because the FAA has determined that three copies are not needed and that the requirement imposes an unnecessary economic cost on the applicant and an administrative burden on the FAA.

Proposed § 65.63(b) would include the current 24-month duration for FAA approval of an aircraft dispatcher certification course. The only substantive change proposed is that an application for renewal would have to be submitted at least 30 days before the expiration date, currently it can be submitted up to 60 days after the expiration date. This change is needed to prevent a course from continuing beyond its expiration date.

Proposed § 65.63(c) would contain the current requirements for obtaining approval of course revisions.

Proposed § 65.63(d) would contain the current provisions for cancellation of approval of an aircraft dispatcher certification course, whether at the FAA's or the operator's initiative. When a course approval is canceled, the operator would have to send to the FAA any records requested by the Administrator so that they would be available if needed.

Proposed § 65.63(e) would contain most of the current requirements that apply to changes in ownership, name, or location of an approved course. Two substantive changes are proposed. Currently "approval of an aircraft dispatcher course may not be continued in effect after the course has changed ownership." Proposed § 65.63(e) would allow for continuation of approval after a change of ownership if the Administrator, after an audit, determines continued compliance with the requirements of part 65 and issues a letter of approval. The other proposed change would require that the Administrator must be notified in writing within 10 days of any changes in ownership, name, or location. The current rule requires notification of a change in location "without delay." This change is desirable to avoid differing interpretations of how much time is allowed.

Section 65.65 Training Facilities

Proposed § 65.65 is a new section that would prescribe the training facilities necessary to operate an approved school. This proposed section is based primarily on material that is currently provided for in appendix A. The proposal would add a requirement that the training facility must be so located that the students in that facility are not distracted by the instruction conducted in other rooms. This proposed requirement would align this section with part 141 of this chapter.

Section 65.67 Instruction

Proposed § 65.67 is a new section that would prescribe instruction requirements necessary to operate an approved school that are mostly based on material that is currently provided for in appendix A. The maximum student-teacher ratio would remain unchanged at 25 to 1. Currently, appendix A states that approval of a course may not be continued in effect unless at least 80 percent of students who apply for testing within 90 days after graduation from an approved school are able to qualify on the first attempt. Proposed § 65.67(b) would continue the 80 percent success rate requirement but would apply the 80 percent rate over a 24 month period which would be consistent with proposed § 141.5 (60 FR 41263, August 11, 1995).

Section 65.70 Records

Proposed § 65.70 is a new section that would prescribe recordkeeping requirements based on material currently provided for in appendix A. A proposed change would allow schools to discard records after 3 years so that recordkeeping would not become a burden. This proposed change could result in significant cost savings to dispatcher schools since a literal reading of the current regulations would require these records to be retained indefinitely.

Appendix A to Part 65—Aircraft Dispatcher Certification Courses

The proposed overview paragraph introduces the specific minimum set of topics that must be covered in an aircraft dispatcher training course and contains general information about those courses.

The individual subject hourly requirements (e.g., Federal Aviation Regulations, 15 classroom hours; meteorology, 75 classroom hours) would be eliminated, and in their place a total course-hour minimum is proposed in § 61.61(a) as discussed above.

A word-by-word comparison of proposed appendix A with current appendix A might make it appear that this proposal is adding to the subject areas to be covered. However, the FAA understands that as a practical matter, training schools, partially through the use of the PTS guide, are in fact covering the subject areas listed in the proposed requirements. In addition, by using modern teaching methods and training aids, it is possible to cover the proposed curriculum without an increase in overall teaching hours.

The proposed curriculum is considered necessary because of the important role of the aircraft dispatcher in maintaining safety of flight operations. The aircraft dispatcher and the pilot in command are jointly responsible for the authorization and control of a flight in accordance with applicable regulations and air carrier procedures. This responsibility extends from the preparation for a flight to its conclusion, and includes dealing with emergency situations.

Many of the dispatcher's tasks require familiarity in dealing with specific regulations and air carrier procedures. Others require exercising judgment to deal with unique aspects of a situation. Virtually all of these problem-solving activities require skill in working with the flight crew, Air Traffic Control, and members of the Air Carrier Operations Control and Maintenance staff.

Regulations

In addition to the parts currently covered (subpart C of part 65 and parts 25, 91, 121), it is proposed that a course must cover parts 1, 61, 71, 139, and 175 of chapter I of 14 CFR as well as part 830 of the regulations of the National Transportation Safety Board, "Rules Pertaining to Aircraft Accidents, Incidents, Overdue Aircraft, and Safety Investigation." Another addition to appendix A training requirements would be training on the "General Operating Manual." that is, training on the common features of a typical certificate holder's manual.

Meteorology

Meterology would be sub-divided into three subject headings; 1) Basic Weather Studies; 2) Weather, Analysis, and Forecasts; and 3) Weather Related Hazards. The subject of meteorology, due to its importance, would be updated and expanded to provide greater detail for instructional guidance.

Navigation

Navigation would be expanded to provide an introduction to international flight planning procedures and limitation.

Aircraft

Aircraft would be updated to provide expanded systems training to ensure proper application of this knowledge.

Communications

Communications would be expanded to include data link communications as well as sources of aeronautical information.

Air Traffic Control

Air traffic control would be expanded to encompass areas of air traffic management.

Emergency and Abnormal Procedures

This proposed new section would address security; in particular, identifying, declaring, and reporting emergencies.

Practical Dispatch Applications

This section would replace the current practical dispatching section. Practical dispatch applications would introduce the dispatch candidate to human factors as applied to decisiomaking, human error, and teamwork.

The "applied dispatching" subsection would provide the student with methods of application for all previous subject matter.

To ensure that future technological advancements will be taught, this proposed appendix would be linked to the Practical Test Standards guide. The PTS is periodically revised, whereas regulatory change may not keep up with technological advancements.

Paperwork Reduction Act

Proposed §§ 65.63 and 65.70 contain information reporting, recordkeeping, and 3rd party notification requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of those proposed sections to the Office of Management and Budget (OMB) for its review.

Proposed § 65.63(a) requires that an applicant for approval of an aircraft dispatcher certification course shall submit a letter to the Administrator requesting approval; two copies of the course outline; a description of equipment and facilities to be used; and a list of the instructors and their qualifications. This information would be necessary for the FAA to evaluate the applicant's qualifications and compliance with the requirements of proposed subpart C of part 63. Proposed § 65.63(b) requires that a course operator must request renewal of an approved aircraft dispatcher certification course within 30 days before the expiration date of the course. This would allow the FAA time to review the course operator's performance and continued qualification for course approval.

Proposed § 65.63(d) requires that a course operator who desires voluntary cancellation of an approved course must send a letter requesting the cancellation to the Administrator. This would provide the FAA with the documentation showing the reason for the cancellation. After the course has been canceled the operator is required to send any records to the FAA that the Administrator requests, so that they would be available if needed. Proposed § 65.63(e) requires that a course operator must notify the Administrator within 10 days of changing the ownership, name, or location of an approved course. This would enable the FAA to continue its oversight and auditing of the course. The FAA estimates the annual recordkeeping burden for § 65.63 compliance to be 71 hours per year.

Proposed § 65.70 requires that course operators keep a chronological log for 3 years of all instructors, subjects covered, and course examinations and results. In addition, the course operator must transmit to the Administrator, not later than January 31 of each year, a report for the previous year that lists the names of all students who graduated, failed, or withdrew from the course, together with the results of the course or reasons for withdrawal for each student. These requirements are necessary for the FAA to evaluate the quality of the course and the operator's compliance with part 65. Proposed § 65.70(b) requires the course operator to provide a written statement of graduation to each student who successfully completes the approved course, so that the student has documentation of his or her qualification to serve as an aircraft dispatcher. The FAA estimates the annual recordkeeping burden for § 65.70 compliance to be 1440 hours per year.

The annual reporting and recordkeeping burden for each aircraft dispatcher certification course operator has not changed as a result of this rulemaking. However, each aircraft dispatcher certification course operator will be required to update the course curriculum and training outline, which will be a one time occurrence of approximately up to 80 hours.

Organizations and individuals desiring to submit comments on the information reporting and recordkeeping requirements should direct them to: U.S. Department of Transportation Dockets, Docket No. FAA–1998–4553, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA is not aware of any differences that this proposal would present if adopted. Any differences that may be presented in comments to this proposal, however, will be taken into consideration.

Economic Summary

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. This proposed rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). This proposed rule will not result in (A) an annual effect on the economy of $100 million or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions; (C) significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposal is intended to amend existing regulations that define the qualification and certification requirements for aircraft dispatchers. Current regulations prescribing these requirements do not reflect the technological advances that have occurred in the aviation industry nor do these regulations reflect the enhancements in training and instructional methods that have affected all aircraft dispatchers.

The FAA has determined that the proposed rule will have little or no cost impact on the aviation industry costs.

The proposed rule will result in minor cost savings for dispatcher schools by relieving them of the burden to retain records indefinitely. Additionally, the proposed rule would consolidate and clarify eligibility, knowledge, experience, and skill requirements among aircraft

dispatchers. Because the proposed rule would have only a minor effect on existing costs, the FAA has not prepared a full regulatory evaluation for the docket. The FAA solicits specific cost information from commenters.

International Trade Impact Analysis

The FAA finds that this proposed rule will have no adverse impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States.

Regulatory Flexibility Determination

Economic Impact

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The Act requires that whenever an agency publishes a general notice of proposed rulemaking, an initial regulatory flexibility analysis identifying the economic impact on small entities, and considering alternatives that may lessen those impacts must be conducted if the proposed rule would have a significant economic impact on a substantial number of small entities.

This proposed rule would impact entities regulated by part 65. The FAA believes there is little or no cost impact on the aviation industry associated with the proposed rule. Therefore, the FAA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Significance

This proposed rulemaking is not significant under Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. This proposed rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." a "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, or $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The proposed regulations would not have substantial direct effects on the states, on the relationship between national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that this proposed regulation would not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 65

Air traffic controllers, Aircraft, Aircraft dispatchers, Airmen, Airports, Reporting and recordkeeping requirements.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend 14 CFR part 65 as follows:

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Subpart C of part 65 is revised to read as follows:

Subpart C—Aircraft Dispatchers

Subpart C—Aircraft Dispatchers

§ 65.51 Certificate required.

(a) No person may serve as an aircraft dispatcher (exercising responsibility with the pilot in command in the operational control of a flight) in connection with any civil aircraft in air commerce unless he has in his personal possession a current aircraft dispatcher certificate issued under this subpart.

(b) Each person who holds an aircraft dispatcher certificate shall present it for inspection upon the request of the Administrator or an authorized representative of the National Transportation Safety Board, or of any Federal, State, or local law enforcement officer.

§ 65.53 Eligibility requirements: General.

(a) To be eligible to take the aircraft dispatcher knowledge test, a person must be at least 21 years of age.

(b) To be eligible for an aircraft dispatcher certificate, a person must—

(1) Be at least 23 years of age;

(2) Be able to read, speak, write, and understand the English language. If the applicant is unable to meet one of these requirements due to medical reasons, then the Administrator may place such operating limitations on that certificate as are necessary for the safe operation of aircraft; and

(c) Comply with §§ 65.55, 65.57, and 65.59.

§ 65.55 Knowledge requirements.

(a) An applicant for an aircraft dispatcher certificate must pass a knowledge test on the items outlined in appendix A of this part.

(b) A report of the test is provided to the applicant. A passing grade is evidence, for a period of 24 months after the date the test is given, that the applicant has complied with this section.

§ 65.57 Experience or training requirements.

An applicant for an aircraft dispatcher certificate must present documentary evidence satisfactory to the Administrator that the applicant has the experience prescribed in paragraph (a) of this section or the training described

in paragraph (b) of this section as follows:

(a) A total of at least 2 out of the last 3 years before the date of application, in any one or in any combination of the following areas:

(1) In military operations as a—

(i) Pilot;

(ii) Flight navigator; or

(iii) Meteorologist.

(2) In part 121 operations as—

(i) An assistant in dispatching air carrier aircraft, under the direct supervision of a dispatcher certificated under this subpart;

(ii) A pilot;

(iii) A flight engineer; or

(iv) A meteorologist.

(3) In other aircraft operations as an—

(i) Air Traffic Controller; or

(ii) Flight Service Specialist.

(4) In other aircraft operations, performing other duties that the Administrator's representative, who must be a certificated aircraft dispatcher, finds provide equivalent experience.

(b) Within 90 days before the date of application, the applicant must successfully complete a course of instruction approved by the Administrator as adequate for the training of an aircraft dispatcher.

§ 65.59 Skill requirements.

An applicant for an aircraft dispatcher certificate must pass a test given by an Administrator's representative, who must be a certificated aircraft dispatcher. The test must be based on the Aircraft Dispatcher Practical Test Standards, as published by the FAA, on the items outlined in appendix A of this part.

§ 65.61 Aircraft dispatcher certification courses: Content and minimum hours.

Prior to exercising the privileges of an aircraft dispatcher certificate, satisfactory completion of initial dispatch training (provided by the air carrier) must be accomplished to ensure comprehensive coverage for that air carrier's specific operation, as approved by the Administrator.

(a) Each aircraft dispatcher certification course must:

(1) Provide instruction in the areas of knowledge and topics listed in appendix A of this part;

(2) Include a minimum of 200 total course hours; and

(3) Outline the major topics and subtopics to be covered and the number of hours proposed for each.

(b) Additional subject headings for an aircraft dispatcher certification course may also be included, however the hours proposed for any subjects not listed in appendix A of this part must be in addition to the minimum 200 total course hours required in paragraph (a) of this section.

(c) For the purposes of meeting paragraph (a) of this section, a student may substitute previous experience or training for a portion of the 200 minimum hours of training. The course operator determines the number of hours of credit based on an evaluation of the experience and training to determine if the experience and training is provable and comparable to portions of the approved course curriculum. Where credit is allowed, the basis for allowance and the total hours credited must be incorporated as part of the student's records, provided for in § 65.70(a).

§ 65.63 Aircraft dispatcher certification courses: Application, duration, and other general requirements.

(a) *Application.* An applicant for approval of an aircraft dispatcher certification course shall submit:

(1) A letter to the Administrator requesting approval;

(2) Two copies of the course outline;

(3) A description of equipment and facilities to be used; and

(4) A list of the instructors and their qualifications.

(b) *Duration and renewal.* The authority to operate an approved aircraft dispatcher certification course of study expires 24 months after the last day of the month of issuance. Application for renewal of an approved aircraft dispatcher certification course shall be made by letter addressed to the Administrator within 30 days prior to the expiration date. Renewal of approval will depend on the course operator's fulfilling the current conditions of course approval and having a satisfactory record of course operation.

(c) *Course revisions.* Requests for revision of the course outlines, facilities, and equipment shall be accomplished in the same manner established for securing approval of the original course of study. Proposed revisions must be submitted in a format that will allow an entire page or pages of the approved outline to be removed and replaced by any approved revision. The list of instructors may be revised at any time without request for approval, provided the minimum requirements of § 65.67 are maintained and the Administrator is notified in writing.

(d) *Cancellation of approval.* Failure to meet or maintain any of the standards set forth in this part for the approval or operation of an approved aircraft dispatcher certification course is considered to be a sufficient reason for discontinuing approval of the course. If a course operator desires voluntary cancellation of an approved course, the course operator shall send a letter requesting cancellation to the Administrator. The operator will be responsible for forwarding any records to the FAA as requested by the Administrator.

(e) *Change is ownership, name, or location.* When an approved course changes ownership, name, or location, the Administrator must be notified of the change in writing within 10 businesses days. The Administrator will audit the course for compliance with this part and issue a letter of approval reflecting the changes.

§ 65.65 Training facilities.

An applicant for authority to operate an approved aircraft dispatcher course of study must have facilities, equipment, and materials adequate to provide each student the theoretical and practical aspects of aircraft dispatching. Each room, training booth, or other space used for instructional purposes must be temperature controlled, lighted, and ventilated to conform to local building, sanitation, and health codes. In addition, the training facility must be so located that the students in that facility are not distracted by the instruction conducted in other rooms.

§ 65.67 Instruction.

(a) The number of instructors available for conducting the course of study shall be determined according to the needs and facilities of the applicant. However, the ratio of students per instructor may not exceed 25 students for one instructor.

(b) Approval of a course shall not be continued in effect unless within the last 24 calendar months at least 80 percent of the students or graduates who applied for testing within 90 days after graduation from that school passed the practical test on the first attempt, and that test was given by—

(1) An FAA inspector; or

(2) A designated dispatch examiner.

(c) At least one instructor who possesses an aircraft dispatcher certificate must be available for coordination of the training course instruction. A certificated aircraft dispatcher must actively participate in the Practical Dispatch Applications instruction.

§ 65.70 Records.

(a) Approval of a course shall not be continued in effect unless the course operator keeps an accurate record of each student, including chronological log of all instructors, subjects covered,

and course examinations and results, for a period of not less than 3 years. The course operator also must prepare, retain and transmit to the Administrator not later than January 31 of each year, a report containing the following information for the previous year:

(1) the names of all students graduated, together with the results of their aircraft dispatcher certification course.

(2) The names of all the students failed or withdrawn, together with results and reasons for withdrawal.

(b) Each student who successfully completes the approved aircraft dispatcher certification course shall be given a written statement of graduation.

3. Appendix A to part 65 is revised to read as follows:

Appendix A to Part 65—Aircraft Dispatcher Courses

Overview

This appendix sets forth the areas of knowledge necessary to perform dispatcher functions. The items listed below indicate the minimum set of topics that must be covered in a training course for aircraft dispatcher certification. The order of coverage is flexible and at the discretion of the approved school. For each of these topics listed below, coverage must include state of the art technologies and techniques, as well as provide a foundation for knowledge of future developments. For updated technological advancements refer to the Practical Test Standards as published by the FAA.

I. Regulations

A. Subpart C of this part 65;
B. Parts 1, 25, 61, 71, 91, 121, 139, and 175, of this chapter;
C. 49 CFR part 830;
D. General Operating Manual.

II. Meteorology

A. Basic Weather Studies

(1) The earth's motion and its effects on weather.
(2) Analysis of regional weather types, characteristics, and structure:
(a) Maritime.
(b) Continental.
(c) Polar.
(d) Tropical.
(e) Combinations thereof.
(3) Analysis of local weather types, characteristics, and structures of:
(a) Coastal.
(b) Mountainous.
(c) Island.
(d) Plains.
(e) Combinations thereof.
(4) The Atmosphere:
(a) Layers.
(b) Composition.
(c) Global Wind Patterns.
(d) Ozone.
(5) Pressure:
(a) Units of Measure.
(b) Weather Systems Characteristics.
(c) Temperature Effects on Pressure.
(d) Altimeters.
(e) Pressure Gradient Force.
(f) Pressure Pattern Flying Weather.
(6) Wind:
(a) Major Wind Systems and Coriolis Force.
(b) Jetstreams and their Characteristics.
(c) Local Wind and Related Terms.
(7) States of Matters:
(a) Solids, Liquid, and Gases.
(b) Causes of change of state.
(8) Clouds:
(a) Composition, Formation, and Dissipation.
(b) Types and Associated Precipitation.
(c) Use of Cloud Knowledge in Forecasting.
(9) Fog:
(a) Causes, Formation, and Dissipation.
(b) Types.
(10) Ice:
(a) Causes, Formation, and Dissipation.
(b) Types.
(11) Stability/Instability:
(a) Temperature Lapse Rate, Convection.
(b) Adiabatic Processes.
(c) Lifting Processes.
(d) Divergence.
(e) Convergence.
(12) Turbulence:
(a) Jetstream Associated.
(b) Pressure Pattern Recognition.
(c) Low Level Windshear.
(d) Mountain Waves.
(e) Thunderstorms.
(f) Clear Air Turbulence.
(13) Airmasses:
(a) Classification and Characteristics.
(b) Source Regions.
(c) Use of Airmass Knowledge in Forecasting.
(14) Fronts:
(a) Structure and Characteristics/Vertical and Horizontal.
(b) Frontal Types.
(c) Frontal Weather Flying.
(15) Theory of Storm Systems:
(a) Thunderstorms.
(b) Tornadoes.
(c) Hurricanes/Typhoons.
(d) Microbursts.
(e) Causes, Formation, and Dissipation.

B. Weather, Analysis, and Forecasts

(1) Observations:
(a) Surface Observations.
(i) Observations made by certified weather observer.
(ii) Automated Weather Observations.
(b) Terminal Forecasts.
(c) Significant En route Reports and Forecasts.
(i) Pilot Reports.
(ii) Area Forecasts.
(iii) Sigmets, Airmets.
(iv) Center Weather Advisories.
(d) Weather Imagery.
(i) Surface Analysis.
(ii) Weather Depiction.
(iii) Significant Weather Prognosis.
(iv) Winds and Temperature Aloft.
(v) Tropopause Chart.
(vi) Composite Moisture Stability Chart.
(vii) Surface Weather Prognostic Chart.
(viii) Radar Meteorology.
(ix) Satellite Meteorology.
(x) Other charts as applicable.
(e) Meteorological Information Data Collection Systems.
(2) Data Collection, Analysis, and Forecast Facilities.
(3) Service Outlets Providing Aviation Weather Products.

C. Weather Related Aircraft Hazards

(1) Crosswinds/Gusts.
(2) Contaminated Runways.
(3) Restrictions to Surface Visibility.
(4) Turbulence/Windshear.
(5) Icing.
(6) Thunderstorms/Microbursts.
(7) Volcanic Ash.

III. Navigation

A. Study of the Earth.
(1) Time reference and location (0 Longitude, UTC, etc.).
(2) Definitions.
(3) Projections.
(4) Charts.
B. Chart reading, application, and use.
C. National Airspace Plan.
D. Navigation Systems.
E. Airborne Navigation Instruments.
F. Instrument Approach Procedures.
(1) Transition Procedures.
(2) Precision Approach Procedures.
(3) Non-precision Approach Procedures.
(4) Minimums and the relationship to weather.
G. Special Navigation and Operations.
(1) North Atlantic.
(2) Pacific.
(3) Global Differences.

IV. Aircraft

A. Aircraft Flight Manual.
B. Systems Overview.
(1) Flight controls
(2) Hydraulics.
(3) Electrical.
(4) Air Conditioning and Pressurization.
(5) Ice and Rain protection.
(6) Avionics, Communication, and Navigation.
(7) Powerplants and Auxiliary Power Units.
(8) Emergency and Abnormal Procedures.
(9) Fuel Systems and Sources.
C. Minimum Equipment List/Configuration Deviation List (MEL/CDL) and Applications.
D. Performance.
(1) Aircraft in general.
(2) Principles of flight:
(a) Group one aircraft.
(b) Group two aircraft.
(3) Aircraft Limitations.
(4) Weight and Balance.
(5) Flight instrument errors.
(6) Aircraft performance:
(a) Take-off performance.
(b) En route performance.
(c) Landing performance.

V. Communications

A. Regulatory requirements.
B. Communications Protocol.
C. Voice and Data Communications.
D. Notice to Airmen (NOTAMS).
E. Aeronautical Publications.
F. Abnormal Procedures.

VI. Air Traffic Control

A. Responsibilities.

B. Facilities and Equipment.
C. Airspace classification and route structure.
D. Flight Plans.
(1) Domestic.
(2) International.
E. Separation Minimums.
F. Priority Handling.
G. Holding Procedures.
H. Traffic Management.

VII. Emergency and Abnormal Procedures

A. Security measures on the ground.
B. Security measures in the air.
C. FAA responsibility and services.
D. Collection and dissemination of information on overdue or missing aircraft.
E. Means of declaring an emergency.
F. Responsibility for declaring an emergency.
G. Required reporting of an emergency.
H. NTSB reporting requirements.

VIII. Practical Dispatch Applications

A. Human Factors.
(1) Decisionmaking:
(a) Situation Assessment.
(b) Generation and Evaluation of Alternatives.
(i) Tradeoffs and Prioritization.
(ii) Contingency Planning.
(c) Support Tools and Technologies.
(2) Human Error:
(a) Causes.
(i) Individual and Organizational Factors.
(ii) Technology-Induced Error.
(b) Prevention.
(c) Detection and Recovery.
(3) Teamwork:
(a) Communication and Information Exchange.
(b) Cooperative and Distributed Problem-Solving.
(c) Resource Management.
(i) Air Traffic Control (ATC) activities and workload.
(ii) Flightcrew activities and workload.
(iii) Maintenance activities and workload.
(iv) Operations Control Staff activities and workload.
B. Applied Dispatching.
(1) Briefing techniques, Dispatcher, Pilot.
(2) Preflight:
(a) Safety.
(b) Weather Analysis.
(i) Satellite imagery.
(ii) Upper and lower altitude charts.
(iii) Significant enroute reports and forecasts
(iv) Surface charts.
(v) Surface observations.
(vi) Terminal forecasts and orientation to Enhanced Weather Information System (EWINS).
(c) NOTAMS and airport conditions.
(d) Crew.
(i) Qualifications.
(ii) Limitations.
(e) Aircraft.
(i) Systems.
(ii) Navigation instruments and avionics systems.
(iii) Flight instruments.
(iv) Operations manuals and MEL/CDL.
(v) Performance and limitations.
(f) Flight Planning.
(i) Route of flight.
1. Standard Instrument Departures and Standard Terminal Arrival Routes.
2. En route charts.
3. Operational altitude.
4. Departure and arrival charts.
(ii) Minimum departure fuel.
1. Climb.
2. Cruise.
3. Descent.
(g) Weight and balance.
(h) Economics of flight overview (Performance, Fuel Tankering).
(i) Decision to operate the flight.
(j) ATC flight plan filing.
(k) Flight documentation.
(i) Flight plan.
(ii) Dispatch release.
(3) Authorize flight departure with concurrence of pilot in command.
(4) In-flight operational control:
(a) Current situational awareness.
(b) Information exchange.
(c) Amend original flight release as required.
(5) Post-Flight.
(a) Arrival verification.
(b) Weather debrief.
(c) Flight irregularity reports as required.

Issued in Washington, DC, on October 6, 1998

Richard O. Gordon,

Acting Director, Flight Standards Service.

[FR Doc. 98–27524 Filed 10–16–98; 8:45 am]

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federal register

Monday
October 19, 1998

Part III

Department of Education

List of Correspondence—Office of Special Education and Rehabilitative Services; Notice

DEPARTMENT OF EDUCATION

List of Correspondence—Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: List of Correspondence from April 1, 1998 through June 30, 1998.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Rhonda Weiss. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5465 or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday, except Federal holidays.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued between April 1, 1998 and June 30, 1998.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A—General Provisions

Section 602—Definitions

Topic Addressed: Use and Transfer of Ownership of Equipment

- Letter Dated June 21, 1998 to Susan Goodman, Esq., Assistive Technology Funding and Systems Change Project, Washington, DC, regarding transfer of ownership of equipment purchased with Part B funds to a State vocational rehabilitation agency for use by an individual transitioning to and participating in a State vocational rehabilitation services program funded under Title I of the Rehabilitation Act of 1973, as amended.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Section 619—Preschool Grants

Topic Addressed: Distribution of IDEA State Grant Funds

- OSEP Memorandum 98–10 dated May 29, 1998, to State Directors of Special Education, regarding State Awards, Set-Aside Amounts, and Flow-Through Funds for LEAs.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education for Eligible Youth with Disabilities Incarcerated in Adult Prisons

- Letter delivered May 15, 1998 to U.S. Congressman Frank E. Riggs, regarding the importance of providing educational services to disabled youths incarcerated in adult prisons and the flexibility afforded States in meeting this statutory requirement.

Topic Addressed: Least Restrictive Environment

- Letter dated June 26, 1998 to U.S. Congressman Wayne Gilchrest, regarding a State's continued ability under the IDEA Amendments of 1997 to place a disabled student at a costly, intensive private school, if that placement is determined necessary for that student to receive FAPE.

Topic Addressed: General Supervision

- Letter dated May 7, 1998 to Patricia A. Hertzler, Esq., Port Royal, Pennsylvania, regarding a public agency's responsibility to maintain, for three years, records demonstrating that all eligible children with disabilities are provided FAPE, consistent with their IEPs.
- Letter dated June 22, 1998 to Donna Hutcheson, Funding Advocate, Illinois Assistive Technology Project, regarding the responsibilities of State Educational Agencies in ensuring the provision of assistive technology devices and services to children with disabilities.

Topic Addressed: Interagency Coordination

- Letter dated April 30, 1998 to U.S. Senator Christopher J. Dodd, regarding interagency financing of costly programs designed by school districts for students whose disabilities have behavioral components.

Topic Addressed: Personnel Standards

- Letter dated May 14, 1998, to Linda J. Garvin, Pediatric Registered Nurse/Advocate, Oceanside, California, regarding State standards under Part B for private providers of special education services.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Individualized Education Programs

- OSEP Memorandum 98–8 to Chief State School Officers and Directors of Special Education, and letter dated May 27, 1998 to individual (personally identifiable information redacted), regarding effective date of new IEP requirements.
- Letter dated April 29, 1998 to Linda Garvin, Educational Advocate/FEAT, Oceanside, California, regarding presence of non-attorney advocates at an IEP meeting.

Section 615—Procedural Safeguards

- Topic Addressed: Finality of Hearing Decisions
- Letter dated April 3, 1998 to Philip A. Drumheiser, Advocate for Children with Disabilities, of Carlisle, Pennsylvania, regarding Department's lack of jurisdiction under Part B to review a decision in a due process hearing or a decision from a due process hearing appealed to the State educational agency.

Topic Addressed: Student Discipline

- Letter dated May 27, 1998 to individual, (personally identifiable information redacted), and letter dated June 16, 1998 to individual, (personally identifiable information redacted), regarding the requirements of IDEA Amendments of 1997 that are applicable to students whose disabilities have behavioral components and the importance of using positive behavioral interventions and supports.
- Letter dated June 26, 1998 to individual, (personally identifiable information redacted), regarding options available to school authorities in disciplining students with disabilities.

Part C—Infants and Toddlers With Disabilities (Previously Part H)

Sections 631–641

Topic Addressed: Period of Obligation of Federal Education Funds

- Letter dated May 19, 1998 to Howard A. Peters III, Secretary, Illinois Department of Human Services, regarding the Department's lack of authority to grant a State's request for an extension of the period of obligation of any Federal grant funds.

Section 636—Individualized Family Service Plan

Topic Addressed: Natural Environments

- Letter dated April 27, 1998 to individual, (personally identifiable information redacted), regarding a State's responsibility to ensure the provision of early intervention services in natural environments, to the maximum extent appropriate to the needs of the child, and the Individualized Family Service Plan Team's responsibility to determine the location in which those services are provided.

Part D—National Activities To Improve Education of Children With Disabilities

Section 673—Personnel Preparation

Topic Addressed: Professional Development

- Letter dated April 3, 1998 to Dr. David L. Porretta, President, National Consortium for Physical Education and Recreation for Individuals with Disabilities, regarding priorities for professional development programs for adapted physical educators.

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Note: The official version of a document is the document published in the **Federal Register**.

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: October 14, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–27981 Filed 10–16–98; 8:45 am]

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Federal Register

Vol. 63, No. 201

Monday, October 19, 1998

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

52579–52956	1
52957–53270	2
53271–53542	5
53543–53778	6
53779–54026	7
54027–54340	8
54341–54552	9
54553–55004	13
55005–55320	14
55321–55496	15
55497–55778	16
55779–55934	19

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7128 52957
7129 53271
7130 53541
7131 53777
7132 54027
7133 54029
7134 54551
7135 55309
7136 55311
7137 55315
7138 55317
7139 55319

Executive Orders:
13011 (See EO 13103) 53273
13103 53273

Administrative Orders:

Presidential Determinations:
No. 98–37 of September 29, 1998 54031
No. 98–38 of September 29, 1998 54033
No. 98–39 of September 30, 1998 55001
No. 98–40 of September 30, 1998 55003
No. 98–41 of September 30, 1998 54035

5 CFR

430 53275
534 53275

Proposed Rules:
532 54616

7 CFR

25 53779
301 ..... 52579, 54037
319 54553
354 54553
457 ..... 55497, 55779
800 55321
905 55497
906 54553
922 54341
931 55005
948 54342
958 55779
966 54556
987 54344
993 52959
1207 53543
1710 53276

Proposed Rules:
1 53852
225 54617
246 54629
300 55559
319 55559
800 52987
967 54382
1065 54383
1788 54385
1924 53616

8 CFR

212 55007
245 55007
286 54526

9 CFR

3 55012
50 53546
77 53547
78 ..... 53548, 53780, 53781
93 53783
130 53783

10 CFR

72 54559
625 54196

Proposed Rules:
35 55559
50 ..... 52990, 54080, 54389
63 55056

11 CFR

Proposed Rules:
102 55056
103 55056
106 55056

12 CFR

30 ..... 55462, 55468
208 55462
263 55468
364 ..... 55462, 55468
570 ..... 55462, 55468

14 CFR

23 ..... 53278, 55012
25 53278
33 53278
39 ..... 52579, 52583, 52585, 52587, 52961, 53549, 53550, 53552, 53553, 53555, 53556, 53558, 53560, 53562, 53798, 53800, 54938, 54039, 54347, 54562, 54564, 54565, 54567, 54569, 54570, 55015, 55321, 55324, 55325, 55327, 55500, 55503, 55504, 55506, 55515, 55517, 55520, 55522, 55524, 55527, 55528, 55783, 55918
61 53532
67 53532
71 ..... 52589, 52590, 52591, 52963, 52964, 52965, 52966,

61 54430
64 ..... 54090, 55077
69 54430
73 ..... 53008, 53009, 54431, 55831
101 53350

48 CFR

212 55040
215 55040
217 55040
225 55040
227 55040
230 55040
237 ..... 54078, 55040
242 55040
247 55040
252 55040
253 55040
1609 55336
1632 55336
1652 55336

Proposed Rules:

1201 52666
1205 52666
1206 52666
1211 52666
1213 52666
1215 52666
1237 52666
1252 52666
1253 52666

49 CFR

107 52844
171 52844
172 52844
173 52844
175 52844
176 52844
177 52844
178 52844
179 52844
180 52844
213 54078
268 54600

Proposed Rules:

229 54104
231 54104
232 54104
395 54432
396 54432
571 ..... 52626, 53848, 54652
572 53848
574 55832
580 52630

50 CFR

2 52632
10 52632
13 52632
14 52632
15 52632
16 52632
17 ..... 52632, 52824, 53596, 54938, 54956, 54972, 54975, 55553
20 ..... 54016, 54022
21 52632
22 52632
23 52632
216 52984
217 55053
227 ..... 52984, 55053
285 ..... 54078, 55339
600 ..... 52984, 53313
648 52639
660 ..... 53313, 53317, 55558, 55809
679 ..... 52642, 52658, 52659, 52985, 52986, 53318, 54381, 54610, 54753, 55340, 55341, 55342

Proposed Rules:

17 ..... 53010, 53620, 53623, 53631, 54660, 55839
20 ..... 53635, 54753, 55840
222 53635
227 53635
600 52676
630 ..... 54661, 55572
644 54433
648 ..... 52676, 55355, 55357
649 55357
660 53636

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 OCTOBER 19, 1998

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida; published 10-16-98

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; published 8-18-98
Air quality planning purposes; designation of areas:
Kentucky; published 8-18-98
Hazardous waste program authorizations:
Delaware; published 8-18-98
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; published 9-18-98
Toxic substances:
Lead-based paint activities—
Training programs accreditation and contractors certification; fees; published 9-2-98
Significant new uses—
Amines, N-cocoalkyltrimethylenedi, citrates, etc.; published 8-20-98

FEDERAL COMMUNICATIONS COMMISSION
Radio service, special:
Maritime services—
Global maritime distress and safety system; at-sea maintenance requirements; published 9-18-98
Radio stations; table of assignments:
Illinois; published 9-15-98
Kentucky; published 9-15-98

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Category II and III ingredients (OTC) not recognized as safe and effective or are misbranded; published 4-22-98

HEALTH AND HUMAN SERVICES DEPARTMENT
Inspector General Office, Health and Human Services Department
Health care programs; fraud and abuse:
Health Insurance Portability and Accountability Act—
Medicare and State health care programs; exclusions; legal authorities; published 9-2-98

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Saab; published 10-2-98
Textron Lycoming et al.; published 8-20-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Beef promotion and research; comments due by 10-27-98; published 8-28-98

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Mediterranean fruit fly; comments due by 10-26-98; published 8-26-98

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase programs:
Tobacco; importer assessments; comments due by 10-29-98; published 9-29-98

AGRICULTURE DEPARTMENT
Farm Service Agency
Program regulations:
Guaranteed farm loan programs; regulatory streamlining; and preferred lender program; implementation; comments due by 10-26-98; published 9-25-98

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Eggs and egg products:
Shell eggs; refrigeration and labeling requirements; comments due by 10-26-98; published 8-27-98

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Guaranteed farm loan programs; regulatory streamlining; and preferred lender program; implementation; comments due by 10-26-98; published 9-25-98

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Guaranteed farm loan programs; regulatory streamlining; and preferred lender program; implementation; comments due by 10-26-98; published 9-25-98

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Guaranteed farm loan programs; regulatory streamlining; and preferred lender program; implementation; comments due by 10-26-98; published 9-25-98

COMMERCE DEPARTMENT
National Institute of Standards and Technology
Advanced technology program; revisions; comments due by 10-26-98; published 9-25-98

COMMODITY FUTURES TRADING COMMISSION
Registration:
Associated persons, floor brokers, floor traders and guaranteed introducing brokers; temporary licenses; comments due by 10-26-98; published 9-24-98

CONSUMER PRODUCT SAFETY COMMISSION
Consumer Product Safety Act:
Multi-purpose lighters; child resistance standard; comments due by 10-30-98; published 9-30-98

DEFENSE DEPARTMENT
Army Department
Personnel:
Army Board for Correction of Military Records; comments due by 10-29-98; published 9-29-98

DEFENSE DEPARTMENT
Personnel:
Ready Reserve screening; comments due by 10-27-98; published 8-28-98

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 10-26-98; published 9-25-98
Hazardous waste program authorizations:
Massachusetts; comments due by 10-30-98; published 9-30-98
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Deltamethrin; comments due by 10-26-98; published 8-26-98
Triclopyr; comments due by 10-26-98; published 8-26-98
Solid wastes:
Products containing recovered materials; comprehensive procurement guideline; comments due by 10-26-98; published 8-26-98

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Access charges—
Incumbent local exchange carriers; reform and pricing flexibility; rulemaking petitions; comments due by 10-26-98; published 10-9-98
Streamlined contributor reporting requirements; biennial regulatory review; comments due by 10-30-98; published 10-8-98
Terminal equipment, connection to telephone network—
Signal power limitations; modifications; biennial regulatory review; comments due by 10-29-98; published 9-29-98
Radio stations; table of assignments:
Idaho et al.; comments due by 10-26-98; published 9-15-98

FEDERAL DEPOSIT INSURANCE CORPORATION
Foreign banks, U.S. branches and agencies; extended examination cycle; comments due by 10-27-98; published 8-28-98

FEDERAL EMERGENCY MANAGEMENT AGENCY

Freedom of Information Act; implementation; comments due by 10-27-98; published 8-28-98

FEDERAL RESERVE SYSTEM

Foreign banks, U.S. branches and agencies; extended examination cycle; comments due by 10-27-98; published 8-28-98

GENERAL SERVICES ADMINISTRATION

Federal travel:

Payment of expenses in connection with death of employees or immediate family members; comments due by 10-26-98; published 8-27-98

GOVERNMENT ETHICS OFFICE

Ethical conduct standards for executive branch employees; comments due by 10-26-98; published 8-26-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Adhesive coatings and components—

2-hydroxy-1-[4-(2-hydroxyethoxy)phenyl]-2-methyl-1-propanone; comments due by 10-26-98; published 9-28-98

Medical devices:

Class III preamendments physical medicine devices; premarket approval; comments due by 10-28-98; published 7-30-98

Suction antichoke device, tongs antichoke device, and implanted neuromuscular stimulator device; retention in preamendments Class III; premarket approval; comments due by 10-28-98; published 7-30-98

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Low income housing:

Housing assistance payments (Section 8)—

Multifamily housing mortgage and housing assistance restructuring program (mark-to-market program), etc.; comments due by 10-26-98; published 9-11-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Chiricahua dock; comments due by 10-30-98; published 7-29-98

Endangered Species Convention:

River otters taken in Missouri in 1998-1999 and subsequent seasons; exportation; comments due by 10-30-98; published 9-30-98

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

NARA facilities:

Presidential libraries; architectural and design standards; comments due by 10-26-98; published 8-25-98

Privacy Act; implementation; comments due by 10-26-98; published 8-26-98

POSTAL RATE COMMISSION

Practice and procedure:

Proceedings; efficiency improvement; comments due by 10-28-98; published 9-2-98

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Florida; comments due by 10-27-98; published 8-28-98

Missouri et al.; comments due by 10-27-98; published 8-28-98

Military personnel:

Child development services programs; comments due by 10-28-98; published 9-29-98

Regattas and marine parades:

Northern California annual marine events; comments due by 10-30-98; published 8-31-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Devices designed as chemical oxygen generators; transportation as cargo in aircraft; prohibition; comments due by 10-26-98; published 8-27-98

Airworthiness directives:

CFM International; comments due by 10-26-98; published 7-28-98

Eurocopter France; comments due by 10-30-98; published 8-31-98

General Electric Co.; comments due by 10-26-98; published 7-28-98

International Aero Engines AG; comments due by 10-26-98; published 7-28-98

Lockheed; comments due by 10-26-98; published 9-11-98

Pratt & Whitney; comments due by 10-26-98; published 7-28-98

Raytheon; comments due by 10-30-98; published 9-2-98

Class E airspace; comments due by 10-26-98; published 9-9-98

Procedural rules:

Protests and contract disputes procedures; and Equal Access to Justice Act implementation; comments due by 10-26-98; published 8-25-98

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol; viticultural area designations:

Yountville, CA; comments due by 10-26-98; published 8-26-98

TREASURY DEPARTMENT

Comptroller of the Currency

Foreign banks, U.S. branches and agencies; extended examination cycle; comments due by 10-27-98; published 8-28-98

TREASURY DEPARTMENT

Thrift Supervision Office

Consumer credit classified as loss, slow consumer credit, and slow loans; definitions removed; comments due by 10-26-98; published 9-25-98

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. 3096/P.L. 105–247

To correct a provision relating to termination of benefits for convicted persons. (Oct. 9, 1998; 112 Stat. 1863)

H.R. 4382/P.L. 105–248

Mammography Quality Standards Reauthorization Act of 1998 (Oct. 9, 1998; 112 Stat. 1864)

H.J. Res. 133/P.L. 105–249

Making further continuing appropriations for the fiscal year 1999, and for other purposes. (Oct. 9, 1998; 112 Stat. 1868)

S. 1355/P.L. 105–250

To designate the United States courthouse located at 141 Church Street in New Haven, Connecticut, as the "Richard C. Lee United States Courthouse". (Oct. 9, 1998; 112 Stat. 1869)

S. 2022/P.L. 105–251

To provide for the improvement of interstate criminal justice identification, information, communications, and forensics. (Oct. 9, 1998; 112 Stat. 1870)

S. 2071/P.L. 105–252

To extend a quarterly financial report program administered by the Secretary of Commerce. (Oct. 9, 1998; 112 Stat. 1886)

H.J. Res. 131/P.L. 105–253

Waiving certain enrollment requirements for the remainder of the One Hundred Fifth Congress with respect to any bill or joint resolution making general or continuing appropriations for fiscal year 1999. (Oct. 12, 1998; 112 Stat. 1887)

H.J. Res. 134/P.L. 105–254

Making further continuing appropriations for the fiscal year 1999, and for other purposes. (Oct. 12, 1998; 112 Stat. 1888)

Last List October 13, 1998

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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
5 Parts:			
1–699	(869–034–00004–5)	35.00	Jan. 1, 1998
700–1199	(869–034–00005–3)	26.00	Jan. 1, 1998
1200–End, 6 (6 Reserved)	(869–034–00006–1)	39.00	Jan. 1, 1998
7 Parts:			
1–26	(869–034–00007–0)	24.00	Jan. 1, 1998
27–52	(869–034–00008–8)	30.00	Jan. 1, 1998
53–209	(869–034–00009–6)	20.00	Jan. 1, 1998
210–299	(869–034–00010–0)	44.00	Jan. 1, 1998
300–399	(869–034–00011–8)	24.00	Jan. 1, 1998
400–699	(869–034–00012–6)	33.00	Jan. 1, 1998
700–899	(869–034–00013–4)	30.00	Jan. 1. 1998
900–999	(869–034–00014–2)	39.00	Jan. 1, 1998
1000–1199	(869–034–00015–1)	44.00	Jan. 1, 1998
1200–1599	(869–034–00016–9)	34.00	Jan. 1, 1998
1600–1899	(869–034–00017–7)	58.00	Jan. 1, 1998
1900–1939	(869–034–00018–5)	18.00	Jan. 1, 1998
1940–1949	(869–034–00019–3)	33.00	Jan. 1, 1998
1950–1999	(869–034–00020–7)	40.00	Jan. 1, 1998
2000–End	(869–034–00021–5)	24.00	Jan. 1, 1998
8	(869–034–00022–3)	33.00	Jan. 1, 1998
9 Parts:			
1–199	(869–034–00023–1)	40.00	Jan. 1, 1998
200–End	(869–034–00024–0)	33.00	Jan. 1, 1998
10 Parts:			
0–50	(869–034–00025–8)	39.00	Jan. 1, 1998
51–199	(869–034–00026–6)	32.00	Jan. 1, 1998
200–499	(869–034–00027–4)	31.00	Jan. 1, 1998
500–End	(869–034–00028–2)	43.00	Jan. 1, 1998
11	(869–034–00029–1)	19.00	Jan. 1, 1998
12 Parts:			
1–199	(869–034–00030–4)	17.00	Jan. 1, 1998
200–219	(869–034–00031–2)	21.00	Jan. 1, 1998
220–299	(869–034–00032–1)	39.00	Jan. 1, 1998
300–499	(869–034–00033–9)	23.00	Jan. 1, 1998
500–599	(869–034–00034–7)	24.00	Jan. 1, 1998
600–End	(869–034–00035–5)	44.00	Jan. 1, 1998
13	(869–034–00036–3)	23.00	Jan. 1, 1998
14 Parts:			
1–59	(869–034–00037–1)	47.00	Jan. 1, 1998
60–139	(869–034–00038–0)	40.00	Jan. 1, 1998
140–199	(869–034–00039–8)	16.00	Jan. 1, 1998
200–1199	(869–034–00040–1)	29.00	Jan. 1, 1998
1200–End	(869–034–00041–0)	23.00	Jan. 1, 1998
15 Parts:			
0–299	(869–034–00042–8)	22.00	Jan. 1, 1998
300–799	(869–034–00043–6)	33.00	Jan. 1, 1998
800–End	(869–034–00044–4)	23.00	Jan. 1, 1998
16 Parts:			
0–999	(869–034–00045–2)	30.00	Jan. 1, 1998
1000–End	(869–034–00046–1)	33.00	Jan. 1, 1998
17 Parts:			
1–199	(869–034–00048–7)	27.00	Apr. 1, 1998
200–239	(869–034–00049–5)	32.00	Apr. 1, 1998
240–End	(869–034–00050–9)	40.00	Apr. 1, 1998
18 Parts:			
1–399	(869–034–00051–7)	45.00	Apr. 1, 1998
400–End	(869–034–00052–5)	13.00	Apr. 1, 1998
19 Parts:			
1–140	(869–034–00053–3)	34.00	Apr. 1, 1998
141–199	(869–034–00054–1)	33.00	Apr. 1, 1998
200–End	(869–034–00055–0)	15.00	Apr. 1, 1998
20 Parts:			
1–399	(869–034–00056–8)	29.00	Apr. 1, 1998
400–499	(869–034–00057–6)	28.00	Apr. 1, 1998
500–End	(869–034–00058–4)	44.00	Apr. 1, 1998
21 Parts:			
1–99	(869–034–00059–2)	21.00	Apr. 1, 1998
100–169	(869–034–00060–6)	27.00	Apr. 1, 1998
170–199	(869–034–00061–4)	28.00	Apr. 1, 1998
200–299	(869–034–00062–2)	9.00	Apr. 1, 1998
300–499	(869–034–00063–1)	50.00	Apr. 1, 1998
500–599	(869–034–00064–9)	28.00	Apr. 1, 1998
600–799	(869–034–00065–7)	9.00	Apr. 1, 1998
800–1299	(869–034–00066–5)	32.00	Apr. 1, 1998
1300–End	(869–034–00067–3)	12.00	Apr. 1, 1998
22 Parts:			
1–299	(869–034–00068–1)	41.00	Apr. 1, 1998
300–End	(869–034–00069–0)	31.00	Apr. 1, 1998
23	(869–034–00070–3)	25.00	Apr. 1, 1998
24 Parts:			
0–199	(869–034–00071–1)	32.00	Apr. 1, 1998
200–499	(869–034–00072–0)	28.00	Apr. 1, 1998
500–699	(869–034–00073–8)	17.00	Apr. 1, 1998
700–1699	(869–034–00074–6)	45.00	Apr. 1, 1998
1700–End	(869–034–00075–4)	17.00	Apr. 1, 1998
25	(869–034–00076–2)	42.00	Apr. 1, 1998
26 Parts:			
§§ 1.0–1–1.60	(869–034–00077–1)	26.00	Apr. 1, 1998
§§ 1.61–1.169	(869–034–00078–9)	48.00	Apr. 1, 1998
§§ 1.170–1.300	(869–034–00079–7)	31.00	Apr. 1, 1998
§§ 1.301–1.400	(869–034–00080–1)	23.00	Apr. 1, 1998
§§ 1.401–1.440	(869–034–00081–9)	39.00	Apr. 1, 1998
§§ 1.441–1.500	(869–034–00082–7)	29.00	Apr. 1, 1998
§§ 1.501–1.640	(869–034–00083–5)	27.00	Apr. 1, 1998
§§ 1.641–1.850	(869–034–00084–3)	32.00	Apr. 1, 1998
§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
§§ 1.908–1.1000	(869–034–00086–0)	35.00	Apr. 1, 1998
§§ 1.1001–1.1400	(869–034–00087–8)	38.00	Apr. 1, 1998
§§ 1.1401–End	(869–034–00088–6)	51.00	Apr. 1, 1998
2–29	(869–034–00089–4)	36.00	Apr. 1, 1998
30–39	(869–034–00090–8)	25.00	Apr. 1, 1998
40–49	(869–034–00091–6)	16.00	Apr. 1, 1998
50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
300–499	(869–034–00093–2)	34.00	Apr. 1, 1998
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
600–End	(869–034–00095–9)	9.00	Apr. 1, 1998
27 Parts:			
1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

Title	Stock Number	Price	Revision Date
200–End	(869–034–00097–5)	17.00	[6] Apr. 1, 1997
28 Parts:			
0–42	(869–034–00098–3)	36.00	July 1, 1998
43–end	(869–034–00099–1)	30.00	July 1, 1998
29 Parts:			
0–99	(869–034–00100–9)	26.00	July 1, 1998
100–499	(869–034–00101–7)	12.00	July 1, 1998
500–899	(869–034–00102–5)	40.00	July 1, 1998
900–1899	(869–034–00103–3)	20.00	July 1, 1998
*1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869–032–00105–7)	29.00	July 1, 1997
1911–1925	(869–034–00106–8)	17.00	July 1, 1998
1926	(869–034–00107–6)	30.00	July 1, 1998
1927–End	(869–034–00108–4)	41.00	July 1, 1998
30 Parts:			
1–199	(869–034–00109–2)	33.00	July 1, 1998
200–699	(869–034–00110–6)	29.00	July 1, 1998
700–End	(869–034–00111–4)	33.00	July 1, 1998
31 Parts:			
0–199	(869–034–00112–2)	20.00	July 1, 1998
200–End	(869–032–00113–8)	42.00	July 1, 1997
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–034–00114–9)	47.00	July 1, 1998
191–399	(869–032–00115–4)	51.00	July 1, 1997
400–629	(869–034–00116–5)	33.00	July 1, 1998
630–699	(869–034–00117–3)	22.00	July 1, 1998
700–799	(869–032–00118–9)	28.00	July 1, 1997
800–End	(869–032–00119–7)	27.00	July 1, 1997
33 Parts:			
1–124	(869–032–00120–1)	27.00	July 1, 1997
125–199	(869–034–00121–1)	38.00	July 1, 1998
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
1–299	(869–034–00123–8)	27.00	July 1, 1998
300–399	(869–032–00124–3)	27.00	July 1, 1997
400–End	(869–032–00125–1)	44.00	July 1, 1997
35	(869–032–00126–0)	15.00	July 1, 1997
36 Parts			
1–199	(869–034–00127–1)	20.00	July 1, 1998
200–299	(869–034–00128–9)	21.00	July 1, 1998
300–End	(869–034–00129–7)	35.00	July 1, 1998
37	(869–032–00130–8)	27.00	July 1, 1997
38 Parts:			
0–17	(869–034–00131–9)	34.00	July 1, 1998
18–End	(869–032–00132–4)	38.00	July 1, 1997
39	(869–034–00133–5)	23.00	July 1, 1998
40 Parts:			
1–49	(869–034–00134–3)	31.00	July 1, 1998
50–51	(869–034–00135–1)	24.00	July 1, 1998
52 (52.01–52.1018)	(869–032–00136–7)	27.00	July 1, 1997
52 (52.1019–End)	(869–034–00137–8)	33.00	July 1, 1998
53–59	(869–034–00138–6)	17.00	July 1, 1998
60	(869–032–00139–1)	52.00	July 1, 1997
61–62	(869–032–00140–5)	19.00	July 1, 1997
63	(869–034–00141–6)	57.00	July 1, 1998
64–71	(869–034–00142–4)	11.00	July 1, 1998
72–80	(869–032–00142–1)	35.00	July 1, 1997
81–85	(869–032–00143–0)	32.00	July 1, 1997
86	(869–032–00144–8)	50.00	July 1, 1997
87–135	(869–032–00145–6)	40.00	July 1, 1997
136–149	(869–032–00146–4)	35.00	July 1, 1997
150–189	(869–032–00147–2)	32.00	July 1, 1997
190–259	(869–032–00148–1)	22.00	July 1, 1997
260–265	(869–032–00149–9)	29.00	July 1, 1997
266–299	(869–032–00150–2)	24.00	July 1, 1997
300–399	(869–032–00151–1)	27.00	July 1, 1997
400–424	(869–032–00152–9)	33.00	[5] July 1, 1996
425–699	(869–032–00153–7)	40.00	July 1, 1997
700–789	(869–032–00154–5)	38.00	July 1, 1997
790–End	(869–034–00156–4)	22.00	July 1, 1998
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–032–00157–0)	36.00	July 1, 1997
102–200	(869–034–00158–9)	15.00	July 1, 1998
201–End	(869–032–00159–6)	15.00	July 1, 1997
42 Parts:			
1–399	(869–032–00160–0)	32.00	Oct. 1, 1997
400–429	(869–032–00161–8)	35.00	Oct. 1, 1997
430–End	(869–032–00162–6)	50.00	Oct. 1, 1997
43 Parts:			
1–999	(869–032–00163–4)	31.00	Oct. 1, 1997
1000–end	(869–032–00164–2)	50.00	Oct. 1, 1997
44	(869–032–00165–1)	31.00	Oct. 1, 1997
45 Parts:			
1–199	(869–032–00166–9)	30.00	Oct. 1, 1997
200–499	(869–032–00167–7)	18.00	Oct. 1, 1997
500–1199	(869–032–00168–5)	29.00	Oct. 1, 1997
1200–End	(869–032–00169–3)	39.00	Oct. 1, 1997
46 Parts:			
1–40	(869–032–00170–7)	26.00	Oct. 1, 1997
41–69	(869–032–00171–5)	22.00	Oct. 1, 1997
70–89	(869–032–00172–3)	11.00	Oct. 1, 1997
90–139	(869–032–00173–1)	27.00	Oct. 1, 1997
140–155	(869–032–00174–0)	15.00	Oct. 1, 1997
156–165	(869–032–00175–8)	20.00	Oct. 1, 1997
166–199	(869–032–00176–6)	26.00	Oct. 1, 1997
200–499	(869–032–00177–4)	21.00	Oct. 1, 1997
500–End	(869–032–00178–2)	17.00	Oct. 1, 1997
47 Parts:			
0–19	(869–032–00179–1)	34.00	Oct. 1, 1997
20–39	(869–032–00180–4)	27.00	Oct. 1, 1997
40–69	(869–032–00181–2)	23.00	Oct. 1, 1997
70–79	(869–032–00182–1)	33.00	Oct. 1, 1997
80–End	(869–032–00183–9)	43.00	Oct. 1, 1997
48 Chapters:			
1 (Parts 1–51)	(869–032–00184–7)	53.00	Oct. 1, 1997
1 (Parts 52–99)	(869–032–00185–5)	29.00	Oct. 1, 1997
2 (Parts 201–299)	(869–032–00186–3)	35.00	Oct. 1, 1997
3–6	(869–032–00187–1)	29.00	Oct. 1, 1997
7–14	(869–032–00188–0)	32.00	Oct. 1, 1997
15–28	(869–032–00189–8)	33.00	Oct. 1, 1997
29–End	(869–032–00190–1)	25.00	Oct. 1, 1997
49 Parts:			
1–99	(869–032–00191–0)	31.00	Oct. 1, 1997
100–185	(869–032–00192–8)	50.00	Oct. 1, 1997
186–199	(869–032–00193–6)	11.00	Oct. 1, 1997
200–399	(869–032–00194–4)	43.00	Oct. 1, 1997
400–999	(869–032–00195–2)	49.00	Oct. 1, 1997
1000–1199	(869–032–00196–1)	19.00	Oct. 1, 1997
1200–End	(869–032–00197–9)	14.00	Oct. 1, 1997
50 Parts:			
1–199	(869–032–00198–7)	41.00	Oct. 1, 1997
200–599	(869–032–00199–5)	22.00	Oct. 1, 1997
600–End	(869–032–00200–2)	29.00	Oct. 1, 1997

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

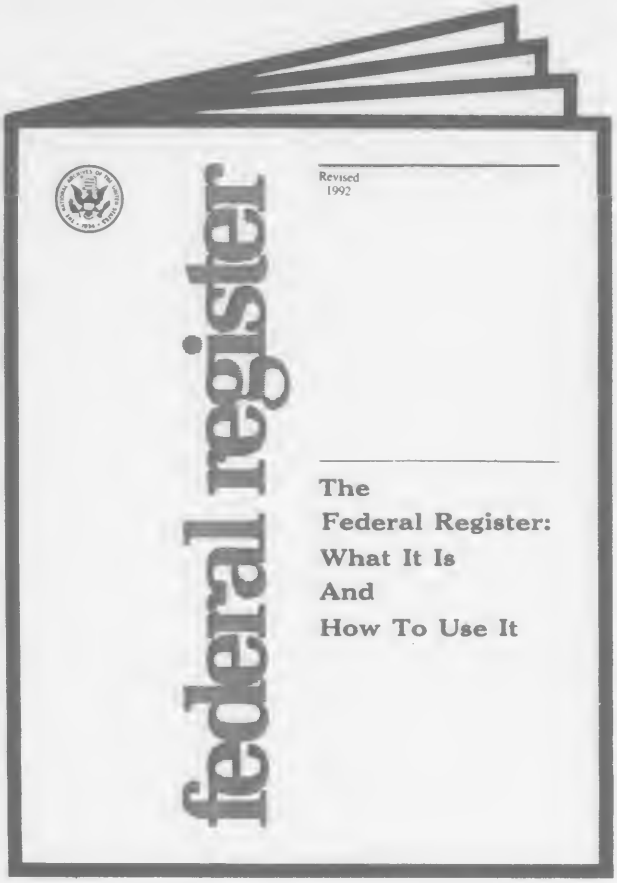
[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[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.



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