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Rules and Regulations

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Wednesday, August 2, 2000

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 97

[Docket number ST 99–006 FR]

RIN 0581–AB71

Revision of Plant Variety Protection Office Fees

AGENCY: Agricultural Marketing Agency, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing Plant Variety Protection Office application, search, and certificate issuance fees by approximately 10 percent. Due to operating cost increases, the last fee increase in 1995 is no longer adequate to cover costs for this fully user-fee funded program. Also, the information symbol used by the Plant Variety Protection Office on the seal on certificates of Plant Variety Protection is added to the USDA/AMS inventory of symbols and would appear in the regulations.

EFFECTIVE DATE: September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Ann Marie Thro, Commissioner, Plant Variety Protection Office, Rm. 500 N.A.L. Building, 10301 Baltimore Blvd. Beltsville MD 20705, telephone 1–301–504–5518 and –7475; fax 1–301–504–5291.

SUPPLEMENTARY INFORMATION:

I. Executive Orders 12866 and 12988, and the Regulatory Flexibility Act

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

This rule has also been reviewed under Executive Order 12988, Civil Justice Reform. This action 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. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provision of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of AMS has considered the economic impact of this action on small entities. There are more than 800 users of the PVPO's variety protection service, of whom about 100 may file applications in a given year. Some of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). The Administrator of AMS determined that this action would not have a significant economic impact on a substantial number of these small entities.

The Plant Variety Protection Office (PVPO) administers the Plant Variety Protection Act by issuing Certificates of Protection which provide legal intellectual property rights to developers of new varieties of plants. A Certificate of Protection is awarded to an owner of a variety after an examination shows that it is new, distinct from other varieties, and genetically uniform and stable through successive generations.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover programs costs while maintaining an adequate reserve balance. Without a fee increase, fiscal year (FY) 2000 revenues are projected at $1,100,000; costs are projected at $1,300,000, and trust fund balances would be $1,500,000. With a fee increase, FY 2000 revenues are projected at $1,200,000 and costs are projected at $1,300,000. With the increase in revenue, the trust fund balance will be maintained at $1,600,000, its level at the end of FY 1999.

This action raises the fee charged to users of plant variety protection. The AMS estimates that this rule would yield an additional $100,000 during FY 2000. The fee for plant variety protection would increase by approximately 10 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual users will be approximately $275.00 per Plant Variety Protection Certificate issued. Plant Variety Protection is sought on a voluntary basis. Any decision on their part to discontinue the use of plant variety protection would not prevent these entities from marketing their varieties. Finally, the addition of the information symbol to the USDA/AMS inventory of symbols and its inclusion in the regulations will not add further costs to users of the variety protection services.

II. Paperwork Reduction Act

This rule does not contain any information collection or recordkeeping requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

III. Background information

The Plant Variety Protection Program is a voluntary, user fee-funded service, conducted under the Authority of the Plant Variety Protection Act (PVPA), 7 U.S.C. 2321 *et seq.* The Act authorizes the Secretary of Agriculture to provide intellectual property rights that facilitate marketing of new varieties of seed-propagated crops and tubers. The act also requires that reasonable fees be collected from the users of the services to cover the costs of maintaining the program.

On April 4, 1995, AMS published a rule in the **Federal Register** (60 FR 17188) that increased Plant Variety Protection Office fees pursuant to amendments to the Plant Variety Protection Act became effective April 4, 1995. In its analysis of projected costs for FY 2000, AMS has identified increases in the costs of providing plant variety protection. Anticipated revenue will not cover increased program costs. Without a fee increase, FY 2000 revenues are projected at $1,100,000; costs are projected at $1,300,000, and trust fund balances would be $1,500,000. With a fee increase, FY 2000 revenues are projected at $1,200,000 and costs are projected at $1,300,000. Due to the increase in revenue, the trust fund balance would be maintained at

$1,600,000, its value at the end of FY 1999. The AMS estimates that this rule would yield an additional $100,000 during FY 2000.

Program operating costs include salaries and benefits of examining staff, supervision, training, and all administrative costs of operating the program. Cost increases are attributed mainly (80 percent of total operating budget) to national and locality pay raises and increased benefit costs for Federal employees. A general and locality salary increase for Federal employees, totaling approximately 4.8 percent for the Washington, D.C. metropolitan area, will materially affect the costs of plant variety protection. Increases are expected to continue in following years. Administrative costs, including salary increases, increases in rent, increases in costs of supplies and replacement equipment, and training have increased, in amounts ranging from 3.1 to 22 percent per item. Due to these operating cost increases, the last fee increase in 1995 is no longer adequate to cover obligations and maintain an adequate reserve balance.

The fees set forth in Section 97.175 will be increased. The application fee will be increased from $300 to $320, the search fee from $2,150 to $2,385, and the issuance fee from $300 to $320. The fees for reviving an abandoned application, correcting or reissuance of a certificate are increased from $300 to $320. The charge for granting an extension for responding to a request is increased from $50 to $55. The hourly charge for any other service not specified is increased from $60 to $66. The fee for appeal to the Secretary (refundable if appeal overturns the Commissioner's decision) is increased from $2,750 to $3,050. These fee increases are necessary to cover costs of this fee-funded program.

The Plant Variety Protection Advisory Board has been informed of cost increases, including anticipated salary increases, and consulted on a fee increase on March 24, 1999. The Board recommended that fees be increased. This rule makes the minimum changes in the regulations to implement the recommended increased fees to maintain the program as a fee-funded program.

The form of the official identification symbol, an umbrella over plant reproductive organs (a pistil with four stamens) illustrates the concept of intellectual property rights protection for sexually-reproduced crops.

Summary of Public Comment

A notice of proposed rule making was published in the **Federal Register** (65 FR 13917) on March 15, 2000. A 30-day comment period was provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impact of this action on small businesses.

The commentor observed that a charge for "any other service not specified" is in the current fee schedule, but was omitted from the proposed revised regulatory text. The hourly charge for "any other service not specified" was omitted from the list of fees and charges in § 97.175 due to an electronic error; however, it was included in the discussion of proposed increases in the text of the "Background" section of the proposed rule as published on March 15. The proposed increase was from $60 to $66. Accordingly, the text of § 97.175 is changed to reflect this fee. The comment also noted that first priority should be given to the examination and issue of certificates. This is done to the extent practicable.

List of Subjects in 7 CFR Part 97

Administrative practice and procedure, Labeling, Laboratories, Plants, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 97 is amended as follows.

PART 97—PLANT VARIETY AND PROTECTION

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

Authority: 7 U.S.C. 2321 *et seq.*

2. Section 97.175 is revised to read as follows:

§ 97.175 Fees and charges.

The following fees and charges apply to the services and actions specified below:

(a) Filing the application and notifying the public of filing—$320.00.

(b) Search or examination—$2,385.00.

(c) Allowance and issuance of certificate and notifying public of issuance—$320.00.

(d) Revive an abandoned application—$320.00.

(e) Reproduction of records, drawings, certificates, exhibits, or or pointed material (copy per page of material)—$1.10.

(f) Authentication (each page)—$1.10.

(g) Correcting or re-issuance of a certificate—$320.00.

(h) Recording assignments (per certificate/application)—$28.00.

(i) Copies of 8 x 10 photographs in color—$28.00.

(j) Additional fee for reconsideration—$320.00.

(k) Additional fee for late payment—$28.00.

(l) Additional fee for late replenishment of seed—$28.00.

(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)—$3,050.00.

(n) Granting of extensions for responding to a request—$55.00.

(o) Field inspections by a representative of the Plant Variety Protection Office, made at the request of the applicant, shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulations.

(p) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $66.00 per employee-hour.

2. A new section 97.900 is added to read as follows:

§ 97.900 Form of official identification symbol.

The symbol set forth in Figure 1, containing the words "Plant Variety Protection Office" and "U.S. Department of Agriculture," shall be the official identification symbol of the Plant Variety Protection Office. This information symbol, used by the Plant Variety Protection Office on the seal on certificates of Plant Variety Protection, has been approved by the Office of Communications to be added to the USDA/AMS inventory of symbols. It is approved for use with AMS materials.

Figure 1. Official identification symbol of the Plant Variety Protection Office.

Dated: July 27, 2000.

Robert L. Epstein,

Acting Deputy Administrator, Science and Technology.

[FR Doc. 00–19452 Filed 8–1–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV00–982–2 FR]

Hazelnuts Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the assessment rate established for the Hazelnut Marketing Board (Board) for the 2000–2001 and subsequent marketing years from $0.004 to $0.005 per pound of hazelnuts handled. The Board locally administers the marketing order, which regulates the handling of hazelnuts grown in Oregon and Washington. Authorization to assess hazelnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 3, 2000.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 115 and Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, 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."

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. Under the marketing order now in effect, hazelnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable hazelnuts beginning on July 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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. Such 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.

This rule increases the assessment rate established for the Board for the 2000–2001 and subsequent marketing years from $0.004 to $0.005 per pound of hazelnuts handled.

The order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board

are producers and handlers of hazelnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate and budget were recommended by a mail vote. The recommendation will be discussed and reconfirmed at the Board's next scheduled public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board, in a mail vote completed at the end of April 2000, unanimously recommended 2000–2001 expenditures of $596,293 and an assessment rate of $0.005 per pound of hazelnuts. In comparison, last year's budgeted expenditures were $568,457. The assessment rate of $0.005 is $0.001 higher than the rate previously in effect. At a rate of $0.004 per pound and an estimated 2000–2001 hazelnut production of 50,000,000 pounds, the Board believes that the projected reserve on June 30, 2001, would not have been adequate to administer the program. The increased assessment rate is expected to result in an operating reserve of $150,147 at the end of the 2000–2001 marketing year.

The major expenditures recommended by the Board for the 2000–2001 marketing year include $39,613 for personal services (salaries and benefits), $7,416 for rent, $5,000 for compliance, $23,000 for the crop estimate, $275,000 for promotion, and $182,364 for an emergency fund. Budgeted expenses for these items in 1999–2000 were $51,385, $7,308, $5,000, $21,000, $275,000, and $182,364, respectively. The Board will consider using emergency funds for authorized activities when it is reasonably certain that its estimate of assessable hazelnuts is reached. It will not be able to make this determination until December 2000, the month in which the hazelnut harvest and deliveries to handlers usually are completed.

The Board based its recommended assessment rate increase on the 2000–2001 crop estimate, the 2000–2001 marketing year expenditures estimate, and the current and projected balance of the operating reserve. Hazelnut shipments for the 2000–2001 marketing year are estimated at 50,000,000 pounds, which should provide $250,000 in assessment income. Income derived from handler assessments, along with interest income ($13,000) and funds from the Board's authorized reserve ($333,293), will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order (approximately one marketing year's operational expenses). Excess funds may be maintained and used by the Board until December 1 following the end of a marketing year (§ 982.62(b)). The Board shall refund to each handler upon request, or credit to the handler's account with the Board, the handler's share of such excess prior to January 1.

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

Although this assessment rate will be in effect for an indefinite period, the Board will continue to conduct a mail vote prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. Any mail votes will be discussed and reconfirmed at a public meeting. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2000–2001 budget has been reviewed and approved. Budgets for subsequent marketing years will also be reviewed and, as appropriate, approved by the Department.

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

There are approximately 800 producers of hazelnuts in the production area and approximately 22 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. Currently, about 86 percent of hazelnut handlers could be considered small businesses under SBA's definition, excluding receipts from other sources. Further, it is estimated that virtually all hazelnut producers have annual receipts of less than $500,000, excluding receipts from other sources. Thus, the majority of handlers and producers of hazelnuts may be classified as small entities.

This rule increases the assessment rate established for the Board and collected from handlers for the 2000–2001 and subsequent marketing years from $0.004 to $0.005 per pound of hazelnuts. The Board, in a mail vote completed at the end of April 2000, unanimously recommended 2000–2001 expenditures of $596,293 and an assessment rate of $0.005 per pound. The assessment rate of $0.005 per pound is $0.001 higher than the $0.004 per pound rate previously in effect. The quantity of assessable hazelnuts for the 2000–2001 marketing year is estimated at 50,000,000 pounds. Income derived from handler assessments, along with interest income and funds from the Board's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2000–2001 marketing year include $39,613 for personal services (salaries and benefits), $7,416 for rent, $5,000 for compliance, $23,000 for the crop estimate, $275,000 for promotion, and $182,364 for an emergency fund. Budgeted expenses for these items in 1999–2000 were $51,385, $7,308, $5,000, $21,000, $275,000, and $182,364, respectively. As mentioned earlier, the Board will not make any decision on using emergency funds until December 2000, at the earliest.

The Board based its recommended assessment rate increase on the 2000–2001 crop estimate, the 2000–2001 marketing year expenditures estimate, and the current and projected balance of the operating reserve. Hazelnut shipments for the 2000–2001 marketing year are estimated at 50,000,000

pounds, which should provide $250,000 in assessment income. Income derived from handler assessments, along with interest income ($13,000) and funds from the Board's authorized reserve ($333,293), will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order (approximately one marketing year's operational expenses). Excess funds may be maintained and used by the Board until December 1 following the end of a marketing year (§ 982.62(b)). The Board is required to refund or credit, upon request, each handler's share of the excess prior to January 1.

The Board reviewed and unanimously recommended 2000–2001 expenditures of $596,293. With the 2000–2001 marketing year assessable hazelnut crop estimated at 50,000,000 pounds, or 26,000,000 pounds less than for 1999–2000, the Board recommended the assessment rate increase to prevent its operating reserve from going lower than $150,000. The Board believes that a reserve less than this is too low. Prior to arriving at this budget, the Board considered information from various sources, including the Proration Committee, the Budget Committee, and the Marketing and Promotion Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research, marketing, and promotion projects to the hazelnut industry.

A review of historical information and preliminary information pertaining to the upcoming marketing year indicates that the producer price for the 2000–2001 marketing year could range between $0.32 and $0.49 per pound of hazelnuts. Therefore, the estimated assessment revenue for the 2000–2001 marketing year as a percentage of total producer revenue could range between 1.02 and 1.56 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large hazelnut 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.

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

A proposed rule concerning this action was published in the **Federal Register** on June 14, 2000 (65 FR 37300). Copies of the proposed rule were also mailed or sent via facsimile to Board members. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending July 14, 2000, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2000–2001 marketing year began on July 1, 2000, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable hazelnuts handled during such marketing year; (2) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Board in a mail vote and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 982.340 is revised to read as follows:

§ 982.340 Assessment rate.

On and after July 1, 2000, an assessment rate of $0.005 per pound is established for Oregon and Washington hazelnuts.

Dated: July 28, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19566 Filed 8–1–00; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21, and 25

Changed Product Rule Meeting; Public Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; Public meeting.

SUMMARY: This document announces two public meetings pertaining to the recent issue of the Changed Product Rule (65 FR 36243). Meetings in both the United States and in Europe have been planned. The international meeting will be held in Hoofddorp, The Netherlands September 20–21, 2000. The U.S. meeting will be held in Kansas City, Missouri, October 3–4, 2000. The international meeting is scheduled in support of the JAA Notice of Proposed Amendment (NPA) circulation to help commenters to better understand the NPA. The U.S. meeting will focus on the rule, transport category aircraft, as well as other products (normal, utility, acrobatic, and commuter airplanes; normal and transport category rotorcraft; manned free ballons; aircraft engines; and propellers). The meeting purpose is to present information regarding the rule, guidance material and to gather comments pertaining to the development of the follow-on Advisory Circular revisions related to general aviation aircraft and other product areas.

DATES: The international meeting will be held September 20–21, 2000, beginning at 11:00 a.m. in Hoofddorp, The Netherlands.

The U.S. industry meeting will be held October 3–4, 2000, starting at 9:00 a.m. in Kansas City, Missouri. Registration begins at 8:00 a.m.

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

International: Joint Aviation Authorities (JAA) Headquarters, Saturnusstraat 8–

10, 2132HB Hoofddorp, The Netherlands.
U.S. Industry: Marriott Downtown, 200 West 12th Street, Kansas City, Missouri.

FOR FURTHER INFORMATION CONTACT: Requests regarding the logistics of the U.S. meeting should be directed to the Federal Aviation Administration (FAA), Small Airplane Directorate, Attention: Lester Cheng, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4120. For international and all other product information, contact FAA, Headquarters Office, Attention: Randall Petersen, AIR–110, 800 Independence Avenue SW, Washington DC 20251; telephone (202) 267–9583. In Europe, contact Joint Aviation Authorities Headquarters (JAA), Ms. Rosa Serrano, Saturnusstraat 8–10, 2132HB Hoofddorp, The Netherlands (31–23–5679745). No official record of the meeting will be maintained.

SUPPLEMENTARY INFORMATION:

Participation at the Public Meeting

Background

On June 7, 2000 (65 FR 36243), the FAA published amended type certification procedures for changed products. These amendments affect changes accomplished through either an amended type certificate or a supplemental type certificate. The amendments are needed to address the trend toward fewer products that are of completely new design and more products with multiple changes to previously approved designs. This final rule action will enhance safety by applying the latest airworthiness standards, to the greatest extent practicable, for the certification of significant design changes of aircraft, aircraft engines, and propellers.

These amended regulations become effective June 7, 2000. Mandatory compliance dates are December 10, 2001, for transport category airplanes and restricted category airplanes that have been certified using transport category standards, and December 9, 2002, for all other category aircraft and engines and propellers.

For the purposes of implementing these amended regulations, the FAA has chartered a Changed Product Rule Team to develop the necessary guidance materials allowing for proper orientation, application and standardization for the Aircraft Certification Service. These guidance materials include Notice, Advisory Circular (AC) and training. The Changed Product Rule Team started its work in April 1999.

At present, the AC draft applicable to part 25 airplanes has been developed. The philosophy and methodology adopted for this AC are derived from the approaches presented by the ICPTF (International Certification Procedures Task Force) Working Group III. Harmonizing this AC with JAA's version has been a constant effort throughout the development process. Notice of availability for public comment of this AC draft (for part 25 only) is scheduled for publication August 2000.

The next phase of the effort is to update the current AC (for part 25 only) by adding elements that are applicable to other parts (that is, parts 23, 27, 29, 31, 33 and 35). The FAA has determined that it is in the public interest to hold a public meeting for the purposes of sharing thoughts and gathering comments that need to be considered for the development of an AC related to general aviation aircraft and other products. Accordingly, the FAA will conduct this public meeting in Kansas City, Missouri.

Public Meeting Procedures

The following procedures have been established for the U.S. industry meeting:

1. Admission and participation in the public meeting is free. Registration will occur on the date of the meeting between 8:00 a.m. and 9:00 a.m. Seating will be limited to the first 300 participants.

2. Representatives from the FAA will conduct the meeting. A technical panel of FAA personnel will discuss information.

3. The issue will be limited to the Changed Product Rule and the development of an AC.

4. Sign and oral interpretations will be made available at the meeting, including assistive listening devices, if requested from the person listed under **FOR FURTHER INFORMATION CONTACT** at least 10 calendar days before the meeting. Anyone requiring other accommodations under the Americans with Disability Act should notify the individual listed under **FOR FURTHER INFORMATION CONTACT** at least 10 calendar days before the meeting.

5. Statements made by FAA personnel are intended to clarify issues.

6. The meeting will be conducted in an informal and nonadversarial manner.

Issued in Kansas City, Missouri on July 19, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18894 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–40–AD; Amendment 39–11830; AD 2000–15–01]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5A, –5B, –5C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5A, –5B, –5C series turbofan engines, that requires initial and repetitive visual inspections of the fuel pump filter cover helicoil inserts and bolts for damage, and, if necessary, repair or replacement with serviceable parts. This amendment also requires the installation of new or reworked fuel pumps that incorporate an improved filter cover retention design (D-bolts), or an on-wing repair of existing fuel pumps, as terminating action to the inspections. This amendment is prompted by reports that fuel pump filter cover helicoil inserts have loosened or pulled out. The actions specified by this AD are intended to prevent fuel leakage from between the fuel pump filter cover and gear housing, which could result in an engine fire and damage to the airplane.

DATES: Effective date October 2, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 2, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone: (513) 552–2800, fax: (513) 552–2816. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7152, fax: (781) 238–7199.

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 CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5A, –5B, –5C series turbofan engines was published in the **Federal Register** on January 24, 2000 (65 FR 3621). That action proposed to require initial and repetitive visual inspections of the fuel pump filter cover helicoil inserts and bolts for damage, and, if necessary, repair or replacement with serviceable parts. That action also proposed to require the installation of new fuel pumps that incorporate an improved filter cover retention design (D-bolts) as terminating action to the inspections.

Comments Received

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

On-Wing Gearbox Replacement

One comment requests that the requirement for on-wing gearbox replacements be removed from the terminating action since the fuel pump is routinely reinstalled and does not receive a shop visit. The comment also suggests that the fuel pump modification should be required at fuel pump shop visit only.

The FAA agrees in part. The FAA agrees that it is not necessary to replace the fuel pump at on-wing gearbox replacement. However, the FAA does not agree that modification of the fuel pump should only be accomplished at fuel pump shop visit. The FAA believes fuel pump modifications should be accomplished at engine shop visit. The terminating action at on-wing gearbox replacement will be removed and the final rule revised accordingly. For clarity, the following definitions will also be added: A fuel pump shop visit is defined as introduction of an engine into a shop for the purpose of removal of the fuel pump from the gearbox. An engine shop visit is defined as introduction of an engine into a shop for the purpose of maintenance or inspection.

Credit for Previous Inspections

Eight comments request that credit be given to operators who have performed initial inspections per the applicable service bulletins (SBs) or aircraft maintenance manuals. One comment requests a wording change so that operators will not have to repeat the initial inspection.

The FAA agrees. This final rule has been revised accordingly.

Terminating Action

One comment expresses concern that the fuel pump manufacturer and repair vendor will not be able to support the five-year compliance schedule. Another comment requests an extension of the terminating action date. Two comments request elimination of a five-year terminating-action requirement because there will be insufficent time to remove the fuel pumps on an attrition basis, and this requirement will disrupt planned component removal schedules.

The FAA does not agree. The engine manufacturer has informed the FAA that the fuel pump vendor should be able to support this five-year compliance schedule. The FAA has revised the final rule in response to another comment to allow an on-wing repair as a terminating action, which should help to minimize disruption in current maintenance schedules.

One comment requests that terminating action be mandated at the next shop visit or 6,000 hours because five years is too long.

The FAA agrees in part. Terminating action will be required at the next shop visit, however the FAA has determined that the terminating action date in this AD provides an adequate level of safety and allows operators time to properly schedule the required activity.

On-Wing Repair

Four comments request that an on-wing repair referenced in the inspection SBs be allowed as terminating action.

The FAA agrees. The FAA will revise the final rule to allow the on-wing repair as terminating action.

Military Operators

One comment requests that military CFM56–2B operators not be required to perform periodic inspections since they already inspect fuel filters every 60 hours.

The FAA does not agree. The FAA has a responsibility to manage the CFM56–2B type certificate. Military operators have the option to determine if incorporation of this part 39 amendment is appropriate for them.

Undue Burden

One comment requests that the requirement to reinspect the fuel filter cover assembly after every fuel filter change be removed since the inspection is already performed in accordance with the B737–300/–500 Aircraft Maintenance Manual, which is part of their FAA approved maintenance program. The comment also suggests that the documentation will create an undue burden.

The FAA does not agree. The FAA has determined that although performing the inspections in accordance with the B737–300/–500 Aircraft Maintenance Manual, may be prudent, it is not a requirement. This AD will mandate the inspection for all operators. The FAA does not consider the required documentation to be an undue burden.

Initial Inspection Interval

Two comments request that the initial inspection be changed from 200 to 300 cycles or 600 hours. Another comment states that preflight walk-around inspections will spot fuel leaks.

The FAA does not agree. The FAA has determined that the initial inspection needs to be performed in a timely manner to detect damaged helicoil inserts and prevent additional fuel leaks. The FAA has also determined that this type of fuel leak may not be consistently detected by a preflight walk-around.

Inspection on Both Engines

One comment suggests that a provision be included in the AD to not inspect all fuel pumps of an airplane during the same maintenance session.

The FAA agrees. This final rule prohibits servicing, replacement, and inspection on all engines of an airplane at one time by the same individual.

Unnecessary Corrective Action

One comment suggests that the AD is unnecessary because the inspections are already being carried out voluntarily.

The FAA does not agree. The FAA has determined that an unsafe condition has been discovered that could cause substantial fuel loss and pose a fire hazard and that it is necessary to mandate action to correct the problem.

CFM56–7B Model

One comment questions if the CFM56–7B model should be included.

The FAA does not agree. The FAA has determined that it is unnecessary to include the CFM56–7B because its configuration is not similar to the design associated with the unsafe condition.

New vs. Reworked Fuel Pumps

One comment requests that wording be added to the AD to indicate that there will be two groups of fuel pumps with D-bolts, reworked and newly made. Another comment requests that the definition of serviceable part be changed to include new fuel pumps.

The FAA agrees. This final rule indicates that both reworked and newly made fuel pumps are serviceable parts.

Adoption of the Rule as Proposed

One comment supports the adoption of the rule as proposed.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Impact

No comments were received on the economic analysis contained in the proposed rules.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

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 the following new airworthiness directive:

2000–15–01 CFM International: Amendment 39–11830. Docket 99–NE–40–AD.

Applicability

CFM International CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5A, –5B, –5C series engines installed on but not limited to McDonnell Douglas DC–8 series, Boeing 737 series, Airbus Industrie A319, A320, A321 and A340 series, as well as Boeing E–3, E–6, and KC–135 (military) series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To prevent fuel leakage from between the fuel pump filter cover and gear housing which could result in an engine fire and damage to the airplane, accomplish the following:

Inspections

(a) Perform initial and repetitive visual inspections of the fuel pump filter cover helicoil inserts and bolts for damage in accordance with Section 2, Accomplishment Instructions, of the applicable Service Bulletins (SBs) listed in paragraph (a)(5) of this AD, as follows:

(1) If the fuel pump has *not* been previously inspected prior to the effective date of this AD, inspect at the next fuel filter replacement, but not to exceed 200 cycles-in-service (CIS) after the effective date of this AD.

(2) If the fuel pump has been previously inspected prior to the effective date of this AD, inspect at the next fuel filter replacement.

(3) Thereafter, inspect at each fuel filter replacement.

Replacement or Repair

(4) If damage equals or exceeds the reject criteria stated in Section 2, Accomplishment Instructions, of the SBs listed in paragraph (a)(5) of this AD, prior to further flight remove the fuel pump from service and replace or repair the helicoil in accordance with Section 2, Accomplishment Instructions, of the SBs listed in paragraph (a)(5), (b) or (c) as applicable, of this AD.

Applicable Inspection SB

(5) Inspect and replace, if necessary, in accordance with the CFMI SB that applies to your engine from the following list:

CFM56–2 SB 73–110, Revision 2, dated April 29, 1999.
CFM56–2A SB 73–055, Revision 1, dated April 29, 1999.
CFM56–2B SB 73–076, Revision 1, dated April 29, 1999.
CFM56–3/3B/3C SB 73–126, Revision 1, dated April 29, 1999.
CFM56–5 SB 73–136, Revision 2, dated April 29, 1999.
CFM56–5B SB 73–056, Revision 2, dated April 29, 1999.
CFM56–5C SB 73–073, Revision 2, dated April 29, 1999.

Terminating Action

(b) Remove and replace the fuel pump with a newly manufactured or reworked fuel pump that incorporates a D-bolt filter cover attachment. This action must be done at the next engine or fuel pump shop visit, which ever occurs first, but no later than 5 years from the effective date of this AD in accordance with the CFMI SB that applies to your engine from the following list:

CFM56–2 SB 73–A113, dated August 17, 1999.
CFM56–2A SB 73–A058, dated August 17, 1999.
CFM56–2B SB 73–A079, Revision 1, dated October 22, 1999.
CFM56–3/3B/3C SB 73–A129, dated August 17, 1999.
CFM56–5 SB 73–A143, dated June 18, 1999.
CFM56–5B SB 73–A062, dated June 18, 1999.
CFM56–5C SB 73–A078, dated June 21, 1999.

Installation of a new or reworked fuel pump that incorporates a D-bolt filter cover attachment in accordance with this paragraph constitutes terminating action to the inspections required by paragraph (a) of this AD.

(c) An alternative terminating action is an on-wing repair that may be performed. Terminating action must be accomplished no later than 5 years from the effective date of this AD, in accordance with one of the following CFMI SB's that applies to your engine:

CFM56–2 SB 73–109, Revision 1, dated January 7, 1998.
CFM56–2A SB 73–054, Revision 1, dated January 7, 1998.
CFM56–2B SB 73–074, Revision 1, dated January 12, 1998.
CFM56–3/3B/3C SB 73–125, Revision 1, dated January 7, 1998.
CFM56–5 SB 73–135, Revision 1, dated January 7, 1998.
CFM56–5B SB 73–055, Revision 1, dated January 7, 1998.
CFM56–5C SB 73–070, Revision 1, dated January 7, 1998.

Prohibited Inspection or Replacement

(d) Inspection, replacement or repair of fuel pumps, in accordance with paragraph (a), (b) or (c) of this AD, on all engines installed on the same airplane by the same individual prior to the same flight is prohibited.

Definitions

(e) For the purpose of this AD:

(1) A serviceable part is defined as a part with gear housing helicoil inserts that meet the inspection requirements of the applicable CFMI SBs listed in paragraph (a)(5) of this AD. A serviceable part is also defined as a fuel pump that has been newly manufactured, reworked or repaired in accordance with the applicable CFMI SBs listed in paragraphs (a)(5), (b) or (c) of this AD.

(2) A fuel pump shop visit is defined as introduction of an engine into a shop for the purpose of removal of the fuel pump from the gearbox.

(3) An engine shop visit is defined as introduction of an engine into a shop for the purpose of maintenance or inspection.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

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

Incorporation By Reference Material

(h) The FAA has reviewed and approved the technical content of the listed CFMI Service Bulletins (SBs). The actions required by this AD shall be done in accordance with the following CFMI SBs:

Document No.	Pages	Revision	Date
CFM56–2			
SB No. 73–110	1–10	2	April 29, 1999.
Total pages: 10			
CFM56–2A			
SB No. 73–055	1–10	1	April 29, 1999.
Total pages: 10			
CFM56–2B			
SB No. 73–076	1–10	1	April 29, 1999.
Total pages: 10			
CFM56–3/3B/3C			
SB No. 73–126	1–10	1	April 29, 1999.
Total pages: 10			
CFM56–5			
SB No. 73–136	1–10	2	April 29, 1999.
Total pages: 10			
CFM56–5B			
SB No. 73–056	1–10	2	April 29, 1999.
Total pages: 10			
CFM56–5C			
SB No. 73–073	1–10	2	April 29, 1999.
Total pages: 10			
CFM56–2			
SB No. 73–A113	1–6	Original	August 17, 1999.
708600–73–113	1–21	Original	May 24, 1999.
Total pages: 27			
CFM56–2A			
SB No. 73–A058	1–3	Original	August 17, 1999.
708400–73–101	1–14	Original	April 16, 1999.
Total pages: 17			
CFM56–2B			
SB No. 73–A079	1–4	1	October 22, 1999.
708600–73–112	1–19	Original	April 14, 1999.
Total pages: 23			
CFM56–3/3B/3C			
SB No. 73–A129	1–4	Original	August 17, 1999.
708600–73–110	1–19	Original	April 14, 1999.
Total pages: 23			
CFM56–5			
SB No. 73–A143	1–4	Original	June 18, 1999.
714900–73–106	1–14	Original	April 9, 1999.
Total pages: 18			
CFM56–5B			
SB No. 73–A062	1–4	Original	June 18, 1999.
714900–73–107	1–15	Original	April 13, 1999.
Total pages: 19			
CFM56–5C			
SB No. 73–A078	1–4	Original	June 21, 1999.
714900–73–108	1–15	Original	April 13, 1999.
Total pages: 19			
CFM56–2			
SB No. 73–109	1–13	1	January 7, 1998.
Total pages: 13			
CFM56–2A			
SB No. 73–054	1–13	1	January 7, 1998.

Document No.	Pages	Revision	Date
Total pages: 13			
CFM56–2B			
SB No. 73–074	1–13	1	January 12, 1998.
Total pages: 13			
CFM56–3/3B/3C			
SB No. 73–125	1–13	1	January 7, 1998.
Total pages: 13			
CFM56–5			
SB No. 73–135	1–13	1	January 7, 1998.
Total pages: 13			
CFM56–5B			
SB No. 73–055	1–13	1	January 7, 1998.
Total pages: 13			
CFM56–5C			
SB No. 73–070	1–13	1	January 7, 1998.
Total pages: 13			

The incorporations by reference were 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 CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone: (513) 552–2800, fax: (513) 552–2816. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on October 2, 2000.

Issued in Burlington, Massachusetts on July 14, 2000.

David A. Downey,

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

[FR Doc. 00–18523 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–79–AD; Amendment 39–11833; AD 2000–15–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200 and –300 Series Airplanes Equipped with General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200 and –300 series airplanes, that currently requires various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This amendment requires installation of a terminating modification, and repetitive functional tests of that installation, and repair, if necessary. This amendment is prompted by the results of a safety review of the thrust reverser systems on Model 747 series airplanes. The actions specified by this AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Effective September 6, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 6, 2000.

The incorporation by reference of Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 25, 1999 (64 FR 39003, July 21, 1999).

The incorporation by reference of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 13, 1995 (60 FR 13623, March 14, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–15–08, amendment 39–11227 (64 FR 39003, July 21, 1999), which is applicable to certain Boeing Model 747–200 and -300 series airplanes, was published in the **Federal Register** on December 28, 1999 (64 FR 72575). The action proposed to continue to require various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system and correction of any discrepancy found, and installation of a terminating modification, repetitive functional tests of that installation, and repair, if necessary.

Comments

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

Request to Remove Running Torque Check From Functional Test Procedures

One commenter, the airplane manufacturer, requests that the running torque check of the thrust reverser system be removed from the functional test procedures contained in Appendix 1 of the proposed rule. The commenter states no justification for its request.

The FAA concurs with the commenter's request. The FAA finds that the running torque check of the

thrust reverser system is not directly related to the integrity of the cone brake or the actuation system lock. The running torque check is used to determine whether the thrust reverser is able to translate smoothly when commanded to deploy or stow. This check is described in Boeing 747 Airplane Maintenance Manual 78–31–00 "Thrust Reverser System—Adjustment/Test" and is performed when the angle gearbox and ballscrew actuator, the rotary flexible drive shaft, or the center drive unit is replaced. The FAA recognizes that it is appropriate to perform the running torque check when these components are replaced and finds that it is not necessary to perform this check as part of the functional test specified in Appendix 1. Therefore, the running torque check of the thrust reverser system has not been included in Appendix 1 of this final rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. This change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 9 Model 747–200 and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD.

The actions originally required by AD 95–06–01, and retained in this AD, take approximately 33 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,960, or $1,980 per airplane, per inspection/test cycle.

The other actions (repeating the functional test of the cone brake required by AD 95–06–01 at reduced intervals) that are currently required by AD 99–15–08, and retained in this AD, do not add any additional economic burden on affected operators.

The bracket installation required by this new AD takes approximately 64 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the bracket installation required by this AD on U.S. operators is estimated to be $7,680, or $3,840 per airplane.

The actuation system lock installation required by this new AD takes approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the lock installation required by this AD on U.S. operators is estimated to be $1,920, or $960 per airplane.

The functional test required by this new AD takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the functional test required by this AD on U.S. operators is estimated to be $240, or $120 per airplane, per test cycle.

The wiring modifications required by this new AD take approximately 833 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of these modifications required by this AD on U.S. operators is estimated to be $99,960, or $49,980 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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 removing amendment 39–11227 (64 FR 39003, July 21, 1999), and by adding a new airworthiness directive (AD), amendment 39–11833, to read as follows:

2000–15–04 Boeing: Amendment 39–11833. Docket 99-NM–79–AD. Supersedes AD 99–15–08, Amendment 39–11227.

Applicability: Model 747–200 and –300 series airplanes equipped with General Electric Model CF6–80C2 series engines with Power Management Control engine controls, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

RESTATEMENT OF THE ORIGINAL REQUIREMENTS OF AD 95–06–01:

Repetitive Tests and Inspections

(a) Within 90 days after April 13, 1995 (the effective date of AD 95–06–01, amendment 39–9171), perform tests of the position switch module and the cone brake of the center drive unit (CDU) on each thrust reverser, and perform an inspection to detect

damage to the bullnose seal on the translating sleeve on each thrust reverser, in accordance with paragraphs III.A. through III.C. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the tests and inspection thereafter at intervals not to exceed 1,000 hours time-in-service until the functional test required by paragraph (d) of this AD is accomplished.

(b) Within 9 months after April 13, 1995, perform inspections and functional tests of the thrust reverser control and indication system in accordance with paragraphs III.D. through III.F., III.H., and III.I. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat these inspections and functional tests thereafter at intervals not to exceed 18 months.

Corrective Action

(c) If any of the inspections and/or functional tests required by paragraphs (a) and (b) of this AD cannot be successfully performed, or if any discrepancy is found during those inspections and/or functional tests, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

RESTATEMENT OF REQUIREMENTS OF AD 99–15–08:

Repetitive Tests/Terminating Action

(d) Within 1,000 hours time-in-service after the most recent test of the CDU cone brake performed in accordance with paragraph (a) of this AD, or within 650 hours time-in-service after August 25, 1999 (the effective date of AD 99–15–08, amendment 39–11227), whichever occurs first: Perform a functional test to detect discrepancies of the CDU cone brake on each thrust reverser, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, or paragraph III.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the functional test thereafter at the interval specified in paragraph (d)(1) or (d)(2) of this AD, as applicable. Accomplishment of such functional test constitutes terminating action for the repetitive test of the CDU cone brake required by paragraph (a) of this AD; the position switch module tests and the bullnose seal inspections continue to be required as specified in paragraph (a) of this AD.

(1) For airplanes equipped with thrust reversers NOT modified in accordance with Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996: Repeat the functional test at intervals not to exceed 650 hours time-in-service.

(2) For airplanes equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996: Repeat the functional test at intervals not to exceed 1,000 hours time-in-service.

Corrective Action

(e) If any functional test required by paragraph (d) of this AD cannot be successfully performed, or if any discrepancy is found during any functional test required by paragraph (d) of this AD, accomplish either paragraph (e)(1) or (e)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, or paragraph III.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved MEL, provided that no more than one thrust reverser on the airplane is inoperative.

NEW REQUIREMENTS OF THIS AD:

Terminating Action

(f) Accomplish the requirements of paragraphs (f)(1) and (f)(2) of this AD at the times specified in those paragraphs. Accomplishment of the actions required by paragraph (f)(1) of this AD constitutes terminating action for the requirements of paragraphs (a), (b), (d), and (e) of this AD.

(1) Within 36 months after the effective date of this AD, accomplish the requirements of paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Install an actuation system lock bracket and fastening hardware to each thrust reverser in accordance with the Accomplishment Instructions of Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997, or Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2, dated March 10, 1998.

(ii) Install an actuation system lock (also called an electro-mechanical lock or electro-mechanical brake) on each thrust reverser in accordance with the Accomplishment Instructions of Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997, or Middle River Aircraft Systems Service Bulletin 78–1020, Revision 3, dated March 16, 1998.

(2) Prior to or concurrent with the accomplishment of the requirements of paragraph (f)(1)(ii) of this AD, perform the thrust reverser wiring modifications of the wings, strut, and fuselage, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996.

Repetitive Tests

(g) Within 1,000 hours time-in-service after accomplishment of paragraph (f) of this AD, or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later: Perform a functional test to detect discrepancies of the CDU cone brake and actuation system lock on each thrust reverser, in accordance with Appendix 1 of this AD. Prior to further flight, correct any discrepancy detected and repeat the functional test of that repair, in accordance with the procedures described in the Boeing 747 Maintenance Manual. Repeat the functional tests thereafter at intervals not to exceed 1,000 hours time-in-service.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–15–08, amendment 39–11227, are approved as alternative methods of compliance with the corresponding requirements specified in this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(j) Except as provided by paragraphs (c)(2), (e)(2), and (g) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994; Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997; Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2, dated March 10, 1998; Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997; Middle River Aircraft Systems Service Bulletin 78–1020, Revision 3, dated March 16, 1998; or Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996; as applicable.

(1) The incorporation by reference of Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997; Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2, dated March 10, 1998; Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997; Middle River Aircraft Systems Service Bulletin 78–1020, Revision 3, dated March 16, 1998; and Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 4, 22–28	1	March 18, 1997.
2, 5–21	Original	August 30, 1997.

Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–5, 8, 12, 13, 15, 19–21, 23–36	2	March 20, 1997.
6, 7, 9–11, 14, 16–18, 22, 37	1	January 17, 1996.

(2) The incorporation by reference of Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, was approved previously by the Director of the Federal Register as of August 25, 1999 (64 FR 39003, July 21, 1999).

(3) The incorporation by reference of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994, was approved previously by the Director of the Federal Register as of April 13, 1995 (60 FR 13623, March 14, 1995).

(4) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective on September 6, 2000.

Appendix 1—Thrust Reverser Electro-Mechanical Brake and CDU Cone Brake Test

1. General
   A. This procedure contains steps to do two checks:
   (1) A check of the holding torque of the electro-mechanical brake.
   (2) A check of the holding torque of the CDU cone brake.
2. Electro-Mechanical Brake and CDU Cone Brake Torque Check
   A. Prepare to do the checks:
   (1) Open the fan cowl panels.
   B. Do a check of the torque of the electro-mechanical brake:
   (1) Do a check of the electro-mechanical brake holding torque:
   (a) Make sure the thrust reverser translating cowl is extended at least one inch.
   (b) Make sure the CDU lock handle is released.
   (c) Pull down on the manual release handle on the electro-mechanical brake until the handle fully engages the retaining clip.

Note: This will lock the electro-mechanical brake.

(d) With the manual drive lockout cover removed from the CDU, install a ¼-inch extension tool and dial-type torque wrench into the drive pad.

Note: You will need a 24-inch extension to provide adequate clearance for the torque wrench.

(e) Apply 90 pound-inches of torque to the system.

(i) The electro-mechanical brake system is working correctly if the torque is reached before you turn the wrench 450 degrees (1¼ turns).

(ii) If the flexshaft turns more than 450 degrees before you reach the specified torque, you must replace the long flexshaft between the CDU and the upper angle gearbox.

(iii) If you do not get 90 pound-inches of torque, you must replace the electro-mechanical brake.

(f) Release the torque by turning the wrench in the opposite direction until you read zero pound-inches.

(i) If the wrench does not return to within 30 degrees of initial starting point, you must replace the long flexshaft between the CDU and upper angle gearbox.

(2) Fully retract the thrust reverser.

C. Do a check of the torque of the CDU cone brake:

(1) Pull up on the manual release handle to unlock the electro-mechanical brake.

(2) Pull the manual brake release lever on the CDU to release the cone brake.

Note: This will release the pre-load tension that may occur during a stow cycle.

(3) Return the manual brake release lever to the locked position to engage the cone brake.

(4) Remove the two bolts that hold the lockout plate to the CDU and remove the lockout plate.

(5) Install a ¼-inch drive and a dial type torque wrench into the CDU drive pad.

Caution: Do not use more than 100 pound-inches of torque when you do this check. Excessive torque will damage the CDU.

(6) Turn the torque wrench to try to manually extend the translating cowl until you get at lease 15-pound inches.

Note: The cone brake prevents movement in the extend direction only. If you try to measure the holding torque in the retract direction, you will get a false reading.

(a) If the torque is less than 15-pound-inches, you must replace the CDU.

D. Return the airplane to its usual condition:

(1) Re-install the lockout plate.

(2) Fully retract the thrust reverser (unless already accomplished).

(3) Pull down on the manual release handle on the electro-mechanical brake until the handle fully engages the retaining clip (unless already accomplished).

Note: This will lock the electro-mechanical brake.

(4) Close the fan cowl panels.

Issued in Renton, Washington, on July 18, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18661 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–285–AD; Amendment 39–11840; AD 2000–15–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections for damage or cracking of the aft pressure bulkhead, and cracking of the bulkhead web-to-Y-ring lap joint area and the upper segment of the bulkhead web. That AD also requires certain follow-on actions, if necessary. This amendment requires that a currently required one-time

inspection to detect cracking of the upper segment of the bulkhead web be accomplished repetitively, and adds additional repetitive inspections to detect cracking of the upper and lower segments of the aft bulkhead web. The actions specified by this AD are intended to detect and correct fatigue cracking of the bulkhead web, which could result in rapid depressurization of the airplane, and consequent reduced controllability of the airplane.

DATES: Effective September 6, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of October 7, 1998 (63 FR 50495, September 22, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–20–20, amendment 39–10786 (63 FR 50495, September 22, 1998), which is applicable to certain Boeing 747 series airplanes, was published in the **Federal Register** on February 2, 2000 (65 FR 4906). The action proposed to continue to require certain actions required by the existing AD. The action proposed to add a requirement that a detailed visual inspection to detect fatigue cracking of the upper segment of the bulkhead web required by the existing AD be accomplished repetitively, along with corrective actions, if necessary. The action also proposed to require additional repetitive surface probe high frequency eddy current (HFEC) inspections to detect cracking of the upper and lower segments of the bulkhead web, and repair, if necessary.

Comments

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

Request To Exclude Portion of Inspection Area

One commenter requests that the FAA revise paragraph (h) of the proposed AD to include the following statement: "For the inspection of the lower segment of the bulkhead web, the area between the 149 degree radial zee stiffeners may be omitted. These stiffeners are immediately outboard of pressure pans which reinforce the electrical wires [sic] penetrations, part number 65B02633–xx." The commenter states that this area does not need surface probe HFEC inspections because splice straps and reinforcing doublers installed on the web during production improve the durability of the lap joint and significantly reduce the stress level of the web-to-Y-ring lap joint in this area.

The FAA concurs with the commenter's request and its rationale. The FAA also infers that the commenter's request applies to paragraph (i) as well as paragraph (h), and has revised those paragraphs in this final rule accordingly.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 671 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 149 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 98–20–20 and retained in this AD take approximately 360 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,218,400, or $21,600 per airplane, per inspection cycle.

The new repetitive detailed visual inspections that are required in this AD take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this requirement on U.S. operators is estimated to be $35,760, or $240 per airplane, per inspection cycle.

The new repetitive HFEC inspections that are required in this AD take approximately 48 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this requirement on U.S. operators is estimated to be $429,120, or $2,880 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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 removing amendment 39–10786 (63 FR 50495, September 22, 1998), and by adding a new airworthiness directive (AD), amendment 39–11840, to read as follows:

2000–15–08 Boeing: Amendment 39–11840. Docket 98–NM–285–AD. Supersedes AD 98–20–20, Amendment 39–10786.

Applicability: Model 747 series airplanes, line numbers 1 through 671 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the bulkhead web, which could result in rapid depressurization of the airplane, and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Actions Required by AD 98–20–20, Amendment 39–10786

Initial Detailed Visual Inspection

(a) Within 750 landings after December 10, 1987 (the effective date for AD 87–23–10, amendment 39–5758), unless accomplished within the last 1,250 landings [for airplanes subject to a 2,000-landing repeat inspection interval in accordance with paragraph (b) of this AD], or unless accomplished within the last 250 landings [for airplanes subject to a 1,000-landing repeat inspection interval in accordance with paragraph (b) of this AD], perform a detailed visual inspection; in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998; of the aft side of the entire Body Station (BS) 2360 aft pressure bulkhead for damage such as dents, tears, nicks, gouges, or scratches; and cracks at splices and doublers, and around the Auxiliary Power Unit pressure pan cutout; and, for Group 4 airplanes only, inspect from the forward side, the area adjacent to the window cutout for damage or cracks.

Note 2: Notwithstanding provisions to the contrary in AD 87–23–10, and in Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, and Revision 5, dated January 16, 1997: For Model 747SR airplanes operating at a cabin pressure differential lower than 8.6 pounds-per-square-inch (psi), an adjustment factor of 1.2 shall NOT be used after October 7, 1998 (the effective date for AD 98–20–20), as a multiplier for inspection thresholds and intervals specified in this AD.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Detailed Visual Inspections

(b) After initial compliance with paragraph (a) of this AD, continue to inspect as follows:

(1) For Group 1 airplanes, repeat the inspections required by paragraph (a) of this AD, at intervals not to exceed 2,000 landings.

(2) For Groups 2 and 3 airplanes, repeat the inspections required by paragraph (a) of this AD, at intervals not to exceed 1,000 landings; or optionally, at the applicable time specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) For Group 2 airplanes that operate the entire interval with aft lavatory complexes or galleys adjacent to bulkheads, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 2,000 landings.

(ii) For Groups 2 and 3 airplanes that operate the entire interval with an intact protective shield on the lower half of the forward side of the bulkhead, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 2,000 landings; and perform a detailed visual inspection of the protective shield for damage in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998, at intervals not to exceed 1,000 landings. If damage is found to the protective shield that exceeds the limits indicated in the service bulletin, prior to further flight, repeat the inspection required by paragraph (a) of this AD.

(3) For Group 4 airplanes, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 1,000 landings.

Repetitive Eddy Current, Ultrasonic, and X-Ray Inspections

(c) Within 750 landings after December 10, 1987, or prior to the accumulation of 20,000 total landings, whichever occurs later, unless accomplished within the last 3,250 landings; and at intervals thereafter not to exceed 4,000 landings; perform eddy current, ultrasonic, and X-ray inspections of the aft side of the BS 2360 aft pressure bulkhead for cracks; in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998.

Repetitive Detailed Visual Inspections

(d) Within 750 landings after December 10, 1987, or prior to the accumulation of 20,000 total landings, whichever occurs later, unless accomplished within the last 6,250 landings; and thereafter at intervals not to exceed 7,000 landings until the inspection required by paragraph (g) of this AD is accomplished: Perform a detailed visual inspection to detect cracking of the BS 2360 aft pressure bulkhead web-to-Y-ring lap joint area between radial stiffeners from the forward side of the bulkhead, in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998.

Repair

(e) If any cracking or damage is found during any inspection required by paragraph (a), (b), (c), or (d) of this AD, repair prior to further flight in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, Revision 1, dated August 13, 1987, Revision 2, dated March 31, 1988, Revision 3, dated March 29, 1990, Revision 4, dated March 26, 1992, or Revision 5, dated January 16, 1997, or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998.

Cabin Pressure Differential

(f) For the purpose of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 2.0 psi.

Initial Detailed Visual Inspection

(g) Perform a detailed visual inspection from the forward side of the bulkhead of the upper segment of the bulkhead web at BS 2360 to detect cracking, in accordance with Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998, at the earlier of the times specified in paragraphs (g)(1) and (g)(2) of this AD. Accomplishment of this inspection terminates the repetitive inspection requirement of paragraph (d) of this AD.

(1) Within 7,000 landings after the most recent detailed visual inspection accomplished in accordance with paragraph (d) of this AD.

(2) At the latest of the times specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD.

(i) Prior to the accumulation of 20,000 total landings.

(ii) Within 1,500 landings after the most recent detailed visual inspection accomplished in accordance with paragraph (d) of this AD.

(iii) Within 90 days after October 7, 1998 (the effective date of AD 98–20–20).

Follow-On Action: High Frequency Eddy Current Inspection

(h) If any cracking is detected during the detailed visual inspections required by paragraph (g) of this AD, prior to further flight, accomplish a surface probe high frequency eddy current (HFEC) inspection from the forward side of the bulkhead to detect cracking of the upper and lower segments of the bulkhead web around the fasteners that attach the web to the outer chord of the Y-ring, in accordance with Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998. For the inspection of the lower segment of the bulkhead web, the area between the 149 degree radial zee stiffeners may be omitted. Repair any cracking, prior to further flight, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

New Requirements of This AD

Repetitive Detailed Visual and HFEC Inspections

(i) If no cracking is detected during the detailed visual inspection required by paragraph (g) of this AD, within 1,500 flight cycles after accomplishment of that inspection or within 250 flight cycles after the effective date of this AD, whichever occurs later: Repeat the detailed visual inspection, as specified in paragraph (g); and perform a surface probe HFEC inspection from the forward side of the bulkhead to detect cracking of the upper and lower segments of the bulkhead web, in accordance with Figure 15 of Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998. For the inspection of the lower segment of the bulkhead web, the area between the 149 degree radial zee stiffeners may be omitted.

(1) If no cracking is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 1,500 flight cycles; and repeat the surface probe HFEC inspection thereafter at intervals not to exceed 3,000 flight cycles.

Repair

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, or a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(j)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–20–20, amendment 39–10786, are approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(l) Except as provided by paragraphs (h) and (i)(2) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987; Boeing Service Bulletin 747–53–2275, Revision 1, dated August 13, 1987; Boeing Service Bulletin 747–53–2275, Revision 2, dated March 31, 1988; Boeing Service Bulletin 747–53–2275, Revision 3, dated March 29, 1990; Boeing Service Bulletin 747–53–2275, Revision 4, dated March 26, 1992; Boeing Service Bulletin 747–53–2275, Revision 5, dated January 16, 1997; or Boeing Alert Service Bulletin 747–53A2275, Revision 6, dated August 27, 1998; as applicable. This incorporation by reference was approved previously by the Director of the Federal Register as of October 7, 1998 (63 FR 50495, September 22, 1998). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(m) This amendment becomes effective on September 6, 2000.

Issued in Renton, Washington, on July 26, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19381 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–11]

Amendment of Class E Airspace; Kearney, NE

AGENCY: Federal Aviation Administration [FAA] DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace area at Kearney, NE. The FAA received a request to amend the hours of the Class E surface area from part time to full time status. An increase in Part 121 and other Instrument Flight Rule operations have made this action necessary. This action amends the Class E surface area at Kearney, NE from part time to full time status.

EFFECTIVE DATE: 0901 UTC October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On May 22, 2000, the FAA proposed to amend Part 71 of Title 14 of the Federal Regulations (14 CFR part 71) by amending Class E surface area at Kearney, NE (65 FR 32046). The action will amend the Class E surface area from part time to full time status.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Title 14 of the Federal Regulations (14 CFR part 71) amends the Class E airspace area at Kearney, NE, from part time to full time status. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routing matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ACE NE E2 Kearney, NE [Revised]

Kearney Municipal Airport, NE
(Lat. 40°43′37″N., long. 99°00′24″W.)
Kearney, VOR
(Lat. 40°43′32″N., long. 99°00′18″W.)

Within a 4.2-mile radius of Kearney Municipal Airport and within 3.1 miles each side of the 194° radial of the Kearney VOR extending from the 4.2-mile radius to 9.2 miles south of the VOR and within 3.1 miles each side of the 329° radial of the Kearney VOR extending from the 4.2-mile radius to 10 miles northwest of the VOR and within 3.1 miles each side of the 360° radial of the Kearney VOR extending from the 4.2-mile radius to 10 miles north of the airport.

* * * * *

Issued in Kansas City, MO on July 14, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–19521 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AWP–5]

Modification of Class E Airspace; Elko, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Elko, NV. A revision to the Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 23 at Elko Municipal-J.C. Harris Field has made action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV RWY 23 SIAP to Elko Municipal-J.C. Harris Field. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Elko Municipal-J.C. Harris Field, Elko, NV.

EFFECTIVE DATE: 0901 UTC August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On June 20, 2000, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Elko, NV (65 FR 38227). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV RWY 23 SIAP at Elko Municipal-J.C. Harris Field, Elko, NV. This action will provide adequate controlled airspace for aircraft executing the RNAV RWY 23 SIAP at Elko Municipal-J.C. Harris Field, Elko, NV.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Elko, NV. A revision to the RNAV RWY 23 SIAP has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the RNAV 23 SIAP at Elko Municipal-J.C. Harris Field, Elko, NV.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 59 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation

Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AWP NV E5 Elko, NV [Revised]

Elko Municipal–J.C. Harris Field, CA
(Lat. 40°49′31″N, long. 115°47′28″W)

That airspace extending upward from 700 feet above the surface within a 8.3-mile radius of the Elko Municipal–J.C. Harris Field and within 1.8 miles either side of the 248° bearing from the Elko Municipal–J.C. Harris Field, extending from the 8.3-mile radius to 11.7 miles southwest of the Elko Municipal–J.C. Harris Field and within 3.9 miles east and 8.3 miles west of the 161° bearing from the Elko Municipal–J.C. Harris Field, extending from 8.3-mile radius to 21.7 miles south of Elko Municipal–J.C. Harris Field and within 4.3 miles each side of the 075° bearing from the Elko Municipal–J.C. Harris Field, extending from the 8.3-mile radius to 17.8 miles southwest of the airport. That airspace extending upward from 1,200 feet above the surface with an 18.7-mile radius of Elko Municipal–J.C. Harris Field, and that airspace bounded on the north by the south edge of V–6, on the south by the north edge of V–32, on the east by the 30-mile radius of the Elko Municipal–J.C. Harris Field, between the southern edge of V–465 clockwise to the northern edge of V–32, thence west to the 18.7-mile radius of the Elko Municipal–J.C. Harris Field and that airspace bounded by a line beginning at lat. 40°34′00″N, long. 116°00′00″W; to lat. 40°27′00″N, long. 116°36′00″W; to lat. 40°31′00″N, long. 116°38′00″W; to lat. 40°32′00″N, long. 116°33′00″W, to lat. 40°33′30″N, long. 116°33′30″W, to lat. 40°38′00″N, long. 116°07′00″W, thence clockwise via the 18.7-mile radius of the Elko Municipal–J.C. Harris Field to the point of beginning .

* * * * *

Issued in Los Angeles, California, on July 14, 2000.

Dawna J. Vicars,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 00–19519 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–10]

Amendment of Class E Airspace; Savannah, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E surface area airspace at Savannah, GA. Hunter Army Air Field (AAF) is included in the Savannah Class D surface airspace area. However, when Hunger AAF control tower closes that segment of the Class D airspace area reverts to Class G airspace, as there is no remote communications to either Savannah Approach Control or Jacksonville Air Route Traffic Control Center (ARTCC) to control aircraft at Hunter AAF. Remote communications equipment is being installed and will be operational by October 5, 2000. Therefore, the airport will meet the criteria of Class E airspace designated as surface area on October 5, 2000. Additional controlled airspace extending upward from the surface is needed to accommodate instrument flight rules (IFR) operations at Hunter AAF when Hunter AAF control tower is closed. This action also makes a technical amendment to the name of the location, changing it from Savannah International Airport, GA, to Savannah, GA.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On May 5, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Savannah, GA (65 FR 26156). This action will provide Class E airspace designated as surface area to accommodate IFR operations at Hunter AAF when Hunter AAF control tower is closed. Class E airspace designations are published in Paragraph 6002 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1, dated September 1, 1999. The Class E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Savannah, GA for Hunter AAF. This action also makes a technical amendment to the name of the location, changing it from Savannah International Airport, GA, to Savannah, GA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103; 40113; 40120, EO 10854, 24 FR 9565, 3 CFR, 1959–11963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO GA E2 Savannah, GA [Revised]

Hunter AAF
(Lat. 32°00′35″N, long. 81°08′44″ W)
Savannah International Airport
(Lat. 32°07′39″N, long. 81°12′08″ W)

Within a 5-mile radius of Savannah International Airport and within a 4.5-mile radius of Hunter AAF. This Class E airspace

area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on July 21, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–19518 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–7]

Amendment to Class E Airspace; Hampton, IA; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace at Hampton, IA, and corrects an error in the coordinates for the Hampton Municipal Airport, Airport Reference Point (ARP) and the Hampton Nondirectional Radio Beacon (NDB) as published in the **Federal Register** May 23, 2000 (65 FR 33250), Airspace Docket No. 00–ACE–7.

DATES: The direct final rule published at 65 FR 33250 is effective on 0901 UTC, October 5, 2000.

This correction is effective on October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

On May 23, 2000, the FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Hampton, IA (FR document 00–12821, 65 FR 33250, Airspace Docket No. 00–ACE–7). An error was subsequently discovered in the coordinates for the Hampton Municipal Airport ARP and the Hampton NDB. This action corrects those errors. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that these corrections will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the errors in the coordinates of the Hampton Municipal Airport ARP and the Hampton NDB and confirms the effective date to the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 5, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, coordinates for the Hampton Municipal Airport ARP and the Hampton NDB as published in the **Federal Register** on May 23, 2000 (65 FR 33250), (**Federal Register** Document 00–12821; page 33251, column two) are corrected as follows:

§ 71.1 [Corrected]

ACE IA E5 Hampton, IA [Corrected]

On page 33251, in the second column, after Hampton Municipal Airport, IA, correct the coordinates by removing (lat. 42°43′26″N., long. 93°13′35″W.) and substituting (lat. 42°43′25″N., long. 93°13′35″W.) and after Hampton NDB correct the coordinates by removing (lat. 42°43′32″N., long. 93°13′30″W.) and substituting (42°43′31″N., long. 93°13′30″W.)

Issued in Kansas City, MO on July 14, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–19520 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 423

Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods

AGENCY: Federal Trade Commission.

ACTION: Final amended rule.

SUMMARY: The Federal Trade Commission, pursuant to section 18 of the Federal Trade Commission Act, issues final amendments to its Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods. The Commission is amending the Rule: To clarify what can constitute a reasonable basis for care instructions; and to change the definitions of "cold," "warm," and "hot" water in the Rule. The Commission has decided not to amend the Rule to require that an item that can be cleaned by home washing be labeled with instructions for home washing. In addition, it has decided not to amend the Rule at this time to include an instruction for professional wetcleaning. This document constitutes the Commission's Statement of Basis and Purpose for the amendments.

EFFECTIVE DATE: The amended Rule will become effective on September 1, 2000.

ADDRESSES: Requests for copies of the amended Rule and the Statement of Basis and Purpose should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio or James Mills, Attorneys, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Ave., NW, S–4302, Washington, DC 20580, (202) 326–2966 or (202) 326–3035.

SUPPLEMENTARY INFORMATION:

Trade Regulation Rule Concerning Care Labeling of Textile Wearing Apparel and Certain Piece Goods; Statement of Basis and Purpose and Regulatory Analysis

Introduction

This document is published pursuant to section 18 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. 57a *et seq.*, the provisions of part 1, subpart B of the Commission's rules of practice, 16 CFR 1.14, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

I. Background

A. The Care Labeling Rule

The Care Labeling Rule was promulgated by the Commission on December 16, 1971. 36 FR 23883. In

1983, the Commission amended the Rule to clarify its requirements by identifying in greater detail the washing or drycleaning information to be included on care labels. 48 FR 22733. The Care Labeling Rule, as amended, requires manufacturers and importers of textile wearing apparel and certain piece goods to attach care labels to these items stating what regular care is needed for the ordinary use of the product. 16 CFR 423.6(a) and (b). The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for the care instructions. 16 CFR 423.6(c).

B. Procedural History

1. Regulatory Review of the Rule

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission published a **Federal Register** notice on June 15, 1994, seeking comment on the costs and benefits of the Rule and related questions, such as what changes in the Rule would increase the Rule's benefits to purchasers and how those changes would affect the costs the Rule imposes on firms subject to its requirements. 59 FR 30733 ("the Regulatory Review Notice").[1] The comments in response to the Regulatory Review Notice generally expressed continuing support for the Rule, stating that correct care instructions benefit consumers by extending the useful life of the garment, by helping the consumer maximize the appearance of the garment, and by allowing the consumer to take the ease and cost of care into consideration when making a purchase.

2. The ANPR

Based on this review, the Commission determined to retain the Rule, but to seek additional comment on possible amendments to the Rule. To begin the process, the Commission published an Advance Notice of Proposed Rulemaking on December 28, 1995. 60 FR 67102 ("the ANPR"). In the ANPR, the Commission discussed and solicited comment on standards for water temperature, the desirability of a home washing instruction and a professional wetcleaning instruction for items for which such processes are appropriate, and the Rule's reasonable basis standard. The Commission received 64 comments in response to this notice.

3. The NPR

Based on the comments responding to the ANPR, and on other evidence, the Commission published a Notice of Proposed Rulemaking on May 8, 1998, 63 FR 25417 ("the NPR"), in which the Commission proposed the following specific amendments to the Rule and sought comments thereon:

1. An amendment to require that an item that can be safely cleaned by home washing be labeled with instructions for home washing;

2. An amendment to establish a definition in the Rule for "professional wetcleaning" and to permit manufacturers to label a garment that can be professionally wetcleaned with a "Professionally Wetclean" instruction;

3. An amendment to clarify that manufacturers must establish a reasonable basis for care instructions for an item based on reliable evidence for each component of the item in conjunction with reliable evidence for the garment as a whole; and

4. An amendment changing the definitions of "cold," "warm" and "hot" water to be consistent with those of the American Association of Textile Chemists and Colorists ("AATCC"), and adding a new term—"very hot"—and corresponding definition consistent with AATCC's term and definition.

In the NPR, at 63 FR 25425–26, the Commission also made the following announcement:

The Commission has determined, pursuant to 16 CFR 1.20, to follow the procedures set forth in this notice for this proceeding. The Commission has decided to employ a modified version of the rulemaking procedures specified in Section 1.13 of the Commission's Rules of Practice. The proceeding will have a single Notice of Proposed Rulemaking, and disputed issues will not be designated.

The Commission will hold a public workshop-conference to discuss the issues raised by this NPR. Moreover, if comments in response to this NPR request hearings with cross-examination and rebuttal submissions, as specified in section 18(c) of the Federal Trade Commission Act, 15 U.S.C. 57a(c), the Commission will also hold such hearings. After the public workshop, the Commission will publish a notice in the **Federal Register** stating whether hearings will be held in this matter, and, if so, the time and place of hearings and instructions for those desiring to present testimony or engage in cross-examination of witnesses.

There were no requests for hearings in the 38 comments received in response to the NPR.[2] Therefore, the Commission did not hold public hearings in this matter. The public workshop-conference (hereinafter "workshop")[3] took place on January 29, 1999 at the Commission's Headquarters Building at 600 Pennsylvania Avenue, NW, Washington, DC. There were 28 participants in the workshop, representing 20 different interests.[4] There also were approximately 30 observers, some of whom, upon request, contributed to the discussion. At the workshop, an announcement was made that post-workshop comments would be accepted

[1] The Regulatory Review Notice also sought comment on whether the Rule should be modified to permit the use of symbols in lieu of words. On November 16, 1995, the Commission published a notice announcing a tentative decision to adopt a conditional exemption to the Rule to permit the use of certain care symbols in lieu of words; it also sought additional comment on specific aspects of the proposal. 60 FR 57552. On February 6, 1997, the Commission announced its decision to adopt the conditional exemption, which became effective on July 1, 1997. 62 FR 5724.

[2] The comments were from: Johnson Group Management Services, Ltd. ("Johnson Group") (1); Mid-Atlantic Cleaners and Launderers Association ("MACLA") (2); Bonnie Peters (3); Aqua Clean Systems, Inc. ("Aqua Clean") (4); J. R. Viola Cleaners ("Viola") (5); David Nobil, Nature's Cleaners, Inc. ("Nature's Cleaners") (6); Bruce Barish, Meurice Garment Care (7); Industry Canada, Fair Business Practices Branch ("Industry Canada") (8); American Textile Manufacturers Institute ("ATMI") (9); Cleaner By Nature (10); American Apparel Manufacturers Association ("AAMA") (11); International Fabricare Institute ("IFI") (12); Elizabeth K. Scanlon ("Scanlon") (13); National Association of Hosiery Manufacturers ("NAHM") (14); Associazione Serica (15); Prestige. . . Exceptional Fabricare ("Prestige") (16); Neighborhood Cleaners Association International ("NCAI") (17); Association of Home Appliance Manufacturers ("AHAM") (18); Dr. Charles Riggs, Texas Woman's University ("Riggs") (19); Bruce W. Fifield ("Fifield") (20); Consumer Policy Institute of Consumers Union ("Consumers Union") (21); The Clorox Company ("Clorox") (22); Marilyn Fleming, Natural Cleaners (23); Pollution Prevention Education and Research Center ("PPERC") (24); Pendleton Woolen Mills ("Pendleton") (25); Gap, Inc. ("Gap") (26); Greenpeace (27); National Coalition of Petroleum Dry Cleaners ("NCPDC") (28); Kathy Knapp (29); Center for Neighborhood Technology ("CNT") (30); The Professional Wetcleaning Network ("PWN") (31); Bowe Permac, Inc. (32); Alliance Laundry Systems UniMac ("Alliance") (33); The Procter & Gamble Company ("P&G") (34); GINETEX International Association for Textile Care Labeling ("Ginetex") (35); Karen Smith (Smith) (36); Pellerin Milnor Corporation (Pellerin Milnor) (37); Mike Lynch (38). The comments are on the public record and are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. The comments also are available for inspection on the Commission's website at <www.ftc.gov/bcp/rulemaking/carelabel/comments/comlist.htm>.

[3] The time and place of the workshop was announced in 63 FR 69232, December 16, 1998.

[4] The participants were: Ed Boorstein, Elaine Harvey, Prestige Cleaners; Martin Coppack, American Association of Family and Consumer Sciences; Deborah Davis, Cleaner by Nature; David DeRosa, Greenpeace; Corey Snyder, Liz Eggert, P&G; Eric Essma, Clorox; Sylvia Ewing, Anthony Star, CNT; Gloria Ferrell, Capital Mercury Apparel, Ltd. ("Ferrell"); Ann Hargrove, PWN; Nancy Hobbs, Pat Slaven, Consumers Union; Steve Lamar, Rachel Subler, AAMA; Cindy Stroup, Steve Latham, Environmental Protection Agency ("EPA"); Melinda Oakes, Ronda Martinez, QVC, Inc. ("QVC"); Karen Mueser, Sears, Roebuck & Co. ("Sears"); Jo Ann Pullen, American Society for Testing and Materials (ASTM); Dr. Charles Riggs; Roy Rosenthal, RCG Marketing; Mary Scalco, Jackie Stephens, IFI; Dick Selleh, MACLA; and Peter Sinsheimer, PPERC. Six Commission staff members also participated in the proceeding.

until March 1, 1999, and 40 such comments were submitted.[5]

II. Commission Determination

A. The Reasonable Basis Requirement of the Rule

1. Background and Current Requirements

The Rule requires that manufacturers and importers of textile wearing apparel possess, prior to sale, a reasonable basis for the care instructions they provide. A reasonable basis must consist of reliable evidence supporting the instructions on the label. Specifically, a reasonable basis can consist of: (1) Reliable evidence that the product was not harmed when cleaned reasonably often according to the instructions; (2) reliable evidence that the product or a fair sample of the product was harmed when cleaned by methods warned against on the label; (3) reliable evidence, like that described in (1) or (2), for each component part; (4) reliable evidence that the product or a fair sample of the product was successfully tested; (5) reliable evidence of current technical literature, past experience, or the industry expertise supporting the care information on the label; or (6) other reliable evidence. 16 CFR 423.6(c).

The Regulatory Review Notice solicited comment on whether the Commission should amend the Rule to conform with the interpretation of "reasonable basis" described in the *FTC Policy Statement Regarding Advertising Substantiation* ("Advertising Policy Statement"), 104 F.T.C. 839 (1984), or to change the definition of "reasonable basis" in some other manner. The comments in response to the Regulatory Review Notice suggested that a significant number of care labels lack a reasonable basis. Based on these comments, the ANPR proposed amending the reasonable basis requirement.

The ANPR sought comment on the incidence of inaccurate or incomplete care instructions, the extent to which it might be reduced by clarifying the reasonable basis standard, and the costs and benefits of such a clarification. The Commission further solicited comment on whether to amend the Rule to clarify that the reasonable basis requirement applies to a garment in its entirety rather than to each of its individual components.[6] Ten commenters responding to the ANPR discussed the reasonable basis provision. Seven of these supported modification of the Rule, contending that clarification would reduce mislabeling.[7] ATMI stated that the Rule should not be modified to require testing of completed garments; however, ATMI also asserted that "apparel manufacturers should be responsible for selecting and combining component materials that can be refurbished together" and should provide warnings about potential problems if components cannot be refurbished by the same method.[8] AAMA contended that changing the Rule was unnecessary.[9] Ginetex, the organization responsible for the voluntary care labeling system used in European countries, noted that it provides technical advice on appropriate test procedures to ensure correct care labeling.[10]

Two commenters provided data on the incidence of mislabeling, which in both cases indicated that there is a significant incidence of inaccurate and/or incomplete labeling.[11] ATMI, while stating that most home washing labels are accurate, and that the vast majority of dryclean instruction labels are accurate, noted that there are limited problems associated with care instructions for special items such as beaded apparel, sequins, and leather appliques.[12] IFI noted that its database shows that "a large portion of the garments damaged are the result of the trim or component part of the garment failing in a specified care procedure."[13]

Section 423.6(c)(3) of the Rule currently states that a manufacturer or importer establishes a reasonable basis for care information by "possessing prior to sale: Reliable evidence . . . for each component part of the product." In the NPR, the Commission proposed to amend the reasonable basis standard to make clear that the reasonable basis requirement applies to the garment in its entirety rather than to each of its individual components, noting that the record establishes that in some cases care instructions may not be accurate for the entire garment.[14] Thus, in the NPR, the Commission proposed amending § 423.6(c)(3) of the Rule to provide that "Reliable evidence . . . for each component part of the product, in conjunction with reliable evidence for the garment as a whole" can constitute a reasonable basis for care instructions.

2. Comments to the NPR

Most commenters favored the proposal to clarify the reasonable basis

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[5] The post-workshop comments were from: Specialized Technology Resources ("STR") (PW–1); Jo Ann Pullen ("Pullen") (PW–2); EPA (PW–3); Massachusetts Toxics Use Reduction Institute ("MTURI") (PW–4); Rawhide Cleaners ("Rawhide") (PW–5) (consisting of two NPR-comments from June 1998 originally lost in transit); Valet Cleaners ("Valet") (PW–6); Minnesota Fabricare Institute ("MFI") (PW–7); D.D. French ("French") (PW–8); Coronado Cleaners & Laundry, Inc. ("Coronado") (PW–9); MACLA (PW–10); South Eastern Fabricare Association ("SEFA") (PW–11); Celanese Acetate ("Celanese") (PW–12); Dr. Charles Riggs (PW–13); Shoemaker's/COBS, Inc. ("COBS") (PW–14); PWN (PW–15); Prestige (PW–16); Dr. Manfred Wentz ("Wentz") (PW–17); Gloria Ferrell (PW–18); Consumers Union (PW–19); IFI (PW–20); PPERC (PW–21); Hallak Cleaners ("Hallak") (PW–22); Avon Cleaners ("Avon") (PW–23); AAMA (PW–24); Comet Cleaners ("Comet") (PW–25); CNT (PW–26); Spear Cleaning & Laundry ("Spear") (PW–27); Greenpeace (PW–28); Cowboy Cleaners ("Cowboy") (PW–29); Aqua Clean (PW–30); Randi Cleaners, Inc. ("Randi") (PW–31); Korean Youth & Community Center ("KYCC") (PW–32); Cypress Plaza Cleaners ("Cypress") (PW–33); Waco Comet Cleaners (PW–34) (an NPR-comment from June 1998 originally lost in transit); Swannanoa Cleaners ("Swannanoa") (PW–35); Sno White Cleaners & Launderers ("Sno White") (PW–36); Environmental Finance Center, Region IX ("EFC9") (PW–37); Perrys-Flanagans Cleaners ("Perrys-Flanagans") (PW–38); Ecology Action, Inc. ("Ecology Action") (PW–39); Micell Technologies ("Micell") (PW–40). In addition, two written statements were read at the workshop and placed on the record: STR (PW–41), and PPERC (PW–42); and two presentations were made at the workshop with respect to which copies of graphic presentations were placed on the record: Clorox (PW–43), and P&G (PW–44).

[6] The ANPR also sought comment on: The option of indicating in the Rule that whether one or more of the types of evidence described in § 423.6(c) constitutes a reasonable basis for care labeling instructions depends on the factors set forth in the Advertising Policy Statement; whether the Rule should be amended to make testing of garments the only evidence that could serve as a reasonable basis for certain types of garments and, if so, whether the Rule should specify particular testing methodologies to be used; and whether the Rule should specify standards for determining acceptable and unacceptable changes in garments following cleaning as directed and identify properties, such as colorfastness and dimensional stability, to which such standards would apply. For reasons set forth in the NPR, 63 FR at 25423–24, the Commission decided not to propose any of these changes in the reasonable basis section of the Rule.

[7] University of Kentucky College of Agriculture Cooperative Extension Service, comment 20 to ANPR, p. 2; Clorox, comment 31 to ANPR, pp. 4–5; Soap and Detergent Association (SDA), comment 43 to ANPR, pp. 1, 3; Consumers Union, comment 46 to ANPR, pp. 2–3; AHAM, comment 51 to ANPR, p. 2; IFI, comment 56 to ANPR, p. 3; P&G, comment 60 to ANPR, p. 5.

[8] ATMI, comment 41 to ANPR, pp. 4–7.

[9] AAMA, comment 57 to ANPR, pp. 2–4.

[10] Ginetex, comment 63 to ANPR, p. 4.

[11] IFI, comment 56 to ANPR, p. 3 (in 1995, 40% of the 25,000 damaged garments in its Garment Analysis database incurred the damage because of inaccurate labeling); Clorox, comment 31 to ANPR, p. 2 (monitoring of bleach instructions on care labels showed 71% inaccuracy in November 1995).

[12] ATMI, comment 41 to ANPR, p. 5; see also AAMA, comment 57 to ANPR, p. 3. The ANPR noted that the Commission had litigated one case involving inaccurate care instructions that resulted in damage to garments (*FTC* v. *Bonnie & Co. Foshions*, No. 90–4454) (D.N.J. 1992)) and had obtained settlements in several other cases where the Commission alleged that care instructions were inaccurate because of damage to trim when the garments were cleaned according to those instructions.

[13] IFI, comment 56 to ANPR, p. 3.

[14] A garment component that may be cleaned satisfactorily by itself might, for example, bleed onto the body of a garment of which it is a part.

requirements of the Rule.[15] Some commenters, who believe that only testing can constitute a reasonable basis, stated that the proposal did not go far enough because it does not require testing.[16] Only one commenter, AAMA, opposed the proposed clarification of the reasonable basis standard. AAMA stated that its member manufacturers specify fabric performance from suppliers and test new styles to makeder sure that components are compatible. It also stated that there is only a very small portion of garments made in the United States with incompatible materials (for fashion reasons) and that "(t)o require that all garments be made entirely of compatible components unduly restricts the creation of fashion."[17]

3. Rule Amendments and Reasons Therefor

The Commission has decided to amend § 423.6(c)(3) of the Rule to provide that "Reliable evidence . . . for each component part of the product, in conjunction with reliable evidence for the garment as a whole" can constitute a reasonable basis for care instructions. This amendment does not require testing of the entire garment if there is an adequate reasonable basis for the garment as a whole without such testing; the amendment clarifies, however, that testing of separate components is not necessarily sufficient if problems are likely to occur when the components are combined.[18]

The Commission does not believe that this revision of the Rule will unduly restrict the creativity of fashion, as AAMA feared. If the combination of components used to make a garment are so incompatible that the garment cannot be cleaned without damage, the Rule provides that the garment can be labeled "Do not wash—do not dryclean." 16 CFR 423.6(b). This is information that the consumer has a right to know, and indeed, under the Rule, it would be deceptive to sell a garment with a care label indicating that it could be successfully cleaned when in fact it cannot. With truthful labeling that indicates the garment cannot be cleaned, consumers are given adequate information and can choose to purchase the garment if they wish to do so even though it cannot be cleaned without damage.

B. Definitions of Water Temperatures

1. Background and Current Definitions

The Rule currently requires that a care label recommending washing also must state a water temperature that may be used unless "the regular use of hot water will not harm the product." 16 CFR 423.6(b)(1)(i). The Rule also provides that if the term "machine wash" is used with no temperature indication, "hot water up to 150 degrees F (66 degrees C) can regularly be used." 16 CFR 423.1(d). This definition is repeated in Appendix 1.a. "Warm" is defined in Appendix 1.b. as ranging from 90 to 110 degrees F (32 to 43 degrees C), and "cold," in Appendix 1.c., as cold tap water up to 85 degrees F (29 degrees C).

Based on the comments filed in response to the Regulatory Review Notice and the ANPR, including recommendations that the Commission adopt definitions developed by the AATCC, the Commission, in the NPR, stated that the definition of "cold," "warm," and "hot" water should be changed because of changes in settings on water heaters and in consumer washing practices in the years since the definitions were established.[19] The Commission noted that AATCC has changed its definitions, which are used in textile testing by much of the apparel industry, to take account of these factors. The NPR proposed changing the upper range of temperature definitions in the Rule to the upper range of what is allowed in tests published by AATCC.[20] Specifically, the Commission proposed the following definitions for water temperature in Appendix.1.b-1.d: "Hot"—initial water temperature ranging from 112 to 125 degrees F (45 to 52 degrees C); "Warm"—initial water temperature ranging from 87 to 111 degrees F (31 to 44 degrees C); "Cold"—initial water temperature up to 86 degrees F (30 degrees C).

The Commission also proposed adding the term "very hot" to the Rule, defined consistently with the AATCC definition, *i.e.*, with an upper range of 63 degrees C (145 degrees F). The record indicated that some garments do need to be cleaned at temperatures higher than 125 degrees F, and that some consumers have access to water hotter than 125 degrees F, either at home or through laundering by professional cleaners. The Commission asked whether the addition of the term "very hot," together with appropriate consumer education, would give notice to those consumers whose hottest water is 120 degrees F that they may have to use professional laundering for garments that should be cleaned in very hot water. The Commission indicated that it was aware, however, that the term "very hot" may be confusing to some consumers because most washing machine dials offer only the choices of "cold," "warm," and "hot." The NPR requested comment on the issue, and, in particular, on suggestions for methods of consumer education.

The Commission noted in the NPR that some comments indicated that consumers need more precise information in order to select the appropriate temperature setting on their washing machines. For example, the comments suggested that some consumers in colder climates may unknowingly be using water that is too cold to activate detergents at the "cold" setting on their machines, and that these consumers would be alerted by a numerical temperature on the care label to use the "warm" setting to compensate. The comments contended that, similarly, an upper range for "warm" might also be helpful to consumers because on many machines the dial setting for warm simply produces a mixture of hot and cold, and if the incoming tap water is very cold, the water in the machine may be too cold to produce optimal cleaning of the clothes being washed. The comments argued that the addition of a precise temperature (52 degrees C, 125 degrees F) after the word "hot" on the care label of a garment may give some consumers an indication that their hot water may be too hot for that garment.[21]

[15] Johnson Group (1) p. 1; MACLA (2); Industry Canada (8); ATMI (9); IFI (12) pp. 2–3; NAHM (14) p. 1; Associazione Serica (15) p. 1; NCAI (17) p. 4; AHAM (18) p. 3; Consumers Union (21) p. 2; Pendleton (25) p. 2; Gap (26) p. 1; P&G (34) pp. 2 and 4; Ginetex (35) p. 2.

[16] Prestige (16) p. 2; Consumers Union (21) p. 2; Clorox (22) p. 2; P&G (34) pp. 2 and 4; Ginetex (35) p. 2.

[17] AAMA (11) p. 3.

[18] For example, red trim that is to be placed on white fabric should be evaluated to determine if it is likely to bleed onto the surrounding fabric. A company may possess reliable evidence—for example, past experience with particular dyes and fabrics—that a particular red trim does not bleed onto surrounding fabric. In such a case, testing of the entire garment might not be necessary.

[19] For a detailed discussion of the comments and the analysis that led the Commission to this conclusion, *see* 63 FR 25417, 25424–426.

[20] The AATCC definitions were submitted as an attachment to AATCC's comment responding to the Regulatory Review Notice: "cold"—27 degrees C ± 3 degrees C (80 degrees F ± 5 degrees F); "warm"—41 degrees C ± 3 degrees C (105 degrees F ± 5 degrees F); "hot"—49 degrees C ± 3 degrees C (120 degrees F ± 5 degrees F); and "very hot"—60 degrees C ± 3 degrees C (140 degrees F ± 5 degrees F). AATCC (34) Attachment.

[21] The Commission noted that, although new water heaters are being set at lower temperatures, the comments indicated that many homes still have older heaters that produce water at 140 degrees F or even hotter. A garment that has been tested in water heated to 125 degrees F may withstand washing in that temperature without damage but nevertheless be damaged by water at 140 degrees F.

The Commission did not, however, propose in the NPR that the Rule be amended to require that precise temperatures be listed on care labels, noting that most Americans do not know the temperature of water in their washing machines. Although the Commission did not propose requiring precise temperatures on labels, it expressed interest in non-regulatory solutions to the problems discussed in the comments and asked for comment on the feasibility of a consumer education campaign to provide consumers with more precise information on water temperature in order to help them more accurately select the appropriate temperature setting on their washing machines.

2. Comments Responding to the NPR

a. The Proposal to Amend the Rule Definitions for "Cold," "Warm," and "Hot" to Be Consistent with the AATCC Definitions. Seventeen comments addressed the issue of water temperature definitions.[22] Five of the comments supported the Commission's proposal to amend the Rule's definitions for "cold," "warm," and "hot."[23] Pendleton supported the proposal because it "seems to reflect changes in consumer washing practices;" AAMA noted that its members already use the AATCC definitions when testing their garments.[24]

Four other comments provided partial support. Dr. Charles Riggs conceded that the proposed definitions are probably realistic for typical household hot water temperatures, but argued that their inclusion in the Rule will not address the problem posed by most detergents not being activated thoroughly in water colder than 65 degrees F.[25] IFI agreed that the proposed temperatures reflect current trends in home water temperatures but contended that they do not correlate to current consumer behavior and consumers' use of professional laundering.[26] MACLA favored amending the Rule to adopt the proposed definitions for "cold" and "warm," but suggested that the definition of "hot" include the range between 125 degrees F and 145 degrees F (52 degrees C—63 degrees C).[27] Like MACLA, AHAM recommended establishing definitions for "cold" and "warm" that are consistent with the definitions proposed in the NPR[28] and suggested a range of between 112 degrees F and 145 degrees F (44 degrees C—63 degrees C) for "hot." Contending that these definitions are "consistent with the clothes washer options available to consumers in their homes," AHAM provided a detailed explanation of how washing machines use cold and hot water to attain "cold," "warm," and "hot" water.[29]

Agreeing that the Rule's definitions for water temperature should be consistent with AATCC's definitions, Consumers Union suggested a definition for "cold" (60 degrees F to 80 degrees F) that was different from the Commission's proposed definition, because "most consumers are unaware that detergent becomes increasingly ineffective as temperatures drop below 60 degrees F,"[30] and a definition for "hot" (120 degrees F to 140 degrees F), "to realistically represent temperatures produced by domestic water heaters and scald laws in some states."[31]

Seven commenters remarked on the water temperature issue without making specific recommendations as to the proposed definitions.[32] For example, four commenters contended that consumers need water temperature numbers on care labels.[33] Ginetex stated that in its system, temperature numbers (in degrees Celsius) are disclosed in the system's washing instruction icons, and contended that terms like "hot," "warm," and "cold" are not precise enough.[34]

b. The Proposal to Add the Term "Very Hot" to the Rule. Four commenters expressed some level of support for the proposal to add the term "very hot" to the Rule. Gap agreed with the proposal without elaboration and Associazione Serica suggested associating the term to a "reference temperature."[35] Procter & Gamble supported the proposal, adding:

> Though the term 'very hot' will not be understood by many consumers, our qualitative research indicates that if consumers see 'very hot' they would be likely to select 'hot' on their washer. This will be the best of available choices and therefore this addition of 'very hot' will only be a benefit in providing more efficient cleaning for consumers.
>
> In addition, the separation of the old hot definition into 'very hot' and 'hot' categories allows more garments (that may have been harmed at temperatures above 125 degrees F) to be more efficiently and appropriately washed in hot temperatures less than 125 degrees F. P&G supports a consumer education campaign that would help consumers use appropriate and consistent water temperatures to achieve more efficient cleaning (better cleaning at less cost), especially in northern US states with colder water.[36]

While not specifically endorsing adoption of the proposed definition, Dr. Charles Riggs suggested that "very hot" have an upper limit of 160 degrees F rather than 145 degrees F, for use as a label for professional shirt laundering.[37]

Seven comments opposed the Commission's proposal to add a definition for "very hot" to the Rule.[38] As an alternative to the proposal, MACLA and AHAM suggested that the definition for "hot" in the amended Rule include a range of up to 145 degrees F, rather than the upper limit of 125 degrees F proposed by the Commission.[39] MACLA contended that the term would be too confusing for consumers, and AHAM stated: "It is not just an issue of confusing consumers or whether some garments do not need to be cleaned with temperatures above 125 degrees, it is an issue of the temperatures a product (clothes washer) can provide with the existing water inlet

[22] MACLA (2); Industry Canada (8); ATMI (9); AAMA (11); IFI (12); Scanlon (13); NAHM (14); Associazione Serica (15); NCAI (17); AHAM (18); Riggs (19); Fifield (20); Consumers Union (21); Pendleton (25); Gap (26); P&G (34); Ginetex (35).

[23] AAMA (11) p. 3; NAHM (14) p. 2; Pendleton (25) p. 2; Gap (26) p. 2; P&G (34) pp. 2, 4.

[24] AAMA (11) p. 3; Pendleton (25) p. 2.

[25] Riggs (19) p. 2. Dr. Riggs contended that the only realistic solution to the problem would be for manufacturers to produce clothes washers equipped with thermostatic temperature controls.

[26] IFI (12) p. 3.

[27] MACLA (2) p. 1. MACLA stated that manufacturers, especially of bed linens and shirting materials, already test in water up to 150 degrees F before attaching care labels associated with commercial laundering procedures.

[28] AHAM proposed: "cold": <86 degrees F (30 degrees C) and "warm": 87 degrees F—111 degrees F (30 degrees C—44 degrees C).

[29] AHAM (18) pp. 1–2. AHAM also explained that the ranges of temperatures for each descriptor depend on several factors, including water heater temperature setting, heat loss in piping, the mix ratio of the particular washer, and the temperature of incoming cold water (which depends on geographical location and seasonal temperature).

[30] In this connection, Consumers Union recommended consumer education on "minimum wash water temperatures."

[31] Consumers Union (21) p. 3.

[32] Industry Canada (8) p. 3; ATMI (9) p. 3; Scanlon (13) p. 1; Associazione Serica (15); NCAI (17) p. 4; Fifield (20) p. 1; Ginetex (35) p. 2.

[33] ATMI (9) p. 3; Associazione Serica, (15) p. 2; Fifield (20) p. 1; Ginetex (35) p. 2. *See* the separate discussion of numerical temperatures in section II.B.2.c., below.

[34] Ginetex (35) p. 2 (stating that ". . . in Europe. clothes washers heat their own water internally. Consumers can choose a precise temperature and the washer will heat the water to it."); Associazione Serica (15), p. 2, recommended harmonization of the Commission's Rule with the Ginetex/ISO system.

[35] Gap (26) p. 2; Associazione Serica (15) p. 2.

[36] P&G (34) pp. 4–5.

[37] Riggs (19) p. 2.

[38] MACLA (2) p. 1; Industry Canada (8) pp. 3–4; IFI (12) p. 3; Scanlon (13) p. 1 ("I would find it hard to believe that "very hot" water was really good for my clothes, and what I would do is use the "hot" setting."); AHAM (18) p. 2; Pendleton (25) p. 2; Ginetex (35) p. 2 (Ginetex opposed the use of word designations as too imprecise, preferring its own system of temperature symbols tied to degrees Celsius.)

[39] MACLA (2) p. 2; AHAM (18) p. 2.

temperatures."[40] Industry Canada argued that consumers would be unlikely to use very hot water under normal washing conditions unless there were a "very hot" indicator on their washing machines, and that it is improbable that they would conclude that they should use a professional cleaner. Rather, concluded Industry Canada, consumers would use the "hot" setting on their machines instead of incurring the cost of professional laundering.[41] In contrast, IFI stated that consumer practice is to send out men's dress shirts, most of which are labeled "Machine wash warm, cool iron," to be commercially laundered and pressed. Pointing out that commercial laundering is done at temperatures in excess of 145 degrees F, IFI concluded that the "very hot" label would not apply even if manufacturers used it, which current practice suggests they would not do.[42] Noting that the need for the addition of a "very hot" water designation does not seem to be clearly demonstrated and that such an instruction would be confusing, Pendleton stated that the trend in home washing practices in recent years has been away from the use of hot water, citing as evidence that none of Pendleton's 30 or more current care labels carry a hot water instruction.[43]

Two textile industry trade associations, ATMI and AAMA, responded to the questions in the NPR without specifically supporting or opposing the proposed amendment. Speculating on how consumers would understand a care instruction to use "very hot" water, ATMI predicted that "responses may range from using the hottest temperature (consumers) can get from their water heater to adding a pot of boiling water to using the services of a professional wetcleaner."

ATMI suggested that the care label indicate that "consumers should use 'Temperatures which normally exceed home laundry and water heater settings,' which would justify a larger label if 'very hot' is truly the preferred method."[44] AAMA observed that "the question of whether consumers understand very hot is important only when professional cleaning is needed. For environmental reasons most hot water heaters in the U.S. do not generate water above 120 F."[45]

c. Numerical Temperatures and Consumer Education. Although the Commission did not propose requiring numerical temperatures on care labels, it sought comment on the possibility of a consumer education campaign on the issues surrounding numerical temperatures. AAMA agreed without elaboration with the Commission's decision not to require specific temperatures on labels.[46] Appliance service technician Bruce Fifield contended that the care label should include the numerical temperature of the water.[47] ATMI stated that consumers assume that there is a direct correlation between what the consumer sees on a care label (e.g., "machine wash hot water") and the temperature selection on their home washers without realizing the many factors that influence the water temperature in the machine. ATMI suggested that clothes washer manufacturers, with input from other affected parties, work towards a consensus on temperatures and a method for standardizing them.[48] Ginetex stated that in the Ginetex/ISO system numerical temperatures (in degrees Celsius) appear along with washing instructions icons.[49] Associazione Serica joined Ginetex in recommending harmonization of the Commission's Rule with the ISO/Ginetex system.[50]

Three comments expressed their support for consumer education in connection with the wash water temperature issue, although none offered specific consumer education plans. AAMA and P&G stated that consumer education would be necessary to help consumers understand the variability issues (geographical and seasonal temperature differences) that affect water temperature.[51] AAMA stated that "Part of the education process will take place as consumers use care symbols. The current NAFTA care symbol guide indicates the median temperature for 'hot,' 'warm,' and 'cold,' in both Fahrenheit and Celsius."[52] Bruce Fifield, who lives in Maine, noted the importance of information about the low end of the temperature range and suggested educating the public by disclosing temperature degrees along with words on detergent packages and clothes washer owners manuals as well as on care labels.[53]

3. Rule Amendments and Reasons Therefor

The Commission has decided to amend the definitions of "cold" and "warm" in the Rule to make them consistent with the AATCC definitions for these terms. The Commission has decided against adding the term "very hot" to the Rule. Rather, the Commission amends the Rule so that the term "hot" now includes the temperature range encompassed by both "hot" and "very hot" in the AATCC definitions. Finally, the Commission will leave unchanged its decision, announced in the NPR, not to require numerical temperatures on labels.

The Commission is changing the Rule's definitions for "cold" and "warm" to be consistent with the AATCC definitions primarily because the AATCC definitions are currently in widespread use in the textile industry and because of the changes in water heater settings, as discussed in the NPR and mentioned above. The Commission agrees with MACLA and AHAM that a "very hot" instruction on labels could be confusing to consumers and impractical in light of the temperature limitations on new water heaters and the majority of home clothes washers. Moreover, there is no evidence of consumer need or demand for information on such an instruction; nor is there evidence of any harm to garments because of the absence of such an instruction. Thus, the Commission will not create a separate temperature range for "very hot." Because AATCC defines "very hot" water as a maximum of 145 degrees F (63 degrees C), the Commission will lower the current range in place under the description of "hot water," with the top end of the range changed from 150 degrees F (66 degrees C) to 145 degrees F (63 degrees C), to be consistent with the AATCC definitions of "hot" and "very hot" taken together.

The Commission is not persuaded to add a requirement that labels include numerical temperatures. As indicated in the NPR, the Commission believes that requiring this type of additional information may not be cost-effective because most American consumers know so little about the temperature of

[40] AHAM (18) p. 2.

[41] Industry Canada (8) pp. 3–4.

[42] IFI (12) p. 3.

[43] Pendleton (25) pp. 2–3. Pendleton suggested that: "If hotter wash temperatures are commonly used or needed in professional laundering, it would seem appropriate for this aspect of cleaning to be controlled by a "professional laundering" care instruction, much as the specifics of dry cleaning are controlled by the professional dry cleaner when the "dry clean" care instruction is used."

[44] ATMI (9) p. 3. ATMI added that magazine articles, provided the advice is consistent, could influence consumers' behavior, and that further comments on what constitutes "very hot" would be important.

[45] AAMA (11) p. 4. In contrast, in responding to the ANPR, SDA estimated that only "20% of today's homes have hot water heaters set at 120 degrees—125 degrees F." SDA, comment 43 to ANPR, p. 2.

[46] AAMA (11) p. 3.

[47] Fifield (20) p. 1.

[48] ATMI (9) p. 3.

[49] Ginetex (35) p. 2.

[50] Associazione Serica (15) p. 2.

[51] AAMA (11) p. 3; P&G (34) p. 2.

[52] AAMA (11) p. 3.

[53] Fifield (20) p. 1.

their tap water, the water from their water heaters (especially after it has passed through plumbing pipes), or the water in their washing machines at the various settings. The Commission recognizes that more information could help consumers avoid using water that is too hot and may damage some items, or not hot enough to clean others thoroughly, or so cold that detergents will not be effective. The Commission believes that non-regulatory approaches, such as industry-sponsored consumer education campaigns or voluntary product labeling, hold the most promise for helping consumers understand how to use water temperatures to their best advantage in cleaning their washable items. The Commission is willing to consider partnering with industry, consumer, or public interest groups or others in such an undertaking.

C. Proposal to Require Home Washing Instruction

1. Background of Proposed Amendment

The Regulatory Review Notice noted that the EPA had been working with the dry-cleaning industry to reduce the public's exposure to perchloroethylene ("PCE" or "perc"), the most common drycleaning solvent,[54] and asked whether the Rule poses an impediment to this goal. The Rule currently requires that the manufacturer provide instruction as to one appropriate method of cleaning the garment, i.e., either a washing instruction or a drycleaning instruction. Thus, garments legally labeled with a "Dryclean" instruction alone may also be washable, but the manufacturer is not required to provide that additional information. In contrast, a "Dryclean Only" label constitutes a warning that the garment cannot be washed, and the manufacturer is required to have a reasonable basis for this instruction. The Regulatory Review Notice asked about the prevalence of care labeling that does not indicate both washing and drycleaning instructions. In addition, it asked whether the use of drycleaning solvents would be lessened, and whether consumers and cleaners could make more informed choices as to cleaning method, if the Rule were amended to require both washing and drycleaning instructions for garments cleanable by both methods.[55] 59 FR 30733–34. The response to this proposal was mixed; some commenters favored a required dual instruction, while others opposed it because of the increased cost to manufacturers of testing garments for both methods. Some pointed out that although many items routinely washed by consumers (such as "wash and wear" apparel) could safely be drycleaned, few consumers would choose to do so.

In the ANPR, the Commission requested comment on a proposed amendment of the Rule to require a home washing instruction for all covered products for which home washing is appropriate. Under the proposal, drycleaning instructions for such washable items would be optional. Manufacturers marketing items with a "Dryclean" instruction alone, however, would be required to substantiate both that the items could be safely drycleaned *and* that home washing would be inappropriate for them; thus, a "Dryclean" instruction would be subject to the same burden of substantiation presently required for a "Dryclean Only" instruction. This revised proposal would eliminate some of the additional substantiation testing costs that a "dual disclosure" requirement would necessitate. 60 FR 67104–05.

Eighteen commenters to the ANPR, including individual consumers, academics, and an appliance manufacturers' trade association, contended that many manufacturers currently label items that can be both washed and drycleaned with a "Dryclean" or "Dryclean Only" instruction. Many of these commenters suggested that a required home washing instruction could save consumers garment care dollars. Some commenters also noted that many consumers believe there are environmental benefits from home washing rather than drycleaning washable items. 63 FR 25418.

Based on the ANPR comments, the Commission concluded that it had reason to believe that "Dryclean" labels on home-washable items are prevalent, that consumers have a preference for being told when items that they are purchasing can be safely washed at home, and that this aspect of the Rule is an impediment to EPA's goal of reducing the use of drycleaning solvents.[56] The Commission also concluded that when a washable garment is labeled "Dryclean," consumers may be misled into believing that the garment cannot be washed at home and therefore incur a drycleaning expense that they would otherwise prefer to avoid. 63 FR 25419.

Accordingly, in the NPR the Commission proposed amending § 423.6(b) of the Rule to read, in pertinent part, as follows:

(b) Care labels must state what regular care is needed for the ordinary use of the product. In general, labels for textile wearing apparel must have either a washing instruction or a drycleaning instruction. If an item of textile wearing apparel can be successfully washed and finished by a consumer at home, the label must provide an instruction for washing. If a washing instruction is not included, or if washing is warned against, the manufacturer or importer must establish a reasonable basis for warning that the item cannot be washed and adequately finished at home, by possessing, prior to sale, evidence of the type described in paragraph (c) of this section. * * *

2. Response to the NPR and Public Workshop-Conference

In the NPR, the Commission solicited empirical information about how consumers interpret a garment label that merely says "Dryclean." The NPR posed the following question:

(1) Is there empirical evidence regarding whether consumers interpret a "dry clean" instruction to mean that a garment cannot be washed? What does the evidence show?

Several commenters offered opinions on this issue,[57] but only two—Clorox and P&G—offered empirical evidence.

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[54] Congress designated PCE as a hazardous air pollutant in section 112 of the Clean Air Act; many state legislatures have followed suit under state air toxics regulations.

[55] When it amended the Rule in 1983, the Commission had considered and rejected an "alternative care labeling" requirement that garments be labeled for both washing and drycleaning if both are appropriate. 48 FR 22742–43. (See Section II.C.3, infra.) In 1983, however, evidence about the harmful effects of PCE was not available. Therefore, it was appropriate for the Commission to revisit the issue during the recent regulatory review proceeding.

[56] EPA's comment (73) to the Regulatory Review Notice stated, at p.1, that the Rule should be revised to require manufacturers to state whether a garment "can be cleaned by solvent-based methods, water-based methods, or both. We believe this change is necessary to advance the use of water-based cleaning technology." EPA's comment to the ANPR suggested that the Rule be amended to recognize professional wetcleaning. EPA, comment 17 to ANPR, p. 1.

[57] Johnson Group (1) p. 1 (anecdotal evidence is more to the effect that consumers interpret the instruction to mean that a garment labeled "Dryclean" will last longer if drycleaned, than it is to the effect that they think it cannot be washed); Nature's Cleaners (6) p. 1 (no evidence, but the perception is true); Industry Canada (8) p. 1 (no data, but assume that's how most Canadian consumers read it); ATMI (9) p. 1 (it is possible that consumers make that assumption—a "casual poll" indicates that most consumers do make that interpretation, but do not necessarily follow their interpretation of the instruction); Scanlon (consumer) (13) ("Certainly I interpret a 'dry clean' instruction to mean that a garment cannot be washed; why else would the manufacturer put dry clean? If that's not what it means, I would appreciate it if you would require manufacturers to be more accurate. If what they really mean is 'dry cleaning preferred,' then they should say so."); Associazione Serica (15) (Comments "mainly based on European consumers' behavior") ("Yes, there is (evidence). This instruction is considered as a prohibition (against) other washing methods."); Prestige (16) p. 1 (experience has shown that many consumers who trust the care label will not attempt a non-listed care method).

Clorox provided, with its comment, the results of a nationally representative survey of 1013 respondents (507 males and 506 females) performed by Market Facts, Inc. and Telenation from June 19 to June 21, 1998.[58] This research was presented at the workshop by Eric Essma of Clorox.[59] Question 3 of the survey asked:

When the care instruction on an article of clothing reads "Dry Clean" what does that mean to you? (Probe:) How would you care for clothing like that? (Probe:) Any other ways? (Record Verbatim. Probe for Clarification. Probe to Exhaustion.)

A majority of the respondents (73.2%) said a "Dryclean" instruction means the garment must be drycleaned, professionally cleaned, or otherwise specially taken care of.

P&G stated, in its comment to the NPR, that it "has much experience and qualitative evidence to indicate that consumers interpret a "dry clean" instruction or a 'dry clean only' instruction to mean that a garment cannot be washed or cared for in the home."[60] At the workshop, P&G presented a description of data obtained from a nationally representative survey of about 1,000 female heads of household who currently do the laundry.[61] Respondents were asked which of five methods they would use to clean a garment labeled "Dryclean." Although multiple responses were allowed, 44% of respondents said drycleaning was the only acceptable way to clean such a garment.[62]

Thus, empirical data in the record indicates that many consumers interpret a "Dryclean" label to mean that the garment cannot be washed. In addition, question 4 in the Market Facts survey asked respondents whether they had "ever washed or laundered any clothing labeled 'Dry Clean.'" Almost half (49%) of the respondents said "yes."[63] These respondents were then asked (in question 8) whether they were "satisfied with the results of washing or laundering 'Dry Clean' items," and 63.4% said 'yes' and 11.1% said "sometimes."[64] Thus, the Market Facts study indicates that some garments labeled "Dryclean" can in fact be washed at home to the satisfaction of the consumer.

Several post-workshop comments discussed the Clorox research, but none questioned the finding that a large number of consumers interpret a "Dryclean" instruction to mean that a garment cannot be cared for at home. Rather, these comments focused on the data about consumer care label *preferences*. Question 9 in the Market Facts survey asked respondents:

For clothing items that can be either washed or dry cleaned if the label can only show one instruction, which instruction would you prefer to see included on the label: (Read List. Enter Single Response. If Unsure Encourage Best Guess.)

Washing instructions, or	1
Dry cleaning instructions	2
(Do Not Read):	
Don't know	X
Refused	R

The responses indicated that 88.8% of respondents would prefer washing instructions.[65]

Support for the proposed amendment came from Consumers Union, AHAM, Pendleton, Greenpeace, and individual consumers, as well as from Clorox and P&G.[66] AHAM, for example, stated that the proposed amendment "will result in consumers saving garment care dollars and will lead to reduction in adverse environment impact resulting from the use of percloroethylene."[67] Greenpeace asserted that "consumers want to know from a care label whether a garment can be cleaned at home, in water-based laundry systems."[68] Pendleton Woolen Mills stated:

This proposed change is consistent with Pendleton's current direction for increased emphasis on garment washability. Market information gathered by Pendleton staff has indicated the importance of washability to consumers. This requirement may mean a relatively small increase in the amount of testing, but Pendleton is already seeking to put washable care instructions on garments when possible.[69]

Commenting on the Clorox survey results, the International Fabricare Institute opposed the proposed amendment. IFI stated:

the fabricare industry takes issue with much of the data presented and believes that an additional consumer survey is required to provide the FTC with sufficiently broad information to determine consumer care label preferences. Clorox asked only whether consumers wanted to know when a garment can be home washed. The question should have been "Would you like to know if a garment can be washed or drycleaned, would you like to know all appropriate methods of care?'[70]

In its comment to the NPR, IFI argued that failure to provide drycleaning instructions when appropriate is an injustice to those consumers who wish to have their garments professionally cleaned and that all appropriate methods of care should be listed on the care label (a concept which it referred to as "alternative labeling").[71] IFI further asserted that "there are consumers who want some of their washable items drycleaned."[72]

[58] A description of the survey and its results are attached to Clorox's comment (22). Telenation conducted the survey using a single-stage, random digit-dial sample technique to select respondents from all available residential telephone numbers in the contiguous United States. Up to three attempts were made on the selected telephone numbers. Telenation's standard data tabulations are provided in a weighted format. The data are weighted on an individual multi-dimensional basis to give appropriate representation to the interaction between various demographic factors. The multi-dimensional array covers gender, within age, within household income in the four National Census regions, resulting in 144 different cells. The current Population Survey from the U.S. Census Bureau is used to determine the weighting targets for each of these 144 cells. Clorox (22) p. 5.

[59] A copy of Mr. Essma's presentation was placed on the public record as Clorox (PW–43).

[60] P&G (34) p. 3.

[61] P&G's two-page summary of the data was placed on the public record as P&G (PW–44).

[62] Workshop Transcript ("Tr."), pp. 26–27. The difference between the results of the P&G survey (44% mentioned only drycleaning) and the Clorox survey (73.2% said the garment must be drycleaned or otherwise specially taken care of) may be due to the fact that the respondents in the P&G survey were female heads of household who currently do the laundry, whereas the Clorox respondents were a random sample of the population. Female heads of household who currently do the laundry may be more aware than the general population that items labeled "Dryclean" may also be washable.

[63] Clorox (22) Weighted Data, p. 6.

[64] Clorox (22) Weighted Data, p. 10.

[65] Clorox (22) Weighted Data, p. 44. Pendleton (25) also stated, at p. 1, that its own market information indicates "the importance of washability to consumers."

[66] Consumers Union (21) p. 1; AHAM (18) p. 2; Pendleton (25) pp. 1–2; Greenpeace (27) p. 1; Smith (36) p 1; Clorox (22) p. 1; and P&G (34) pp. 2, 3.

[67] AHAM (18) p. 2.

[68] Greenpeace (27) p. 1.

[69] Pendleton (25) p. 1.

[70] IFI (PW–20), p. 2.

[71] IFI (12) p. 1. Many other cleaners and cleaners' trade associations also favored requiring instructions for both washing and drycleaning or for all methods by which an item can be cleaned (including, presumably, professional wetcleaning and newly emerging techniques such as the use of liquid carbon dioxide for cleaning): MACLA (2) p. 1; Viola (5) p. 2; Prestige (16) p. 1; NCAI (17) p. 2 (otherwise consumers might pay more in the long run because of "excess wear potentially caused by home care"); Valet (PW–6) p. 1; MFI (PW–7), p. 1; French (PW–8), p. 1; Coronado (PW–9), p. 1; MACLA (PW–10) p. 1; SEFA (PW–11) p. 1; COBS (PW–14) p. 1; Hallak (PW–22) p. 1; Avon (PW–23) p. 1; Comet (PW–25), p. 1; Spear (PW–27), p. 1; Cowboy (PW–29), p. 1; Randi (PW–31), p. 1; Swannanoa (PW–35) p. 1; Sno White (PW–36) p. 1; Perrys-Flanagans (PW–38) p. 1. One yarn manufacturer and one academic expert also favored dual or alternative labeling. Celanese (PW–12) p. 1; Riggs (PW–13) p. 3. EPA (PW–3) at pp.1–2, favored alternative labeling. Other cleaners and cleaners' trade associations opposed the proposed change and favored retaining the status quo—i.e., that either washing or drycleaning may be listed on the label of a garment that can either be washed or drycleaned. Rawhide (PW-5) pp. 1–4 (cleaning by consumers is more hazardous to the environment than cleaning by drycleaners); NCPDC (28) pp. 1–2 (recommending home washing as the preferred method is not necessarily providing consumers with the best method of cleaning their garments).

[72] IFI (12) p. 2.

The AAMA also criticized the Clorox Market Facts survey, noting that it showed "nothing more than a preference for home washable garments and not a preference for a change in the rule." [73] AAMA opposed requiring that garments that can be either washed or drycleaned be labeled for home washing, stating: "Responsible apparel firms label their garments according to what they believe to be the best method of cleaning." [74] AAMA contended that the proposed change in the Rule would not reduce underlabeling (i.e., labeling washable garments "Dryclean") without increased enforcement of the Rule; that the proposed change would increase costs to manufacturers; and that there is a "gray area between garments that need some type of professional cleaning and finishing and those that can be maintained with home washing and finishing." [75]

In its post-workshop comment, AAMA also argued that the proposed change would be burdensome because of a lack of specific standards:

> the definition of "successful home washing" is yet to be established. . . . While a definition may exist for a manufacturer establishing a reasonable basis for a garment that is traditionally home washed, it is unclear if this definition also applies to a garment that is traditionally dry cleaned. Does such a garment have to pass an absolute or a comparative test when reasonable basis is established? For example, is a garment "successfully" home washed if it can withstand a certain number of home wash cycles, even though it can withstand a greater number of dry clean cycles? Similarly, a mandatory home wash standard suggests that a garment must fail every conceivable home care method before the label can warn against home care. We are concerned that manufacturers will be expected to establish a reasonable basis with a law that is not fully defined.[76]

AAMA reiterated its belief that the proposed change would increase costs to manufacturers, including costs of "additional testing, increased paperwork, lost production time, increased liabilities, and damaged garments," but stated that its members were unable to quantify these costs.[77] AAMA asserted that the proposed change would result in manufacturers losing revenues and customers because of high garment return rates for garments labeled for home washing when they should "ideally be dry cleaned" and because of "consumer anger at prematurely worn-out clothes." [78]

In addition to its argument that the proposed change would harm manufacturers, AAMA contended that it would harm consumers for several reasons, including increased costs. AAMA stated: "One apparel manufacturer currently carries a 'performance-satisfaction guarantee' that it vows to revoke if the proposed amendment were to become part of the Rule." Consumers will also be hurt, according to AAMA, because they may not feel certain that they are caring for their garments in the best way: "AAMA believes that consumers prefer to be given the best care instructions, not just the possible care instructions." AAMA further suggested that the proposed change would be confusing to consumers because the meaning of a simple " Dryclean" instruction will in effect change to "Dryclean Only." Finally, AAMA argued that the proposed change should not be adopted because it would be difficult to convey in symbols. [79]

3. Commission Decision Not to Adopt the Proposed Amendment

In promulgating or amending a trade regulation rule pursuant to section 18 of the FTC Act, 15 U.S.C. 57a, the Commission must act within its statutory mandate to "define with specificity acts or practices which are unfair or deceptive . . . (within the meaning of (section 5(a)(1) of the FTC Act))" and to "include requirements prescribed for the purpose of preventing such acts or practices." In promulgating the Rule in 1971 and amending it in 1983, the Commission found that it is both unfair and deceptive to fail to disclose any instructions of a method by which a garment can be cleaned. 36 FR 23889 and 48 FR 22736. The Commission did not find, however, that it is either unfair or deceptive to label a garment with only one method of cleaning when another method also can be used. Indeed, in amending the Rule in 1983, the Commission considered but rejected requiring that instructions for *both* washing and drycleaning (which the Commission referred to as "alternative care labeling") be included on care labels, stating that the record did not show that the benefits of such a requirement would exceed its costs:

> An alternative care labeling requirement would impose significant testing and substantiation costs on manufacturers. For example, it would require [manufacturers] to give drycleaning instructions, and to have a reasonable basis for those instructions, for all items they already label as washable. 48 FR at 22742.

In order to amend the Rule to require that a garment manufacturer list a *particular* cleaning method on the care label in all cases where that method is applicable, the Commission would have to find evidence indicating that the failure to list the method is both a prevalent practice and an unfair or deceptive one. The Commission also would have to conclude that the particular remedy was an appropriate and cost effective way to address the unfair or deceptive practice. [80] There is evidence in the record that some garments labeled "Dryclean," or even "Dryclean Only," are in fact home washable. There is also evidence that some consumers believe a "Dryclean" instruction means that a garment cannot be washed; thus, they may be misled by the instruction and incur a cleaning cost they would not otherwise incur. The Commission is not convinced, however, that the evidence is sufficiently compelling to justify a change in the Care Labeling Rule at this time. Moreover, the benefits of the proposed amendment are highly uncertain. For example, it is not clear from the record how many garments currently labeled "Dryclean" would have to be labeled for home washing if the amendment were adopted. [81] In addition, it appears that there have been changes in the marketplace, since the beginning of this rulemaking proceeding, that suggest regulatory change may not be needed. Therefore, after carefully weighing the evidence and the competing considerations at stake, the Commission has decided not to adopt the proposed amendment to require a home washing instruction for all garments that may be washed.

One impetus for the proposed amendment to require a home washing instruction where applicable was the environmental goal of reducing use of PCE. 63 FR at 25418–19. Discussion at the workshop and some post-workshop

[73] AAMA (PW–24) p. 3.

[74] AAMA (11) p. 2.

[75] Id.

[76] AAMA (PW–24) p. 2. Johnson Group (1) made a similar point, at p. 2, stating that appropriate criteria must be developed "specifying the product performance after a given number of cleaning cycles."

[77] AAMA (PW–24) p. 2.

[78] Id. at 2–3.

[79] Id. at 4.

[80] 16 CFR 1.14.

[81] In the absence of standards for a successful wash result (in terms of the durability of the garment as compared to its durability when drycleaned), there is, as suggested by the AAMA, a "gray area" where deference would have to be accorded the manufacturer's best judgment. AAMA (11) p. 2, (PW–24) p. 2. In addition, the use of "Dryclean" labels on garments that also could be washed seems to be limited to certain kinds of fabrics. Silk, wool, and rayon have been mentioned most frequently as fabrics often labeled "Dryclean" when in fact they could be washed. Other factors, such as the type of weave in the fabric and the dyes used also affect washability. Tr. 38–39; ATMI (9) p. 1.

comments indicated, however, that use of this solvent by the drycleaning industry has already been dramatically reduced.[82] The discussion suggested that the reason for this decline may be higher recovery rates for PCE during the cleaning process, as opposed to the use of other solvents or methods.[83] Furthermore, the discussion showed that the effect of a mandatory wash instruction on consumer behavior simply could not be predicted.[84] While it is clear that many consumers have a preference for more information, including washing instructions, it is not at all clear that a required washing instruction would change consumer behavior sufficiently to reduce either the use of PCE or the cost to consumers of caring for their garments.[85]

Another change in the marketplace is the emergence of new cleaning technologies, including professional wetcleaning[86] and liquid carbon dioxide.[87] These new technologies are considered to be more "environmentally friendly" than PCE[88] and provide additional options for consumers. Another new technology is the formulation of home cleaning products, such as Dryel (a new P&G product).[89]

A number of commenters urged the Commission to amend the Rule to require that all appropriate methods of care be listed on the care label.[90] While this proposal would have the advantage of maximizing the information and options provided to consumers, it is potentially costly and burdensome on manufacturers for the Commission to require that an evolving list of cleaning technologies be named on a permanent garment label and that manufacturers have substantiation for all of them (including contrary evidence for those not mentioned). The EPA suggested that the Commission not establish a preference for one environmentally friendly technology over others.[91] The Commission agrees with this position; the Commission does not agree, however, that the rulemaking record supports a determination that it is an unfair or deceptive act or practice for a manufacturer to fail to provide a label listing all methods or technologies that could be used to clean a garment. Moreover, the rapidly changing nature of the garment care industry suggests that the Commission should not intervene with a regulatory change that might in the future prove to be inadequate or inappropriate.

The Market Facts study shows that despite the perception by some consumers that a "Dryclean" instruction is tantamount to a "Dryclean Only" instruction, nearly half of those surveyed had in fact washed a garment with a "Dryclean" label.[92] Moreover, the majority of that group was satisfied with the results of washing. This suggests that consumers may be getting information about the ability to wash some garments with a "Dryclean" label from other reliable sources. Such sources could include retailers, consumer publications[93] or media sources, professional cleaners, other consumers, or a consumer's own past experience.

Representatives of some large retailers, including J.C. Penney, Sears, and QVC, indicated that frequently they ask manufacturers to change the care labels of garments with a "Dryclean" instruction where the retailers' own testing shows them to be machine washable.[94] They do so because they believe that a washing instruction will be the most useful one for their customers. This is an example of the marketplace responding to consumer preferences and demonstrates the ability of retailers to ensure that their customers get the type of care information they want. In addition, some manufacturers themselves indicate they are responding to consumers' desire for information on washability by putting washing instructions on garments when possible.[95]

Finally, to the extent that consumers are being misled by "Dryclean Only" labels on clothing that can be home laundered, the Commission points out that such an instruction would be illegal under the current Rule. 16 CFR 423.6(c)(2). The term conveys to consumers a warning that the item cannot be washed successfully. A manufacturer using such a label must have a reasonable basis for this warning, just as the manufacturer must also have a reasonable basis for stating that the garment can be drycleaned successfully. Although the Commission has not to date brought enforcement actions based on a misleading instruction of "Dryclean Only," it may do so in the future if this practice occurs.

The Commission hopes that manufacturers and their trade associations will respond affirmatively to the evidence in this proceeding that consumers want more information about cleaning options, particularly washing instructions where applicable.[96] One manufacturer suggested, for example, use of label language such as: "machine wash...or dry clean for best results."[97] If manufacturers are reluctant to lengthen labels to communicate that washing is possible, although drycleaning may be preferred for best long term results, they certainly can find other ways to convey the information. They could use hang tags, for example, to inform consumers that a "Dryclean" instruction on the label does not mean that the garment cannot be cleaned by washing or other methods, but rather that drycleaning is an appropriate way to clean the item

[82] An EPA representative stated: "From the numbers that I have seen . . . it would appear that the dry cleaners, the dry cleaning industry, has done an excellent job of reducing the use of PERC over the last ten and twenty years. . . . I think it's less than half of what it was ten years ago." Tr. p. 115. A representative of a drycleaners trade association in the Southwest stated in a written comment that improvements in the manner of using PERC over the last ten or fifteen years has resulted in a 75% reduction of usage of the solvent even though more clothes are cleaned in it every year. He further asserted that with the development of alternative solvents, including liquid carbon dioxide, drycleaning could become the environmentally preferable method of cleaning clothes in the future. Rawhide (PW–5) p. 2. IFI contends that PERC consumption has declined 70% over the past 10 years. IFI (PW–20) p. 2.

[83] Riggs Tr. p. 118 and (PW–13) p. 2; IFI (PW–20) p. 2.

[84] Stroup (EPA) Tr. pp. 115–16.

[85] As noted above, it is speculative as to how many garments now labeled "Dryclean" would actually have to be re-labeled for home washing. In addition, it has been suggested that some consumers take washable garments to a drycleaner rather than washing them at home simply for the convenience of professional cleaning and/or because they believe the clothing will look better or last longer if professionally cleaned. French (PW–8); IFI (12) p. 2; MFI (PW–7) p. 1; MACLA (PW–10) pp. 1–2; Spear (PW–27) p. 1; Greenpeace (27) p. 2; Tr. 107–08.

[86] *See* discussion in Part II.D, *infra*.

[87] *See* discussion in Part III, *infra*.

[88] EPA (PW–3) pp. 1–2.

[89] *See* discussion in Part III, *infra*. Although such products are not likely to be total replacements for professional drycleaning, they do offer consumers additional, and less costly, cleaning options.

[90] *E.g.*, IFI (PW–20) p. 2; Valet (PW–6) p. 1; MFI (PW–7) p. 1; MACLA (PW–10) p. 1; SEFA p. 1; Celanese (PW–12).

[91] EPA (PW–3) p. 2.

[92] As some commenters noted, however, this study does not necessarily provide insight about the total percentage of garments labeled "Dryclean" that might also be washable. The consumers who answered "yes" to this question could be referring to only one garment out of many wardrobe items with a "Dryclean" label or one garment over a period of many years.

[93] For example, Consumers Union published an article describing results obtained when blouses and sweaters with a "Dryclean" or "Dryclean Only" label were washed. Consumers Union concluded that many such garments can be home washed. Tr. pp. 38–39; article attached to comment of Consumers Union (21).

[94] Tr. pp. 58–60.

[95] *E.g.*, Pendleton (25) p. 1. A recent trade press article notes that, in direct response to consumer demand, some other manufacturers are dramatically increasing the number of washable items they offer for sale. "Cleaning Up With Washable Fabrics," A. D'Innocenzio, Women's Wear Daily, April 12, 2000.

[96] The AAMA agreed that "underlabeling" (i.e., labeling a garment simply "Dryclean" when washing at home is also a viable option) is a problem in the clothing industry. AAMA (PW–24) p. 6.

[97] Pendleton (25) p. 2.

and, in some cases, may be the preferred method for garment appearance or longevity. On a hang tag, consumers could be given additional useful information, not conducive to shortened form on a label, such as, with certain fabrics, white garments can be washed without harm, but brightly colored garments might fade if washed rather than drycleaned.

D. Professional Wetcleaning Instruction

1. Background of Proposed Amendment

Several comments submitted in response to the Regulatory Review Notice suggested that new technologies of professional wetcleaning offer promising alternatives to PCE-based drycleaning. Therefore, in the ANPR, the Commission requested information about the professional wetcleaning process. It also sought comment on the feasibility of amending the Rule to require such an instruction, when appropriate and in addition to a drycleaning instruction, for items that cannot be home laundered. 60 FR at 67105, 67107. Twenty-nine commenters addressed the wetcleaning issue. Some opposed amending the Rule to require such an instruction, arguing that the technology is too new and not yet well understood nor widely available. A number of commenters provided information about the available processes and equipment. In addition, they offered widely varying estimates of the percentage of garments now labeled "Dryclean" or "Dryclean Only" that could also be wetcleaned effectively. 63 FR at 25420–21. Ginetex stated that it is waiting for development of a standardized test method before incorporating wetcleaning into the European care labeling system.[98]

2. Response to the NPR

In the NPR, the Commission sought comment on a proposed amendment that would permit, though not require, a "Professionally Wetclean" instruction on care labels. Under the proposed amendment, this instruction would be in addition to, not in place of, a care instruction for another method of cleaning, such as washing or drycleaning. The NPR also set forth a proposed definition of "professional wetcleaning." [99] The proposed amendment specified that a label with a "Professionally Wetclean" instruction must state one type of professional wetcleaning equipment that may be used, unless the garment could be cleaned successfully by all commercially available types of professional wetcleaning equipment. The proposed amendment further specified that a label recommending professional wetcleaning must also list the fiber content of the garment.

In response to the NPR, 25 comments addressed the issue of professional wetcleaning. A few of these opposed the proposed amendment, stating that the technology and availability of this process are not yet sufficiently advanced to justify a care labeling instruction.[100] Most of the comments favored amending the Care Labeling Rule to recognize professional wetcleaning. They did not agree, however, on how this should be accomplished. Several argued that the Rule should require a "Professionally Wetclean" instruction whenever the method would be appropriate.[101] Some believed that a "Professionally Wetclean" instruction should always be accompanied by another appropriate care method,[102] while others asserted that a second instruction should be allowed, but not required.[103] With regard to the issue of specifying wetcleaning equipment, most thought it would be unnecessary and overly restrictive.[104] Of those addressing the issue of whether fiber content should be stated on a label with a "Professionally Wetclean" instruction, most suggested that fiber content should be required on all care labels, not just labels that recommend professional wetcleaning.[105] Eleven comments addressed the proposed definition of "wetcleaning;" [106] a few favored it, others suggested modifications, and others rejected it as too narrow, encompassing only the newest technology.

3. Public Workshop-Conference and Post-Workshop Comments

At the workshop, seven participants stated that professional wetcleaning is an established care method that is currently used not only by those who specialize in wetcleaning but also by many, if not most, conventional cleaners.[107] Six of the participants and two observers agreed that a definition and test procedure should be developed before the Commission amends the Rule to permit or to require a wetcleaning instruction.[108] The discussion made clear, however, that there is not one, clearly defined process performed by those who do professional wetcleaning.[109]

There was considerable discussion at the Workshop about the need to define "wetcleaning" and develop a test procedure that manufacturers could use to establish a reasonable basis for using a "Professionally Wetclean" instruction on labels. A representative of the Center for Neighborhood Technology read the definition CNT proposed in its comment responding to the NPR,[110] and representatives of ASTM and AATCC offered to consider establishing a definition and test procedure at the next meetings of those organizations, using

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[98] Ginetex, comment 63 to ANPR, p. 3

[99] See 63 FR 25417 at 25426:

Professional wet cleaning means a system of cleaning by means of equipment consisting of a computer-controlled washer and dryer, wet cleaning software, and biodegradable chemicals specifically formulated to safely wet clean wool, silk, rayon, and other natural and man-made fibers. The washer uses a frequency-controlled motor, which allows the computer to control precisely the degree of mechanical action imposed on the garments by the wet cleaning process. The computer also controls time, fluid levels, temperatures, extraction, chemical injection, drum rotation, and extraction parameters. The dryer incorporates a residual moisture (or humidity) control to prevent overdrying of delicate garments. The wet cleaning chemicals are formulated from constituent chemicals on the EPA's public inventory of approved chemicals pursuant to the Toxic Substances Control Act.

[100] See, e.g., Viola (5) p. 2; AHAM (18) p. 3 (Delay incorporating a "Professionally Wet Clean" instruction in the Rule "until the manufacturers can establish a reasonable basis for this method of garment refurbishment."); Alliance (33) p. 1 ("To create special labeling at this time is premature.").

[101] *See, e.g.*, Aqua Clean (4) p. 1; Cleaner By Nature (10) p. 1; Riggs (19) p. 2; PPERC (24) p. 2; Pendleton (25) p. 2; Greenpeace (27) p. 3; CNT (30) p. 2.

[102] *See, e.g.*, Johnson Group (1) p. 1; MACLA (2) p. 1; Industry Canada (8) p. 2; ATMI (9) p. 2; IFI (12) p. 2; Scanlon (13) p. 1; Riggs (19) p. 2; Pendleton (25) p. 2.

[103] *See, e.g.*, Nature's Cleaners (6) p. 1; Associazione Serica (15) p. 1; CNT (30) pp. 2–3.

[104] *See, e.g.*, Riggs (19) p. 2; Consumers Union (21) p. 2; CNT (30) p. 3 (label should not specify equipment type, but should specify finishing instructions, when needed.); PWN (31) p.-2; P&G (34) pp. 2, 3 (equipment statement should not be required; allow an optional statement of at least one type of equipment that can be used, unless all would work). But, see PPERC (24) p. 4 (require "Professionally Wetclean" instructions to specify wetclean finishing equipment, if necessary).

[105] *See, e.g.*, Consumers Union (21) p. 2; PPERC (24) p. 2; Greenpeace (27) p. 2; CNT (30) p. 3; PWN (31) p. 2.

[106] IFI (12) p. 2; Prestige Cleaners (16) p. 1; NCAI (17) p. 1; Riggs (19) p. 1; Consumers Union (21) p. 3; PPERC (24) p. 2; Greenpeace (27) p. 2; CNT (30) pp. 2–3; PWN (31) p. 2; P&G (34) pp. 2–3; Pellerin Milnor (37) p. 1.

[107] Star (CNT) Tr. pp. 155–59; Hargrove (PWN) Tr. p. 169; Boorstein (Prestige) Tr. p. 171; Sinsheimer (PPERC) Tr. p. 180; Oakes (QVC) Tr. p. 189; Davis (Cleaner by Nature) Tr. pp. 190–91; Scalco (IFI) Tr. p. 244.

[108] Riggs Tr. pp. 172–75; Easter (Univ. Ky.) [Observer] Tr. p. 176; Pullen Tr. pp. 181–83; Ferrell (Capital Mercury Apparel, Ltd.) Tr. p. 186; Lamar (AAMA) Tr. p. 189; Essma (Clorox) Tr. pp. 207–08; Jones, General Electric Company ("GE") [Observer] Tr. pp. 230–32; Stroup (EPA) Tr. p. 261.

[109] For example, Ms. Hargrove of PWN asked if IFI would agree that most of the nation's 30–35,000 cleaners do some amount of wetcleaning. Ms. Scalco of IFI agreed, but with the qualification that "there's vast differences in how they do that wet cleaning from shop to [shop]." Tr. p. 169.

[110] Ewing (CNT) Tr. p. 178.

the CNT definition and the definition proposed by the Commission in the NPR as a basis for discussion.[111] Responding to many participants' expressed need for additional time to standardize a definition and test method for wetcleaning, Commission staff conducting the workshop suggested that the rulemaking record could be kept open for nine months to a year to allow time for affected interests to develop a definition and test procedure before the Commission makes a final decision on whether to add a wetcleaning instruction to the Rule.[112] It was the general sense of the participants that this would be a desirable approach.[113]

Post-workshop comments confirmed that wetcleaning is a growing and viable technology for professional garment care,[114] and overwhelmingly supported the idea that the rulemaking record remain open on this issue for an extended period of time. The Center for Neighborhood Technology, for example, reported that at the February 1999 meeting of the AATCC, steps were taken to form a subcommittee to begin the development of the necessary test methods.[115] Another conference participant reported that the issue of defining "professional wetcleaning" had been placed on the ASTM D13.62 agenda.[116] Nineteen of the 23 post-workshop comments that addressed the timing question supported the idea of keeping the rulemaking record open to allow the relevant stakeholders a reasonable interval of time to continue the dialogue begun at the FTC's workshop.[117] The other four commenters believed the Commission should amend the Care Labeling Rule without delay so as not to hinder the development of this "environmentally friendly" cleaning technology.[118]

[111] Pullen Tr. p. 211; Riggs Tr. pp. 172–74.

[112] See Engle (FTC) Tr. pp. 228, 270–71; Kolish (FTC) Tr. pp.234–36, 294–95.

[113] See, e.g., Jones (GE) [Observer] Tr. pp. 230–32; Pullen Tr. p. 234. Sinsheimer (PPERC), however, asserted that, although some time would be necessary to standardize a definition and test, nine months would be too long a delay. Tr. pp. 229–30.

[114] E.g., EPA (PW–3) p. 1; Aqua Clean (PW–30) pp. 1–2; KYCC (PW–32) pp. 1–2.

[115] CNT (PW–26) p. 1.

[116] Pullen (PW–2) p. 1.

[117] EPA (PW–3) p. 2; Valet (PW–6) p. 2; Celanese (PW–12) p. 1; COBS (PW–14) p. 1; PWN (PW–15) p. 1; Prestige (PW–16) p. 1; Wentz (PW–17) p. 2; Consumers Union (PW–19) p. 1; IFI (PW–20) pp. 1, 4; Hallak (PW–22) p. 1; Avon (PW–23) p. 1; AAMA (PW–24) p. 7; Comet (PW–25) p. 2; CNT (PW–26) pp. 1–2; Randi (PW–31) p. 1; Swannanoa (PW–35) p. 3; Sno White (PW–36) p. 1; EFC9 (PW–37) p. 2; Perrys-Flanagans (PW–38) p. 1.

[118] PPERC (PW–21) pp. 2, 6; Greenpeace (PW–28) p.1; KYCC (PW–32) p. 3; Cypress (PW–33) p. 2.

4. Commission Decision Not to Adopt the Proposed Amendment and To Close the Record

Based on the discussion of professional wetcleaning at the workshop, combined with the NPR comments and the post-workshop comments, the Commission has concluded that it would be premature at this time to amend the Rule to allow a "Professionally Wetclean" instruction. The Commission believes that a final definition of "professional wetcleaning" and an appropriate test method for the process must be developed before the Commission can amend the Rule to permit a "Professionally Wetclean" instruction on required care labels.[119] This is necessary in order to give manufacturers clear guidance as to how they may establish a reasonable basis for a wetclean instruction. Currently, manufacturers can test garments for drycleaning by having them drycleaned in perchloroethylene. They can test for home washing by having them laundered at various water temperatures. In order to have a reasonable basis for a "Professionally Wetclean" instruction, manufacturers would need to be able to subject the garments to such a cleaning method. In this case, however, the "method" may encompass many different processes, and the one chosen would depend in large part on the particular cleaner. In recommending a particular cleaning method, manufacturers must have assurance that the method they are recommending—and for which they have established a reasonable basis—is the same method that cleaners actually would use to clean the garment labeled for that method. For this reason, a definition of "professional wetcleaning," for purposes of amending the Care Labeling Rule, must either describe all important variables in the process, so that manufacturers could determine that their garments would not be damaged by the process, or be coupled with a specific test procedure that manufacturers could use to establish a reasonable basis.[120]

One workshop participant suggested that a reasonable basis already exists in the marketplace in the form of wetcleaning being performed on a daily basis by professional wetcleaners, and that the Commission should add a wetcleaning instruction to the Rule while the definition and test are being formally standardized.[121] The Neighborhood Cleaners Association International suggested, in its NPR comment, that the use of a computer-controlled washer and dryer is not necessary and that it is the operator's knowledge of the chemistry of wetcleaning and of fabrics, fibers, and dyes that is determinative.[122] It is not clear how this body of knowledge could be incorporated into a definition, however, given that there is no way to ensure that persons who attempt such cleaning will have such knowledge. A regional drycleaners association stated that professional wetcleaning is an emerging technology that "has yet to be standardized."[123]

The Commission has concluded that some level of standardization is necessary before a "Professionally Wetclean" instruction can be placed on garments that are to be sold throughout the entire country. The Commission is encouraged by the fact that, during the year since the workshop took place, standards-setting organizations and other interested participants in this proceeding appear to have been working independently to resolve these outstanding issues. It appears, however, that progress has been slow toward developing a definition and test procedure that would enable manufacturers to have a reasonable basis for a wetcleaning instruction.

The Commission has learned, for example, that although AATCC is close to a final definition for the wetcleaning process, the draft definition appears to be general enough in its terminology that a test procedure would be needed to complement it before manufacturers could have a reasonable basis to determine if their garments would

[119] Presumably, all garments that could be safely washed at home also could be cleaned by professional wet cleaning. The record indicates, however, that the reverse is not true: there are certain garments that can be professionally wet cleaned but cannot be successfully washed and finished at home. Under the Care Labeling Rule, the first category of garments can be labeled for washing. No amendment of the Rule is needed to provide cleaners with the information about cleaning such garments in water. A proposed definition of "professional wet cleaning" needs to focus, therefore, only on the second category of garments, i.e., those that cannot be washed at home but could be professionally wet cleaned.

[120] Although the Rule does not require a manufacturer to conduct testing to establish a reasonable basis (see discussion, Part II.A.1, supra), other indices of reliability, such as past experience, would likely not he present with respect to a new technology such as professional wetcleaning.

[121] Sinsheimer (PPERC) Tr. pp. 179–81, 229, and 241.

[122] NCAI (17) p 2.

[123] SEFA (PW–11) p. 1. SEFA further stated: "Wetcleaning, as practiced in our industry, to date, includes everything from hand washing to computerized equipment to specialized finishing equipment." Id.

survive the process.[124] If, as currently seems to be the case with the AATCC draft, the definition is not sufficiently specific for a manufacturer to make such a determination, there must be a test procedure in place upon which manufacturers can rely before the Commission can amend the Rule in this respect.

It is clear to the Commission that additional time is necessary for standards-setting organizations such as AATCC or ASTM to develop a test procedure.[125] Given the fact that more than one year has already elapsed since the workshop, with development of only a very general draft definition for professional wetcleaning and no agreement on an appropriate test procedure, it appears unlikely that a final test procedure will be established in the near future.

Accordingly, the Commission is not amending the Rule to include a definition and instruction for wetcleaning. If a more specific definition and/or test procedure, which would provide manufacturers with a reasonable basis for a wetcleaning instruction, is developed in the future, the Commission will consider a proposal to add such an instruction to the Rule. In the meantime, the Commission is concluding this rulemaking proceeding.

III. Other Issues Raised in the Comments and the Workshop

Other proposals introduced in the comments or in the workshop included: Care instructions for liquid carbon dioxide; home fabric care instructions for products such as Dryel; a "professionally clean" instruction; and requiring specific dryer temperatures on care labels. Neither the ANPR nor the NPR afforded notice or solicited comment about these issues; hence, their inclusion in the rulemaking proceeding at this final stage would be inappropriate.

The use of liquid carbon dioxide as a cleaning solvent is a new technique that was introduced last year at one site in the United States. Micell Technologies, Inc. ("Micell"), the corporation that developed this new technology and launched it on February 9, 1999, recommended that the Commission require a care instruction for "Liquid Carbon Dioxide Process."[126] In its post-workshop comment, EPA urged the Commission "to begin the process to develop a standard definition and test protocol, and eventually a "Liquid Carbon Dioxide Process" care label instruction requirement."[127]

As noted above, the Commission will consider amending the Rule to recognize a new technology for care label purposes when there is a standard definition of that technology, so that manufacturers can give an instruction for "Method X" with assurance that the "Method X" they are describing (and which they have a reasonable basis to believe will refurbish their garments without damage) is the same "Method X" that cleaners who attempt to clean their garments are using.[128] The development of a standardized process must precede the development of a standardized definition, however, and the standardization of a new technology must, to a large extent, occur within the industry that is offering the new technology to the public. The Commission can help articulate a definition for a new technology when the technology has progressed to a stage where there is at least some standardization of the process. It is not within the Commission's mandate, however, to try to create demand for new technologies that might be environmentally desirable; nor does the Commission have the expertise necessary to evaluate the environmental effects of such new technologies.

Procter & Gamble recommended that the Commission modify the Rule to permit manufacturers to include an optional "home fabric care instruction" on labels of garments that could be cleaned at home with the use of a product such as Dryel, a new product marketed by P&G. P&G described Dryel as an "in-dryer "dryclean only" fabric care product which offers the consumers a convenient, safe and inexpensive method for cleaning and freshening garments at home." P&G also stated that it has developed test methods for Dryel performance.[129]

The Commission does not believe it is appropriate at this time to include in the Rule provisions for labeling for products such as Dryel. The only evidence the record contains about Dryel is evidence P&G submitted in response to the NPR. Hence, inclusion of a labeling instruction for products such as Dryel would be premature. The product can be offered to consumers regardless of whether instructions for its use appear on garment care labels. Indeed, if garment manufacturers wish to recommend the use of this type of product on their garments, they are free to do so as long as they have a reasonable basis for whatever recommendations they give consumers.

The Center for Neighborhood Technology suggested that the Commission consider a "Professionally Clean" label, which would leave the choice of solvent to the cleaner and would encompass both wet and drycleaning, along with future technologies. It also stated that "if a particular garment would not be serviceable in a specific solvent, this label could have an exclusion for that solvent."[130]

The Commission does not believe it is appropriate to include the option of a "Professionally Clean" label in the Rule at this time. Currently, the Rule refers to one method of professional cleaning—drycleaning—and requires the manufacturer to provide warnings when the normal drycleaning process (as defined in the Rule) must be modified to prevent damage to the garment. CNT's proposal for a "Professionally Clean" label would absolve the manufacturer of the responsibility to provide such warnings but would make the manufacturer responsible for warning that particular solvents could not be used on the garment. In fact, however, whether or not certain drycleaning solvents can be used can depend on whether or not warnings (such as, for example, "short cycle") are provided. The responsibility to provide

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[124] According to the Winter, 2000 volume of Wetcleaning Update, published by the Center for Neighborhood Technology, AATCC's RA43 Committee on Professional Textile Care approved the following definition for wetcleaning:

Professional Wetcleaning—A process for cleaning sensitive textiles (e.g., wool, silk, rayon, linen) in water by professionals using special technology, detergents and additives to minimize the potential for adverse effects. It is followed by appropriate drying and restorative finishing procedures.

Wetcleaning Update reported that the Committee on Textile Cleaning of the International Standards Organization also is conducting a ballot on this definition.

[125] As part of a project known as AQUACARB (partially funded by the European Union), six European research institutes are also attempting to develop a test procedure for professional wetcleaning. AATCC is coordinating its efforts with AQUACARB , as well as with research efforts at North Carolina State University. "Dynamics of Change in Professional Garment Cleaning," Textile Chemist and Colorist & American Dyestuff Reporter, December 1999, pp. 38, 41.

[126] Micell (PW–40) p. 1.

[127] EPA (PW–3) p. 2. While not specifically referring to liquid carbon dioxide, Greenpeace (PW–28) also commented, at p. 2, that it encouraged the FTC "to find a way to streamline and accelerate the proper labeling of these [new] processes' and suggested that environmental impact studies are a good way "to objectively prioritize the value of consumer technologies."

[128] If such an instruction is to be the only instruction on the care label, the Commission would also inquire into the accessibility of the method to consumers, who are accustomed to garments that are labeled for one of two widely available cleaning methods, washing or drycleaning.

[129] P&G (34) p. 4.

[130] CNT (30) p. 2, (PW–26) p. 2. PWN (PW–15) p. 1 and EFC9 (PW–37) p. 2 also supported a "Professionally Clean" label.

warnings as to how the normal drycleaning process should be modified for a particular garment is currently placed on the manufacturer. This is appropriate because, as the Commission said when it amended the Rule in 1983, the manufacturer, having chosen all the components of a garment, would be able to determine the "care traits of a given item" and "professional drycleaners may be unable to determine the combination of fibers and finishes used in a particular fabric and thus may not be able to determine the appropriate solvent and drycleaning procedure to be followed." 48 FR 22739.

Consumers Union recommended that the Rule require specific dryer temperatures (instead of "high," "medium," and "low") on care labels that recommend washing and machine drying because there are no standardized temperature definitions in the dryer industry for these words.[131] The Commission agrees that consumers would benefit if the terms that appear on clothes dryers—such as "high," "medium," and "low"—had standardized definitions, and it urges the industry to develop such definitions through private standards-setting organizations.[132] At the present time, the Commission does not believe that requiring specific dryer temperatures on care labels would be helpful to consumers because consumers have no way of knowing the temperature in their clothes dryers.

IV. Regulatory Analysis and Regulatory Flexibility Act Requirements

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a final regulatory analysis for amendments to a rule only when it (1) estimates that the amendments will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendments will cause a substantial change in the cost or price of goods or services that are used extensively by particular industries, that are supplied extensively in particular geographic regions, or that are acquired in significant quantities by the federal government, or by state or local governments; or (3) otherwise determines that the amendments will have a significant effect upon covered entities and upon consumers. A final regulatory analysis is not required because the Commission finds that the amendments to the Rule will not have such effects on the national economy, on the cost of textile wearing apparel or piece goods, or on covered businesses and consumers.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–12, requires agencies to conduct an analysis of the anticipated economic impact of proposed amendments on small businesses.[133] The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Care Labeling Rule covers manufacturers and importers of textile wearing apparel and certain piece goods, and the Commission preliminarily concluded in the NPR that any amendments to the Rule may affect a substantial number of small businesses. For example, unpublished data prepared by the U.S. Census Bureau under contract to the Small Business Administration ("SBA") show there are 288 manufacturers of men's and boys" suits and coats (SIC Code 2311), more than 75% of which qualify as small businesses under applicable SBA size standards.[134] There are more than 1,000 establishments manufacturing women's and misses' suits, skirts, and coats (SIC Code 2337), most of which are small businesses. Other small businesses are likely covered by the Rule.

Nevertheless, for reasons stated in the NPR, the Commission certified under the RFA that the proposed amendments to the Care Labeling Rule, if promulgated, would not have a significant economic impact on a substantial number of small businesses, and concluded, therefore, that a regulatory analysis was not necessary. To ensure that no significant economic impact was being overlooked, however, the Commission requested comments on this issue. The only commenters to address this issue did so with respect to the proposed amendment to require a home wash instruction for garments that can safely be washed at home " a proposal that the Commission has decided not to adopt at the present time.

The comments addressed no issues with regard to the impact of other proposed amendments on small businesses. The amendment to the reasonable basis provision of the rule is simply a clarification of the fact that the manufacturer or importer must have a reasonable basis for care instructions for the garment as a whole, not simply for the separate components. It does not impose any significant additional burden on covered entities. The amendments to the Rule's definitions of "cold," "warm," and "hot" simply conform the Rule to standards currently used in the textile industry and do not impose any additional burdens on manufacturers and importers. Therefore, the Commission has determined that the Rule will not have a significant impact on a substantial number of small entities and concludes that a regulatory flexibility analysis is not required. In light of the above, the Commission certifies, under section 605 of the RFA, 5 U.S.C. 605, that the Rule amendments adopted herein will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

The Rule contains various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Office of Management and Budget Control Number 3084–0103. A notice soliciting public comment on extending the clearance for the Rule through December 31, 2001, was published in the **Federal Register** on October 6, 1999, 64 FR 54324. OMB subsequently extended the clearance until December 31, 2001.

As noted above, the Rule requires manufacturers and importers of textile wearing apparel to attach a permanent care label to all covered items and requires manufacturers and importers of piece goods used to make textile clothing to provide the same care information on the end of each bolt or roll of fabric. These requirements relate to the accurate disclosure of care instructions for textile wearing apparel. Although the Rule also requires manufacturers and importers to base their care instructions on reliable evidence, it does not contain any explicit record keeping requirements. The Rule also provides a procedure whereby an industry member may petition the Commission for an exemption for products that are claimed

[131] Consumers Union (21) p. 4.

[132] Pursuant to section 12(d)(1) and (3) of the National Technology Transfer and Advancement Act of 1995, P.L. 104–13, 110 Stat. 783, when setting standards, federal agencies are required to use "technical standards that are developed or adopted by voluntary consensus standards bodies' except when use of such standards is "inconsistent with other laws or otherwise impractical."

[133] The RFA addresses the impact of rules on "small entities," defined as "small businesses," "small governmental entities," and "small (not-for-profit) organizations," 5 U.S.C. 601. The Rule does not apply to the latter two types of entities.

[134] SBA's revised small business size standards are published at 61 FR 3280 (Jan. 31, 1996).

to be harmed in appearance by the requirement for a permanent label. Such petitions have been filed only rarely in recent years.

In the NPR, the Commission preliminarily concluded that the proposed amendments to the Rule, if enacted, would not increase the paperwork burden associated with these paperwork requirements. The Commission stated that the proposed amendment to change the numerical definitions of the words "hot," "warm," or "cold," when they appear on care labels, would not add to the burden for businesses because they are already required to indicate the temperature in words and to have a reasonable basis for whatever water temperature they recommend. Moreover, businesses would not be burdened with determining what temperature ranges should be included within the terms "hot," "warm," or "cold" because the Rule would provide the appropriate numerical temperatures. OMB regulations, at 5 CFR 1320.3(c)(2), provide that "the public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within [the definition of collection of information]."

The Commission concludes on the basis of the information now before it that the amendments to the Care Labeling Rule adopted herein will not increase the paperwork burden associated with Rule compliance.

VI. Environmental Assessment

In the NPR, the Commission noted that it had prepared a proposed Environmental Assessment in which it analyzed whether the proposed amendments to the Rule were required to be accompanied by an Environmental Impact Statement. Because the main effect of the amendments is to provide consumers with additional information rather than directly to affect the environment, the Commission concluded in the proposed Environmental Assessment that an Environmental Impact Statement is not necessary.[135]

In the NPR, the Commission requested comment on this issue. Consumers Union stated that it believed the proposed amendment to permit labeling for professional wetcleaning (as opposed to requiring labeling for professional wetcleaning) would be a disincentive to the widespread adoption and use of wetcleaning, and therefore the Rule as proposed in the NPR would require an environmental impact statement for its potential negative impacts on the increase of wetcleaning technology.[136] Greenpeace also stated that an environmental impact statement "would be helpful in deciding how to finally amend the proposed Care Labeling Rule."[137]

The Commission has concluded that a final Environmental Assessment and an Environmental Impact Statement are not necessary. The Commission is not amending the Rule at this time to include an instruction for professional wetcleaning. Even if the Commission were deciding to include professional wetcleaning in the Rule, the main effect of that decision would be to provide consumers with additional information rather than directly to affect the environment. With respect to the final amendments of the Rule that are adopted herein, the Commission concludes that there is no discernible effect on the environment.

List of Subjects in 16 CFR Part 423

Clothing; Labeling, Reporting and recordkeeping requirements; Textiles; Trade practices.

VII. Final Amendments

In consideration of the foregoing, the Commission amends title 16, chapter I, subchapter D of the Code of Federal Regulations, as follows:

PART 423—CARE LABELING OF TEXTILE WEARING APPAREL AND CERTAIN PIECE GOODS AS AMENDED

1. The authority for part 423 continues to read as follows:

Authority: 38 Stat. 717, as amended; (15 U.S.C. 41, *et seq.*)

2. In § 423.1, the last sentence of paragraph (d) is revised to read as follows:

§ 423.1 Definitions.

* * * * *

(d) * * * When no temperature is given, e.g., *warm* or *cold*, hot water up to 145 degrees F (63 degrees C) can be regularly used.

3. In § 423.6, paragraphs (b)(1)(i) and (c)(3) are revised to read as follows:

§ 423.6 Textile wearing apparel.

* * * * *

(b) * * *

(1) * * *

(i) *Washing.* The label must state whether the product should be washed by hand or machine. The label must also state a water temperature—in terms such as *cold*, *warm*, or *hot*—that may be used. However, if the regular use of hot water up to 145 degrees F (63 degrees C) will not harm the product, the label need not mention any water temperature. [For example, *Machine wash* means hot, warm or cold water can be used.]

* * * * *

(c) * * *

(3) Reliable evidence, like that described in paragraph (c)(1) or (2) of this section, for each component part of the product in conjunction with reliable evidence for the garment as a whole; or

* * * * *

4. In Appendix A to Part 423—Glossary of Standard Terms, paragraphs 1.d. through 1.o. are redesignated as paragraphs 1.e. through 1.p., paragraphs 1.a. through 1.c. are revised, and a new paragraph 1.d. is added to read as follows:

Appendix A to Part 423—Glossary of Standard Terms

1. Washing, Machine Methods:

a. "Machine wash"—a process by which soil may be removed from products or specimens through the use of water, detergent or soap, agitation, and a machine designed for this purpose. When no temperature is given, e.g., "warm" or "cold," hot water up to 145 degrees F (63 degrees C) can be regularly used.

b. "Hot"—initial water temperature ranging from 112 to 145 degrees F [45 to 63 degrees C].

c. "Warm"—initial water temperature ranging from 87 to 111 degrees F [31 to 44 degrees C].

d. "Cold"—initial water temperature up to 86 degrees F [30 degrees C].

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By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–19491 Filed 8–1–00; 8:45 am]

BILLING CODE 6750–01–P

[135] The proposed Environmental Assessment is on the public record and is available for public inspection at the Public Reference Room, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, Washington, DC. It can also be obtained at the FTC's web site at http://www.ftc.gov on the Internet.

[136] Consumers Union (21) p. 2.

[137] Greenpeace (27) p. 3.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

RIN 3038–AB46

Exemption From Registration for Certain Foreign FCMs and IBs

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is adopting amendments to Part 30 of the Commission's rules to include new Rule 30.12.[1] The new rule permits certain foreign firms acting in the capacity of FCMs and IBs to accept and to execute foreign futures and options orders directly from certain U.S. customers without having to register with the Commission. The Commission also is amending Rule 30.1 to include definitions of "foreign futures and options customer omnibus account" and "foreign futures and options broker."

EFFECTIVE DATE: September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Andrew V. Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Proposed Rules

On August 26, 1999, the Commission published proposed amendments to Part 30 of its rules.[2] Part 30 sets forth rules governing the offer and sale of foreign futures[3] and foreign option[4] contracts. For example, with respect to foreign futures or foreign options customers,[5] Rule 30.4 requires any person engaged in the activities of a futures commission merchant ("FCM") or introducing broker ("IB"), as those activities are defined within the rule, to register with the Commission unless such person claims relief from registration under Part 30. The activities that are subject to regulation and that require registration under Part 30 include the solicitation or acceptance of orders for trading any foreign futures or foreign option contract and acceptance of money, securities or property to margin, guarantee or secure any foreign futures or foreign option trades or contracts.[6] Rule 30.10 allows the Commission to exempt a firm from compliance with any or all of the requirements of Part 30.[7]

In response to requests from industry representatives, the Commission proposed to adopt Rule 30.12 to permit certain foreign firms acting in the capacity of FCMs and IBs (referred to herein as foreign futures and options brokers ("FFOBs"))[8] to accept and to execute foreign futures and options orders directly from certain, sophisticated U.S. customers without having to register with the Commission.[9] Prior to the amendment to Part 30 adopted herein, only those FFOBs that were foreign affiliates of U.S. FCMs were permitted, subject to certain terms and conditions set forth in advisories issued by the Division of Trading and Markets ("T&M"), to accept and to execute orders from certain sophisticated U.S. customers, known as "authorized customers," through the FCM's foreign futures and options customer omnibus account.[10] As set forth in the final rule, any unregistered FFOB may accept orders directly from authorized customers for execution for or on behalf of such customers to be carried in the FCM's foreign futures and options customer omnibus account at the FFOB, or to be given up to another unregistered FFOB carrying the FCM's customer omnibus account. The Commission believes that permitting greater flexibility with respect to the direct foreign order transmittal process will provide authorized customers with more efficient access to international futures markets without requiring these customers to forfeit the operational and economic efficiencies that are the natural consequence of having all futures and options transactions carried by a well-capitalized U.S. FCM. The Commission also notes that such an arrangement affords the FCM a more complete picture of aggregate risk that the customer, and hence the FCM, is incurring.

II. Final Rule 30.12

The Commission received seven comment letters on the proposed rulemaking: One from a U.S. commodity exchange; one from the National Futures Association; two from futures industry professional associations; two from U.S. FCMs; and one from a global investment banking firm. The commenters generally supported the relief provided by proposed Rule 30.12, but suggested that the relief did not go far enough with respect to the participants in the direct foreign order transmittal process and the means by which orders may be transmitted. A discussion of the comments follows.

A. Authorized Customers

Proposed Rule 30.12 restricted the direct foreign order transmittal process to certain sophisticated U.S. customers, known as "authorized customers." The Commission derived its definition of "authorized customers" from the list of "eligible swap participants" ("ESPs") in Part 35 of the Commission's rules and the list of customers eligible to participate in the limited foreign order transmittal process set forth in prior advisories issued by T&M. As requested by industry representatives, the Commission also included in its definition certain commodity trading

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[1] Commission rules referred to herein are found at 17 CFR Ch. I (2000).

[2] 64 FR 46613 (August 26, 1999); 64 FR 46618 (August 26, 1999).

[3] "Foreign futures" means "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade." Rule 30.1(a).

[4] "Foreign option" means "any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade." Rule 30.1(b).

[5] "Foreign futures or foreign options customer" means "any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: Provided, That an owner or holder of a proprietary account as defined in paragraph (y) of [Rule 1.31] shall not be deemed to be a foreign futures or foreign options customer within the meaning of [Rules 30.6 and 30.7] of this part." Rule 30.1(c).

[6] *See* Rule 30.4.

[7] In particular, the Commission may exempt a foreign firm acting in the capacity of an FCM from registration under the Act and compliance with certain provisions of Part 30 based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator (referred to herein as "Rule 30.10 relief").

[8] As defined in amended Rule 30.1(e), "foreign futures and options broker" means any person located outside the United States, its territories or possessions that is a member of a foreign board of trade, as defined in Rule 1.3(ss), and is licensed, authorized or otherwise subject to regulation in the jurisdiction in which the foreign board of trade is located; or a foreign affiliate of U.S. futures commission merchant licensed, authorized or otherwise subject to regulation in the jurisdiction in which the affiliate is located.

[9] 64 FR 46618 (August 26, 1999).

[10] *See* CFTC Advisory No. 93–115, Comm. Fut. L. Rep. (CCH) ¶ 25,932 at 41,047 (T&M December 23, 1993)(permitting unregistered foreign affiliates of a U.S. FCM that carry the customer omnibus account of the FCM to receive orders for trades placed directly by certain foreign futures and options customers for execution for or on behalf of such customers through the FCM's customer omnibus account, provided that the affiliate had obtained confirmation of Rule 30.10 relief); CFTC Advisory No. 95–08, Comm. Fut. L. Rep. (CCH) ¶ 26,300 at 42,489 (T&M January 25, 1995)(extending the relief in Advisory No. 93–115 to unregistered foreign affiliates who had not received confirmation of Rule 30.10 relief). For a list of "authorized customers," see CFTC Advisory No. 93–115, ¶ 25,932 at 41,052–053. For a list of the terms and conditions governing the direct foreign order transmittal process under CFTC Advisories Nos. 93–115 and 95–08, see ¶ 25,932 at 41,053–054; ¶ 26,300 at 42,490–491, respectively.

As defined in amended Rule 30.1(d), "foreign futures and options customer omnibus account" means an account in which the transactions of one or more foreign futures or foreign options customers are combined and carried in the name of the originating futures commission merchant rather than in the name of each individual foreign futures or foreign options customer. The Commission notes that a foreign futures and options customer omnibus account may contain one or more accounts of persons located outside the U.S. (*i.e.*, persons excluded from the definition of "foreign futures or foreign options customer"), provided that all customer funds are treated in a manner consistent with Commission rules.

advisors ("CTAs") and those foreign persons performing a similar function.

Commenters on the proposed rulemaking recommended that the Commission's definition of "authorized customer" be modified in two ways. First, the commenters sought uniformity in defining the class of sophisticated U.S. customers to which less regulatory protections apply. Currently, there exist within Commission rules six definitions of sophisticated U.S. customers: qualified eligible participants, qualified eligible clients, ESPs, eligible participants for exchange transactions under § 4(c) of the Commodity Exchange Act ("Act"), eligible customers for post-execution allocation, and customers for which FCMs and IBs are not required to provide the Rule 1.55 risk disclosure statement. One commenter stated, "[t]his new definition [of "authorized customer"], along with the others, subjects firms to unnecessary compliance burdens without adding any real regulatory benefit." Second, the commenters specifically questioned why the category of persons who are eligible to engage in direct foreign order transmittal should be any more restrictive than the category of persons who are eligible to engage in complex, over-the-counter swap transactions addressed in Part 35.[11]

Upon review of these comments and its own reconsideration of the issue, the Commission has determined to revise the definition of "authorized customer" in the final rule to incorporate those changes recommended by the commenters. The Commission notes, however, that certain characteristics unique to the direct foreign order transmittal process prevent the Commission from merely cross-referencing the definition of an ESP (or any other current class of sophisticated customer) in the definition for "authorized customer." For example, Part 30 generally does not govern the offer and sale of foreign futures and foreign options contracts to persons located outside the U.S.[12] As such, rules regulating the conduct of an FCM (or any firm exempt from such registration) are generally limited to the firm's interaction with U.S. customers or to customers engaged in transactions on U.S. markets. In light of the obligations, discussed below, that will be required of an FCM (or a firm exempt from such registration) flowing from a customer's classification as an "authorized customer," the definition of "authorized customer" does not include persons located outside the U.S. Additionally, at the request of futures industry representatives, Rule 30.12, unlike Part 35, will focus on the financial sophistication of the person managing the assets and not the individual contributors to a commodity pool or the clients of a CTA. As such, Rule 30.12 will permit certain domestic and foreign trading advisors to place orders directly for foreign futures and foreign options contracts for customers that do not otherwise qualify as ESPs. The inclusion of advisors in this context thus provides for greater participation in direct foreign order transmittal than is permitted in swaps.[13]

As previously stated, Rule 30.12 defines an authorized customer, in part, as a foreign futures or foreign options customer that the carrying FCM has authorized to place orders for the account of the FCM's foreign futures and foreign options customer omnibus account. Since non-U.S. persons cannot, by definition, be foreign futures or foreign options customers, Rule 30.12 does not regulate the manner in which they execute foreign futures and option transactions through an FCM's foreign futures and options customer omnibus account. Non-U.S. persons, however, may act on behalf of authorized customers, provided that the non-U.S. persons independently qualify as an eligible direct foreign order transmittal participant. To clarify that non-U.S. persons may act on behalf of authorized customers, the Commission has determined to define "authorized customer" as "[a]ny foreign futures or foreign options customer, as defined in paragraph (c) of § 30.1, *or its designated representative*," that the FCM has authorized to place orders for the account of the FCM's foreign futures and options customer omnibus account.

As noted, the Commission also is incorporating the request from industry representatives to focus on the financial sophistication of the person managing the assets and not on the sophistication of the individual contributors to the clients of a CTA. The Commission is adopting Rule 30.12 to include in the definition of "authorized customer" any person whose investment decisions with respect to foreign futures and foreign option transactions are made by a CTA, including any investment adviser registered as such with the Securities and Exchange Commission that is exempt from regulation as a CTA under the Act or Commission regulations, or a foreign person performing a similar role or function subject as such to foreign regulation, provided that the CTA has total assets under management exceeding $50,000,000 and that the CTA places the foreign futures or foreign options order. The Commission recognizes that, under this scenario, the contact with the unregistered FFOB is limited to contact with the individual with the demonstrated financial sophistication, *i.e.*, the CTA. For the sake of consistency, the $50,000,000 asset under management test will apply to those CTAs providing the investment decisions for employee benefit plans subject to the Employee Retirement Income Security Act of 1974 that do not independently have total assets exceeding $5,000,000.

B. Carrying FCMs

1. Capital Requirements

In the proposed rulemaking, the Commission proposed to limit direct foreign order transmittal to authorized customers of FCMs whose adjusted net capital exceeds certain minimum requirements. As discussed in the rule proposal, a participating FCM may not be able to prevent an authorized customer from placing orders in excess of its trading limits with an unaffiliated FFOB.[14] Under these circumstances, an FCM may be responsible for the trades even though the positions exceed a customer's trading limits. Therefore, FCMs should possess sufficient capital to meet an unusually large margin call and thereby mitigate the increased systemic risk.[15] Accordingly, as set forth in paragraph (b)(1) of the proposed rule, the Commission proposed to require FCMs whose authorized customers use

[11] From the list of ESPs, the definition of "authorized customers" in proposed Rule 30.12 excluded: floor brokers, floor traders, employee benefit plans, individuals with net worth in excess of $10,000,000, state and local governments, and non-U.S. persons trading on their own behalf (the latter do not come within the definition of foreign futures or foreign options customer in Rule 30.1(c)).

[12] *But see, e.g.*, Rule 30.9(a)("It shall be unlawful for any person * * * in or in connection with any account, agreement or transaction involving any foreign futures contract or foreign options transaction: (a) To cheat or defraud or attempt to cheat or defraud *any other person*." (emphasis added)); *In re Sogemin Metals*, CFTC Docket No. 00–04 (February 7, 2000) (Commission order instituting administrative proceedings against and accepting an offer of settlement from respondent located in the U.S. dealing with non-U.S. customers for trading on a non-U.S. exchange).

[13] *See* Rule 35.1(b)(2).

[14] Financial obligations arising from a customer trading in excess of its limits are resolved according to privately-negotiated contractual arrangements entered into by the customer, the FCM and/or the intermediating FFOBs, and/or the rules of the exchange or clearing organization governing such a transaction.

[15] While some of these risks are present in domestic give-up arrangements, they are mitigated by the fact that on U.S. exchanges all participants to the transaction, including the floor brokers and floor traders, are either clearing members of that exchange or guaranteed by clearing members. Not all foreign exchanges have similar requirements.

direct foreign order transmittal to maintain either $50,000,000 in adjusted net capital as defined by Rule 1.17(c)(5), or three times the amount of adjusted net capital required by Rule 1.17(a)(1)(i)(B).[16] In the alternative, the proposed rule stated that any FCM not satisfying either standard could seek relief from the capital requirement in accordance with the petition process described in Rule 140.99.

Three of the seven commenters addressed the capital requirements for carrying FCMs. One commenter agreed with the Commission that capital requirements are a necessary element of direct foreign order transmittal, but suggested that the standard for adjusted net capital be $50,000,000, or the greater of three times the FCM's capital requirement under Rule 1.17(a)(1)(i)(A) or three times the FCM's capital requirement under Rule 1.17(a)(i)(B) (and not just paragraph (a)(1)(i)(B)). The commenter noted that, under certain circumstances, an FCM possessing adjusted net capital of three times the amount set forth in paragraph (a)(1)(i)(B), i.e., three times four percent of the required segregated and secured amounts, but not (a)(1)(i)(A), i.e., three times $250,000, or $750,000, may not possess sufficient capital to provide the necessary cushion in the event of a systemic failure. The second commenter requested that the Commission more specifically describe the type of showing an FCM would be required to make in order to obtain relief from the capital requirement and recommended that the petition for relief from the capital requirement be made in accordance with Rule 30.10, instead of Rule 140.99. The third commenter questioned whether "less onerous [capital] requirements" for FCMs that cannot satisfy either capital standard are justified.

The Commission has determined to adopt Rule 30.12 by incorporating certain comments regarding the capital requirement for carrying FCMs. As adopted, Rule 30.12 will require that FCMs maintain adjusted net capital of $20,000,000, or the greater of three times the FCM's capital requirement under Rule 1.17(a)(1)(i)(A) or three times the FCM's capital requirement under Rule 1.17(a)(i)(B). After careful consideration, the Commission has determined that $20,000,000 in adjusted net capital provides sufficient cushion to protect against the risk of defaulting authorized customers. Accordingly, the Commission is adopting, for those FCMs who do not meet the requirement to maintain at least triple their minimum capital requirement under Rule 1.17, a $20,000,000 minimum adjusted net capital figure rather than the proposed $50,000,000. The decrease in the minimum capital requirement is consistent with the Commission's recent proposal to permit FCMs with at least $20,000,000 in adjusted net capital to act as intermediaries for non-institutional customers on derivatives transaction facilities.[17]

The Commission believes that the decrease in the required minimum capital for FCMs under Rule 30.12 as amended as compared to proposed Rule 30.12 should reduce the need for relief from this requirement. The Commission further believes that any request for relief from this capital requirement must be addressed on a case-by-case basis and believes that a petition for relief from this requirement should be made in accordance with Rule 140.99. The Commission expects that any FCM seeking relief from the Rule 30.12 capital requirement shall be required to likewise demonstrate its ability to mitigate the risk associated with the activities of its authorized customers, including, but not limited to, the use of internal controls to evaluate on an ongoing basis the risk of default for any given authorized customer.

2. Internal Controls

The proposed rulemaking also required carrying FCMs to institute internal controls designed to regulate the direct foreign order transactions entered into by authorized customers (or their designated representatives), including procedures to determine which customers qualify as authorized customers and to monitor the FCM's risk relative to its authorized customers' risk aggregated across all markets. The Commission did not receive any comments dealing with these aspects of the proposed rule.

3. Disclosure

The Commission received one comment regarding the requirement that carrying FCMs furnish a written disclosure to each authorized customer advising the customer of the additional risks the customer may be assuming in placing orders directly with an FFOB. The commenter inquired whether the FCM may provide the disclosure as a separate document or as additional text in the customer account agreement. Either method will be acceptable. The Commission also has determined to eliminate from the final rule the requirement that the written disclosure be "in a form acceptable to the Commission." In light of the existing requirement for written disclosures to track the language set forth in the rule, the requirement as to form is superfluous. Accordingly, paragraphs (b)(3)(i) and (ii) have been combined into one paragraph for the final rule.

C. Eligibility Requirements for Foreign Futures and Options Brokers

Proposed Rule 30.12 would have required participating foreign brokers to be FFOBs, as defined in Amended Rule 30.1(e), and either a clearing member of the foreign exchange on which the trade is executed, a majority-owned affiliate of such a clearing member, or an affiliate of the FCM carrying the authorized customer's account. Amended Rule 30.1(e) defines FFOB to mean a non-U.S. person that is a member of a foreign board of trade, as defined in Rule 1.3(ss), licensed, authorized or otherwise subject to regulation in the jurisdiction where the foreign board of trade is located, or a foreign affiliate of a U.S. FCM, licensed, authorized or otherwise subject to regulation in the jurisdiction where the affiliate is located.

Two commenters addressed the eligibility requirements for foreign brokers. While one commenter recommended that Rule 30.12 require a participating foreign broker to be an FFOB and either a clearing member on any foreign exchange (or its majority-owned affiliate) or an affiliate of any FCM, another commenter stated that any FFOB should be eligible to participate in the direct foreign order transmittal process.

In light of these comments and the foreign order transmittal-specific risk disclosure to be distributed by each authorized customer's FCM, combined with the sophisticated nature of the participating customers and the required internal controls for FCMs, the Commission has determined that the additional layer of protection set forth in the eligibility requirements for foreign brokers is not necessary. Accordingly, the adopted rule only will require participating foreign brokers to

[16] Rule 1.17(a)(1)(i)(B). Rule 1.17(a)(1)(i) requires FCMs to maintain adjusted net capital equal to or in excess of the greatest of various defined amounts, including:

(A) $250,000, or

(B) Four percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured accounts.

[17] 65 FR 39008 (June 22, 2000).

be FFOBs, as defined in Amended Rule 30.1(e).

Commenters also requested that the Commission clarify the application of Rule 30.12 with respect to FFOBs that carry the customer account for any foreign futures and options customer directly rather than on an omnibus basis. The Commission confirms that an FFOB that directly carries the customer account for any foreign futures and options customer may permit that customer to place orders directly with another FFOB in accordance with the procedures set forth herein, provided that: (i) The carrying FFOB has registered as an FCM, or has applied for and received confirmation of Rule 30.10 relief in accordance with existing procedures; (ii) the carrying FFOB complies with the terms and conditions set forth in the rule; and (iii) the foreign futures and options customer qualifies as an authorized customer. Additionally, the Commission confirms that authorized customers of FCMs that maintain a customer omnibus account with a single foreign affiliate who, in turn, maintains customer omnibus accounts with clearing brokers at foreign exchanges also may participate in the direct foreign order transmittal process described in Rule 30.12.

D. Automated Order Routing Systems

Proposed Rule 30.12 permitted qualifying FFOBs to accept orders directly from authorized customers only via telephone, facsimile and email. The relief from registration under proposed Rule 30.12 did not extend to orders placed directly with FFOBs via automated order routing systems ("AORSs"). With one exception, the commenters generally requested that the Commission modify proposed Rule 30.12 to permit FFOBs to accept orders placed via AORSs.

The Commission has determined to revise Rule 30.12 to permit qualifying FFOBs to accept orders directly from authorized customers via an AORS.[18] The Commission notes that the requirement for each carrying FCM to establish control procedures governing the direct contacts between authorized customers and FFOBs and to have in place appropriate risk management procedures to monitor its own risk relative to its authorized customers' risk aggregated across all markets applies regardless of whether the authorized customer places the order via telephone, facsimile, e-mail or an AORS.

E. Effect of the Adopted Rule

In the proposed rulemaking, the Commission noted that Rule 30.12, if adopted, would replace prior T&M advisories as the sole source of authorization for unregistered FFOBs to accept orders directly from foreign futures and options customers. The Commission invited comment from any party adversely affected by that determination. Having received no comment on this issue, the Commission hereby rescinds CFTC Advisories Nos. 93–115 and 95–08. Adopted Rule 30.12 will apply to all regulated activities with all current and new foreign futures and foreign options customers as of the effective date of the new rule. As a point of clarification, adopted Rule 30.12 will not apply to brokerage activities originating with non-U.S customers. Additionally, this rule does not amend, abrogate or otherwise alter the transactional relationship between any U.S. foreign futures and foreign options customer and any non-U.S. firm that has received confirmation of Rule 30.10 relief. With respect to U.S. customers, a firm with Rule 30.10 relief must continue to abide by the local laws, rules and regulations deemed acceptable for substituted compliance by the Commission, as well as the Commission laws and regulations outlined in orders issued by the Commission.

III. Amendments to Rule 30.1

In the **Federal Register** notice issued concurrently with proposed Rule 30.12, the Commission proposed, among other things, to amend Rule 30.1 to include definitions for "foreign futures and options customer omnibus account" and FFOBs.[19] Currently, for purposes of Parts 15 through 21 of the Act, Rule 15.00(a)(1) defines the term "foreign broker" to mean "any person located outside the United States or its territories who carries an account in commodity futures or commodity options on any contract market for any other person." For the sake of clarity, the Commission believes that a formal definition of FFOB is necessary to distinguish it from the definition of "foreign broker." Having gradually expanded the relief associated with direct foreign order transmittal by reference to customer omnibus accounts, it is also appropriate to define the term "foreign futures and options customer omnibus account." The Commission did not receive any comments regarding either of the proposed definitions. Accordingly, the Commission is adopting the proposed definitions of "foreign futures and options customer omnibus account" and "foreign futures and options brokers" as Rules 30.1(d) and (e), respectively.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in adopting rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[20] The Commission previously has determined that registered FCMs and CPOs are not small entities for the purpose of the RFA.[21] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.[22] Due to the minimum requirements for the amount of money under management for eligible CTAs under Rule 30.12, the Commission believes that it is unlikely that firms defined as small businesses could qualify as an authorized customer for the purpose of engaging in direct order transmittal. Further, the final rule would not add any legal, accounting, consulting or expert costs because the determination of whether a business qualifies as an authorized person requires minimal analysis of data that will be readily accessible. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

When publishing final rules, the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.* (Supp. I 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. These rules contain information collection requirements. As required by the PRA, the Commission has submitted a copy of this rule to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)). In response

[18] For purposes of Rule 30.12, an AORS generally means any system of computers, software or other devices that allows entry of orders through another party for transmission to a board of trade's computer or other automated device where trade matching or execution takes place.

[19] 64 FR 46613.

[20] 47 FR 18618–18621 (April 30, 1982).

[21] 47 FR 18619–18620.

[22] 47 FR 18618–18620.

to the Commission's invitation in the proposed rulemakings to comment on any potential paperwork burden associated with these rules, no comments were received.

List of Subjects in 17 CFR Part 30

Definitions, Foreign futures, Consumer protection, Foreign options, Registration requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4(b), 4c and 8a thereof, 7 U.S.C. 2, 6(b), 6c and 12a (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

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

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Section 30.1 is amended by adding paragraphs (d) and (e) to read as follows:

§ 30.1 Definitions.

* * * * *

(d) *Foreign futures and options customer omnibus account* is defined as an account in which the transactions of one or more foreign futures and foreign options customers are combined and carried in the name of the originating futures commission merchant rather than in the name of each individual foreign futures or foreign options customer.

(e) *Foreign futures and options broker* (FFOB) is defined as a non-U.S. person that is a member of a foreign board of trade, as defined in § 1.3(ss) of this chapter, licensed, authorized or otherwise subject to regulation in the jurisdiction in which the foreign board of trade is located; or a foreign affiliate of a U.S. futures commission merchant, licensed, authorized or otherwise subject to regulation in the jurisdiction in which the affiliate is located.

3. Section 30.12 is added to read as follows:

§ 30.12 Direct Foreign Order Transmittal.

(a) *Authorized customers defined.* For the purposes of this section, an "authorized customer" of a futures commission merchant shall mean any foreign futures or foreign options customer, as defined in § 30.1(c), or its designated representative, that:

(1) The futures commission merchant has authorized to place orders for the account of the futures commission merchant's foreign futures and options customer omnibus account; and

(2)(i) Is an eligible swap participant, as defined in § 35.1(b)(2) of this chapter, or

(ii) Whose investment decisions with respect to foreign futures and foreign option transactions are made by a commodity trading advisor subject to regulation under the Act, including any investment adviser registered as such with the Securities and Exchange Commission that is exempt from regulation as a commodity trading advisor under the Act or Commission regulations, or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that the commodity trading advisor has total assets under management exceeding $50,000,000 and that the commodity trading advisor places the foreign futures or foreign options order.

(b) *Procedures for futures commission merchants.* It shall be unlawful for any futures commission merchant to permit an authorized customer to place orders for execution in the futures commission merchant's foreign futures and options customer omnibus account directly with a person exempt from registration under paragraphs (c) and (d) of this section, unless, such futures commission merchant:

(1) Meets one of the following capital requirements, as determined by the futures commission merchant's most recent required filing of a Form 1–FR–FCM with the Commission:

(i) Possesses $20,000,000 in adjusted net capital, as defined by § 1.17(c)(5) of this chapter; or

(ii) Possesses the greater of three times the amount of adjusted net capital required by § 1.17(a)(1)(i)(A) of this chapter or three times the amount of adjusted net capital required by § 1.17(a)(1)(i)(B) of this chapter; and

(2) Has established control procedures that will serve as guidelines for permitting direct contacts between any authorized customer of the futures commission merchant and any person exempt from registration under paragraphs (c) or (d) of this section, and has in place appropriate risk management procedures to monitor its own risk relative to its authorized customers' risk aggregated across all markets, including, but not limited to, procedures to ensure that each authorized customer satisfies the participation criteria set forth in paragraph (a) of this section and to specify the manner in which trades may be executed through its customer omnibus account pursuant to this section;

(3) Furnishes a written disclosure statement to each such authorized customer advising the customer of the additional risks the customer may be assuming in placing orders directly with the foreign broker. The disclosure statement must read as follows:

Direct Order Transmittal Client Disclosure Statement

This statement applies to the ability of authorized customers [1] of [FCM] to place orders for foreign futures and options transactions directly with non-US entities (each, an "Executing Firm") that execute transactions on behalf of [FCM's] foreign futures and options customer omnibus accounts.

Please be aware of the following should you be permitted to place the type of orders specified above.

- The orders you place with an Executing Firm are for [FCM's] foreign futures and options customer omnibus account maintained with a foreign clearing firm. Consequently, [FCM] may limit or otherwise condition the orders you place with the Executing Firm.
- You should be aware of the relationship of the Executing Firm and [FCM]. [FCM] may not be responsible for the acts, omissions, or errors of the Executing Firm, or its representatives, with which you place your orders. In addition, the Executing Firm may not be affiliated with [FCM]. If you choose to place orders directly with an Executing Firm, you may be doing so at your own risk.
- It is your responsibility to inquire about the applicable laws and regulations that govern the foreign exchanges on which transactions will be executed on your behalf. Any orders placed by you for execution on that exchange will be subject to such rules and regulations, its customs and usages, as well as any local laws that may govern transactions on that exchange. These laws, rules, regulations, customs and usages may offer different or diminished protection from those that govern transactions on US exchanges. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction. United States regulatory authorities may be unable to compel the enforcement of the rules of regulatory authorities or markets in non-US jurisdictions where transactions may be effected.
- It is your responsibility to determine whether the Executing Firm has consented to the jurisdiction of the courts in the United States. In general, neither the Executing Firm nor any individuals associated with the Executing Firm will be registered in any capacity with the Commodity Futures Trading Commission. Similarly, your contacts with the Executing Firm may not be sufficient to subject the Executing Firm to the

[1] You should contact your account executive regarding your eligibility to participate in the direct order transmittal process.

jurisdiction of courts in the United States in the absence of the Executing Firm's consent. Accordingly, neither the courts of the United States nor the Commission's reparations program may be available as a forum for resolution of any disagreements you may have with the Executing Firm, and your recourse may be limited to actions outside the United States.

• Unless you object within five (5) days, by giving notice as provided in your customer agreement after receipt of this disclosure, [FCM] will assume your consent to the aforementioned conditions.

(c) *Exemption for foreign futures and options brokers.* Any person not located in the United States, its territories or possessions, who is otherwise required in accordance with this part to be registered with the Commission as a futures commission merchant or as an introducing broker will be exempt from such registration, notwithstanding that such person accepts orders for foreign futures and foreign options transactions from authorized customers of a registered futures commission merchant that meets the requirements of paragraph (b)(1) of this section, provided, that:

(1) The orders are executed for or on behalf of the foreign futures and options customer omnibus account of a registered futures commission merchant;

(2) The person does not solicit or accept any money, securities or property (or extend credit in lieu thereof) directly from any U.S. foreign futures and options customer to margin, guarantee or secure any trades or contracts that result or may result therefrom; and

(3) The person is a foreign futures and options broker, as defined by § 30.1(e).

(d) *Exemption for foreign futures and options brokers carrying a foreign futures and options customer omnibus account.* Any person not located in the United States, its territories or possessions, who is otherwise required in accordance with this part to be registered with the Commission as a futures commission merchant will be exempt from such registration, notwithstanding that such person:

(1) Carries the foreign futures and options customer omnibus account of a futures commission merchant that meets the requirements of paragraph (b)(1) of this section;

(2) Accepts orders for foreign futures and foreign options transactions from authorized customers for the execution of the trades for or on behalf of the foreign futures and options customer omnibus account of a registered futures commission merchant either directly or pursuant to a give-up arrangement; and

(3) The person is a foreign futures and options broker, as defined by § 30.1(e).

Dated: July 27, 2000.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–19444 Filed 8–1–00; 8:45 am]

BILLING CODE 6351–01–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 231, and 271

[Release Nos. 33–7877; IC–24582; File No. S7–14–00]

RIN 3235–AH93

Exemption From Section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act for Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Interim final rule with request for comments.

SUMMARY: The Securities and Exchange Commission is adopting, as an interim final rule, rule 160 under the Securities Act of 1933 to exempt from the consumer consent requirements of the Electronic Signatures in Global and National Commerce Act ("Electronic Signatures Act") prospectuses of registered investment companies that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors. Consistent with Commission interpretations of existing law, the rule permits a registered investment company to provide its prospectus and supplemental sales literature on its web site or by other electronic means without first obtaining investor consent to the electronic format of the prospectus. The Commission also is clarifying its interpretation on the responsibility of registered investment companies for hyperlinks to third-party web sites from their advertisements or sales literature.

DATES: *Effective Date:* October 1, 2000, except for the amendments to parts 231 and 271, which are effective July 27, 2000.

Comment Date: We are publishing interim final regulations, rather than a notice of proposed rulemaking, for the reasons given below in the section entitled "Waiver of Proposed Rulemaking and Request for Comments." We will, however, consider any comments received on or before September 1, 2000, and will revise rule 160 if necessary.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–14–00; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. 20549–0102. Electronically submitted comment letters will be posted on the Commission's Internet site (http://www.sec.gov).[1]

FOR FURTHER INFORMATION CONTACT: Maura S. McNulty, Senior Counsel, or Kimberly Dopkin Rasevic, Assistant Director, (202) 942–0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting rule 160 [17 CFR 230.160] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act") as an interim final rule pursuant to Section 104(d)(2) of the Electronic Signatures Act.

I. Exemption from Consumer Consent Requirements of the Electronic Signatures Act

A. Discussion

We are adopting, as an interim final rule, rule 160 under the Securities Act to exempt from the consumer consent requirements of the Electronic Signatures Act prospectuses of registered investment companies ("funds") that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors. The rule implements Section 104(d)(2) of the Electronic Signatures Act, which directs the Commission to provide this exemption within 30 days after the date of enactment.[2] Rule 160, consistent with Commission interpretations of existing law, permits a fund to provide its prospectus and supplemental sales literature on its web site or by other electronic means without first obtaining

[1] We do not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, § 104(d)(2).

an investor's consent to the electronic format of the prospectus.[3]

The Electronic Signatures Act

On June 30, 2000, President Clinton signed the Electronic Signatures Act into law. The Electronic Signatures Act is designed to facilitate the use of electronic records and signatures in interstate or foreign commerce.[4] Among other things, the Act provides that if a statute or regulation requires that information relating to a transaction in interstate commerce be provided to a consumer in writing, the use of an electronic record to provide the information satisfies the "writing" requirement if the consumer consent requirements of the Electronic Signatures Act are met.[5]

Section 104(d)(2) of the Electronic Signatures Act directs the Commission to issue a regulation or order, within 30 days after the date of enactment, exempting from the Act's consumer consent requirements "any records that are required to be provided in order to allow advertising, sales literature, or other information concerning a security issued by [a registered] investment company * * * to be excluded from the definition of a prospectus under section 2(a)(10)(A) of the Securities Act * * *." The purpose of this exemption is "to clarify that documents, such as sales literature, that appear on the same [w]eb site as, or which are hyperlinked to, the final prospectus required to be delivered under the federal securities laws, can continue to be accessed on a [w]eb site as they are today under [Commission] guidance for electronic delivery."[6]

Section 5(b)(1) and Section 2(a)(10)(a) of the Securities Act

Section 5(b)(1) of the Securities Act prohibits the use of interstate commerce to transmit any "prospectus" relating to a security with respect to which a registration statement has been filed unless the prospectus meets the requirements of Section 10 of the Securities Act.[7] "Prospectus" is broadly defined in Section 2(a)(10) of the Securities Act to include any advertisement or communication, "written or by radio or television, which offers any security for sale."[8] Because the term "offer" is defined and interpreted broadly under the Securities Act, written or broadcast communications that relate to a security or that aid in the selling effort with respect to a security generally must be in the form of a Section 10 prospectus to comply with Section 5(b)(1).[9]

There is a limited exception to the general requirement that written or broadcast offers after the filing of a registration statement must be in the form of a Section 10 prospectus. So-called "supplemental sales literature" may be used after the effective date of a registration statement if it is preceded or accompanied by a prospectus that meets the requirements of Section 10(a) of the Securities Act ("statutory prospectus").[10] Many investment companies, particularly mutual funds, continuously offer and sell their shares, and are continuously subject to the restrictions on communications imposed by Section 5(b)(1).[11] As a result, investment companies frequently rely on the "supplemental sales literature" exception.

Rule 160

Commission interpretations of existing law permit a fund to provide its supplemental sales literature on its web site or by other electronic means without first obtaining an investor's consent to receive in electronic form the statutory prospectus that is required to precede or accompany the supplemental sales literature.[12] Rule 160 would clarify that a fund may continue this practice after the effective date of the Electronic Signatures Act. Specifically, the rule would provide that a prospectus for an investment company registered under the Investment Company Act of 1940 that is sent or given for the sole purpose of permitting a communication not to be deemed a prospectus under Section 2(a)(10)(a) of the Securities Act is exempt from the consumer consent requirements of the Electronic Signatures Act. We remind funds, however, that we do not consider supplemental sales literature that is electronically delivered to have been preceded or accompanied by an electronic statutory prospectus unless investors are provided with reasonably comparable access to both the prospectus and the supplemental sales literature.[13]

The exemption provided by rule 160 is not available when a fund prospectus is provided to an investor for a purpose other than, or in addition to, permitting the fund's supplemental sales literature not to be deemed a prospectus under Section 2(a)(10)(a) of the Securities Act. For example, if an investor who views a fund's prospectus and supplemental sales literature on its web site subsequently purchases shares of the fund, rule 160 will not apply to the delivery of the prospectus that is required in connection with the purchase.[14]

Today we express no view regarding how the Electronic Signatures Act affects the federal securities laws. We are continuing to consider the implications of the Electronic Signatures Act on securities transactions.

B. Procedural Matters

Waiver of Proposed Rulemaking and Request for Comments

Under the Administrative Procedure Act ("APA"), the Commission may issue a final rule without prior notice and comment upon a finding of good cause.[15] We find that good cause exists for dispensing with the normal notice and comment requirements of the APA in connection with interim final rule 160.

Congress directed the Commission to issue, within 30 days after the date of enactment of the Electronic Signatures Act, a rule exempting from the consumer consent requirements of the Act fund prospectuses that are used for the purpose of permitting sales literature to be provided to prospective investors. It is impracticable for the Commission to comply with the normal notice and comment requirements within the mandated 30-day period. In making the determination that good cause exists for waiving notice and comment, we also note that rule 160 will make no changes to Commission

[3] *See* Securities Act Release No. 7856 (April 28, 2000) [65 FR 25843 (May 4, 2000)], at 25847 (the "2000 Release"); Securities Act Release No. 7233 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)], at 53463 and 53465, Ex. 14, Ex. 15, Ex. 34, and Ex. 35.

[4] Electronic Signatures Act preamble.

[5] Electronic Signatures Act § 101(c)(1).

[6] *See* 146 Cong. Rec. H4359 (daily ed. June 14, 2000) (statement of Rep. Dingell).

[7] 15 U.S.C. 77e(b)(1).

[8] 15 U.S.C. 77b(a)(10).

[9] Section 2(a)(3) of the Securities Act defines the term "offer" to include "every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value." 15 U.S.C. 77b(a)(3).

[10] Under Section 2(a)(10)(a) of the Securities Act, supplemental sales literature that is preceded or accompanied by a prospectus meeting the requirements of Section 10(a) is not considered to be a prospectus and therefore is not subject to Section 5(b)(1) of the Securities Act.

[11] 15 U.S.C. 77e(b)(1). A "mutual fund" is a managed open-end investment company that issues redeemable securities. Section 5(a)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a–5(a)(1).

[12] *See* 2000 Release, *supra* note 3.

[13] *See* 2000 Release, *supra* note 3, at 25846, n. 34.

[14] *See, e.g.*, Section 5(b)(2) of the Securities Act, 15 U.S.C. 77e(b)(2) (statutory prospectus must precede or accompany securities delivered by mail or in interstate commerce).

[15] Under section 553(b)(3)(B) of the APA, the Commission may dispense with prior notice and comment when it finds, for good cause, that such notice and public comment are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B).

interpretations of existing law or industry practice. Thus, the Commission finds that the Congressional directive and the absence of any negative effect of the rule on any interested parties render observation of the normal notice and comment requirements under the APA impracticable and unnecessary.

Rule 160 will be effective October 1, 2000, the effective date for the consumer consent requirements of the Electronic Signatures Act. Although the Commission has dispensed with prior notice of proposed rulemaking, the Commission is interested in receiving written comments on the rule within 30 days after its publication in the **Federal Register**. The Commission will consider those comments and make changes to the rule if necessary.

Paperwork Reduction Act

This interim final rule does not contain a collection of information.

Cost/Benefit Analysis

The Commission is sensitive to the costs imposed by its rules. We anticipate that rule 160 will not impose any new regulatory costs on funds, since the rule would provide an exemption from the consumer consent requirements of the Electronic Signatures Act. Moreover, because the rule makes no changes to Commission interpretations of existing law or industry practice, it should not produce any new costs. However, we request that commenters address the costs and benefits of the rule, and provide supporting empirical data for any positions advanced.

Consideration of Burden on Promotion of Efficiency, Competition, and Capital Formation

Rule 160 is being issued as an interim final rule. In accordance with its responsibilities under Section 2(b) of the Securities Act, the Commission, in determining whether rule 160 is consistent with the public interest, has considered, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[16] Because the rule makes no changes to prior Commission interpretations of existing law or industry practice, it should not affect efficiency, competition, or capital formation. The Commission is, however, interested in receiving any comments regarding rule 160's impact on efficiency, competition, and capital formation. We will consider those comments in making any changes to the rule if necessary. Likewise, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[17] the Commission is interested in receiving information regarding the potential effect of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that rule 160 will not have a significant economic impact on a substantial number of small entities. Rule 160 provides an exemption from the consumer consent requirements of the Electronic Signatures Act, effective on the date the Act goes into effect. The rule will make no changes to Commission interpretations of existing law or industry practice. Moreover, all registered investment companies that are small entities will qualify for the exemptive relief provided by rule 160. Accordingly, the rule will not have a significant economic impact on a substantial number of small entities. We include the Certification in this release as Attachment A. Although rule 160 is being issued as an interim final rule, the Commission is interested in receiving written comments relating to the Certification. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

II. Clarification of Guidance on Responsibility for Hyperlinked Information

In the Commission's April release on the use of electronic media (the "2000 Release"), we expressed our view that when an issuer embeds a hyperlink to a web site within a document that is required to be filed or delivered under the federal securities laws, the issuer should always be deemed to be adopting the hyperlinked information for purposes of the antifraud provisions of the federal securities laws.[18] We wish to clarify, effective immediately, that this view does not extend to a mutual fund's responsibility for hyperlinks to third-party web sites from fund advertisements or sales literature.[19]

Mutual funds, unlike operating companies, are required to file their advertisements and sales literature with the Commission.[20] We do not believe, however, that it follows from this filing requirement that a mutual fund, unlike an operating company, should always be responsible for third-party information to which it establishes a hyperlink from an advertisement or sales literature, without regard to the specific facts and circumstances.

The issue of whether a fund should be deemed to have adopted information on a third-party web site to which a fund advertisement or sales literature is hyperlinked should be resolved by reference to the factors set forth in the 2000 Release, as applied to the specific facts and circumstances.[21] In addition, when a fund is in registration, if the fund establishes a hyperlink from its web site to information that meets the definition of an "offer to sell," "offer for sale," or "offer" under Section 2(a)(3) of the Securities Act, a strong inference arises that the fund has adopted that information for purposes of Section 10(b) of the Securities Exchange Act of 1934 and rule 10b–5.[22]

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[16] Section 2(b) of the Securities Act, 15 U.S.C. 77b(b), requires the Commission, when determining whether a rule is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[17] Pub. L. No. 104–21, Title II, 110 Stat. 857 (1996).

[18] *See* 200 Release, *supra* note 3, at 25847, n. 41 and 25849. In the 2000 Release, we indicated that an issuer could be liable for third-party information to which the issuer establishes a hyperlink under either an "entanglement" or "adoption" theory. *Id.* at 25848–9. Here, we discuss the "adoption" theory only.

[19] Our references to mutual fund advertisements and sales literature include rule 482 advertisements, 17 CFR 230.482, tombstone advertisements, 17 CFR 230.134, supplemental sales literature, 15 U.S.C. 77b(a)(10)(a), and generic advertisements, 17 CFR 230.135a.

See Letter dated June 19, 2000, from the Investment Company Institute ("ICI Letter") and Letter dated June 16, 2000, from Fidelity Investments ("Fidelity Letter"), available in SEC Public Reference File S7–11–00 (requesting clarification on responsibility of mutual funds for hyperlinks to third-party web sites from advertisements or sales literature).

[20] *See* Section 24(b) of the Investment Company Act, 15 U.S.C. 80a–24(b). Pursuant to rule 24b–3 under the Investment Company Act, funds generally satisfy this requirement by filing advertisements and sales literature with NASD Regulation, Inc. 17 CFR 270.24b–3.

The filing requirements of Section 24(b) apply to registered unit investment trusts and registered face-amount certificate companies, as well as to mutual funds. We have used the term "mutual fund" in this section for simplicity, but we also intend our statements about mutual funds to apply to registered unit investment trusts and registered face-amount certificate companies. Closed-end investment companies are not subject to Section 24(b), and they are not covered by out statements about mutual funds.

[21] These factors include the context of the hyperlink, the presence or absence of precautions against investor confusion about the source of the information, and the presentation of hyperlinked information. *See* 2000 Release, *supra* note 3, at 25848–9. As we stated in the 2000 Release, these factors form a useful framework for analysis, but they are not intended to be exclusive or exhaustive.

[22] *See* 2000 Release, *supra* note 3, at 25849.

A fund may hyperlink to third-party web sites for a variety of reasons in a variety of circumstances, including links to educational materials such as our Mutual Fund Cost Calculator and continuous links to independent third-party news and information sources.[23] We wish to encourage mutual funds to provide information to investors that will educate them and assist them in making informed investment decisions. We also wish to discourage funds from providing information to investors that is inaccurate or misleading. Both goals are furthered by considering all the facts and circumstances in determining whether a fund has adopted information on a third-party web site to which a fund advertisement or sales literature is hyperlinked.[24]

III. Statutory Authority

The Commission is adopting rule 160 pursuant to authority set forth in Section 19(a) of the Securities Act [15 U.S.C. 77s(a)] and Section 104(d) of the Electronic Signatures Act.

List of Subjects

17 CFR Part 230

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 231

Securities.

17 CFR Part 271

Investment companies, Securities.

Text of Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 is amended by adding the following citation:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z-3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

Section 230.160 is also issued under Section 104(d) of the Electronic Signatures Act.

* * * * *

2. Section 230.160 is added to read as follows:

§ 230.160. Registered investment company exemption from Section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act.

A prospectus for an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) that is sent or given for the sole purpose of permitting a communication not to be deemed a prospectus under section 2(a)(10)(a) of the Act (15 U.S.C. 77b(a)(10)(a)) shall be exempt from the requirements of section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act.

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

3. Part 231 is amended by adding Release No. 33–7877 and the release date of July 27, 2000, to the list of interpretative releases.

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

4. Part 271 is amended by adding Release No. IC–24582 and the release date of July 27, 2000, to the list of interpretative releases.

Dated: July 27, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Attachment A to the preamble will not appear in the Code of Federal Regulations.

Attachment A.—Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. Section 605(b), that rule 160 under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (Release No. 33–7877) would not have a significant economic impact on a substantial number of small entities. The rule would exempt from the consumer consent requirements of the Electronic Signatures in Global and National Commerce Act [Pub. L. No. 106–229] prospectuses of registered investment companies that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors.

The rule will make no changes to Commission interpretations of existing law or industry practice. Moreover, all registered investment companies that are small entities will qualify for the exemptive relief provided by rule 160. Accordingly, the rule will not have a significant economic impact on a substantial number of small entities.

Dated: July 24, 2000.

Arthur Levitt,

Chairman

[FR Doc. 00–19446 Filed 8–1–00; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 161, 250, and 284

[Docket Nos. RM98–10–005 and RM98–12–005; Order No. 637–B]

Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services

Issued July 26, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order denying requests for rehearing and providing clarification of Order No. 637–A [65 FR 35705, Jun. 5, 2000]. Order No. 637 revised Commission regulations to enhance the competitiveness and efficiency of the interstate pipeline grid. The rehearing and clarification requests addressed in the order principally relate to posting and bidding requirements for pre-arranged capacity release transactions and segmentation. The order also addresses requests related to penalties, reporting requirements, and the right of first refusal (ROFR).

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294.

Robert A. Flanders, Office of Markets, Tariffs, and Rates Federal Energy Regulatory Commission, 888 First

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[23] Securities and Exchange Commission, *The SEC Mutual Fund Cost Calculator* (last modified December 6, 1999) <http://www.sec.gov/mfcc/mfcc-int.htm>.

[24] Commenters on the 2000 Release have requested that we provide additional guidance for determining when a mutual fund is responsible for third-party information to which the fund establishes a hyperlink. *See* ICI Letter, *supra* note 19; Fidelity Letter, *supra* note 10. We have asked the Division of Investment Management to consider this suggestion.

Street, NE., Washington, DC 20426, (202) 208–2084.

SUPPLEMENTARY INFORMATION:

Order Denying Rehearing

In Order No. 637–A,[1] issued on May 19, 2000, the Commission denied in part and granted in part rehearing of Order No. 637,[2] and clarified its policies as they relate to the regulatory changes made in Order No. 637. Order Nos. 637 and 637–A revised the Commission's open access regulations to improve the efficiency of the market and to provide captive customers with the opportunity to reduce their cost of holding long-term pipeline capacity, while continuing to protect against the exercise of market power. Specifically, Order Nos. 637 and 637–A granted a waiver for a limited period of the price ceilings for short-term released capacity; revised the Commission's regulatory approach to pipeline pricing in order to enhance the efficient allocation of capacity; revised regulations relating to scheduling procedures, capacity segmentation, and pipeline penalties to improve the efficiency and competitiveness of the pipeline grid; revised pipeline reporting requirements to provide greater transparency; and revised the right of first refusal (ROFR) to remove economic biases.

In Order No. 637–A, the Commission upheld the regulations adopted in Order No. 637, making only minor adjustments relating to penalties, reporting requirements, and the ROFR. The Commission also responded to requests for clarification and explained its policies relating to implementation of the regulations adopted in Order No. 637.

Twenty-one requests for rehearing or clarification of Order No. 637–A were filed.[3] The principal requests relate to the issues of posting and bidding requirements for pre-arranged capacity release transactions at the maximum tariff rate and the requirement that pipelines permit shippers to segment capacity as well as Commission policies as they relate to segmentation. There also are a few requests for rehearing or clarification relating to the penalty provisions, reporting requirements, and the ROFR.

As discussed below, this order denies the requests for rehearing. The order does not address rehearing or clarification requests that were fully discussed in Order No. 637–A or that are not generic, but relate to particular pipelines or potential issues that may arise in filings. These issues include requests by the Pa. Office of Consumer Advocate about pipeline filings to implement capacity auctions, by AGA, El Paso, and DTI relating to the mechanics of the ROFR pricing policy, and by National Fuel regarding the receipt and delivery points available to a shipper exercising its ROFR for a volumetric portion of its capacity. These concerns can be addressed in specific cases, if they arise.

I. Exemption from the Posting and Bidding Requirements for Pre-Arranged Capacity Release Transactions at the Previous Maximum Rate

In Order No. 637, the Commission granted a waiver of the maximum rate ceiling applicable to short-term capacity release transactions until September 30, 2002. The Commission, however, retained the pre-existing posting and bidding requirements for capacity release transactions.[4] Under the Commission regulations issued in Order No. 636 and continued in Order No. 637, the Commission requires all capacity release transactions, including prearranged deals, to be posted for bidding with two exceptions. First, pre-arranged deals for 31 days or less are not subject to posting and bidding, but any rollover or continuation of such transactions is subject to bidding. Second, transactions at the "maximum rate applicable to the release" are exempt from posting and bidding.[5]

On rehearing of Order No. 637, a number of shippers sought rehearing or clarification regarding the continued applicability to short-term capacity release transactions of the prior exemption from posting and bidding for prearranged capacity release transactions at the maximum tariff rate. They contended local distribution companies should be permitted to enter into pre-arranged transactions at the maximum tariff rate without having those transactions subject to the posting and bidding requirements. They argued that maintaining pre-arranged transactions at the maximum rate would facilitate state retail unbundling programs.

In Order No. 637–A, the Commission denied the rehearing and clarification requests. The Commission explained that the current regulation exempted transactions at the "maximum rate applicable to the release," so that once the maximum rate ceiling was removed, all transactions (except for transactions qualifying for the 31 days or less exemption) would be subject to the posting and bidding requirements. In order to ensure that the regulations are clear, the Commission amended 284.8 (i) to specify that the exemption from the posting and bidding requirements for transactions at the maximum rate would not apply to short-term capacity release transactions as long as the waiver of the maximum rate ceiling is in effect.

In denying rehearing, the Commission found that requiring posting and bidding is necessary to ensure that capacity is equally available to all shippers and to protect against undue discrimination and the exercise of market power.[6] The Commission also explained that in individual cases where an LDC considers an exemption from the posting and bidding requirement essential to further a state retail unbundling program, it, together with the appropriate state regulatory agency, may request the Commission to waive the regulation. If the LDC seeks such a waiver, the Commission stated the LDC should be prepared to have all of its capacity release transactions and any re-releases of that capacity limited to the applicable maximum rate for pipeline capacity.

AGA, UGI, Florida Cities, Dominion LDCs, New England Local Distribution Cos., Pa. Office of Consumer Advocate, and National Fuel seek rehearing of the Commission's determination to require posting and bidding for transactions at the previous maximum tariff rate for release transactions. They also request that local distribution companies not be required to relinquish their ability to sell above the maximum rate as condition of a waiver exempting maximum rate transactions from the posting and bidding requirements. They contend that failing to provide an exemption from posting and bidding for prearranged capacity release transactions at the previous maximum rate impedes state retail unbundling efforts where LDCs are required to release capacity to marketers serving in-state customers at maximum rates.

[1] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637–A, 65 FR 35706 (Jun. 5, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,099 (May 19, 2000).

[2] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (Feb. 25, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,308 (Feb. 9, 2000).

[3] Those filing rehearing and clarification requests are listed on the Appendix.

[4] Order No. 637, 65 FR at 10182, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,279.

[5] 18 CFR 284.8(h)(1) (formerly 18 CFR 284.243(h)(1)).

[6] Order No. 637–A, 65 FR at 35718, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,568–69.

The Commission denies the requests for rehearing of its requirement for posting and bidding for capacity release transactions at the previous maximum tariff rate. As the Commission explained in Order No. 637–A, Order No. 636 generally required posting and bidding for capacity release transactions to ensure that capacity is equally available to all shippers and to protect against undue discrimination and the exercise of market power. The only reason that prearranged deals at the maximum rate were exempt from the posting and bidding requirements was that, as long as a rate ceiling was in effect, no other shipper could beat the pre-arranged deal and bidding and posting requirements would be superfluous.[7] With the removal of the rate ceiling during the waiver period, pre-arranged transactions always can be beaten by a higher bid, and posting and bidding for transactions at the previous (and now non-existent) maximum rate is necessary to ensure that capacity is available to all shippers and to protect against undue discrimination and the exercise of market power.

Order No. 637 proceeded from the premise that lifting the price ceiling for short-term capacity release transactions would create a more efficient and competitive national market for gas and transportation in which shippers seeking short-term capacity would pay the market price. Providing certain customers with a preferential rate for short-term capacity runs counter to that premise. It would make the overall gas market less efficient because capacity could be allocated to those shippers who do not place the greatest value on obtaining it. Indeed, providing preferential rates to certain customers is inconsistent with the basic premise of Order No. 637, because such preferences can lead to other customers having to pay higher than market rates for capacity. Reserving capacity at preferential rates for certain customers will remove that capacity from the market, with the likely effect of increasing prices for the capacity remaining to be sold to other customers.[8]

The rehearing requests also address potential conditions the Commission may impose in considering requests for waiver of the posting and bidding requirements. The Commission has yet to receive a waiver request or determine whether to grant such a waiver. Each waiver request, together with any associated conditions, will be considered on an individual basis based on the facts presented in the waiver request.

II. Segmentation

In Order No. 636, the Commission adopted a policy of requiring pipelines to permit shippers to divide their capacity into segments and use each segment for different purposes. In Order No. 637, the Commission responded to the inconsistent application of segmentation rights by adopting a regulation requiring pipelines to enable each shipper "to make use of the firm capacity for which it has contracted by segmenting that capacity into separate parts for its own use or for the purpose of releasing that capacity to replacement shippers to the extent such segmentation is operationally feasible."[9] The Commission required pipelines to submit *pro forma* tariff filings to comply with this regulation. In Order No. 637–A, the Commission made no changes in the regulation, but explained some of its policies regarding the implementation of the segmentation requirement in the pipeline compliance filings.

Columbia Gas seeks rehearing of the requirement that pipelines make *pro forma* compliance filings. Other requests relate to policies involved in implementing the requirement, particularly those relating to segmentation on reticulated pipelines and policies relating to the use of primary receipt points, discounting, backhauls, and priority for transactions at secondary points.

A. Compliance Filing Requirement

Columbia Gas contends that under section 5 of the Natural Gas Act, the Commission must show that an existing pipeline tariff is unjust and unreasonable and that its proposed change is just and reasonable. Columbia Gas maintains the Commission has not explained whether it is acting under section 5 in the rulemaking or in the individual compliance filings and, accordingly, has not demonstrated that it has the authority to direct pipelines to make filings to change their tariffs to permit segmentation or to demonstrate that they should not have to comply with the new requirement.

The Commission exercised its section 5 authority in this case by making the generic determination that pipeline tariffs that do not permit segmentation, where segmentation is feasible, are unjust and unreasonable, because the pipeline is denying shippers the ability to use their firm capacity as flexibly as the pipelines did when they were merchants.[10] Because pipelines may have to implement segmentation in different ways depending on the operational characteristics of their systems, the Commission established *pro forma* compliance filings, just as it did in Order No. 636, as the means for determining how pipelines can best comply with the regulation. Any final determination on whether a particular pipeline tariff is unjust and unreasonable will be made in the individual compliance filing.

The Commission has the authority under section 5 of the NGA to establish a hearing to determine whether a pipeline's tariff is unjust and unreasonable and to determine the proper just and reasonable tariff provision.[11] The NGA gives the Commission the authority to require pipelines to provide information necessary to make those determinations,[12] which is the information required by the pro forma compliance filings. Indeed, Columbia Gas concedes the Commission "may have sufficient authority to direct a pipeline to show cause why a specific alleged conduct should not be found to be in violation of its tariff or the Commission's regulations."[13] In this case, the Commission has directed the filing of pro forma tariffs to determine whether pipelines are in compliance

[7] Release of Firm Capacity on Interstate Natural Gas Pipelines, Order No. 577, 60 FR 16979 (Apr. 4, 1995), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] para. 31,017, at 31,316 (Mar. 29, 1995) ("when the pre-arranged deal is at the maximum rate, no other shipper can make a better bid for that capacity").

[8] For example, suppose an LDC has 10,000 Dth of available capacity with a maximum rate of $1 during a time at which the price of capacity would exceed the $1 value. Suppose that if the LDC places all 10,000 Dth for sale, the price per unit would be $1.25 given the demand characteristics of the shippers bidding for capacity. However, if the LDC sells 500 Dth to certain shippers, such as marketers who sell gas behind the LDC's city-gate, for the former maximum rate of $1.00, that leaves only 500 Dth remaining to be sold to other interstate shippers. By limiting the amount of available capacity through sales at below-market prices, the price for the remaining capacity is likely to rise above $1.25 in order to allocate the capacity to the remaining interstate shippers.

[9] Order No. 637, 65 FR at 10195, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,303–304; 18 CFR 284.7(e).

[10] Order No. 637–A, 65 FR at 35730, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,590–91; Transmission Access Policy Study Group v. FERC, No. 97–1715, at 59–61, 2000 U.S. App. LEXIS 15362 (D.C. Cir. June 30, 2000) (authority to make a generic public interest finding under *Mobile-Sierra*); Wisconsin Gas Co. v. FERC, 770 F.2d 144, 1166–67 (D.C. Cir. 1985) (authority to make generic finding that practices are unjust and unreasonable in rulemakings).

[11] 15 U.S.C. 717d(a).

[12] 15 U.S.C. 717i (Commission can require natural gas companies to file special reports and to require natural gas companies to answer questions); 717m (c) (Commission can summon witnesses and require production of documents relevant to a hearing).

[13] Columbia Gas Rehearing Request, at 15.

with its regulation requiring them to permit segmentation.

B. Segmentation on Reticulated Pipelines

Columbia Gas and DTI seek clarification or rehearing relating to the requirement for segmentation on reticulated pipelines. Columbia Gas seeks clarification that a pipeline is permitted to demonstrate that capacity segmentation is not operationally feasible on its system. DTI argues that in requiring segmentation for reticulated pipelines the Commission ignored the detrimental effect that requiring segmentation for one zone pipelines with postage stamp rate designs can have on the development of market centers.

DTI asserts that the Commission erred by not providing greater guidance on how segmentation on reticulated pipelines should be accomplished.

The determination as to whether and how to implement segmentation on particular pipelines will be determined in the *pro forma* compliance filing proceedings. As the Commission stated in Order No. 637–A, the Commission expects all pipelines, including reticulated pipelines, to implement segmentation to the maximum extent feasible and that factors such as current rate design should not be an obstacle to permitting segmentation. The Commission expects pipelines and their customers to work together to propose methods of segmentation that will work given the operational characteristics of the pipeline. On reticulated pipelines, this may include allowing segmentation on straight-line portions of the pipeline where capacity paths can be constructed, using different methods for allocating storage capacity so that customers will have capacity paths from storage to delivery points, or permitting shippers authority to segment subject to operational limitations when needed to protect system integrity or other shippers rights. The details of segmentation need to be worked out in the first instance between the pipelines and their customers who have the greatest knowledge of the physical operations of the system.

C. Allocation of Point Rights and Point Priority

In Order No. 637–A, the Commission discussed its policies on how segmentation should be implemented, including policies relating to overlapping capacity segments, allocation of primary point rights, point discounts, and mainline priority at secondary points within a contract path. Rehearing or clarification requests were received on several of these policies.

1. Segmentation at Paper Pooling Points

In Order No. 637–A, the Commission clarified that shippers can divide their capacity through segmentation at any transaction point on the pipeline system, including virtual transaction points, such as paper pooling points, as well as at physical interconnect points, such as market centers.[14] Columbia Gas and El Paso contend that the Commission has not explained how segmentation at paper points will work. Columbia contends that permitting segmentation at paper points will permit shippers to multiply their capacity beyond their contract demand.

The Commission was merely clarifying that shippers would have the right to segment capacity at locations on a pipeline that may not be physical interconnect points, but are recognized gas transaction points, such as paper pooling points. For example, a shipper may want to release capacity upstream of a pooling point and obtain gas at the pooling point for transportation on a downstream segment of its capacity. Columbia Gas has not explained how such segmentation will permit shippers to multiply their capacity beyond their contract demand. To the extent such difficulties exist, they are more appropriately examined in the compliance filings where the operational characteristics of the pipeline can be evaluated.

2. Forwardhaul-Backhaul Overlaps at a Point

In Order No. 637–A, the Commission explained its policy regarding overlap of capacity segments. As a general matter, the Commission's policy is that shippers are permitted to segment capacity and overlap those mainline segments up to the contract demand of the underlying contract. As part of this discussion, the Commission found that a shipper using a forwardhaul and a backhaul to bring gas to a delivery point in an amount that exceeds its contract demand is not overlapping mainline capacity.

INGAA, Williams, and El Paso Pipelines seek rehearing of this determination. They claim that the Commission is changing an existing policy without adequate justification and that overlaps of capacity at a point result in shippers receiving service in excess of the original shipper's contract.

In the first place, the Commission is not changing a well established policy. The only case cited by those seeking rehearing in which the Commission did not permit a forwardhaul and backhaul overlap to a single point was a Commission letter order, addressed only to the parties in the case and which did not discuss the policy issues involved.[15] More recently, in a formal order, the Commission found that a forwardhaul and a backhaul to 23 meter stations treated as a single delivery point for nomination and scheduling purposes would not be considered an overlap.[16] In making this determination, the Commission found it unnecessary to analyze whether gas may have physically overlapped at some mainline point in excess of the shipper's contract demand. Distinguishing between overlaps at a single point and those to a collection of points treated as a single point is not a useful basis for determining shippers' rights to use their capacity.

The Commission, therefore, has eliminated such artificial distinctions and moved to a policy in which forwardhauls and backhauls to the same point are not considered an overlap. Those seeking rehearing have not shown that pipelines face any operational problems in permitting such flexibility nor have they demonstrated that such flexibility adversely affects other shippers or the pipeline's ability to sell mainline capacity to other shippers. The shipper has contracted for a certain amount of mainline capacity from the pipeline and the use of that capacity to effect a forwardhaul and a backhaul does not exceed the shipper's contract demand in any mainline segment.

The Commission's policy since Order No. 636 has been that shippers should be permitted to make the full use of their firm capacity whether through a forwardhaul, backhaul, or through a combination of forwardhaul and backhaul.[17] After unbundling, shippers should have the same flexibility that pipelines had as merchants, which included the ability to forwardhaul and backhaul to the same point.

3. Primary Point Rights

In Order No. 637, the Commission explained that in the past it had adopted different policies on the issue of whether pipelines could restrict

[14] Order No. 637–A, 65 FR at 35731, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,591–92.

[15] Iroquois Gas Transmission System, L.P., 78 FERC ¶ 61,135 (1997).

[16] Transcontinental Gas Pipe Line Corporation, 91 FERC ¶ 61,031 (2000).

[17] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636–B, 61 FERC ¶ 61,272, at 61,997 (1992) (shippers can use their capacity to release capacity through forwardhauls and backhauls).

replacement shippers' ability to choose new primary points depending on whether pipelines had historic tariff provisions that limited primary point rights to the same level as the shipper's mainline contract demand. Although the Commission accepted tariff filings during Order No. 636 that continued historic limitations on the number of primary receipt and delivery points, the Commission questioned in the Order No. 636 restructuring orders as well as in Order No. 637 whether allowing pipelines to limit receipt and delivery point quantities to the shipper's contract demand continued to be appropriate.

In Order No. 637, the Commission concluded that a pipeline's overly restrictive allocation of primary point rights to existing shippers could restrict the ability of shippers to use their capacity flexibly and required pipelines in their compliance filings to justify continued restrictions on primary receipt and delivery point allocation, in particular requiring pipelines to justify a proposal to deviate from the Commission policy that both releasing and replacement shippers could choose primary receipt and delivery points equal to their contract demand (*Texas Eastern/El Paso* policy).[18] In Order No. 637–A, the Commission stated that it could not clarify the role of primary receipt points on a generic basis, but would need to examine the issues raised in the pipelines' compliance filings.

El Paso Energy contends that the Commission has not justified its change in policy with respect to primary point rights, a justification it argues is especially necessary when the policy change affects contractual rights. El Paso argues that "first-in-time shippers and marketers will immediately seek to segment their capacity into the smallest pieces possible in order to confiscate the largest amount of primary point capacity as possible."[19]

Rather than being a change in Commission policy, as El Paso intimates, the Commission is seeking here to apply on a uniform basis policies that it first developed in Order No. 636, in part at least, in El Paso's own restructuring proceeding.[20] In that order, the Commission found:

> overly restrictive limits on the amount of primary receipt and delivery point capacity that a shipper can reserve could preclude a shipper from seeking alternative sources of gas at several primary receipt points. Thus, it may be unreasonable for a pipeline to limit primary receipt capacity to a firm transportation shipper's MDQ, particularly if the total receipt point capacity of the pipeline substantially exceeds its maximum daily transportation capacity. Furthermore, if a pipeline's consent is always required to change a primary receipt point, then the pipeline would have the ability to block a shipper's change in a primary point that might injure the commercial prospects of the pipeline's gas sales affiliate, or of favored transportation customers.[21]

In Order No. 637–A, the Commission further explained why permitting flexibility in the selection of primary points in segmented releases can be important to creating effective competition between pipeline services and released capacity. If replacement shippers are limited to the use of segmented points on a secondary basis, as El Paso suggests, the pipeline would still retain the right to sell that receipt point on a primary basis. The ability to sell points on a primary basis would provide the pipeline with a competitive advantage over segmented release transactions.

Because of the potential effects that limitations on primary point rights can have on competition, such restrictions need to be reexamined in the pipeline's compliance filings. In those filings, pipelines need to justify restrictions on shippers' abilities to use additional primary points in segmentation transactions and any deviations from the *Texas Eastern/El Paso* policy.

El Paso is concerned that permitting shippers to select primary points in excess of their mainline contract demand could lead to possible hoarding of capacity. But, as the Commission stated in Order No. 637–A, its policy recognizes that pipelines might need to impose some restrictions on primary point rights. as appropriate to the circumstances of their systems, to prevent hoarding of capacity by some shippers to the detriment of others.[22] While the crafting of appropriate tariff provisions to limit hoarding may be challenging, as El Paso suggests, it does not appear infeasible.

4. Discount Provisions

In Order No. 637–A, the Commission addressed requests with respect to the interaction of its segmentation policy and its current policy permitting pipelines to limit discounts to particular points.[23] The Commission stated that this issue needs to be reexamined in the compliance filings when segmented transactions occur within the path of the shipper's transportation contract. The Commission explained that once the pipeline has decided that a discount is needed to stimulate throughput in a section of the pipeline, it has foreclosed the possibility of selling that capacity to a shipper at an upstream point and that the discount, therefore, should apply to all transactions within the capacity path.

Pipelines contend that the new rule will prevent them from selectively discounting because it will prevent them from offering selective discounts to all shippers within the capacity path.[24] INGAA states that as it reads the Commission's new rule, if long line pipelines decide to "discount transportation to New York from the Gulf of Mexico or southern Texas they are precluded from refusing discounts from the just and reasonable maximum rate for points of delivery along over 1,000 miles of pipeline into many different markets, which markets present diverse competitive conditions."[25]

The Commission will clarify that it did not intend to change the rules regarding selective discounting. Pipelines, for example, will still be able to discount transportation to a particular customer who has competitive options to stimulate throughput without necessarily offering the same discount to other customers who are not similarly situated.

As part of the examination of restrictions on segmentation, the compliance filings need to examine whether current restrictions on a discount shipper's use of its capacity impede segmentation and competition. In *Natural Gas Pipeline Company of America*,[26] the Commission refused to permit the pipeline to impose a condition in discount contracts that would suspend the discount in the event the shipper released capacity, because such a provision would inhibit the competition between capacity release and pipeline capacity by requiring the discount shipper to pay the maximum rate in order to release capacity.

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[18] Order No. 637, 65 FR at 10194, III FERC Stats. & Regs. Regulations Preambles para. 31,091, at 31,301–302; Texas Eastern Transmission Corporation, 63 FERC ¶ 61,100, at 61,452 (1993); El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,991. See also Transwestern Pipeline Company, 61 FERC ¶ 61,332, at 62,232 (1992).

[19] El Paso Rehearing Request, at 9.

[20] El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,982–83 (1993).

[21] *Id.*

[22] Order No. 637–A, 65 FR at 35732, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,593. *See* El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,982–83 (1993) (pipelines can propose methods for limiting the potential for hoarding).

[23] Order No. 637–A, 65 FR at 35733, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,595.

[24] DTI, INGAA, Williams, Reliant, Columbia Gas, Duke Energy Pipelines, Enron Pipelines, El Paso.

[25] Rehearing Request by INGAA, at 7.

[26] 82 FERC ¶ 61,298 (1998).

Once having granted a particular shipper a discount, some pipelines restrict the shipper's use of its capacity through capacity release or segmentation by requiring that shipper to pay the maximum rate for capacity in order to effectuate a segmented or release transaction. Placing such restrictions on discounted transactions could interfere with competition created through released capacity. Replacement shippers frequently need to use points different from those of the releasing shippers, and neither the releasing or replacement shipper may be willing to absorb the differential between the discounted and maximum rate. Given the increased use of discounted transportation by pipelines, it is important to explore in the compliance filings, the effect that allowing pipelines to restrict discount shippers' ability to segment and release capacity at alternative points would have on competition.

DTI asks for clarification that the policy with respect to point discounts should not necessarily be applied to reticulated pipelines which do not permit segmentation. The Commission stated in Order No. 637–A that discount policies on reticulated pipelines need to be evaluated differently than those on straight-line pipelines because a reticulated pipeline, with multiple laterals, may provide a shipper with a discount in order to stimulate throughput on a less-used lateral of its system, but not provide such discounts on more valuable laterals.[27]

5. Mainline Priority at Secondary Points Within the Capacity Path

In Order Nos. 637 and 637–A, the Commission addressed the question of whether shippers seeking to use mainline capacity within their path should receive a higher priority than shippers paying the same zone rate, but seeking to use capacity outside of their path. The Commission previously had found that giving priority to the shipper in the path and providing equal or *pro rata* rights were both just and reasonable.[28] In Order No. 637, the Commission chose not to adopt a specific policy with respect to assigning priority over mainline capacity among shippers using secondary points, leaving the *status quo* on individual pipelines. In Order No. 637–A, the Commission reconsidered and determined that providing priority to the shipper moving within its path would strengthen competition and promote capacity release because it would provide greater certainty as to the capacity rights of each of the shippers. Under *pro rata* allocation, the Commission found that neither the upstream nor downstream shipper would have definitive rights to the mainline capacity and that such uncertainty would make capacity trading difficult. The Commission provided that in the compliance filings, each pipeline must use the within-the-path allocation method unless it can demonstrate that such an approach is operationally infeasible or leads to anticompetitive outcomes on its system.

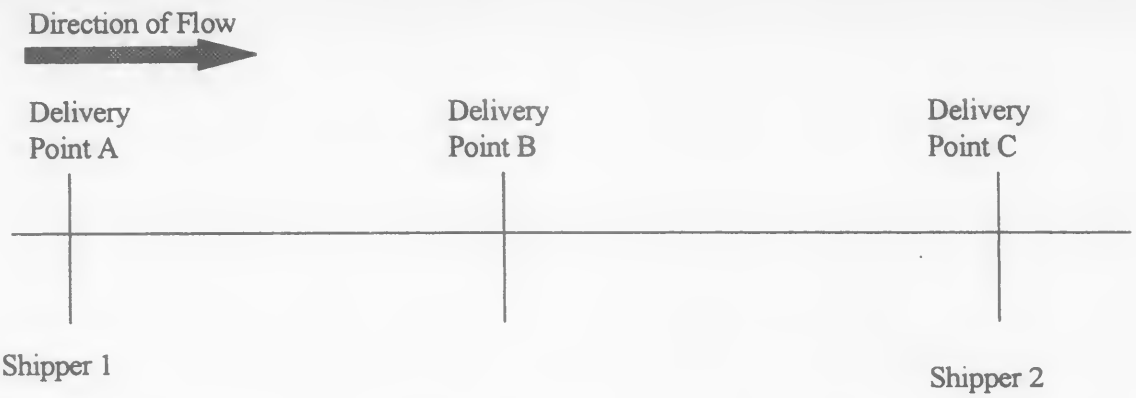
Columbia's Distribution Companies, Florida Gas, NYSEG, and FMNGA seek rehearing of the within-the-path allocation priority contending this policy reduces competition, is discriminatory, and unfairly confers competitive advantages on some shippers while disadvantaging others. They claim it contravenes the Commission's general policy that shippers receive the service for which they pay. They further assert it contravenes the Commission's recognition in Order No. 637 that one cannot tell whether the upstream or downstream shipper places the greatest value on the capacity. They contend that, as a result, there is no basis for giving preferential rights to the downstream shipper. They further argue adoption of within-the-path allocation rights will result in all shippers seeking to subscribe to capacity at the farthest downstream point in order to obtain the most valuable capacity. They also maintain that the Commission should not change its allocation priority policy without also addressing each pipeline's rate and zone design.

Enron and Florida Gas contend that the Commission should review the priority policy in individual cases. Florida Gas is concerned that the within-the-path allocation method will upset past agreements on Florida Gas Transmission Company. Enron maintains that in some situations, either within-the-path allocation or *pro rata* may be the most appropriate method and that the Commission should not mandate a single approach without close examination of pipeline's rate design.

The Commission affirms its determination that within-the-path allocation priority generally will best facilitate competition in the capacity release market. The issue presented is how to allocate mainline capacity to secondary points when shippers pay the same zone rate. In the following illustration, where shipper 1 (with a primary delivery point at A) and shipper 2 (with a primary delivery point downstream at C) pay the same rate in the zone, the issue would be whether the shippers should receive equal priority over mainline capacity to point B or whether shipper 2 should receive a higher priority over mainline capacity to point B than shipper 1, because point B is within shipper 2's path.

[27] This concern does not apply to long line pipelines, since selling capacity to a downstream point on a long line pipeline makes impossible the sale of that same capacity to an upstream point. Thus, in selling the capacity at a discount, the long line pipeline already has foregone the opportunity to collect a higher rate at the upstream point.

[28] *Compare* Tennessee Gas Pipeline Company, 71 FERC ¶ 61,399, at 62,577 (1995) (providing equal priority) *with* Panhandle Eastern Pipe Line Company, 78 FERC ¶ 61,202, at pp. 61,870–71 (1997) (conditionally accepting within the path allocation); Northwest Pipeline Corporation, 67 FERC ¶ 61,095 (1994) (priority given to shippers moving within primary path).



Capacity allocation is at its most efficient when capacity can be exchanged so that the shipper placing the highest value on the capacity can purchase it. As the Commission found in Order No. 637–A, competition and capacity release will be more efficient if one party has a defined right that can be exchanged, rather than two or more shippers having equal rights.[29] The problem with giving equal rights to reach secondary points is that neither the upstream (shipper 1) nor downstream shipper (shipper 2) has an alienable right to the mainstream capacity to point B. Thus, giving both shippers equal rights to the mainline capacity to point B gives neither shipper the right to make deliveries to point B and would make it difficult for either shipper to release capacity to a replacement shipper needing capacity to point B, because the replacement shipper would not be guaranteed the right to ship to point B. In addition, competition would be limited because a shipper with primary point capacity at B would have a competitive advantage in selling its capacity, since it can guarantee delivery to point B whereas neither shipper 1 nor shipper 2 can guarantee delivery to point B. In order to promote capacity trading, the right to the mainline capacity should be assigned to one shipper or the other, so that shipper has the right to release the capacity unencumbered by another shipper's claim.

The Commission agrees with the rehearing requesters that on an *a priori* basis, it is not possible to tell whether the upstream or downstream shipper places greater value on reaching the secondary point. But the purpose of assigning rights so as to permit capacity trading is to establish the value of the capacity and permit the allocation of that capacity to the highest valued use. In this case, the capacity cannot be allocated to the upstream shipper (shipper 1 in the example), because the downstream shipper (shipper 2) can always preempt the upstream shipper's ability to use the capacity by shipping to its primary point (point C). For instance, assume shipper 1 and shipper 2 each attempt to schedule 1000 Dth/day to delivery point B and the pipeline has only 1000 Dth/day available on the mainline between point A and point B. Once shipper 2 realizes its capacity will be cut, it will reschedule its capacity to its primary point C and thereby receive its full 1,000 Dth/day.[30] In that event, even if shipper 1 were given the higher priority to point B, it would be unable to schedule any gas to that point. If, on the other hand, the right were allocated to shipper 2, its use of the mainline to point B could not be interrupted or curtailed by shipper 1. Thus, as between the two shippers, the right to the secondary point needs to be allocated to shipper 2 in order to create a meaningful, tradable right to the capacity.

For this reason, the allocation of the priority to the downstream shipper is not unduly discriminatory, because the upstream and downstream shippers are not similarly situated. By virtue of the primary point rights in their contracts, shipper 2 already has the ability to preempt shipper 1's use of the downstream point. The Commission, therefore, is not creating discrimination, but is simply reacting to the facts as they stand to facilitate more effective capacity allocation. This determination is consistent with the conclusion reached in Order No. 636 that while upstream shippers can select downstream points in the same zone, the shipper will be using those points on an interruptible basis, subject to a higher priority to shippers using primary points.[31]

Those requesting rehearing contend that adoption of within-the-path allocation priority will lead all shippers, upon contract expiration, to seek to sign up for capacity at the end of the zone, since it is the most valuable. The Commission recognized in Order No. 637 that such an incentive could be created, but in reconsidering its decision, the Commission determined that enhancing capacity release competition was worth the difficulty of perhaps having to deal with potential conflicts in the future. It may well turn out that there is not a great incentive to move primary points to the end of the zone, because, as some of the rehearing requests point out,[32] shippers may not want to risk giving up their primary point rights at their former delivery points where they most need the gas.

Those seeking rehearing further contend that the Commission should not change policy until after it has examined pipelines' rate design and zone structures to ensure that the rates shippers pay equate with the service

[29] Order No. 637–A, 65 FR at 35734 & n.126, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,596 & n.126 (citing R. Posner, Economic Analysis of Law, § 3.1, at 28 (2d ed. 1977)).

[30] As was pointed out in Order No. 637–A, shipper 2 can often effect the full delivery of capacity to point B through the expedient of scheduling capacity to point C and then using a backhaul to reach point B. Thus, shipper 2 can preempt shipper 1's ability to deliver to point B, while preserving its ability to make the delivery itself.

[31] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,585 (Aug. 3, 1992), Order No. 636–B, 61 FERC ¶ 61,272, at 62,013 (1992). In *Northwest*, the Commission recognized that there is no undue discrimination in giving priority to shippers using their primary path over those using capacity between secondary points. Northwest Pipeline Corporation, 67 FERC ¶ 61,095, at 61,274 (1994).

[32] Rehearing Request FMNGA, at 9 (the shipper's right to use an upstream point is still secondary).

they receive. Cost-of-service rate design, however, may not perfectly represent the value of capacity, because both rates and zones may reflect considerations other than the value of reaching downstream delivery points. Indeed, the issue with respect to allocation of mainline capacity has arisen on Panhandle Eastern Pipe Line Company, a pipeline without rate zones and with rates that already are very mileage sensitive.[33] The Commission, therefore, will not generically delay implementation of within-the-path scheduling priority until after it has conducted an examination of pipeline rate structures.

ETG supports within-the-path allocation, but asks the Commission to clarify that it applies equally to receipt as well as the delivery points used in the Commission's illustration. The Commission grants the clarification. The analysis that applies to delivery points applies equally to receipt points, so that shippers seeking to move to receipt points within their path should generally have higher priority for mainline capacity than shippers moving to receipt points outside their path.[34] This means that a shipper would have a higher priority over mainline transportation to a receipt point downstream of its primary point than a shipper in the same zone seeking to use the same receipt point, which is upstream of its primary receipt point.

III. Imbalance Services, Operational Flow Orders, and Penalties

In Order No. 637–A, the Commission affirmed its new policy set forth in Order No. 637 that penalties may be imposed only when necessary to protect system integrity, and further explained that pipelines may not impose penalties for purposes other than system reliability, such as for enforcement of contractual obligations.[35] The Commission also held that under its definition of "penalty,"[36] a tiered cash-out program is a penalty, while a cash-out mechanism that requires that a shipper reimburse for the cost of the gas provided by the pipeline is not a penalty. DTI and El Paso seek rehearing and clarification of these rulings.

DTI and El Paso argue that the Commission erred in finding that penalties cannot be used to enforce contractual rights because this ignores the pipeline's right as a contract carrier to impose reasonable penalties to enforce its contracts, and that where a pipeline and shipper have entered into a contract to transport a specific quantity of gas, the pipeline should not be forced to exceed that quantity. DTI asserts that the consequences of the Commission's approach will be that pipelines will be unable to enforce contracts because shippers will contract for *de minimis* amounts of contract capacity and rely on generic contract overrun rights to meet their requirements. Further, DTI asserts that this will lead to decontracting, jeopardize the pipeline's ability to recover its cost of service, and unlawfully force pipelines to become common carriers rather than contract carriers.

As the Commission explained in the prior orders, penalties can limit the ability of shippers to use their capacity and can create market distortions.[37] Therefore, the Commission shifted its policy away from one that fosters the use of penalties to a service-oriented policy that gives shippers other options to obtain flexibility and limits penalties to their intended purpose—to protect the reliability of the system.[38] The result of this shift in policy does not eliminate the ability of pipelines to charge a penalty for contract overruns, but merely means that such penalties must be structured so that a penalty is not imposed when the system is not reasonably threatened. For example, a pipeline should not impose a penalty on a day that there is sufficient available capacity and the pipeline would have granted an authorized overrun. On a day when there is sufficient capacity to provide overrun service, a shipper that takes service above its contractual level is receiving interruptible service and should pay the maximum rate for that service, but should not be charged a penalty, since its use of interruptible service does not threaten system reliability or deliveries to other shippers.

Designing contract overrun penalty provisions so that they are imposed only when necessary to protect system integrity does not give shippers an incentive to contract for less than their required capacity and rely instead on contract overruns to meet their needs. Shippers contract for firm service in order to be guaranteed the service necessary to meet their requirements on a peak day, and they will not be guaranteed service at peak if they contract for only a portion of their capacity needs. The capacity that a shipper would obtain by means of an unauthorized overrun is not firm service, but is interruptible service that is subject to bumping and is limited by the capacity available at the time. Shippers that contract for firm service have already made a choice not to rely on interruptible service to meet their needs and therefore are unlikely to rely on an interruptible overrun service. Further, pipelines can still impose reasonable penalties when such penalties are related to system integrity. For example, on a peak day when capacity is not available, a shipper ordinarily would not be entitled to an authorized overrun because the provision of overrun or interruptible service could impede system reliability or adversely affect other shippers. Thus, a firm shipper could expect to be charged a penalty for using overrun service on a peak day and this prospect would deter the shipper from decontracting.

DTI has not explained why a contract overrun should be treated any differently than other penalties. For instance, when a shipper runs an imbalance by taking more gas than it has delivered to the pipeline, its responsibility is to make-up or pay for the gas it has taken and, under the Commission's regulations, a penalty would be imposed only when necessary to protect system reliability. Similarly, when a shipper incurs a contract overrun, it must pay for the interruptible service it has used, and a penalty should be imposed only when needed to protect the reliability of the pipeline. Thus, contrary to DTI's suggestion, the Commission's shift in policy does not affect the nature of the service provided by the pipelines or the ability of pipelines and shippers to contract for service, and does not force pipelines to become common carriers.

El Paso asks the Commission to clarify that it is not abrogating GISB Standard

[33] *See* Panhandle Eastern Pipe Line Company, 78 FERC ¶ 61,202 (1997) (rates based on 100 mile increments); Panhandle Eastern Pipe Line Company, 87 FERC ¶ 61,331 (1997) (issue is still under consideration).

[34] Northwest Pipeline Corporation, 67 FERC ¶ 61,095 (1994) (shipper within the path receives priority over shipper outside the path).

[35] Order No. 637–A, 65 FR at 35741, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,608–09.

[36] The Commission stated that it considers a penalty to be any charge imposed by the pipeline on a shipper that is designed to deter shippers from engaging in certain conduct and reflects more than simply the costs incurred as a result of the conduct. Order No. 637–A , 65 FR at 35742, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,610.

[37] See Order No. 637, 65 FR at 10197–98, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,307–08; Order No. 637–A, 65 FR at 35740, III FERC Stats. & Regs. ¶ 31,099, at 31,607.

[38] *See* Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,939, at 30,424 (penalties are to deter behavior inimical to the welfare of the system).

1.3.19[39] with its statement that shippers should be given the flexibility to exceed contractual limitations unless such action jeopardizes system integrity. The Commission clarifies that the new penalty policy does not abrogate GISB Standard 1.3.19 because it does not change the process for seeking authorized overrun service.

El Paso also argues that a tiered cash-out mechanism should not be treated as a penalty because the primary purpose of a tiered cash-out mechanism is the same as a simple cash-out mechanism, *i.e.*, to address the costs resulting from using the pipeline's system supply. If the Commission does not grant rehearing on this issue, El Paso asks the Commission to modify the requirement that pipelines must include their cash-out mechanisms in their *pro forma* compliance filings and make clear that the cash-out mechanism provision is included in the compliance filing for informational purposes only. El Paso also asks the Commission to clarify that any currently effective settlement will remain in effect.

A tiered cash-out mechanism is a penalty provision because, unlike a simple cash-out mechanism, it does not simply recoup the cost of gas incurred as a result of shipper conduct, but imposes a greater penalty for larger imbalances. The filing of any cash-out mechanisms in the pro forma compliance filings is not for informational purposes only, but is for the purpose of enabling the Commission to evaluate how the pipeline's system management program, including the cash-out mechanism, imbalance services, netting and trading, OFO and penalty provisions work together in light of the pipeline's characteristics and the Commission's policy. As a general matter, the Commission will not exempt pipelines from complying with this policy simply because it provides service pursuant to a settlement. However, if the parties to an individual proceeding believe that a particular settlement should govern the imposition of penalties on a specific pipeline, this issue can be addressed in the compliance proceeding.

IV. Reporting Requirements for Interstate Pipelines

In Order No. 637–A, the Commission granted rehearing with respect to the time at which transactional information will be posted. In Order No. 637, the Commission held that firm transactional data must be posted contemporaneously with contract execution. In Order No. 637–A, the Commission modified this requirement to provide that the transactional information for both firm and interruptible service must be posted no later than the first nomination for service under the agreement. The Commission recognized that changing the time for posting of firm contracts may result in somewhat later disclosure of some contractual commitments, but explained that the effect of such a delay on the shippers' ability to obtain information about available capacity will be mitigated by other reporting requirements. Specifically, the Commission stated that under § 284.13(d), the pipeline is required to post all available firm capacity on its system, and once the pipeline enters into a contract committing firm capacity, the pipeline must amend its posting to reflect the fact that this capacity is no longer available, even if it does not immediately disclose the identity of the purchasers.

Amoco agrees that if the pipelines contemporaneously amend their capacity posting data at the time of the execution of the new contract, as the Commission assumes will be the case, this will provide some transactional information to the public at an early enough point to be helpful in the decisionmaking process. Amoco asserts that § 284.13(d) of the regulations should be clarified, consistent with the Commission's intent, to modify the language to require pipelines to amend their capacity availability posting simultaneous with the execution of the contract. Specifically, Amoco asserts that the word "timely" should be replaced with "contemporaneously" and "whenever capacity is scheduled" should be replaced with "whenever contracts are executed."

There is no need to modify the regulation because it already requires posting of changes to available capacity immediately after contract execution. Section 284.13(d) of the Commission's regulations require pipelines to post available capacity "whenever capacity is scheduled." GISB currently requires pipelines to schedule capacity four times a day,[40] and therefore the pipeline must post its available capacity four times daily. This not mean, however, that capacity under contract can be posted as available up until the time it is actually scheduled. A change in available capacity must be reflected in the next capacity posting after the execution of the contract because once the contract is executed, the capacity is no longer available. The pipeline cannot post capacity as available if it is no longer available.

V. Right of First Refusal

In Order No. 637, the Commission held that in the future, the ROFR will apply only to maximum rate contracts and, therefore will not apply to discounted contracts or negotiated rate contracts. The Commission grandfathered existing discounted contracts so that the ROFR will apply upon the expiration of those contracts, but explained that the ROFR will not apply to the re-executed contract unless it is at the maximum rate. In Order No. 637–A, the Commission affirmed these holdings and clarified that the ROFR does not apply to negotiated rate contracts regardless of whether the negotiated rate is equal to or higher than the maximum tariff rate for the service.[41] ETG, New England, and WPSC seek rehearing or clarification of these holdings.

ETG and New England argue that the Commission erred in depriving negotiated rate contracts that are at the maximum tariff rate of ROFR protection. ETG argues that a negotiated contract to pay the maximum rate is a contract at the maximum rate within the meaning of the discussion in Order No. 637 and revised section 284.221(d) of the Commission's regulations. Further, ETG asserts that this limitation on the ROFR will discourage negotiated rate contracts and discounts, contrary to the Commission's policy of favoring settlements and approving procedures for negotiated rate contracts. New England asserts that in negotiating the re-execution of existing contracts, certain pipelines insisted that captive shippers enter into negotiated rate contracts at the maximum tariff rate, and that these customers are subject to the pipeline's monopoly power. New England states that under the Commission's rationale, a captive customer willing to pay the maximum rate must forego any benefits of the negotiated rate contract in order to retain the ROFR.[42] New England argues that this is unfair and tends to limit the service options available to captive customers.

A shipper with a negotiated rate contract is not paying the tariff rate. That shipper's rate will be established

[39] GISB Standard 1.3.19 provides "Overrun quantities should be requested on a separate transaction."

[40] 18 CFR § 284.12(b)(1)(i), Standard 1.3.2.

[41] Order No. 637–A, 65 FR at 35756, III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,634.

[42] New England states that the contract may differ from the *pro forma* service agreement on non-rate matters, and therefore be termed a negotiated rate agreement. For example, New England states the shipper may obtain the right to reduce contract demand prior to the expiration of the contract under certain circumstances.

by its contract regardless of the tariff or any changes to the tariff rate during the term of the negotiated rate contract. Because a negotiated rate is not a tariff rate, it cannot be the maximum tariff rate within the meaning of the Commission's regulations regardless of how the level of the negotiated rate compares to the level of the tariff rate.

Pipelines cannot require captive customers to enter into negotiated rate agreements rather than to take service under the maximum tariff rate. All shippers are entitled to take service pursuant to the pipeline's generally applicable tariff, and the pipeline cannot refuse to provide service under the tariff if capacity is available and the shipper agrees to pay the maximum tariff rate. This limitation does not impact the Commission's policy regarding settlements in rate cases; a negotiated rate is not a rate case settlement rate. Further, while the Commission permits negotiated rate contracts, it does not permit negotiated terms and conditions of service. The limitation on the ROFR therefore cannot limit the service options available to captive customers under negotiated contracts because customers cannot negotiate terms and conditions of service.

ETG, New England, and WPSC ask the Commission to clarify that negotiated rate contracts entered into before the issuance of Order No. 637 are, like discounted contracts, grandfathered and the ROFR will apply upon their expiration. These parties argue that negotiated rate contracts should be treated the same as discounted rate contracts with regard to grandfathering because in both cases shippers entered into the contracts in reliance on the existence of the ROFR, and the purpose of grandfathering is to protect that reliance interest.

The ROFR applied to negotiated rate contracts prior to Order No. 637, and the Commission agrees that the same policy should apply to negotiated rate contracts as to discounted contracts. Thus, negotiated rate contracts entered into prior to the issuance of Order No. 637 will be grandfathered, and the ROFR will apply to the service at the expiration of the contract. However, the ROFR will not apply to future negotiated rate contracts, and will apply only to contracts for recourse service taken pursuant to the pipeline's tariff at the maximum rate.

VI. Conclusion

With this order, the rulemaking process is at an end. The next step is for the industry and the Commission to focus on the issues raised in the compliance filings so as to restructure pipeline services and penalties to enhance competition throughout the industry.

The Commission orders:

Order Nos. 637 and 637-A are clarified as discussed in this order and rehearing of Order No. 637-A is denied.

By the Commission. Commissioner Breathitt dissented with a separate statement attached.

David P. Boergers,

Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations

Appendix—Requests for Rehearing Docket Nos. RM98–10–005 and RM98–12–005

Applicant	Abbreviation
American Gas Association	AGA.
Amoco Energy Trading Corporation and Amoco Production Company.	Amoco.
Columbia Gas Transmission Corporation.	Columbia Gas.
Columbia's Distribution Companies (Columbia Gas of Kentucky, Maryland, Ohio and Pennsylvania).	Columbia's Distribution Companies.
Dominion LDCs (Peoples Natural Gas Co., East Ohio Gas Company, Hope Gas, Inc., Virginia Natural Gas Co.).	Dominion LDCs.
Dominion Transmission, Inc.	DTI.
Duke Energy Gas Transmission (Algonquin Gas Transmission Company, East Tennessee Natural Gas Company, Texas Eastern Transmission Corporation).	Duke
East Tennessee Group	ETG.
El Paso Corporation Interstate Pipelines.	El Paso.
Enron Interstate Pipelines	Enron.
Florida Cities	Florida Cities.
Florida Municipal Natural Gas Association.	FMNGA.
Interstate Natural Gas Association of America.	INGAA.
National Fuel gas Distribution Corporation.	National Fuel.
New England Local Distribution Companies.	New England Distribution Companies.
New York State Electric & Gas Corp. (The Berkshire Gas Company, Connecticut Natural Gas Corp., Southern Connecticut Gas Co.).	NYSEG.
Pennsylvania Office of Consumer Advocate and Ohio Office of Consumer Counsel.	Pa. Office of Consumer Advocate.
Reliant Energy Gas Transmission Company and Mississippi River Transmission Corporation.	Reliant.
The Williams Companies, Inc..	Williams.
UGI Utilities, Inc.	UGI.
Wisconsin Public Service Corporation.	WPSC.

Breathitt, Commissioner, *dissenting in part*:

I am dissenting in part on Order No. 637–B because of its determination that it is permissible for a shipper to use a forwardhaul and a backhaul to bring gas to a single delivery point in an amount that exceeds its contract demand. In a *Tennessee Gas Pipeline Company* proceeding, the Commission expressly prohibited shippers from using forwardhaul and backhaul transactions in a pipeline segment in excess of contract demand.[1] This prohibition was retained in Order No. 637–A. The rationale offered in *Tennessee* was that segmenting rights are not without limit. The Commission explained that the limiting factor was the shipper original entitlement or contract demand. Specifically, the Commission stated, "this means that they have no right to release and use overlapping segments, where, in the overlapped portion, the total capacity released and used exceeds their original entitlement."

In an *Iroquois Gas Transmission System, L.P.* decision, the Commission applied that prohibition to overlapping transactions at a single point, finding that a shipper could not schedule forwardhaul and backhaul transactions to the same delivery point in excess of its total contract demand.[2] The justification for this prohibition was the same in both cases. That is, the overlap of forwardhaul and backhaul transactions in excess of contract demand results in shippers receiving service in excess of that for which the shipper is paying. This is so, regardless of whether the overlap is at a single point or on a segment.

Today's order does not adequately respond to this inconsistency in policy between treatment of contract rights on a segment and treatment of contract rights at a single point. Parties have argued on rehearing that overlapping transactions in excess of contract demand at a point negatively effects shippers' attempts to sell unused capacity in the secondary market. I do not believe that this order has adequately addressed this concern about the impact of this decision on the capacity release market. For these reasons, I am dissenting on the majority's decision to allow shippers to exceed there contractual entitlements by overlapping capacity at a single point.

Linda K. Breathitt,

Commissioner.

[FR Doc. 00–19453 Filed 8–1–00; 8:45 am]

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[1] Tennessee Gas Pipeline Co., 85 FERC ¶ 61,052, at 61,135 (1998).

[2] Iroquois Gas Transmission System, L.P., 78 FERC ¶ 61,135 at 61,524 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 330 and 385

[Docket No. RM99–5–001; Order No. 639–A]

Regulations Under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf

Issued July 26, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on rehearing of final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is addressing the requests for rehearing of its final rule, Order No. 639, issued on April 10, 2000, implementing regulations under the Outer Continental Shelf Lands Act (OCSLA).[1] The final rule was issued to ensure that natural gas is transported on an open and nondiscriminatory basis through pipeline facilities located on the Outer Continental Shelf (OCS). The regulations require OCS gas transportation service providers to make available information regarding their affiliations and the conditions under which service is rendered. This information will assist the Commission and interested persons in determining whether OCS gas transportation services conform with the open access and nondiscrimination mandates of the OCSLA. By rendering offshore transactions transparent, the regulations' reporting requirements should provide a sound basis for implementing the uniformly applicable open access and nondiscrimination mandates of the OCSLA, thus resulting in greater efficiencies in this marketplace. This order clarifies and amends the regulations to grant, in part, the requests for rehearing of Order No. 639.

EFFECTIVE DATE: The order on rehearing is effective October 2, 2000.

FOR FURTHER INFORMATION CONTACT:

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Gordon Wagner, Office of the General Counsel, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–0122

SUPPLEMENTARY INFORMATION:

United States of America

Federal Energy Regulatory Commission

[18 CFR Parts 330 and 385]

[Docket No. RM99–5–001]

Regulations under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf.

Order on Rehearing and Clarification

Order No. 639–A

Issued July 26, 2000.

I. Introduction

On April 10, 2000, the Federal Energy Regulatory Commission (Commission) issued a final rule, Order No. 639,[1] promulgating regulations under the Outer Continental Shelf Lands Act (OCSLA)[2] to ensure that natural gas is transported on an open and nondiscriminatory basis through pipeline facilities located on the Outer Continental Shelf (OCS).[3] The regulations require OCS gas transportation service providers to make available information regarding their affiliations and the conditions under which service is rendered. This information will assist the Commission and interested persons in determining whether OCS gas transportation services conform with the open access and nondiscrimination mandates of the OCSLA and will enable shippers who believe they are subject to anticompetitive practices to bring their concerns to the Commission. The transactional transparency that reporting will bring should provide a sound basis for ensuring open and nondiscriminatory access offshore and produce greater efficiencies in this marketplace. The Order No. 639 regulations do not eliminate or modify any existing regulations or Commission policies relating to the regulation of offshore facilities pursuant to the Commission's authority under the Natural Gas Act (NGA).[4]

II. Background

Requests for rehearing and/or clarification of Order No. 639 were filed by Duke Energy Field Services Assets, LLC (Duke); El Paso Energy Corporation (El Paso); the Interstate Natural Gas Association of America (INGAA); the Independent Petroleum Association of America (IPAA);[5] the Natural Gas Supply Association (NGSA); OCS Producers; the Producer Coalition; and the Williams Companies, Inc. (Williams).[6]

Parties requesting rehearing endorse the expressed aim of the final rule—to ensure compliance with the OCSLA's open and nondiscriminatory access requirements. Producer interests generally support the Commission's means to this end—to require OCS service providers to report certain information on their affiliates and transactions—whereas pipeline interests generally oppose aspects of the new reporting requirements. In response to the concerns raised, for the reasons discussed below, we modify, clarify, and affirm the OCSLA reporting requirements set forth in Order No. 639.

III. Requests for Rehearing and/or Clarification and the Commission's Response

A. Commission Authority To Require OCSLA Reporting

1. Requests for Rehearing and/or Clarification

Duke, El Paso, INGAA, OCS Producers, and Williams claim that the Commission has failed to present an adequate legal foundation for promulgating new OCSLA reporting requirements. The parties stress that since the OCSLA's 1953 enactment, with but a handful of exceptions, the Commission has not relied on the OCSLA to ensure that gas is transported on or across the OCS on an open and nondiscriminatory basis.

Williams argues that the Commission should have, but did not, consult with the Attorney General prior to implementing a new rule.

Duke insists that other federal agencies—but not the Commission—can act under the OCSLA to enforce nondiscrimination by instituting a civil action in district court; therefore, the Commission's rule and its proposed enforcement are without foundation and invalid.

OCS Producers believe the Commission could employ other, less

[1] 43 U.S.C. 1301–1356.

[1] 65 FR 20354 (Apr. 17, 2000), FERC Stats. & Regs. ¶ 31,514 (2000).

[2] 43 U.S.C. 1301–1356.

[3] The OCS is defined as "all submerged lands lying seaward and outside of the area of lands beneath navigable waters * * * and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." 43 U.S.C. 1331(a). *See also* 43 U.S.C. 1301(a)(1), defining "lands beneath navigable waters" as "all lands within the boundaries of each of the respective States."

[4] 15 U.S.C. 717.

[5] Rather than submit separate comments, IPAA states that it endorses and adopts the Producer Coalition's submission as its own, including the relief specified therein. Accordingly, references to the Producer Coalition may be read as including the IPAA.

[6] We accept the requests for rehearing pursuant to Rule 713 of the Commission's Rules of Practice and Procedure. 18 CFR 385.713.

burdensome means to secure the benefits of OCSLA compliance and assert the Commission has not demonstrated that reporting is needed for effective OCSLA enforcement.

2. Commission Response

We acknowledge that we have not established an extensive record of reliance upon the OCSLA. It was not until 1988 that we found cause to issue a rule interpreting the Commission's responsibilities under the OCSLA.[7] Until then, the NGA had appeared fully adequate to the task of regulating offshore natural gas facilities and services. As offshore exploration and development has evolved, it has grown beyond our ability to regulate by relying exclusively on the NGA.

Initial offshore construction consisted of gas companies building lines out from existing onshore facilities to production areas on the shallow shelf close to shore, stepping incrementally further out as technological advances led to the development of fields in increasing water depths. Typically, these early offshore lines were used to attach production from a single well or single platform in a field that produced gas for the system supply of a single company. It has proved to be the case that where an offshore pipeline serves to provide long-term, firm transportation for the pipeline's owner, issues of access do not arise. Generally, these offshore systems were owned and operated by, and used to carry the gas of, interstate pipeline companies. Thus, the Commission's NGA jurisdiction over interstate transportation extended to these offshore systems, and we consequently found no cause to turn to the OCSLA to guarantee open and nondiscriminatory access on these pipelines.

By the late 1980s, the nature of offshore operations had started to shift. In 1988, in Order No. 491, we observed that the offshore infrastructure consisted of major trunkline systems interconnected via a "proliferation" of laterals, resulting in a grid with the "flexibility to move offshore reserves from a variety of offshore locations via a number of pipeline facilities to onshore destinations."[8] We recognized that to take advantage of such flexibility, shippers were equally dependent on the physical capabilities of the facilities and "the degree of access which shippers have to the transportation system."[9] Consequently, in order to ensure open and nondiscriminatory access, we required all offshore NGA-jurisdictional pipelines to obtain blanket certificates under Part 284 of our regulations, authorizing transportation on behalf of others on an open and nondiscriminatory basis.[10]

At that time, the offshore transportation grid was still largely subject to our NGA jurisdiction, so we found no need to implement a separate set of regulations under the OCSLA targeted at NGA-exempt OCS service providers.[11] During the past decade, however, the character of the offshore environment has again undergone significant change, particularly after the 1989 *EP Operating Company* v. *FERC (EP Operating)* decision,[12] which led the Commission to reclassify numerous offshore facilities from transmission to gathering.

Now a more significant portion (approximately half) of the offshore gas infrastructure is excluded from NGA oversight, thereby eroding the applicability and effectiveness of our earlier OCSLA rule. Further, we expect a continuation of the recent trend of pipelines' requesting reclassification of existing certificated offshore lines from transmission to gathering. We expect a greater portion of new construction to qualify as gathering as well.[13] In view of these factors, the OCSLA's competitive principles no longer can be met by mandating that offshore NGA pipelines adhere to our Part 284 open access requirements. Since we can no longer rely on this scheme of regulatory piggybacking, the new OCSLA reporting requirements are needed to adequately monitor the dynamic, expanding portion of the offshore infrastructure that is not subject to NGA oversight.

Williams contends the Commission neglected to consult with other federal agencies, as specified in OCSLA section 1334(f)(3),[14] prior to implementing the reporting regulations. This same issue was raised in response to the Notice of Proposed Rulemaking (NOPR),[15] referencing the separate but similar consultation requirement specified in OCSLA section 1334(e).[16] In the final rule, we explained our belief that the act of requiring reporting under the OCSLA did not trigger the consultation requirement, a position we maintain.[17]

The OCSLA section 1334(f)(3) consultation requirement applies in the event that "specific conditions" are "included in any permit, license, easement, right-of-way, or grant of authority." The final rule's reporting requirements are not such a condition, as demonstrated by the fact that the reporting requirements apply not only to NGA-jurisdictional pipelines to which we have granted certificates, but also to NGA-exempt pipelines, to which we have granted no certificate or any other "permit, license, easement, right-of-way, or grant of authority." Thus, our rule is predicated entirely upon the OCSLA's open and nondiscriminatory access requirements, which pertain regardless of whether an OCS service provider is operating under authority of any permit or certificate. As such, we

[7] Interpretation of Section 5 of the OCSLA, Order No. 491, 53 FR 14922 (Apr. 26, 1988), 43 FERC ¶ 61,006 (1988).

[8] 43 FERC ¶ 61,006 at 61,030.

[9] *Id.*

[10] *See* Interpretation of, and Regulations Under, Section 5 of the OCSLA Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the OCS, Order No. 509, 53 FR 50925 (Dec. 19, 1988), FERC Stats. & Regs. ¶ 30,842 (1988), *order on reh'g*, Order No. 509–A, 54 FR 8301 (Feb. 28, 1989), FERC Stats. & Regs. ¶ 30,848 (1989).

[11] On rehearing of Order No. 509, parties asserted it was unreasonable and discriminatory for the Commission to limit its actions to NGA-jurisdictional pipelines. They argued for extending the Part 284 blanket transportation requirements to NGA-exempt OSC service providers as well. In response, we explained that our application of the already established NGA open access requirements to NGA facilities was a "starting point" and that we would look to other remedies, as needed, to cover other OCS facilities.

[12] 876 F.2d 46 (5th Cir. 1989). The court questioned the Commission's rationale for finding a 16-inch diameter, 51-mile long line, extending from a floating rig in deep water to a fixed platform on the shallow shelf, to be a transmission line. In response, the Commission modified the manner in which it determined the primary function of facilities located offshore, and subsequently found increasingly larger sets of offshore facilities to be gathering. *See, e.g.*, Amerada Hess Corporation, 52 FERC ¶ 61,268 (1990).

[13] Our 1996 Policy Statement established a rebuttable presumption that facilities located in deep water of 200 meters or more were engaged in production or gathering. Gas Pipeline Facilities and Services on the OCS—Issues Related to the Commission's Jurisdiction Under the NGA and the OCSLA, 74 FERC ¶ 61,222 (1996), *reh'g dismissed*, 75 FERC ¶ 61,291 (1996). Given that deep water prospects are predicted to provide substantial quantities of new offshore gas supplies, we expect additional pipeline construction in deep water areas.

[14] Specifically, Williams cites OCSLA section 1334(f)(3), which states that:

The Secretary of Energy and the Federal Energy Regulatory Commission shall consult with and give due consideration to the views of the Attorney General on specific conditions to be included in any permit, license, easement, right-of-way, or grant of authority in order to ensure that pipelines are operated in accordance with the competitive principles set forth in paragraph (1) of this subsection. In preparing any such views, the Attorney General shall consult with the Federal Trade Commission.

[15] Regulations under the OCSLA Governing the Movement of Natural Gas on Facilities on the OCS, 64 FR 37718 (July 17, 1999), FERC Stats. & Regs. ¶ 32,542 (1999).

[16] OCSLA section 1334(e) states, in part, that the Commission "in consultation with the Secretary of Energy" may, in certain circumstances, determine proportionate amounts of gas to be transported.

[17] We note that Williams and all federal agencies received public notice of this rulemaking proceeding, and but for the Department of the Interior's Mineral Management Service (MMS), those agencies elected not to comment on either the NOPR or the final rule.

conclude consultation with the Attorney General is not a prerequisite for promulgating this reporting rule.

Williams notes that in the Order No. 509 rulemaking, the Commission requested the views of other federal agencies. There is a material distinction between that rulemaking and this one: there, we told OCS service providers how to operate; here, we merely have OCS service providers tell us how they operate.

In Order No. 509, we imposed specific conditions on service providers. Although the conditions were contained in our NGA regulations and were applied only to offshore pipelines already subject to the NGA, these NGA conditions were applied in fulfillment of the OCSLA's transportation requirements, compelling OCS service providers to adopt and follow certain business practices as a specific condition of complying with the competitive principles of OCSLA section 1334(f)(1).[18] In this rule, while we exhort NGA-exempt OCS service providers to adhere to the same competitive principles that NGA-jurisdictional pipelines are subject to under our Part 284 open access regulations, the only requirement of Order No. 639 issued under the OCSLA is that service providers present information on their business practices. We impose no new conditions on those practices.

Duke takes the position that the Commission's authority under OCSLA section 1334(f)(3) to impose conditions on OCS service providers "is not an independent grant of authority." Rather, Duke argues that section 1334(f)(3) only describes "steps the Commission is required to take when exercising its authority under another statute such as the NGA."[19] We disagree. Duke reads too much into our decision in Order No. 509 to limit the rule's applicability to offshore pipelines already subject to the NGA and our reliance on the operating obligations contained in our NGA regulations to compel compliance with the provisions of the OCSLA.

As we emphasized in the order on rehearing of Order No. 509, "the open-access mandate of the OCSLA applies to all pipeline operations on the OCS."[20] We might have gone further and exercised our OCSLA authority to impose specific open access regulatory requirements on all OCS facilities; instead, on rehearing of Order No. 509, we elected to "consider appropriate measures for remedying discriminatory access to other [NGA-exempt] OCS facilities on a case by case basis."[21] Thus, our approach in Order No. 509 does not indicate, as Duke advocates, that our OCSLA authority applies in some derivative manner only after we have already first established our jurisdiction by means of another statute. We conclude that, though administering and enforcing the OCSLA involves coordination and a division of labor among several federal entities, the Commission's OCSLA authority stands apart and independent from our statutory responsibilities under the NGA.

Duke is correct that several federal agencies can institute OCSLA enforcement actions. However, this sharing of responsibility does not preclude the Commission, as an independent agency, from acting without the assistance of other responsible federal agencies to oversee and enforce open and nondiscriminatory access. The Commission's capacity to compel open and nondiscriminatory access under the OCSLA is discussed in *Shell Oil Company* (*Shell*).[22] At issue in *Shell* was an offshore oil pipeline's refusal to serve a new customer. The Commission exercised its authority under section 1334(f) of the OCSLA to order the oil pipeline to accept and transport the new customer's volumes.[23] When the court issued its decision in *Shell,* the oil pipeline complied with the Commission's order to interconnect. Thus, issues relating to cooperative agency action were not reached. We note, however, that if the Commission finds it necessary to seek the imposition of monetary civil penalties for any OCS service provider's violation of the reporting requirements, as opposed to physical remedies to force open and nondiscriminatory access, the Commission expects to rely on the Secretary of the Interior's authority to "assess, collect, and compromise any such penalty," in accordance with section 1350(b) of the OCSLA.

B. Regulatory Conflict and Accord

1. Requests for Rehearing and/or Clarification

Duke, El Paso, INGAA, and Williams maintain it is inequitable to subject separate sets of offshore facilities to separate regulatory regimes. They stress that even if the new OCSLA reporting requirements diminish the difference between operating under the OCSLA as opposed to the NGA, OCS service providers subject exclusively to the OCSLA will still retain a competitive advantage over those also subject to the NGA.

INGAA proposes all offshore facilities be declared gathering, *i.e.*, exempt from the NGA under section 1(b), thereby leaving all offshore facilities and services subject exclusively to the OCSLA. Williams implicitly endorses this approach.

El Paso urges the Commission to rescind the new reporting requirements and regulate offshore activities as it has to date, by relying on the NGA in conjunction with complaints under the OCSLA.

OCS Producers caution that exploration, development, and production are properly the regulatory domain of the MMS, and the Commission risks clashing with MMS if it fails to plainly put these activities beyond its reach.

2. Commission Response

Concerns regarding the impacts of existing laws—*e.g.*, whether the statutory regime in place offshore favors one type of entity or activity over another—are appropriately directed to Congress rather than to this Commission. In the onshore context, we have been confronted with analogous allegations of commercial advantage conferred as a consequence of operating subject to state versus federal regulation. Weighing the comparative benefits and burdens of operating under one statute versus another, however, is beyond our purview.

We are charged with, and our authority extends only to, enforcing each statute as it applies; hence, we are

[18] Specifically, Order No. 509 granted all NGA-regulated OCS pipelines Part 284, Subpart G, blanket transportation certificates, then mandated these pipelines file tariffs to implement their blanket certificates, and pursuant to their certificates, required that the offshore lines provide firm and interruptible transportation on an open and nondiscriminatory basis to owner and nonowner shippers. The rule had no impact on NGA-regulated pipelines onshore, as onshore entities retained the option to forego seeking a blanket transportation certificate.

[19] Duke's Request for Reconsideration and Rehearing at 4 (May 10, 2000).

[20] Order No. 509–A, 54 FR 8301 (Feb. 28, 1989), FERC Stats. & Regs. ¶; 30,848 at 31,334 (1989).

[21] *Id.*

[22] 47 F.3d 1186 (D.C. Cir. 1995). We note that in addition to enforcement action by federal agencies, OCSLA section 1349 provides for citizens suits, and the Shell case was initiated as such by a private party. Duke cites this case to stress that Congress granted original jurisdiction to the district courts of the United States for suits, cases, and controversies arising out of OCS operations. We concur, but note that the parties in the Shell case initially sought administrative relief from this Commission in Bonito Pipe Line Company, 61 FERC ¶ 61,050 (1992), prior to judicial review.

[23] The Commission determined that the oil pipeline had excess capacity sufficient to accommodate the maximum projected new volumes, and therefore found no need to act under OCSLA section 1334(e) to adopt an allocation methodology.

not at liberty to contemplate the equities and impacts of the existing regulatory regime on competitors' operations. We observe that here, if anything, the enhanced transactional transparency to be gained by OCSLA reporting will diminish the differences between OCS service providers now operating under joint NGA/OCSLA jurisdiction and those subject only to the OCSLA. We would not characterize the new reporting requirements as another layer of regulation, as does INGAA; rather, given the OCSLA's applicability to all OCS facilities and services, we view reporting as the foundation for implementation of a uniform, light-handed regulatory regime offshore.

We will not pursue INGAA's proposal that we find all offshore facilities gathering, and thereby remove them from our direct NGA oversight, since the application of our test for determining whether facilities are performing primary a gathering or transportation function [24] is not at issue in this rulemaking proceeding. However, as discussed in the NOPR and final rule, part of our motive for acting to enhance the availability of information about offshore operations is the development of the *Sea Robin* proceeding and the guidance offered by the court concerning the application of our primary function test to offshore facilities. That decision prompted us to review and revise our criteria for determining the primary function of offshore facilities, resulting in a determination that portions of Sea Robin's system, which had always been regulated under the NGA as transmission, should be reclassified as gathering.[25] While this result calls into question whether other offshore facilities that have traditionally been regulated as NGA transmission lines might be performing primarily a gathering function, we believe the proper approach is to examine such facilities individually, on a case-by-case basis, in separate proceedings.

If, in the wake of *Sea Robin*, additional offshore facilities are declared gathering, and are thereby pushed out from under the umbrella of the regulatory protections that the NGA provides, the NGA's scope will shrink, making it less effective as a means to check market power abuses.[26] Under these circumstances, we expect complaints brought under the OCSLA will play an increasingly significant role.

We have recently revised our complaint procedures to permit more efficient processing,[27] and where before a general allegation of wrongdoing might be deemed adequate to pursue a complaint, under the revised regulations, specific allegations must be presented that measure up to a more rigorous minimum criterion before the Commission will proceed. As discussed in the final rule, we expect it will be difficult for a shipper or service provider to fashion a sustainable complaint absent the availability of information about the business practices of service providers.

Setting forth the particulars of an alleged OCSLA violation by an NGA-regulated service provider can be straightforward, given the wealth of information regarding jurisdictional interstate pipelines' actions. However, while the NGA's disclosure requirements are arguably adequate to allow for a complaint-driven enforcement regime, the same cannot now be said regarding possible OCSLA violations by NGA-exempt entities, since without the data contained in the new OCSLA reports, we question whether a description of alleged violations could be set forth in sufficient detail to sustain a complaint. Because we believe the data that will be generated by OCSLA reports is necessary to effectively monitor NGA-exempt OCS service providers, we reject El Paso's proposal to rescind the OCSLA reporting requirement.

We envision no pending conflict with the MMS. First, offshore, traditionally, several federal agencies have simultaneously exercised overlapping duties without inducing intractable conflict. Second, as discussed below, production facilities are generally exempt from the OCSLA reporting requirements.

C. Reporting Requirements

1. Requests for Rehearing and/or Clarification

Duke, El Paso, OCS Producers, and Williams contend public disclosure will reveal commercially sensitive, confidential, and proprietary information, to the detriment of the reporting entities.

The Producer Coalition has the opposite apprehension, expecting service providers will request privileged and confidential treatment for most of the information they report. Therefore, to ensure transactional transparency, the Producer Coalition advocates eliminating such treatment and making all data public.

The final rule directs an OCS service provider to file a report on the first day of each quarter, describing its status as of the first day of the previous quarter. The Producer Coalition, OCS Producers, and NGSA are concerned that the filed report may omit the immediately preceding quarter's intra-quarter changes, *i.e.*, a change on October 2 will be omitted from the January 1 report, and only picked up in the April 1 report. The parties suggest this is too long.

The Producer Coalition proposes requiring that additional details be reported regarding rates and conditions of service. For example, the Producer Coalition requests we revise § 330.2(b) to clarify that the primary receipt and delivery points include both the points listed as primary receipt or delivery points in each contract and any other receipt or delivery points that are actually used for service under the contract during the reporting period. The Producer Coalition explains this clarification will discourage the practice of listing primary points in contracts, and then in fact flowing gas through other points. Further, the Producer Coalition believes it would be easier to find receipt and delivery points if the service provider designated them not just by meter identification numbers but by geographic location as well.

OCS Producers request clarification concerning events triggering the reporting requirement and an itemization of the conditions of service to be reported. NGSA notes that the regulations request a detailed description of the derivation of non-cost-based rates and ask whether it is sufficient to simply state that such rates were derived by negotiation.

OCS Producers suggest the affiliate reporting requirement be modified as

[24] The Commission's "primary function" test was articulated in Farmland Industries, Inc. (Farmland), 23 FERC ¶ 61,063 (1983).

[25] We note that the result of our review was to split Sea Robin's system, retaining as transmission a 36-inch diameter, 66-mile long line to shore, but reclassifying as gathering Sea Robin's remaining 372 miles of 4-to 30-inch diameter pipe. 87 FERC ¶ 61,384 (1999), *reh'g pending.*

[26] NGSA speculates that the NGA's effectiveness as a means to check market power abuses may also diminish if the currently applicable NGA reporting requirements are later trimmed back. If and when modifications to our NGA regulations are proposed, NGSA, other interested parties, and the Commission will have ample opportunity to consider the potential impacts on NGA-regulated OCS service providers and the implications for monitoring and ensuring compliance with the OCSLA. Such a future NGA rulemaking proceeding is the appropriate forum to consider these issues.

[27] *See* 18 CFR 385.206, Complaint Procedures, Order No. 602, 64 FR 17087 (Apr. 8, 1999), FERC Stat. & Regs. ¶ 31,071 (1999), 86 FERC ¶ 61,324 (1999), *order on reh'g and clarification,* Order No. 602–A, 64 FR 43600 (Aug. 11, 1999), FERC Stats. & Regs. ¶ 31,076 (1999), 88 FERC ¶ 61,114 (1999), order on reh'g, Order No. 602–B, 64 FR 53595 (Oct. 8, 1999), FERC Stats. & Regs. ¶ 32,545 (1999), 88 FERC ¶ 61,249 (1999).

follows: eliminate the need to identify gas consumer affiliates, since such affiliates are numerous, change often, and have little impact on upstream offshore operations; list only those affiliates that are active on the OCS; and add gas gathering affiliates to those that must be reported. El Paso would restrict named affiliates to those engaged in gas operations within the US and adjacent water bodies.

NGSA requests that the Commission specify a format, establish procedures for electronic filing, and make the filed information Internet accessible.

2. Commission Response

Reporting is not intended to force the revelation of commercially sensitive, confidential, or proprietary information immaterial to ensuring compliance with the OCSLA. That said, reporting will nonetheless compel OCS service providers to make public aspects of their operations that they have heretofore been permitted to keep private. While we appreciate companies' preference to withhold certain information, we note that the wide applicability of the new OCSLA reporting requirements, like the wide applicability of the existing NGA reporting requirements, serves to place competitors on a more consistent regulatory footing.

We intend to continue the current practice under § 388.112 of our regulations of considering requests for privileged treatment of information on a case-by-case basis. Because the outcome of each request typically turns on the specific facts presented, we are unable to make broad declarations on what information qualifies for such treatment. Accordingly, we reject the Producer Coalition's proposal that we generically declare no information can qualify for privileged treatment. However, we do not intend to extend privileged treatment to information that is necessary to determine whether service providers are operating in accord with the OCSLA, *e.g.*, a § 330.2 report that failed to state the actual rates charged would have no utility.

To date, in the context of exercising our non-OCSLA authority, we have been able to give adequate attention to individual requests for privileged treatment and expect to be able to do the same with respect to requests related to OCSLA reporting. Over time, the Commission has determined what types of data might be exempt from the mandatory disclosure requirements of the Freedom of Information Act,[28] and these past decisions can be expected to guide our assessment of requests for privileged treatment of information in OCSLA reports.

If circumstances arise that prompt the Commission, on its own initiative, to question a non-reporting OCS service provider's conformity with the OCSLA, we may deem it appropriate, initially, to permit the service provider to submit information to the Commission confidentially. If we subsequently determine the service provider does not qualify for an exemption, we would expect to then direct that reporting commence pursuant to § 330.2 of the regulations. Duke urges we expand upon this by revoking the reporting requirements and handling all OCSLA access disputes on a confidential basis. As noted, we expect there will be some cases where some portion of the information needed to resolve a dispute will be withheld from public view. However, because there is now no adequate repository of information regarding NGA-exempt OCSLA activities, there is now no straightforward means to gauge service providers' adherence to the OCSLA. Duke's proposal would preclude establishing a database sufficient to this task.

In the NOPR, we suggested that OCS service providers notify the Commission every time a change in affiliates or services took place, and to do so within 15 days of any such change. Comments in response painted the picture of a large, dynamic OCS service provider, compelled to make daily filings to keep the record up to date with ongoing changes to its system. To avoid burdening a service provider with perpetual filings, we modified our approach, foregoing ongoing updating in favor of quarterly reporting.

Because data's utility is a function of its accuracy, we share the concerns expressed that the reported data not be stale. Therefore, we will modify § 330.3(c) of the regulations. We will change the scheduled reporting date from the first day of a calender quarter to 15 days after the close of a calender quarter. However, a report must now reflect a service provider's status as of the *last* day of the preceding quarter and describe all changes to a service provider's affiliates, customers, rates, conditions of service, and facilities that have occurred during the course of that quarter. Thus, reports, when required, are due on April 15, July 15, October 15, and January 15.

In the final rule, we set October 1 as the due date for the initial § 330.2 reports. We revise that here. Reports will be due on October 15, 2000, and are to contain a description of activities during the third calender quarter of this year. However, because October 15, 2000 falls on a Sunday, pursuant to § 385.2007 of our rules of Practice and Procedure, reports are to be filed on Monday, October 16, 2000. This first OCSLA report will set a baseline specifying service providers' status; subsequent reports will look back to this baseline to determine what future changes merit reporting.

An exempt OCS service provider may become subject to reporting by virtue of taking on another shipper or as a result of a Commission decision that a shipper was denied service without good cause. Currently, § 330.3(b) gives such a service provider 90 days from the date it loses its exemption to file a report. We will modify this time frame so that if an exempt service loses its exemption during a calender quarter, it must file a § 330.2 report on the 15th day of the subsequent quarter. Where an exemption is lost due to serving another shipper, the date such service commences will be the date exempt status ends.[29] Where an exemption is lost due to a refusal to serve, the date the Commission determines the denial of service was unjustified is the date exempt status ends. In reaching such a determination, we note we may elect to alter this default date.

In the final rule, we stated that if an OCS service provider's operations are identical quarter to quarter, the service provider need not submit a report. Concerns were raised that this could entice a service provider to make intraquarter changes, while arranging to revert to an apparent static state in time to be able to claim no quarter-to-quarter change took place. We clarify that although reports need only be filed once per quarter, this report is to be a cumulative record of all changes that have taken place during the calender quarter covered. If there is no change during a given quarter, then there is no need to file a report on the 15th day of the subsequent quarter.

OCS Producers request clarification of §§ 330.3(a)(1) and (a)(2) of the regulations, which state that single-shipper and owner-shipper exemptions end when either the service provider agrees to serve another customer, or when a new customer requests service, is denied, and the Commission determines the denial is unjustified. Discussions with prospective shippers do not jeopardize an existing

[28] 5 U.S.C. 552.

[29] Although we identify service to a new shipper as ending an exemption and triggering the requirement to report, we note that for an exempt owner-shipper, changes in ownership or shipping rights may have the same effect.

exemption.[30] We are persuaded that the date parties reach an accord for future service should not be, as is now, the event that triggers the reporting requirement. Precedent agreements for future service may schedule long lead times before going into effect; actions that take place between the time the agreement is signed and service starts may void the agreement. Therefore, rather than make reaching an agreement to serve the reporting trigger, we will require actual service, and so modify §§ 330.3(a)(1) and (a)(2) to designate the time the Gas Service Provider "commences service" as the event that eliminates a reporting exemption.

Currently, §§ 330.3(a)(1) and (a)(2) state that an exempt service provider's denial of service can trigger reporting if the Commission finds the denial unjustified and the denied shipper objects. OCS Producers persuades us that there is little to be gained by requiring that the denied shipper contest a refusal to serve. In investigating a denial of service, the Commission will have the opportunity to weigh the legitimacy and the merits of both the shipper's request and the service provider's refusal. Thus, we find no need for the denied shipper to present the Commission with the circumstances of its denial, again, following a finding that the denial was unwarranted. We will modify §§ 330.3(a)(1) and (a)(2) accordingly.

This is a first effort at obtaining information under the OCSLA. Nothing has changed since the final rule, where in response to a request for a more detailed OCSLA report we explained that "[g]iven the complexities of offshore operations, the array of entities offshore, and the fact that we have not heretofore collected the information described in §§ 330.2 and 330.3(b) and (c), we feel it premature to fix the manner of presentation or filing format of an OCSLA report at this time."[31] If early rounds of OCSLA reports prove the information collected to be deficient, excessive, extraneous, redundant, inconsistent, or otherwise ineffective, we may then describe a more rigorous format and content for the reports. As is, we anticipate the information specified in our OCSLA regulations, as modified herein, will be adequate to enable interested parties to compare rates, conditions of service, and affiliate treatment among a pipeline's various customers and among various pipelines. Therefore, we deny rehearing requests to add details to the parameters of the OCSLA report.

For reporting to be effective, interested persons must be able to compare costs to ship gas between specific points. To address the Producer Coalition's apprehension that service providers might post rates between primary receipt and delivery points, then actually ship gas between other sets of points, we will revise our regulations. Sections 330.2(b)(5) and (b)(6), directing service providers to list their primary receipt and delivery points, remains unchanged. Section 330.2(b)(7) is expanded to require service providers to report "Rates between each pair of primary receipt and delivery points and each pair of any other points served."

We concur with the Producer Coalition that it would be easier to find receipt and delivery points if the service provider designated them not just by meter identification numbers but by geographic location as well. We encourage service providers to do so.

Section 330.2(b) of the regulations presents two reporting alternatives and asks service providers to file either copies of contracts or a description of the conditions of service that includes an explanation of the rates charged. The Producer Coalition proposes that we emphasize the alternative nature of this filing requirement by changing the format, but not the substance, of the regulations. We will do so, to avoid any possible confusion regarding the information to be submitted, as follows.

Section 330.2(b) is revised to read: "A Gas Service Provider must file with the Commission its conditions of service, consisting of the information specified in this paragraph (b), or alternatively, the information specified in paragraph (c). Under paragraph (b), a Gas Service Provider must submit, for each shipper served * * *." Section 330.2(b)(8) now concludes after "Gas Service Provider." Section 330.2(b)(9) is redesignated as § 330.2(c) and reads: "As an alternative to the above paragraph (b) requirements, a Gas Service Provider may file a statement of its rules, regulations, and conditions of service that includes * * *." Sections 330.2(b)(9)(i), (ii), (iii), and (iv) are redesignated as § 330.2(c)(1), (c)(2), (c)(3), and (c)(4), respectively.

In the final rule, we expressed the expectation "that, with limited exceptions, all filings by regulated entities will be made in electronic form."[32] We retain this expectation, but for the reasons noted above, believe it would be premature to attempt to establish the format, content, and procedural protocol for electronic filing of OCSLA reports before the experience of a single round of reporting. The reports, filed as paper copies, will be available in the Commission's Public Reference Room and may be accessed remotely via the Internet through the FERC Home Page (*http://www.ferc.fed.us*) using the Records and Information Management System (RIMS) link or the Energy Information OnLine icon.

We will expand the § 330.2(a)(6) definition of affiliate to include gathering affiliates and restrict it to affiliates engaged in gas operations within the US and adjacent water bodies. The omission of gathering affiliates was an oversight. We do not expect foreign affiliates will have any significant impact on OCS service providers' operations.

We will not adopt OCS Producers' proposal to further narrow the affiliate category to only those doing business on the OCS, as we can envision instances where onshore affiliates, *e.g.*, an affiliate owner of a processing plant, might influence an OCS service provider to modify the volumes or path of gas transported. We will adopt OCS Producer's proposal to omit identification of affiliate gas consumers, and modify § 330.2(a)(6) accordingly. Given end user's location at the far end of the wellhead-to-burnertip gas path, we do not expect consumer affiliates to exert an undue influence on upstream offshore operations.

If shippers are charged negotiated rates, NGSA asks whether additional information beyond this fact needs to be submitted. Section 330.2(b) itemizes the reporting requirements. Reports should enable interested persons, particularly prospective and existing shippers, to compare the rates and terms of service they might receive or are receiving, with that of other shippers. Thus, simply stating that all rates are negotiated will not do. As noted in *NorAm Gas Transmission Company*, a negotiated rate formula must be stated with "sufficient specificity to permit easy calculation of the actual negotiated rate, charge, and rate component for each transaction,"[33] to enable a shipper to estimate the rate it would be charged to transport gas between specific points in

[30] Similarly, conversations with existing shippers concerning possible changes to rates or terms of service may continue in private indefinitely. Only when the results of such discussions are put into actual practice is the submission of a revised report required.

[31] 65 FR 20354 at 20366, FERC Stats. & Regs. ¶ 31,514 at 31,535.

[32] *Id.*, note 64.

[33] 75 FERC ¶ 61,091 (1996), *order on reh'g*, 77 FERC ¶ 61,011 at 61,037 (1996).

order to compare its hypothetical rate with the actual rates of other shippers.

D. Reporting Exemptions

1. Requests for Rehearing and/or Clarification

Williams would lift the single-shipper and owner-shipper reporting exemptions, claiming such exemptions make it difficult for a shipper to determine if it has been denied access or subject to discrimination. Duke is similarly concerned that reporting exemptions will produce an "information asymmetry," whereby nonreporting OCS service providers may exploit the public record to gain a competitive advantage over their reporting rivals.

El Paso urges that all reporting exemptions, other than the exemption for offshore pipelines subject to the NGA, be eliminated as a means of leveling the regulatory playing field.

El Paso, OCS Producers, and Williams expect existing effective offshore arrangements will be upset as service providers structure their business organization and facilities to come within the reporting exemptions.

OCS Producers would expand the reporting exemptions by (1) treating affiliates of the same corporate family as if they were one entity; (2) considering parties engaged in a common financial transaction, such as a sale and leaseback, as a single or joint owner; (3) applying the owner-shipper exemption to a jointly-owned pipeline that receives gas from multiple fields, even though all pipeline owners do not hold interests in each of the attached fields; (4) treating each owner of a pipeline with undivided ownership interests as if each were an individual pipeline (*i.e.*, a pipe within a pipe); (5) extending the shared ownership exemption of a single pipeline crossing multiple fields to include multiple pipelines crossing multiple fields; and (6) declaring that gas volumes shipped in conjunction with the MMS' royalty-in-kind program will not void the single-shipper or shipper-owner exemptions.

OCS Producers argue that production platforms, and facilities upstream thereof, should be exempt from reporting (effectively broadening the "feeder-line" exemption). NGSA would establish a rebuttable presumption that all production facilities and services qualify for the feeder-line exemption.

2. Commission Response

Adopting proposals to eliminate some or all of the reporting exemptions would admittedly meet our aim of producing a broader and more complete picture of offshore operations. However, we seek only the minimal information necessary to be able to verify that OCS service providers are operating in compliance with the OCSLA's open and nondiscriminatory access mandates. We continue to believe that an entity that serves a single customer, or that transports only its own gas, has little opportunity or motive to contravene these OCSLA mandates. Thus, we do not find it necessary to employ reporting to monitor such entities.

Given that adding a new customer will void the single-shipper or owner-shipper reporting exemption, it seems futile for an exempt service provider to offer prospective shippers discriminatory terms, since the service provider's first filing following termination of its exemption will advertise the disparity between new and existing customers' conditions of service and invite action contesting the disparity. Similarly, a Commission determination that a denial of service is unjustified informs the rejected shipper, without the need for any further inquiry, that the rejected shipper has cause to complain. Therefore, while a reporting exemption may place a service provider at an advantage in negotiating with prospective shippers, acting on this advantage will be ultimately self-defeating, since any impropriety will come to light in a first filing. In view of the above, we do not expect the single-shipper or owner-shipper reporting exemptions will be used to exploit shippers, as Williams worries, since discrimination or an unwarranted refusal to serve inevitably will be revealed and rectified.

Duke is correct that the cure for "information asymmetry" is a wider application of the transactional transparency that OCSLA reporting provides. However, an exempt service provider that is able to make use of the public record to enable it to add a new customer or entice one away from a competitor, will lose its reporting exemption by adding that shipper. Because reporting will end the "information asymmetry," the problem Duke identifies should prove largely self-correcting. To the extent we find evidence that this is not the case—*i.e.*, as Duke warns, the partial transparency produced by allowing reporting exemptions reduces competition and economic efficiency in the OCS marketplace—we will reevaluate the operation and outcome of the OCSLA reporting regime.

Duke asserts that OCS producers, when compared to OCS service providers, "often have superior market knowledge," [34] and thus enjoy an advantage when weighing offers for transportation services. This advantage, coupled with a producer's capability to construct its own gathering and transportation facilities, leads Duke to conclude that the ultimate leverage holder and decision maker is the offshore producer. We find this assertion unpersuasive. Individual producers are compelled to publically disclose to the MMS a significant amount of information about their OCS leaseholdings, including their estimates of gas and oil reserves, exploration and development plans, information on deepwater discoveries, and data on production, existing and planned wells, structures, platforms and rigs, geographic mapping, and royalty relief. Although some of the producer-specific or lease-specific data is not publically available, enough is to permit OCS service providers to evaluate OCS producers' ongoing activities. Given this we do not expect that requiring some service providers to make certain information public to tip the competitive balance between producers and the pipelines that carry their gas. Both service providers and producers should be positioned to adequately monitor one another and reach rational accord on the merits of contracting for capacity versus constructing proprietary pipeline facilities.

El Paso would eliminate the single-shipper, owner-shipper, and feeder-line reporting exemptions in the interests of leveling the competitive playing field. As discussed, we do not expect the first two exemptions to confer any sustainable competitive benefit; therefore, we believe these exemptions can be retained without distorting offshore operations. With respect to the feeder-line exemption, as discussed in the final rule, feeder line facilities are typically owned and operated by the same entity that holds the right to produce gas from a particular field and are found upstream of a point where gas leaves a platform or platforms on its way from a producing field to shore. We do not expect issues of access or discrimination to arise with respect to such facilities, since where the same entity owns or leases both the mineral rights and the facilities necessary to draw gas from its own reservoirs.

OCSLA section 1334(f)(2) states the "Commission may, by order or regulation, exempt from any or all of the [open and nondiscriminatory access] requirements * * * any pipeline or class of pipelines which feeds into a

[34] Duke's Request for Rehearing, Appendix C, Affidavit at 2 (May 10, 2000).

facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed." We exercised this option, stating in § 330.3(a)(3) of the regulations that the reporting requirements would not apply to "[s]ervices rendered over facilities that feed into a facility where natural gas is first collected, separated, dehydrated, or otherwise processed."

OCS Producers and NGSA stress that the statute provides for an exemption for pipelines feeding into facilities where gas is first collected *or* into facilities where gas is first separated, dehydrated, or otherwise processed. They argue that because we eliminated the "or" between the point of first collection and the point of first separation, dehydration, or other processing, we restrict the exemption so that it holds only up to the first point where any of the specified activities occurs. OCS Producers maintain this excludes "the majority of production-related facilities" from qualifying for the feeder-line exemption, citing the example of a subsea manifold adjacent to wellbores as a potential point of first collection.

This was not our intention. In fact, we view our regulatory exemption as an expansive application of what OCSLA section 1334(f)(2) allows. However, to preclude any interpretative ambiguity, we will more explicitly follow the wording of the statute, and modify § 330.3(a)(3) to read "[a]ny pipeline or class of pipelines which feeds into a facility where gas is first collected or a facility where gas is first separated, dehydrated, or otherwise processed."

We decline OCS Producers' and NGSA's invitations to categorically exempt all production-related facilities. Without reviewing the configuration of offshore facilities, we cannot be satisfied that a pipeline's location upstream of a processing platform guarantees it serves as a feeder line and not as a transportation line, or that a platform is being used to support production activities rather than, for example, serving to collect, redistribute, and boost the pressure of gas already in transit en route to shore. Therefore, we will retain the feeder-line exemption, but will not broaden it.

We recognize that by providing reporting exemptions, we invite OCS service providers to organize their operations so as to come within these exemptions. For example, Williams anticipates exempt service providers, in contemplating expansions, may be motivated to deliberately undersize new capacity to be able to claim to be physically incapable of serving additional customers.

In the final rule, in response to this same example, we observed it would be economically irrational to reject the receipt of the additional revenues that new customers confer in favor retaining a reporting exemption. We do not believe the administrative convenience of not reporting will outweigh service providers' motivation to maximize profit. As we also observed in the final rule, "[g]iven that exempt and non-exempt service providers must ultimately abide by the same OCSLA nondiscrimination provisions, we do not expect opting out of reporting will confer a noticeable commercial advantage." [35] We do not expect legitimate efforts to obtain or retain exempt status will impede or distort offshore development, or have any significant adverse impact the offshore's competitive transportation markets, or upset offshore investments. Therefore, we will permit regulated entities to arrange their affairs with an eye to the regulatory impact thereof.

We do not intend, however, to let exempt form trump exempt substance, which leads us to reject OCS Producers' proposals to treat exemptions expansively. Specifically, our standard practice is to treat separate business entities as distinct, regardless of affiliation, and we will continue to do so. Thus, for the purposes of applying the single-shipper exemption, two affiliated shippers count as two shippers, and consequently could not both be served under the single-shipper criteria. Also, where a pipeline is jointly owned by more than one entity, each with an undivided interest in the line, the single-shipper exemption will only apply as long as one and only one party ships its gas through the pipeline.

In the same manner, we expect to rely on the formalities of financial arrangements, and treat entities engaged in a common financial transaction as separate parties. Thus, while OCS Producers propose treating entities engaged in a sale and leaseback as a single or joint owner, we view each participant as a separate actor. Accordingly, if individual entities wish to be treated as a collective joint owner, they should execute agreements to that effect, and not count on this Commission to examine the depth of their financial ties, affiliate status, or other indicia of intimacy in order to construe them to be a constructive joint owner.

[35] 65 FR 20354 at 20365, FERC Stats. & Regs. ¶ 31,514 at 31,534.

We clarify that where the same parties own a pipeline and all the gas flowing through it, if such parties contract with a third party as their agent to operate the pipeline, or manage other transportation matters on their behalf, the owner-shipper exemption remains intact. This same principle applies to the single-shipper exemption.

We presume that service providers serving themselves will not deny access to or discriminate against themselves, hence the owner-shipper exemption. Section 330.3(a)(2) states this exemption applies where a service provider's owners hold interests in a pipeline and the gas from the "field or fields connected to a single pipeline." OCS Producers suggest, and we agree, that the intent is clarified by changing "a single pipeline" to "that single pipeline." OCS Producers also suggest changing the reference from "that single pipeline" to "that pipeline or pipelines" in order to cover a configuration where laterals that gather gas from a production area feed into a trunkline. We will also adopt this change, but note this owner-shipper exemption holds only as long as all the same parties share ownership interests in all the pipeline facilities and in all the gas supplies transported by those facilities.

We recognize that, as a practical matter, due to arrangements such as production balancing agreements, an owner-shipper pipeline may not always flow gas volumes in constant proportion to the ownership interests in the production field. We clarify that as long as all the same parties share ownership interests in the pipeline and in all production attached to that line, the owner-shipper exemption will apply.

OCS Producers would expand the owner-shipper exemption to permit parties that are not shippers to hold interests in a pipeline. A premise of the owner-shipper exemption is that where all parties share the same ultimate interest, the self-dealing of one will be the self-dealing of all. Introducing non-shipping pipeline owners, introduces third parties that do not necessarily share interests in common with shipper-owners. This undermines our assumption that parties engaged in a single enterprise will have little motive to exploit one another; therefore, we will not broaden the shipper-owner exemption in the proposed manner.

We clarify that the fact that upstream laterals and/or extensions of a pipeline system qualify for reporting exemptions is not determinative of whether the downstream segments of the same pipeline system are exempt. For example, consider an offshore pipeline system configured in the form of an

inverted "Y," owned and operated by gas producers A, B, and C. Gas flows in separate paths along the left and right legs, merging into a single stream that moves along the trunk of the "Y." Assuming the legs are the only lines connecting to the trunk, if producer A owns and ships all the gas in the left leg, and producers B and C own and ship all of the gas in the right leg, then each leg qualifies for a reporting exemption. The left leg comes under the single-shipper exemption and the right leg under the shipper-owner exemption. In addition, because all gas flowing along the trunkline portion of the pipeline system is owned by the same parties that own that line, the trunkline would also qualify for the shipper-owner exemption. We note that if the trunkline were owned by only one or two of the three producers, the trunkline could not qualify for this exemption. The legs leading into the trunkline retain their exempt status regardless of the ownership of the trunkline.

We clarify that transporting gas on behalf of MMS under its royalty-in-kind program will be considered to be service for a separate shipper—but only if gas is actually moving under such an arrangement.[36] In theory, MMS royalty-in-kind gas could flow in every offshore pipeline. In practice, at present, only minimal amounts of such gas are actually flowing. In the final rule, we rejected MMS' suggestion that we treat its potential participation as a second shipper as voiding the single-shipper and owner-shipper exemptions. Here, we reject OCS Producers' contrary suggestion that we carve out an exception to retain those same exemptions where MMS participates as a shipper. Recognizing the provisional nature MMS' royalty-in-kind collection program, we reaffirm the wait-and-see approach of the final rule: "in the event MMS moves beyond its present royalty-in-kind pilot program and begins to collect a significant portion of royalty payments as gas volumes, we may be inclined to revisit the applicability of the reporting exemptions." [37]

E. Rate Regulation

1. Requests for Rehearing and/or Clarification

Williams urges the Commission to state that it does not intend to use the OCSLA to impose cost-based rates.

Duke and Williams are concerned that potential allegations of rate discrimination will create the need to renegotiate existing contracts every time a new customer is signed up under different terms.

Duke and Williams are concerned that the reporting requirements will compel pipelines to forego individually-tailored offerings in favor of uniform rates and services.

2. Commission Response

We recognize that the OCSLA contains no provision for the imposition of cost-based rates and clarify that it is not our intention to apply a full NGA cost-of-service review to non-NGA OCS entities. Our focus under the OCSLA is open and nondiscriminatory access, not ratemaking methodology. Thus, as long as an OCS service provider charges its customers compatible rates, and assuming there is no rate inequity, then under the OCSLA we would have no cause for further inquiry regarding the rates' derivation. Of course, if an OCS service provider is subject to the NGA, its rates would be scrutinized and authorized as just and reasonable under the NGA.

The prospect that OCSLA reporting might place a straightjacket on OCS service providers was raised and responded to in the final rule. There we rejected such speculation, stating that "we see no bar to a service provider offering different shippers different terms—provided the variation in the terms of service either reflect differences in costs incurred to provide service or reflect differences among the shippers served," [38] a position we reaffirm here. We clarify that our review of a service provider that charges a lower rate to one customer and a higher rate to another would not necessitate scrutiny of the service provider's full cost of service data. Rather, the service provider would only need to provide that data and other information material to justify the higher rate.

We reiterate that we will neither oblige an OCS service provider to offer identical rates and terms to all customers to meet the OCSLA's nondiscrimination mandate nor oblige comparable OCS service providers to offer identical rates and terms of service. Provided an OCS service provider can justify variable conditions of service among its customers, we may find such customers are not in fact similarly situated. Additionally, if comparable service providers can articulate an acceptable reason for differences in their rates and terms of service, we may accept the differences as reasonable reflections of distinctive business conditions and practices.[39]

Duke and Williams are correct to suggest that offering service to a new customer under terms at odds with those of existing customers may give rise to suspicions of discrimination. However, such suspicions may be set aside if the service provider demonstrates a legitimate reason for such treatment, *e.g.*, a disparity in new and existing customer reserve commitments. Thus, while a service provider may seek safe harbor by establishing a uniform tariff applicable to all customers, we do not interpret the OCSLA as requiring this. To clarify, we do not read the OCSLA's nondiscrimination requirement as a most-favored-nations clause; where an OCS service provider can present an acceptable rationale for offering its customers different rates and terms, we can find different conditions of service acceptable.

Duke asserts that reporting will lessen competition by reducing the business alternatives now available to offshore service providers, which will lead to diminished OCS investment. This conflicts with the premise of Order No. 639 that "the free flow of information

[36] This applies regardless of whether MMS holds title to the gas or the gas is transported under the name of another shipper on behalf of MMS.

[37] 65 FR 20354 at 20361, FERC Stats. & Regs. ¶ 31,514 at 31,526.

[38] 65 FR 20354 at 20358, FERC Stats. & Regs. ¶ 31,097 at 31,522.

[39] With this in mind, § 330.2(b)(8) solicits "[o]ther conditions of service deemed relevant by the Gas Service Provider." The Producer Coalition suggests the Commission spell this out, maintaining that without requiring specific information, rates and terms that superficially appear the same can mask discrimination. As an example, the Producer Coalition posits a service provider that charges a shipper a rate that includes recovery of costs incurred to build new facilities to serve that shipper, and then charges that same rate to a second shipper, but differently than the first shipper, the second shipper pays upfront for the new facilities needed for its service. The Producer Coalition asserts that unless the service provider is made to report and display this underlying disparity, it appears both shippers are subject to the same rate. The Producer Coalition would prevent this by revising § 330.2(b)(8) to require reporting of "other economically and operationally material conditions of service, including contract volumes, the effective and expiration date of the contract, dedication of gas supply, responsibility for construction of interconnection facilities, and any other economically or operationally material term of service (such as gas quality standards, scheduling priorities, imbalance provisions and billing and payment) that sets the subject contract apart from other contracts on Gas Service Provider's system." Although some of the itemized information may be relevant to determining whether a service provider is complying with the OCSLA, some of it may not. Without an explicit need for more data, we are reluctant to increase the reporting burden. In the case of the above example, we are not convinced the second shipper needs the additional information the Producer Coalition proposes to be alerted to the possibility that it may not be signing up for service under a rate reflecting the same set of conditions as the rate charged the first shipper. Accordingly, we place upon the service provider the responsibility of determining what information to report as relevant under § 330.2(b)(8) while reminding shippers of the need to remain alert to signs of service providers' sins of omission.

regarding offshore gas activities is critical to the successful creation of a competitive and efficient marketplace." [40] We are unclear which particular business practices depend on remaining closeted to remain viable. We stress that this new rule imposes no new obligations on how OCS service providers conduct business; it is the OCSLA that obligates OCS service providers to conduct business premised on open and nondiscriminatory access.

As discussed above, we do not intend for reporting to force all OCS service providers to adhere to one rigid tariff. We see no reason that the flexibility, variety, and experimentation reflected in existing offshore agreements and practices cannot be sustained under this new reporting regime, provided these business arrangements conform to the OCSLA's longstanding open and nondiscriminatory access requirements. Thus, reporting should neither diminish the number of legitimate business alternatives nor diminish offshore investments.

F. Gas and Oil Asymmetry

1. Requests for Rehearing and/or Clarification

Duke points out that the OCSLA applies with equal force to oil and gas transportation and asks why the new reporting requirements are confined to gas.[41]

2. Commission Response

Here we are concerned solely with offshore natural gas operations, and while this leads us to also consider other statutes' impact on such operations (principally the NGA), we find no cause to consider OCSLA provisions affecting oil operations. In the final rule, we explained to Duke that in this proceeding we have elected to confine our considerations to gas matters, given that we have found rates for transportation on oil pipelines to be just and reasonable,[42] but have made no such finding for rates for transportation on NGA-exempt OCS gas pipelines. Thus, to protect gas shippers using NGA-exempt OCS facilities from discriminatory, exorbitant charges, we look to the OCSLA. We do not rule out the future implementation of similar reporting requirements for offshore oil service providers, but that possibility is outside our present purpose.

G. Administrative Burdens

1. Requests for Rehearing and/or Clarification

OCS Producers expect the Commission to be inundated with requests for declarations that production-related facilities and services qualify for a reporting exemption.

2. Commission Response

We are unable to predict the number of petitions that might be presented with respect to OCSLA reporting status; however, we intend to give prudent consideration to the issues raised in each request and process all requests as expeditiously as our resources permit. Initial uncertainties about how to assess whether exemptions apply should recede with each declaratory order addressing the merits of the OCSLA exemptions. As discussed in the final rule, we entrust OCS service providers with undertaking a good faith analysis of whether they qualify for one of the reporting exemptions, *i.e.*, service providers need not obtain prior Commission permission in order to lay claim to a reporting exemption.

We expect requests for a review of an entity's OCSLA reporting status will follow the pattern we are familiar with for requests of an entity's NGA jurisdictional status, namely, the Commission sees primarily those cases where the circumstances give rise to doubts about results reached. In the far more numerous cases where the facts lead to a reasonably unambiguous outcome, unless a company seeks reassurance that its own analysis is correct, the Commission's own assessment is rarely requested.

H. Offshore Development

1. Requests for Rehearing and/or Clarification

NGSA suggests that service providers be permitted to reserve capacity for their own future use and offer such capacity to third parties until needed. NGSA points out that NGA-regulated pipelines can reserve capacity for future use, and is apprehensive that unless NGA-exempt OCS pipelines can do the same, shippers seeking access to a service provider's facilities could disrupt a development plan between an OCS service provider and producer. NGSA also suggests OCS service providers be required to enlarge capacity when prospective shippers agree to bear the cost of the expansion.

2. Commission Response

We endorse the idea of sizing facilities to match anticipated transportation needs. Particularly offshore, where developing a producing field may entail extensive time and expense, we recognize the practicality of coordination, whereby a producer incrementally bringing additional volumes on line can be assured that when the field's extraction reaches its zenith, pipeline facilities will be in place with the capacity to take away and transport all gas volumes. Although such coordination, ultimately, is efficient, there can be a period of underutilization between the time a large diameter line is completed and the field it serves reaches full production.

Under such circumstances, we believe it is appropriate to compel the service provider to allow other shippers to interconnect, at their own expense, with the underutilized line. However, given that the primary purpose of the new line is to pick up gas at a particular production platform, as the volumes available at that production platform increase with the development of the field, these other shippers may be curtailed. This is appropriate, given that such shippers will have elected to enter into contracts for service on an interim basis, *i.e.*, between the time the line is placed in operation and the time excess capacity on the line is needed by the producer-shipper. We will permit a service provider to reserve its own capacity, as NGSA requests, provided (1) potential shippers' transportation requirements are taken into consideration in designing the new line, (2) shippers willing to bear the economic costs of moving gas on an until-as-needed basis are allowed access to reserved but unused capacity, and (3) the service provider does not shift costs associated with the underutilization of its own reserved capacity onto other customers.

NGSA requests we mandate expansions. Our authority to do so is contained in OCSLA section 1334(f)(2)(B), which states that:

Upon the specific request of one or more owner or nonowner shippers able to provide a guaranteed level of throughput, and on the condition that the shipper or shippers

[40] 65 FR 20354 at 20364, FERC Stats. & Regs. ¶ 31,514 at 31,531.

[41] Duke also argues that in amending the OCSLA in 1978—an amendment that added the nondiscrimination mandate to the existing open access requirement—Congress was preoccupied with potentially anticompetitive activities of oil companies, not gas. This insight into the legislative history of the OCSLA, however, does not alter the fact that the plain language of the statute, as Duke points out, does not distinguish between oil and gas. Thus, the competitive principles of OCSLA section 1334(f) apply with equal force to OCS oil and gas service providers.

[42] *See* Revision to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, 58 FR 58753 (Nov. 4, 1993), FERC Stats. & Regs. ¶ 30,985 (1993). Whether this presumption of just and reasonable oil rates applies to oil lines located wholly on the OCS has yet to be affirmed by judicial review.

requesting such expansion shall be responsible for bearing their proportionate share of the costs and risks related thereto, the Federal Energy Regulatory Commission may, upon finding, after a full hearing with due notice thereof to the interested parties, that such expansion is within technological limits and economic feasibility, order a subsequent expansion of throughput capacity of any pipeline for which the permit, license, easement, right-of-way, or other grant of authority is approved or issued after the date of enactment of this subparagraph [enacted Sept. 18, 1978]. This subparagraph shall not apply to any such grant of authority approved or issued for the Gulf of Mexico or the Santa Barbara Channel.

We have yet to exercise our authority under this section of the OCSLA, and until we are faced with a case of first impression covering our mandatory expansion authority, we believe it would be imprudent to speculate on how we might exercise that authority.

I. Applicability of the Rule

1. Requests for Rehearing and/or Clarification

OCS Producers point to instances where the Commission's applies its rule to "OCS service providers" and "facilities" used to "move" gas. OCS Producers believes these words designate categories that are improperly broad given that the OCSLA, by its own terms, applies to "pipelines" that "transport" gas.

2. Commission Response

The OCSLA, by its own terms, applies to the exploration, development, or production of OCS minerals—defining "production" to include the "transfer of minerals to shore;"[43] "minerals" being defined as including gas.[44] This is a broader regulatory sweep than the NGA. For example, NGA section 1(b) excludes production and gathering facilities, whereas the OCSLA contains no such limitations.

For this reason, rather than refer to an OCS "pipeline," which risks being associated with the narrower NGA usage, we deliberately refer to an OCS "service provider." Similarly, "transportation," as a term of art under the NGA, carries connotations and limitations that we seek to sidestep. Our reference to facilities that "move" gas is no more expansive than the OCSLA's section 1331(q) description of "transportation," which covers everything between a wellhead and shore.

We clarify that we do not intend to cross reference common OCSLA and NGA terms. Thus, the OCSLA's use of the terms "pipeline" and "transportation" is to be interpreted by exclusive reference to the OCSLA. NGA definitions are relevant to the OCSLA only to the extent that NGA-regulated interstate transportation facilities are exempt from OCSLA reporting.

OCS Producers request we refine the § 330.1(b) definition of an OCS gas service provider to explicitly exclude production and explicitly include gathering. The OCSLA contains an expansive view of "production," quoted above. Rather than attempt to define production more rigorously, we find the more prudent approach is to make use of our OCSLA authority to exclude feeder line facilities from compliance with the competitive principles of section 1334(f). This should have the effect of removing the bulk of production activities from the OCSLA reporting requirements. All other OCS facilities and services, unless they fall under the single-shipper, owner-shipper, or NGA-regulated exemption, remain subject to the reporting requirements.

IV. Effective Date

The amendments to our regulations adopted in this order on rehearing will become effective October 2, 2000. As discussed above, since October 15, 2000 is a Sunday, OCS service providers' initial reports will be due on October 16, 2000.

List of Subjects in 18 CFR 330

Natural gas, Pipelines, Reporting and record keeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission denies rehearing in part, grants rehearing in part, and clarifies Order No. 639. The Commission amends Part 330, Title 18, Code of Federal Regulations, as follows.

PART 330—CONDITIONS OF SERVICE REPORTING REQUIREMENTS

1. The authority for Part 330 continues to read as follows:

Authority: 43 U.S.C. 1301–1356.

2. In § 330.2, paragraphs (a)(6), (b) introductory text, (b)(7), and (b)(8) are revised; the introductory text of paragraph (b)(9) is removed and paragraphs (b)(9)(i), (ii), (iii), and (iv) are redesignated, respectively, as paragraphs (c)(1), (c)(2), (c)(3), and (c)(4), and paragraph (c) is revised to read as follows:

§ 330.2 Reporting requirements.

(a) * * *

(6) For all entities affiliated with the Gas Service Provider and engaged in the exploration, development, production, processing, gathering, transportation, marketing, or sale of natural gas within the boundaries of the United States and the water bodies immediately adjacent thereto: the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations that directly or indirectly hold control over the Gas Service Provider, and, the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations directly or indirectly controlled by the Gas Service Provider (where the Gas Service Provider holds control jointly with other interest holders, so state and name the other interest holders).

(b) A Gas Service Provider must file with the Commission its conditions of service, consisting of the information specified in this paragraph (b), or alternatively, the information specified in paragraph (c) of this section. Under this paragraph (b), a Gas Service Provider must submit, for each shipper served:

* * * * *

(7) Rates between each pair of primary receipt and delivery points and each pair of any other points served, and;

(8) Other conditions of service deemed relevant by the Gas Service Provider.

(c) As an alternative to the requirements in paragraph (b) of this section, a Gas Service Provider may file a statement of its rules, regulations, and conditions of service that includes:

(1) The rate between each pair of receipt and delivery points, if point-to-point rates are charged;

(2) The rate per unit per mile, if mileage-based rates are charged;

(3) Any other rate employed by the Gas Service Provider, with a detailed description of how such rate is derived, identifying customers and the rate charged to each customer;

(4) Any adjustments made by the Gas Service Provider to the rates charged based on gas volumes shipped, the conditions of service, or other criteria, identifying customers and the rate adjustment applicable to each customer.

3. In § 330.3, paragraphs (a)(1), (a)(2), (a)(3), (b), and (c) are revised to read as follows:

§ 330.3 Applicability of reporting requirements.

(a) * * *

(1) A Gas Service Provider that serves exclusively a single entity (either itself

[43] 43 U.S.C. 1331(m). The OCSLA refers to, but does not define, "gathering" and "transportation."

[44] 43 U.S.C. 1331(q).

or one other party), until such time as the Gas Service Provider commences service to serve a second shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified;

(2) A Gas Service Provider that serves exclusively shippers with ownership interests in both the pipeline operated by the Gas Service Provider and the gas produced from a field or fields connected to that single pipeline or pipelines, until such time as the Gas Service Provider commences service to a non-owner shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified;

(3) Any pipeline or class of pipelines which feeds into a facility where gas is first collected or a facility where gas is first separated, dehydrated, or otherwise processed; and

* * * * *

(b) A Gas Service Provider that makes no filing pursuant to §§ 330.3(a)(1) or (a)(2) becomes subject to the § 330.2 reporting requirements at any time that it no longer meets the §§ 330.3(a)(1) or (a)(2) criteria. A Gas Service Provider that becomes subject to reporting during any calender quarter must submit a § 330.2 report on the 15th day of the following quarter. Gas Service Providers must comply with the § 330.2 reporting requirements as directed by the Commission.

(c) When a Gas Service Provider subject to the § 330.2 reporting requirements alters its affiliates, customers, rates, conditions of service, or facilities during any calender quarter, it must then file with the Commission, on the 15th day of the following quarter, a revised report describing all alterations occurring during the previous quarter.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 00P–1282]

Obstetrical and Gynecological Devices; Classification of the Clitoral Engorgement Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the clitoral engorgement device into class II (special controls). The special control that will apply is a guidance document entitled: "Guidance for Industry and FDA Reviewers: Class II Special Controls Guidance Document for Clitoral Engorgement Devices." The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, and the FDA Modernization Act of 1997. The agency is classifying the clitoral engorgement device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This rule is effective September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

In accordance with section 513(f)(1) of the act, FDA issued an order on April 25, 2000, classifying the Urometrics EROS–Clitoral Therapy Device into class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or to a device that was subsequently reclassified into class I or class II. On April 27, 2000, FDA filed a petition submitted by Urometrics, requesting classification of the Urometrics EROS–Clitoral Therapy Device into class II under section 513(f)(2) of the act.

After review of the information submitted in the petition, FDA determined that the Urometrics EROS–Clitoral Therapy Device can be classified in class II with the establishment of special controls. This device is indicated for use in women with female sexual arousal disorder, which can present with symptoms of diminished vaginal lubrication, diminished clitoral and genital engorgement, lowered sexual satisfaction, and a reduced ability to achieve orgasm. FDA believes that class II special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

FDA has identified the following risks to health associated specifically with this type of device: Unknown effects of extended use, and improper use of the device due to misplacement, or use of the device over compromised tissue. In addition to the general controls of the act, this type device is subject to the following special control: A special controls guidance document entitled "Guidance for Industry and FDA Reviewers: Class II Special Controls Guidance for Clitoral Engorgement Devices."

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of this type of device and, therefore, the device is not exempt from premarket notification requirements. FDA review of key design features, data sets from

bench studies and clinical trials, other relevant performance data, and labeling will ensure that minimum levels of performance, for both safety and effectiveness, are addressed before marketing clearance. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on the clitoral engorgement device before marketing the device.

On April 28, 2000, FDA issued an order to the petitioner classifying Urometrics EROS–Clitoral Therapy Device and substantially equivalent devices of this generic type into class II under the generic name, clitoral engorgement device. FDA identifies this generic type of device as a device designed to apply a vacuum to the clitoris. It is intended for use in the treatment of female sexual arousal disorder. FDA is codifying this device by adding 21 CFR 884.5970. This order also identifies the following special control applicable to this device: A special controls guidance document entitled "Guidance for Industry and FDA Reviewers: Class II Special Controls Guidance for Clitoral Engorgement Devices."

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so it is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA knows of only one manufacturer of this type of device. Classification of these devices from class III to class II will relieve this manufacturer of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e) and may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 884 is amended as follows:

List of Subjects in 21 CFR Part 884

Medical devices.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 884.5970 is added to subpart F to read as follows:

§ 884.5970 Clitoral engorgement device.

(a) *Identification.* A clitoral engorgement device is designed to apply a vacuum to the clitoris. It is intended for use in the treatment of female sexual arousal disorder.

(b) *Classification.* Class II (special controls). The special control is a guidance document entitled: "Guidance for Industry and FDA Reviewers: Class II Special Controls Guidance Document for Clitoral Engorgement Devices."

Dated: July 17, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–19489 Filed 8–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–187F]

RIN 1117–AA51

Schedules of Controlled Substances: Exempt Anabolic Steroids Products; Republication

Editorial Note: Due to numerous printing errors, rule document FR Doc. 00-17915 originally published at 65 FR 43690-43694, Friday, July 14, 2000 is being reprinted in its entirety.

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) published an interim rule with request for comments (65 FR 3124, Jan. 20, 2000, as corrected at 65 FR 5024, Feb. 2, 2000) which identified six anabolic steroid products as being exempt from certain regulatory provisions of the Controlled Substances Act (21 U.S.C. 801 *et seq.*) (CSA). No comments were received. Therefore, the interim rule is being adopted without change.

EFFECTIVE DATE: July 14, 2000.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug

Enforcement Administration, Washington, D.C. 20537; Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Does This Rule Accomplish and by What Authority Is It Being Issued?

This rule finalizes an interim rule (65 FR 3124, Jan. 20, 2000, as corrected at 65 FR 5024, Feb. 2, 2000) which identified six products as being exempt from certain portions of the Controlled Substances Act (21 U.S.C. 801 *et seq.*) (CSA). Section 1903 of the Anabolic Steroids Control Act of 1990 (title XIX of Pub. L. 101–647) (ASCA) provides that the Attorney General may exempt products which contain anabolic steroids from all or any part of the CSA if the products have no significant potential for abuse. The procedure for implementing this section of the ASCA is described in 21 CFR 1308.33. Exempt status removes each product from application of the registration, labeling, records, reports, prescription, physical security, and import and export restrictions associated with Schedule III substances.

Why Did DEA Add Six Products to the List of Exempt Anabolic Steroids Products?

Manufacturers of six anabolic steroid products submitted exempt status applications to the Deputy Assistant Administrator for the DEA Office of Diversion Control in accordance with 21 CFR 1308.33. Each application delineated a set of facts which the applicant believed justified the exempt status of its product. The applicants provided information which they believed showed that because of the specific product preparation, concentration, mixture, or delivery system these products had no significant potential for abuse. Upon acceptance of the applications, the Deputy Assistant Administrator requested from the Assistant Secretary for Health, Department of Health and Human Services (HHS) a recommendation as to whether these products should be considered for exemption from certain portions of the CSA. The Deputy Assistant Administrator received the determination and recommendation of the Assistant Secretary for Health and Surgeon General that there was sufficient evidence to establish that each product does not possess a significant potential for abuse.

Which Anabolic Steroid Products Are Affected and When Does the Rule Become Effective?

In the interim rule, the Deputy Assistant Administrator identified the following six products as being exempt from application of sections 302 and through 309 and 1002 through 1004 of the CSA (21 U.S.C. 822–829 and 952–954) and 21 CFR 1301.13, 1301.22, and 1301.71 through 1301.76:

EXEMPT ANABOLIC STEROID PRODUCTS

Trade name	Company	NDC No.	Form	Ingredients	Quantity
Component E–H in process granulation.	Ivy Laboratories, Inc., Overland Park, KS.	.....	Pail or drum ...	Testosterone propionate	10 parts
				Estradiol benzoate	1 part
Component E–H in process pellets.	Ivy Laboratories, Inc., Overland Parks, KS.	.....	Pail	Testosterone propionate	25 mg/
				Estradiol benzoate	2.5 mg/pellet
Component TE–S in process granulation.	Ivy Laboratories, Inc., Overland Park, KS.	.....	Pail or drum ...	Trenbolone acetate	5 parts
				Estradiol USP	1 part
Component TE–S in process pellets.	Ivy Laboratories, Inc., Overland Parks, KS.	.....	Pail	Trenbolone acetate	120 mg/
				Estradiol USP	24 mg/pellet
Testoderm with Adhesive 4 mg/d.	Alza Corp., Palo Alto,CA	Export only	Patch	Testosterone	10 mg
Testosterone Ophthalmic Solutions.	Allergan, Irvine, CA	.....	Ophthalmic Solutions.	Testosterone	≤0.6% w/v

The interim rule became immediately effective on publication in the **Federal Register**, January 20, 2000, in order to provide a health benefit to the public by more expeditiously increasing the access to these anabolic steroid products and to reduce regulatory restrictions that DEA (in consultation with HHS) has determined to be an unnecessary burden on the businesses manufacturing these products.

What Comments to the Interim Rule Were Received?

Comments to the interim rule were requested, none were received.

What Exempt Anabolic Steroid Products are Included in the List Referred to in 21 CFR 1308.34?

With the publication of this final rule, the complete list of products referred to in 21 CFR 1308.34 is as follows:

EXEMPT ANABOLIC STEROID PRODUCTS

Trade Name	Company	NDC No.	Form	Ingredients	Quantity
Andro-Estro 90–4	Rugby Laboratories, Rockville Centre, NY.	0536–1605	Vial	Testosterone enanthate	90 mg/ml
				Estradiol valerate	4 mg/ml
Androgyn L.A.	Forest Pharmaceuticals, St. Louis, MO.	0456–1005	Vial	Testosterone enanthate	90 mg/ml
				Estradiol valerate	4 mg/ml
Component E–H in process granulation.	Ivy Laboratories, Inc., Overland Park, KS.		Pail or drum ...	Testosterone propionate	10 parts
				Estradiol benzoate	1 part
Componenet E–H in process pellets.	Ivy Laboratories, Inc., Overland Park, KS.		Pail	Testosterone propionate	25 mg/
				Estradiol benzoate	2.5 mg/pellet
Component TE–S in process granulation.	Ivy Laboratories, Inc., Overland Park, KS.		Pail or drum ...	Trenbolone acetate	5 parts
				Estradiol USP	1 part
Component TE–S in process pellets.	Ivy Laboratories, Inc., Overland Park, KS.		Pail	Trenbolone acetate	120 mg/
				Estradiol USP	24 mg/pellet

EXEMPT ANABOLIC STEROID PRODUCTS—Continued

Trade Name	Company	NDC No.	Form	Ingredients	Quantity
depANDROGYN	Forest Pharmaceuticals, St. Louis, MO.	0456–1020	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
DEPTO–T.E.	Quality Research Pharm., Carmel, IN.	52765–257	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Depo-Testadiol	The Upjohn Company, Kalamazoo, MI.	0009–0253	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
depTESTROGEN	Martica Pharmaceuticals, Phoenix, AZ.	51693–257	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Duomone	Wintec Pharmaceutical, Pacific, MO.	52047–360	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml
DUO–SPAN II	Primedics Laboratories, Gardena, CA.	0684–0102	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
DURATESTRIN	W. E. Hauck, Alpharetta, GA	43797–016	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Estratest	Solvay Pharmaceuticals, Marietta, GA.	0032–1026	TB	Esterifield estrogens Methyltestosterone	1.25 mg 2.5 mg
Estratest HS	Solvay Pharmaceuticals, Marietta, GA.	0032–1023	TB	Esterifield estrogens Methyltestosterone	0.625 mg 1.25 mg
Menogen	Sage Pharmaceuticals, Shreveport, LA.	59243–570	TB	Esterifield estrogens Methyltestosterone	1.25 mg 2.5 mg
Menogen HS	Sage Pharmaceutical, Shreveport, LA.	59243–560	TB	Esterifield estrogens Methyltestosterone	.0625 mg 1.25 mg
PAN ESTRA TEST	Pan American Labs., Covington, LA.	0525–0175	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Premarin with Methyltestosterone.	Ayerst Labs. Inc,. New York, NY.	0046–0878	TB	Conjugated estrogens Methyltestosterone	0.625 mg 5.0 mg
Premarin with Methyltestosterone.	Ayerst Labs. Inc., New York, NY.	0046–0879	TB	Conjugated estrogens Methyltestosterone	1.25 mg 10.0 mg
Synovex H in-process bulk pellets.	Syntex Animal health, Palo Alto, CA.		Drum	Testosterone propionate Estradiol benzoate	25 mg 2.5 mg/pellet
Synovex H in-process granulation.	Syntex Animal Health, Palo Alto, CA.		Drum	Testosterone propionate Estradiol benzoate	10 part 1 part
Synovex Plus in-process bulk pellets.	Fort Dodge Animal Health, Fort Dodge, IA.		Drum	Trenbolone acetate Estradiol benzoate	25 mg/ 3.50 mg/pellet
Synovex Plus in-process granulation.	Fort Dodge Animal Health, Fort Dodge, IA.		Drum	Trenbolone acetate Estradiol benzoate	25 parts 3.5 parts
Testagen	Clint Pharmaceuticals, Nashville, TN.	55553–257	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
TEST–ESTRO Cypionates	Rugby Laboratories Rockvill Centre, NY.	0536–9470	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testoderm 4 mg/d	Alza Copr., Palo Alto, CA	17314–4608	Patch	Testosterone	10 mg
Testoderm 6 mg/d	Alza Corp., Palo Alto, CA	17314–4609	Patch	Testosterone	15 mg
Testoderm with Adhesive 4 mg/d.	Alza Corp., Palo Alto, CA	Export only	Patch	Testosterone	10 mg
Testoderm with Adhesive 6 mg/d.	Alza Corp., Palo Alto, CA	17314–2836	Patch	Testosterone	15 mg
Testoderm in-process film	Alza Corp, Palo Alto, CA		Sheet	Testosterone	0.25 mg/cm2
Testoderm with Adhesive in-process film.	Alza Corp., Palo Alto, CA		Sheet	Testosterone	0.25 mg/cm2
Testosterone Cypionate/Estradiol Cypionate Injection.	Best Generics, No. Miami Beach, FL.	54274–530	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Cypionate/Estradiol Cypionate Injection.	Goldline Labs, Ft. Lauderdale, Fl.	0182–3069	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2mg/ml
Testosterone Cyp 50 Estradiol Cyp 2.	I.D.E.-Interstate, Amityville, NY.	0814–7737	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Cypionate/Estradiol Cypionate Injection.	Schein Pharmaceuticals, Port Washington, NY.	0364–6611	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Cypionate/Estradiol Cypionate Injection.	Steris Labs. Inc., Phoenix, AZ.	0402–0257	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Enanthate/Estradiol Valerate Injection.	Goldline Labs, Ft. Lauderdale, Fl.	0182–3073	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml
Testosterone Enanthate/Estradiol Valerate Injection.	Schein Pharmaceuticals, Port Washington, NY.	0364–6618	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml
Testosterone Enanthate/Estradiol Valerate Injection.	Steris Labs. Inc., Phoenix, AZ.	0402–0360	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml
Testosterone Ophthalmic Solutions.	Allergan, Irvine, CA		Ophthalmic solutions.	Testosterone	≤0.6% w/v
Tilapia Sex Reversal Feed (Investigational).	Rangen, Inc., Buhl, ID		Plastic bags	Methyltestosterone	60 mg/kg fish feed

EXEMPT ANABOLIC STEROID PRODUCTS—Continued

Trade Name	Company	NDC No.	Form	Ingredients	Quantity
Tilapia Sex Reversal Feed (Investigational).	Ziegler Brothers, Inc., Gardners, PA.		Plastic bags ...	Methyltestosterone	60 mg/kg fish feed

Additional copies of this list may be obtained by submitting a written request to the Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537.

Plain Language Instructions

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator, for the DEA Office of Diversion Control, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this rule and by approving it, certifies that it will not have significant economic impact on a substantial number of small business entities. The granting of exempt status relieves persons who handle the exempt products in the course of legitimate business from the registration, labeling, records, reports, prescription, physical security, and import and export restrictions imposed by the CSA.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866, section 1(b). The Office of Management and Budget (OMB) reviewed the interim rule as a significant action; the DEA received no comments regarding the interim rule. This final rule falls into a category of regulatory actions which OMB has determined are exempt from regulatory review. Therefore, this action has not been reviewed by the OMB.

Executive Order 13132

This action has been analyzed in accordance with the principles and criteria in Executive Order 13132 and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

PART 1308—[AMENDED]

Pursuant to the authority delegated to the Administrator of the DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100 and redelegated to the Deputy Assistant Administrator of the Drug Enforcement Administration Office of Diversion Control, pursuant to 28 CFR 0.104, appendix to subpart R, section 7(g), the Deputy Assistant Administrator of the Office of Diversion Control hereby adopts as a final rule, without change, the interim rule which was published at 65 FR 3124 on Jan. 20, 2000 and corrected at 65 FR 5024, on Feb. 2, 2000, amending the list described in 21 CFR 1308.34.

Dated: July 3, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 00–17915 Filed 7–13–00; 8:45 am]

Editorial Note: Due to numerous printing errors, rule document FR Doc. 00-17915 originally published at 65 FR 43690-43694, Friday, July 14, 2000 is being reprinted in its entirety.

[FR Doc. R0–17915 Filed 8–1–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA–156F]

RIN # 1117–AA43

Listed Chemicals; Final Establishment of Thresholds for Iodine and Hydrochloric Gas (Anhydrous Hydrogen Chloride)

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final Rule with request for comment.

SUMMARY: Effective October 3, 1996, the Comprehensive Methamphetamine Control Act of 1996 (MCA) established that iodine is a List II chemical; however, it was not made subject to import/export regulatory controls. While exports of the listed chemical hydrochloric acid (including anhydrous hydrogen chloride, referred to in the MCA as hydrochloric gas, which is a form of hydrogen chloride) were already regulated pursuant to 21 CFR 1310, the MCA had the practical effect of directing the DEA to place domestic controls on anhydrous hydrogen chloride. Since no domestic thresholds for iodine or anhydrous hydrogen chloride have been established prior to this Final Rule, all domestic transactions involving such chemicals have been subject to recordkeeping and reporting requirements under the Controlled Substances Act since October 3, 1996.

This rule establishes a domestic threshold of zero (0.0 kilograms) for anhydrous hydrogen chloride, and a domestic threshold of 0.4 kilograms for iodine. Import and export transactions in anhydrous chloride are unaffected by this rule. Iodine transactions involving amounts below the threshold will not be subject to recordkeeping and reporting requirements except for reporting of any unusual or excessive loss or disappearance as required by 21 U.S.C. 830(b)(1)(C).

Although the threshold for anhydrous hydrogen chloride is established at 0.0 kilogram, DEA has concluded that certain transactions in anhydrous hydrogen chloride are not sources for

diversion. This rule also provides exemption from the recordkeeping and reporting requirements for both transactions involving pipeline distributions and distributions of 12,000 pounds (net weight) or more in a single container. Because these exemptions were not discussed in the Notice of Proposed Rulemaking published in September 30, 1997, DEA requests public comment with respect to the exemption for these two types of transactions involving anhydrous hydrogen chloride.

This rule reinserts the table in 21 CFR 1310.04(f)(2)(iv), listing thresholds for exports, transshipments, and international transactions to designated countries set forth in 21 CFR 1310.08(b). This table was inadvertently omitted from the DEA's final rule regarding implementation of the Domestic Chemical Diversion Control Act of 1993, published on June 22, 1995 (60 FR 32447). Finally, this final rule assigns the DEA chemical code number of 6699 for iodine.

DATES: This final rule is effective September 1, 2000, except that § 1310.08(h) and (i) are effective [insert date of publication]. Comments on § 1310.08(h) and (i) should be submitted by September 1, 2000.

ADDRESSES: Comments and objections should be submitted in triplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Attention: DEA Federal Register Representative/CCR.

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

SUPPLEMENTARY INFORMATION:

1. Background

a. Effect of the Comprehensive Methamphetamine Control Act on Iodine and Anhydrous Hydrogen Chloride

Section 204 of The Comprehensive Methamphetamine Control Act of 1996 (MCA), which became effective on October 3, 1996, amended the definition of "List II chemicals" in Section 102(35) of the Controlled Substances Act (CSA) (21 U.S.C. 802(35)) to include iodide as a List II chemical. The MCA, however, did not control salts of iodine (*e.g.*, potassium iodide or sodium iodide).

The listed chemical iodine is currently available as crystals, tinctures, and formulations (*e.g.*, povidone-iodine and polozamer-iodine complexes). Under this rule, only transactions involving at least 0.4 kg of iodine crystals will be subject to regulatory controls. Since iodine tinctures and formulations are considered chemical mixtures, transactions in these materials are not currently regulated and are not affected by this rule. However, DEA is conducting a separate rulemaking to develop regulations governing the distribution of any chemical mixtures that contain a listed chemical (63 FR 49506). As such, some chemical mixtures may soon be subject to recordkeeping and other chemical regulatory control provisions of the CSA.

This rule also relates to the chemical described in the MCA as "hydrochloric gas." This term refers to the chemical hydrogen chloride that is free of water. The DEA has adopted the term "anhydrous hydrogen chloride," which is the term used most commonly by the industrial and scientific communities to describe this chemical. Prior to passage of the MCA, hydrochloric acid was included as a listed chemical by regulation. The anhydrous form of hydrochloric acid, anhydrous hydrogen chloride, is a regulated form of hydrochloric acid (57 FR 43614). Prior to the MCA, domestic transactions in hydrochloric acid, including anhydrous hydrogen chloride, were excluded from the definition of "regulated transaction" (21 CFR 1310.08(a)). However, the MCA provides that domestic transactions in the anhydrous hydrogen chloride form of hydrochloric acid are regulated transactions, and subject to the recordkeeping and reporting requirements of 21 CFR 1310. This change does not affect other forms of hydrochloric acid.

b. Thresholds Used to Define Regulated Transaction

Not all transactions involving a listed chemical are necessarily regulated. For purposes of defining a regulated transaction (21 U.S.C. 802(39)), the CSA provides that the Attorney General may establish a threshold amount for each listed chemical. A threshold amount is established to determine whether a receipt, sale, importation or exportation within a calendar month or cumulative transactions by an individual within a calendar month are considered regulated transactions. Unless the Attorney General sets a threshold, the threshold is considered to be zero; this has been the case of iodine and anhydrous hydrogen chloride since passage of the MCA on October 3, 1996.

When an amount of listed chemical distributed to any "person" in a calendar month is equal to or greater than the threshold, the transaction is a regulated transaction. Thereafter, all transactions within the calendar month to those persons involving the listed chemical are regulated transactions. If the transaction is considered a regulated transaction, recordkeeping and reporting requirements as specified in 21 CFR Part 1310 apply. A "person" is defined in 21 CFR 1300.02(21) as "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." This includes any consumer who takes possession of a product, even as a free sample.

c. Notice of Proposed Rulemaking and the Comment Period

Prior to this Rule, thresholds had not been established for iodine or anhydrous hydrogen chloride. Therefore, all domestic distributions involving these chemicals became regulated effective October 3, 1996. In order to establish thresholds, the DEA published a notice of proposed rulemaking on September 30, 1997, (62 FR 51072) that proposed domestic thresholds for anhydrous hydrogen chloride and iodine of 0.0 kilograms and 0.4 kilograms, respectively. Interested persons were invited to comment.

The proposed domestic threshold of anhydrous hydrogen chloride is based on several factors: Nature of its legitimate use in industry; quantities used by legitimate industry; and quantities of anhydrous hydrogen chloride seized at clandestine laboratories. DEA learned that most transactions of anhydrous hydrogen chloride involve thousands of pounds, whereas clandestine laboratories use containers holding quantities as small as 0.5 pounds. Since the majority of anhydrous hydrogen chloride transactions involved large quantities, and to ensure the most effective controls on the diversion of this chemical, the DEA proposed a domestic threshold of 0.0 kilograms.

The comment period lasted for 60 days after publication of the proposed rule in the **Federal Register.** Interested persons who might be affected by the proposed thresholds responded. The DEA considered each of the seven comments received as well as the concerns of law enforcement and the provisions of the MCA.

2. Comments

a. Comments Related To the Iodine Threshold

A total of seven comments were received with two of the seven comments referring to iodine. One

requested that the threshold be raised from 0.4 kilograms to 3 kilograms. The other comment encouraged DEA to take into account recognized industrial standards for iodine distribution and to reduce the reporting burden for all legitimate suppliers and consumers of iodine. The standard for iodine distribution refers to the iodine package size used in distributions.

b. Anhydrous Hydrogen Chloride Threshold

All seven comments mentioned anhydrous hydrogen chloride. These comments mostly requested clarification while one requested that the threshold be set at 5 pounds. The comments also included a description of types of transactions in anhydrous hydrogen chloride that the commenters stated should not be subject to regulation.

c. Exemption Request for Some Transactions in Anhydrous Hydrogen Chloride

Three comments described transactions involving very large amounts of anhydrous hydrogen chloride. These transactions involve a special form of anhydrous hydrogen chloride referred to as refrigerated liquid. The material is distributed via large tank trucks, tank cars or by pipeline. The DEA agrees that these transactions should not be subject to regulation. However, the Notice of Proposed Rulemaking did not propose that these methods of distribution be exempted from regulation. Therefore, the DEA will exempt these forms of transactions via this notice as an interim final rule. The rule will be in effect upon publication but the DEA will allow for a comment period.

This final rule will: (1) Establish the iodine threshold, (2) establish the anhydrous hydrogen chloride thresholds, and (3) serve as an interim rule that exempts certain transactions in anhydrous hydrogen chloride. Due to the complexity of this final rule, it will be broken into three parts.

Part I Iodine

a. Iodine Is a Listed Chemical Under the MCA

The majority of clandestine laboratory seizures in the United States are those manufacturing methamphetamine, a Schedule II controlled substance. From 1993 through calendar year 1998, the DEA has participated in more than 4,740 methamphetamine laboratory seizures in the United States. This number does not include thousands of additional methamphetamine laboratory seizures by state and local authorities.

Clandestine laboratory operators most frequently use the ephedrine/pseudoephedrine reduction method to synthesize methamphetamine. This method utilizes hydriodic acid, which is a List I chemical with a domestic threshold of one liter. Because of increased controls on hydriodic acid, clandestine laboratory operators are resorting to producing their own hydriodic acid. They produce hydriodic acid from iodine, either in a separate step or by using iodine directly in the synthesis of methamphetamine.

b. Legal Uses for Iodine

Iodine is used largely in the form of a complex, salt, or as part of some chemical, that contains iodine. Iodine may be found dissolved in some disinfectants. Iodine does not dissolve well in water and so needs to be bound to a stabilizer or in some way converted to a water stable form to be used in disinfectants. Iodine crystals have very limited direct use and are mostly restricted to laboratory settings.

The major end uses of iodine are in catalysts, stabilizers and animal feeds. DEA has identified that farriers use iodine crystals. It can be purchased from either veterinary supply stores, feed and tack/farm supply stores or chemical distributors.

c. Determining the Iodine Threshold

The reasons cited in the proposed rule for the 0.4 kilogram threshold included legitimate use in industry, including quantities normally required for such uses; quantities purchased by clandestine laboratory operators; quantities seized at clandestine laboratory sites; and iodine's use in the production of methamphetamine. The majority of clandestine laboratories that produce methamphetamine do so in less than one-half kilogram quantities. The DEA cannot determine the source of all of the iodine seized at the clandestine laboratories due to operators removing the original labels or transferring the iodine to other unmarked containers. At those sites where iodine was seized in its original containers, DEA identified that the iodine was being purchased from either veterinary supply stores, feed and tack/farm supply stores or chemical distributors. The DEA has determined that a 2-ounce bottle of iodine would last a rancher or a farrier several months and that, typically, an individual would purchase at the most three 2-ounce bottles (approximately 0.2 kilograms).

Based on the above information, the DEA proposed a domestic threshold of 0.4 kilograms for iodine. This would subject transactions of 1 pound package size or larger to recordkeeping requirements and would ensure the most effective controls on the diversion of iodine while minimizing the impact on industry, particularly for small businesses such as veterinary, feed, and farm supply stores.

d. Comments Pertaining to the Iodine Threshold

One comment suggested that the threshold be raised to 3 kilograms for iodine. The perceived substantial burden that the threshold will place on certain retailers, namely those associated with supplying the research community, is cited as the reason for this suggested threshold. The DEA believes that implementing a 3 kilogram threshold for iodine would allow current diversion of this chemical to continue mostly unabated. The DEA has queried suppliers of iodine to walk-in customers regarding the amounts of iodine that these customers would reasonably require for legitimate purposes and found that a 2 ounce bottle (approximately 60 grams) would last a typical purchaser several months. Additionally, the DEA has evidence that indicates that iodine is diverted for use at illicit methamphetamine laboratories often in one pound sizes. The DEA is aware that many legitimate distributors devote a good deal of effort the prevent their products from being sold to traffickers. However, some distributors sell to the general public under the pretense that the chemicals are to be used solely for research purposes without regard to how these chemicals are actually used. Based on these findings, the DEA concluded that the 0.4 kilogram threshold for iodine would impact traffickers while minimizing the burden upon legitimate industry.

DEA estimates that approximately 75 grams (0.17 pounds) of methamphetamine can be produced from 0.4 kilograms of iodine that has been converted into hydriodic acid. Approximately 563 grams (over 1 pound) of methamphetamine can be produced from 3 kilograms of iodine converted by hydriodic acid. The amount of 0.4 kilograms is twice the amount identified as the normal quantity range sold in legitimate face-to-face transactions. These factors contribute to setting the threshold at 0.4 kilograms.

It should be noted that to help lessen the burden of recordkeeping, 21 CFR 1310.06(b) provides that normal business records shall be considered adequate, provided they contain information described in 21 CFR 1310.06(a) and are readily retrievable from other business records. These

records can be those already required by other federal, state and local regulatory agencies.

e. Conclusion

DEA has determined that increasing the iodine threshold from 0.4 to 3 kilograms will not be sufficient to prevent diversion of iodine for illegitimate reasons. Therefore, the threshold for iodine will be set at 0.4 kilograms.

Part II Anhydrous Hydrogen Chloride Threashold

1. Background

a. What Is Anhydrous Hydrogen Chloride?

The statutory term "hydrochloric gas" is a form of hydrogen chloride more properly called anhydrous hydrogen chloride. Anhydrous hydrogen chloride is hydrogen chloride that is free from water. When in the form of a gas it is free of water. At ambient temperature and normal atmospheric pressure, anhydrous hydrogen chloride exists as a gas. Therefore, sometime anhydrous hydrogen chloride is referred to as hydrogen chloride gas or hydrochloric gas.

When the atmospheric pressure is increased and/or the temperature is decreased, anhydrous hydrogen chloride can change from a gas to a liquid. This is sometime referred to as refrigerated hydrogen chloride. Refrigerated hydrogen chloride is the same as anhydrous hydrogen chloride even though the physical state has been changed from a gas to a liquid.

Anhydrous hydrogen chloride is often dissolved in water. When dissolved it is usually referred to as hydrochloric acid. A commercial name for hydrochloric acid is muriatic acid. Because it is mixed with water, the term anhydrous cannot be used.

b. Past and Current Regulation of Anhydrous Hydrogen Chloride

Was Anhydrous Hydrogen Chloride a List II Chemical Prior to the MCA?

Yes. Prior to the MCA, by regulation, all forms of hydrochloric acid, which included anhydrous hydrogen chloride, were a list II chemical (21 CFR 1310.02(b)(8)). However, all domestic and import transactions of hydrochloric acid were excluded from the definition of "regulated transaction" (21 CFR 1310.08(a)). In addition, by regulation, all exports, transshipments and international transactions of anhydrous hydrogen chloride, except those to all South American countries and Panama above a threshold of 27 kilograms, had similarly been excluded from the definition of "regulated transaction" (21 CFR 1310.08(b)). This may have given the appearance that anhydrous hydrogen chloride was a non-regulated form of the chemical. Prior to enactment of the MCA, only exports to all South American countries and Panama above a threshold of 27 kilograms had been regulated transactions (21 CFR 1310.08(b)).

How Does the MCA Affect Transactions of Anhydrous Hydrogen Chloride?

The CSA amendment by the MCA had the practical effect of directing DEA to place domestic controls on anhydrous hydrogen chloride. As a result, domestic transactions and the already controlled exports, transshipments and international transactions of anhydrous hydrogen chloride to designated countries are regulated transactions. These designated countries are listed in 21 CFR 1310.08(b).

How Is Hydrochloric Acid Affected by This New Regulation?

Hydrochloric acid, that is, hydrogen chloride dissolved in water, is not affected by these regulations. Domestic and import transactions involving that form of the chemical are not regulated transactions. Only export transactions of threshold amounts to those countries designated in 21 CFR 1310.08(b) are regulated transactions.

C. Uses for Anhydrous Hydrogen Chloride

i. Legal uses. According to information gathered by the DEA, the major legitimate uses of anhydrous hydrogen chloride are in the cotton industry, the electronic/silicon industry, the pharmaceutical industry and other industries for use in chemical syntheses. All of those industries use large quantities of anhydrous hydrogen chloride for their manufacturing processes. Generally, thousands of pounds are involved in a single transaction with the exception of smaller quantities (i.e., single or multiple cylinders) being used by research, analytical or synthetic laboratories.

ii. Illicit uses. Anhydrous hydrogen chloride can be used to convert an illicitly produced controlled substance from the "base" form to the "salt" form. These two forms have different physical characteristics. It is the salt form that is typically sold and used by individuals for abuse purposes.

Hydrochloric acid can also be used to isolate the base by forming the salt. However, using hydrochloric acid is not as easy as using anhydrous hydrogen chloride and requires the proper solvents and laboratory technique. Hydrochloric acid has advantages in the illicit processing of cocaine and heroin. Anhydrous hydrogen chloride is the preferred chemical for the manufacture of methamphetamine into a usable form.

2. Comments for Anhydrous Hydrogen Chloride

Seven responses were received; two responses came from membership organizations. All seven comments requested clarifications or exemptions for specific types of transactions. One comment requested that the threshold be raised to 5 pounds. The DEA has carefully reviewed and considered the comments received in response to the Notice of Proposed Rulemaking. These will be discussed below.

a. Clarification as to the Form of Hydrogen Chloride Being Addressed in This Rulemaking

Five comments requested that the DEA clarify what is meant by hydrochloric gas. In response, DEA notes that the chemical being addressed in this rulemaking is the form of hydrochloric acid that is free of water. This substance is anhydrous hydrochloric acid or anhydrous hydrogen chloride. The DEA has responded to these concerns by revising 21 CFR 1310.02 and 1310.04 to include the term "anhydrous hydrogen chloride," thereby specifying the form of the chemical for which domestic transactions are regulated.

Two comments stated that the designations (*e.g.*, UN 1050, UN 1789 and UN 2186) used by the United Nations (UN) should be adopted to identify the different forms of the acid. The DEA agrees that this is an efficient means to identify the acid for industrial commerce. However, the introduction of these numbers into the CFR would not be advantageous. DEA believes that introducing new designations to the CFR may cause confusion and imply that a new chemical has been placed in list II.

Anhydrous forms of hydrochloric acid being addressed in this rulemaking are anhydrous hydrogen chloride (designated as UN 1050; Anhydrous gas) and refrigerated anhydrous hydrogen chloride (designated as UN 2186; anhydrous refrigerated liquid). These forms of hydrochloric acid are free from water and thus included as anhydrous hydrogen chloride. The form that is dissolved in water is hydrochloric acid (designated as UN 1789) which has been addressed under a separate rulemaking published on September 22, 1992, (57 FR 43614). That final rule identifies

anhydrous hydrogen chloride as a form of hydrochloric acid regulated under the chemical designation of hydrochloric acid (DEA chemical code number 6545).

The DEA does not treat the different forms of hydrogen chloride as separate listed chemicals with distinct DEA chemical code numbers (57 FR 43614). Certain transactions in hydrochloric acid, including domestic distributions, have been exempt from the recordkeeping and reporting requirements (21 CFR 1310.08(a)(b)). The MCA directed DEA to impose controls on domestic transactions of the anhydrous form of hydrochloric acid but not the form dissolved in water. However, no new chemical is being addressed. The use of UN numbers in the CFR may imply that new chemicals are being added to the list of regulated chemicals.

Introducing the UN numbers to the regulatory language would create additional problems. Reference to each form of the chemical will need to be made via UN numbers everywhere the chemical is mentioned. Because UN numbers may not be understood by all who use the CFR, it may cause confusion. The DEA would need to define the UN numbers in the CFR to make use of them.

b. Clarification of the Forms of Hydrochloric Acid in 21 CFR 1310.02(b)

Two comments raised the issue of including anhydrous hydrogen chloride in 21 CFR 1310.02(b)(8), which lists hydrochloric acid. The comments noted that if the different forms are named in the same subsection, then any time a reference in the regulation mentions hydrochloric acid, it also should include anhydrous hydrogen chloride. It was suggested that these different forms be listed separately in List II. The DEA concluded that this might imply that a new substance is being placed on the list. All forms of hydrogen chloride, as finalized in 57 FR 43614, are List II chemicals and currently regulated in 21 CFR 1310.02(b). To clarify, 21 CFR 1310.02(b)(8) will be modified to read: "Hydrochloric acid (including anhydrous hydrogen chloride)."

The comments raised the fact that DEA needs to clarify when a specific form of hydrogen chloride is referred to in the regulations. The appropriate sections of 21 CFR (*e.g.,* 1310.04 and 1310.08) will be modified accordingly to reflect this clarification. The new paragraph (l) in 21 CFR 1310.04(f)(2)(ii) will then be added to read "Anhydrous hydrogen chloride." 21 CFR 1310.04(f)(2)(iv)(A)(1) will read "Anhydrous hydrogen chloride." 21 CFR 1310.08(a) will be amended to read "Domestic and import transactions of hydrochloric and sulfuric acids but not including anhydrous hydrogen chloride." 21 CFR 1310.08(b) will be amended by inserting after "hydrochloric" the phrase "(including anhydrous hydrogen chloride)".

c. Threshold for Anhydrous Hydrogen Chloride

One comment suggested that the threshold for anhydrous hydrogen chloride be raised to 5 pounds. Many clandestine operations can be successfully carried out with 5 pounds or less of anhydrous hydrogen chloride. While most anhydrous hydrogen chloride containers seized at clandestine laboratories are 65 pounds and less, the DEA has identified small bottles containing 0.5 pounds of anhydrous hydrogen chloride at methamphetamine laboratories. The zero threshold for anhydrous hydrogen chloride has been chosen to prevent the diversion of smaller canisters, as small as 0.5 pounds, for use in illegal drug production.

As stated, the DEA is aware that legitimate chemical distributors understand the growing problem of diversion and act responsibly to prevent their products from being used for illicit purposes. However, some distributors sell products used for the production of illegal substances under the pretense that they are for research purposes only without regard for how the products will actually be used. Raising the threshold to 5 pounds would allow unscrupulous suppliers to sell almost without regard for the regulatory process. DEA determined that clandestine laboratories would be supplied with desired chemical if the threshold were raised to 5 pounds. Therefore, the threshold will be set at 0.0 kilograms.

d. Transactions Involving Residual Amounts of Anhydrous Hydrogen Chloride

One comment stated that undue burden would be placed upon industry if controls of anhydrous hydrogen chloride were to include all containers and physical states. The person stated that regardless of the physical state, all containers would have the gas phase in the container headspace. The headspace refers to the empty space above the solution within a container. When anhydrous hydrogen chloride is dissolved in water to form a solution of hydrochloric acid, a small amount of the hydrogen chloride gas will form in the headspace above the solution. Because of the zero threshold, the comment requests clarification for treatment of the small amount of gas that naturally forms in any container holding a solution of hydrochloric acid.

DEA would like to clarify that residual anhydrous hydrogen chloride contained in the head space of containers holding a solution of hydrochloric acid will not cause an otherwise non-regulated transaction to be regulated. The chemical being marketed as hydrochloric acid solution is distinctly different than that marketed as anhydrous hydrogen chloride. The natural formation of hydrogen chloride gas above the solution, along with water vapor, does not constitute the formation of anhydrous hydrogen chloride for purposes of this regulation.

The comment also stated that it is not clear from the proposed rule that the domestic regulatory controls would not apply to the inadvertent anhydrous hydrogen chloride present in container headspace of containers of anhydrous hydrogen chloride. The comment is referring to small amounts of anhydrous hydrogen chloride that remain inside a container of anhydrous hydrogen chloride because it is impossible to empty the container completely.

The DEA realizes that a container deemed empty may have residual anhydrous hydrogen chloride present. The purchaser frequently retains these containers until the hydrogen chloride is used and then the container is returned to the distributor. The DEA does not consider transactions involving depleted containers that held anhydrous hydrogen chloride to be regulated transactions just because a residual amount of anhydrous hydrogen chloride is present.

e. Anhydrous Hydrogen Chloride and the Surveillance List

A comment suggested that small quantities of anhydrous hydrogen chloride be include in the DEA Special Surveillance List in lieu of adopting a zero threshold for this chemical. Section 205 of the MCA requires that DEA establish a Special Surveillance List of laboratory supplies. This was established on May 13, 1999 (62 FR 25910). The MCA provides for a civil penalty for distribution of a laboratory supply made with reckless disregard to a person who uses, or attempts to use the laboratory supply in the manufacturing of a controlled substance. The term "laboratory supply" is defined to include listed chemicals. Therefore, listed chemicals are already included on the surveillance list.

The Special Surveillance List is an added means to help prevent the diversion of both listed and other

designated chemicals and equipment that can be used in clandestine synthesis of controlled substances. The surveillance list is not a substitute for regulatory controls on regulated transactions of anhydrous hydrogen chloride, a List II chemical. It does not impose recordkeeping, reporting or registration requirements as do regulations associated with listed chemicals.

f. Synthetic Alternative to Anhydrous Hydrogen Chloride

A comment pointed out that the regulation of anhydrous hydrogen chloride might be a futile attempt at controlling the use of anhydrous hydrogen chloride in the illegal production of controlled substances. Clandestine operators may form their own anhydrous hydrogen chloride by using a method simple enough for such operations.

DEA acknowledges that hydrogen chloride can be manufactured clandestinely. However, commercially produced anhydrous hydrogen chloride is commonly found at seized clandestine laboratories. The control of such chemicals is a valuable tool in denying traffickers a ready supply of anhydrous hydrogen chloride. This is why Congress included such control provisions in the MCA.

g. Impact of This Rule on the Anhydrous Hydrogen Chloride Trade

A comment questioned whether this rulemaking was a significant rule. The person stated that the DEA acknowledged that the industry was large by including the statement "the majority of anhydrous hydrogen chloride transactions involve thousands of pounds" in the proposed rulemaking. This statement refers to the amount of anhydrous hydrogen chloride traded in a single transaction and not the number of persons carrying out such transactions. The major uses of anhydrous hydrogen chloride were determined to be in the cotton industry, the electronic/silicon industry, the pharmaceutical industry and other industries for use in chemical synthesis. All of these industries use large quantities of anhydrous hydrogen chloride for their manufacturing processes.

Distributions of anhydrous hydrogen chloride have been identified as originating from manufacturing sites that produce anhydrous hydrogen chloride as a by-product of a principle manufacturing operation. Manufacturers distribute large quantities of anhydrous hydrogen chloride, sometimes under terms of a contract, to end-users. The impact of this rulemaking on the trade has been evaluated by considering the added cost of doing business, not the gross annual cost for the entire anhydrous chloride trade. The DEA, as stated, only requires access to records that are part of daily recordkeeping for most companies that trade in this commodity. These records can be those already required by other federal agencies, or by state and local agencies. Normal business records needed by companies for internal recordkeeping are likely to be adequate for the purposes of this rulemaking.

21 CFR 1310.06 states that "* * * normal business records shall be considered adequate if they contain the information listed in paragraph (a) of this section and are readily retrievable from other business records of the regulated person." This acceptance of records that are already maintained by persons in the anhydrous hydrogen chloride trade reduces the impact on the anhydrous hydrogen chloride industry.

3. Conclusion

The DEA has considered the comments submitted in response to the notice of proposed rulemaking (62 FR 51072) to establish the anhydrous hydrogen chloride threshold. Out of seven comments received, only one requested that the threshold be raised. Most comments raised issues of clarification or compliance. The DEA concluded that the threshold for anhydrous hydrogen chloride will be established at 0.0 kilograms for domestic distributions. This threshold is based on anhydrous hydrogen chloride cylinders containing as little as 0.5 pounds of the chemical being recovered at illicit methamphetamine laboratories and legitimate transactions of this chemical being large. Maintaining the zero threshold will help curtail diversion of amounts useful to the clandestine operator. Increasing the threshold will allow for the manufacturing of methamphetamine in quantities normally associated with clandestine operations with traffickers obtaining as little as 0.5 pounds of the chemical.

Part III Category Exemption

a. Comments Requesting Category Exemption

The DEA received comments requesting exemption for two categories of transactions involving anhydrous hydrogen chloride. These are transactions involving: (1) Refrigerated liquid; and (2) anhydrous hydrogen chloride distributed by pipeline. The DEA agrees that anhydous hydrogen chloride distributed by these methods is unlikely to be susceptible to diversion. The exemption for these categories was not proposed in the Notice of Proposed Rulemaking. Authority to remove a category of transaction from the definition of "regulated transaction" is given in 21 U.S.C. 802(39)(A)(iii), which permits exclusion of "any category of transaction or any category of transaction for a specific listed chemical or chemicals specified by regulation of the Attorney General as excluded from this definition as unnecessary for enforcement of this subchapter or subchapter II of this chapter."

b. Refrigerated Liquid; Large Quantity Distributions of Anhydrous Hydrogen Chloride

The DEA collected additional information from the affected industry. DEA learned that rail and truck carriers ship refrigerated liquid only in large containers. The average payload of a rail car is approximately 135,000 pounds. The capacity for tank trucks is approximately 12,000 to 30,000 pounds. These shipments are in single containers holding the specified weights. Specialized equipment and engineering skills are needed to off-load this commodity. Distributors are aware of their customers and are involved in tracking shipments. The DEA believes that anhydrous hydrogen chloride in this form and in these quantities is not likely to be diverted.

DEA has not identified any shipment of refrigerated anhydous hydrogen chloride less than the tank truck size of approximately 12,000 pounds. Therefore, domestic distributions of anhydous hydrogen chloride in single container shipments of 12,000 pounds (net weight) or more will be excluded from the definition of regulated transaction. Transactions that involve multiple containers, each containing less than 12,000 pounds of the chemical are regulated transactions even if the aggregate weight is over 12,000 pounds.

Why Not Just Provide an Exemption for All Transactions in "Anhydrous Hydrogen Chloride, Refrigerated Liquid"?

The refrigerated liquid is not clearly defined or distinguished from the gaseous form except by the weight of the anhydrous hydrogen chloride contained in a single vessel. Distributors use both cooling and pressure to liquefy the gas in order to increase the amount of anhydrous hydrogen chloride that the container can hold. However, the containers that transport the liquefied hydrogen chloride are not refrigerated. The method of distributing the

refrigerated form is only clearly distinguished by the size of the vessel used to transport the commodity. DEA is concerned that unscrupulous persons may attempt to deceive law enforcement personnel by distributing smaller quantities mislabeled as refrigerated liquid. Therefore, the DEA concluded that a category be defined by the net weight of anhydrous hydrogen chloride that a single container holds. Defining the category by using the net weight of anhydrous hydrogen chloride in a single container eliminates the possibility of misinterpreting whether or not a distribution is a regulated transaction.

c. Pipeline Transfers

The DEA also received comments that included reasons to eliminate pipeline transactions of anhydrous hydrogen chloride as regulated transactions. Pipeline transactions involve pumping the chemical through a closed system, directly to the customer from the distributor's site. Pipelines are located underground or in piperacks and are maintained at high pressure. Diversion from a pipeline is unlikely because of the location, construction and the obvious danger associated with the unauthorized tapping of this source. Pipeline distributions may involve thousands of pounds of anhydrous hydrogen chloride transferred on a given day.

The DEA concluded, in light of these comments, that these transactions have an insignificant risk of diversion. Therefore, domestic pipeline transactions will be the second category of transaction in anhydrous hydrogen chloride regarded as a non-regulated transaction.

d. Exclusion of Categories; Interim Rule With Request for Comments

This Final Rule will establish, on an interim basis, that domestic transactions of (1) anhydrous hydrogen chloride weighting 12,000 pounds (net weight) or more in a single container or (2) anhydrous hydrogen chloride by pipeline are excluded from the definition of regulated transactions. These exemptions will take effect on the day that this Final Rule is published in the **Federal Register**.

To exempt these categories, two new paragraphs (h) and (i) in Title 21 CFR Section 1310.08 will be added to read; (h) Domestic distribution of anhydrous hydrogen chloride weighing 12,000 pounds (net weight) or more in a single container; and (i) Domestic distribution of anhydrous hydrogen chloride by pipeline. The DEA is soliciting comments only on this portion of this Final Rule. The DEA will allow 30 days for persons to comment on these category exemptions.

After the close of this comment period pertaining to the exempted categories, DEA will publish a notice in the **Federal Register** to inform interested persons if changes are needed or if these categories will be adopted as stated.

e. Exemption Authority

The CSA authorizes DEA, pursuant to 21 U.S.C. 802(39)(A)(iii), to remove certain transactions in listed chemicals from the definition of regulated transaction. DEA has determined that transactions in anhydrous hydrogen chloride in the form of refrigerated liquid and transactions involving the direct transfer of anhydrous hydrogen chloride by pipeline are unlikely sources for diversion and should be removed from the definition of regulated transaction. DEA became aware of these types of transactions by the comments received in response to the **Federal Register** proposal to establish thresholds for iodine and anhydrous hydrogen chloride (62 FR 51072). Since that proposal did not propose that these categories of transactions in anhydrous hydrogen chloride would be exempt, the general public did not have the opportunity to comment on the exclusion of these transactions from the definition of regulated transaction.

The DEA has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553 *et seq.*) (APA) to forego a notice of proposed rulemaking for the exclusion of these transactions from the definition of regulated transaction. The AP states that an agency may forego a notice of proposed rule making if it is impracticable, unnecessary, or contrary to the public interest.

Although all transactions involving anhydrous hydrogen chloride are considered regulated until and unless DEA establishes a threshold, establishing a zero threshold for this substance may cause affected parties to implement a permanent system of recordkeeping and reporting for all transactions. This would involve some companies who otherwise may not engage in regulated transactions if the exemptions are finalized. If a proposal is published in the **Federal Register** to exclude these transactions from the definition of regulated transactions, each affected entity may find it necessary to establish these procedures on a permanent basis even though the requirement may only be temporary. To avoid unnecessary burdens on affected companies during the pendency of proceedings in this matter, the DEA will include as part of this rulemaking an interim rule, with request for comments, that removes these two types of transactions from the definition of regulated transactions.

The DEA is also including in this final rulemaking the reinsertion of the table in 21 CFR 1310.40(f)(2)(iv), listing thresholds for exports, transshipments, and international transactions to designated countries set forth in 21 CFR 1310.08(b). The DEA's final rule regarding implementation of the Domestic Chemical Diversion Control Act of 1993, published on June 22, 1995 (60 FR 32447), inadvertently omitted the table from the section. A DEA chemical code number for iodine, 6699, will also be included in this rule.

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation. The DEA has determined that this rule is not a "significant regulatory action" under Executive Order 12866, Section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

The Deputy Administrator in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: The DEA sought information from legitimate handlers of iodine to determine the uses of iodine and the quantities typically sold in legitimate transactions. The DEA sought information from over 300 veterinary suppliers and feed and farm supply stores to determine how iodine is typically sold. The DEA learned that walk-in customers would purchase, at the most, three 2-ounce bottles (less than 0.2 kilograms). Suppliers and end-users claim that a 2-ounce bottle lasts several months. Iodine has very limited application for walk-in customers. Setting the iodine threshold at 0.4 kilograms will not have a significant effect on small businesses. The iodine portion of this Final Rule applies only to those companies manufacturing and distributing iodine in larger volumes. Recordkeeping requirements will not impact researchers or other end-users.

This regulation will not have a significant economic impact upon a substantial number of small entities that trade in anhydrous hydrogen chloride. Trade in anhydrous hydrogen chloride is mostly in very large quantities. Generally, thousands of pounds are involved in single industrial transactions. Smaller quantities *i.e.*,

single or multiple cylinders) are being used by research, analytical or synthetic laboratories. The majority of anhydrous hydrogen chloride is traded in thousands of pound quantities. The DEA has included in this Final Rule the exclusion from the definition of "regulated transaction" transactions involving anhydrous hydrogen chloride in bulk quantities of 12,000 pounds (net weight) or more. The DEA is soliciting comments on that part of this Final Rule.

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

List of Subjects in 21 CFR Part 1210

Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR Part 1310 is amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is amended by revising paragraph (b)(8) and adding paragraph (b)(11) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(b) List II chemicals:

* * * * *

(8) Hydrochloric acid (including anhydrous hydrogen chloride)	6545

* * * * *

(11) Iodine	6699

3. Section 1310.04 is amended by adding new paragraphs (f)(2)(ii) (H) and (I), and revising (f)(2)(iv) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(ii) Domestic Sales

Chemical	Threshold by volume	Threshold by weight
* * * * * * *		
(H) Iodine	N/A	0.4 kilograms.
(I) Anhydrous Hydrogen chloride	N/A	0.0 kilograms.

(iii) * * *

(iv) Exports, Transshipments and International Transactions to Designated Countries as Set Forth in § 1310.08(b).

Chemical	Threshold by volume	Threshold by weight
(A) Hydrochloric acid	50 gallons	
(*1*) Anhydrous Hydrogen chloride		27 kilograms.
(B) Sulfuric acid	50 gallons	

* * * * *

4. Section 1310.08 is amended by revising paragraphs (a) and (b) introductory text and by adding new paragraphs (f), (g), (h) and (i) to read as follows:

§ 1310.08 Excluded transactions.

* * * * *

(a) Domestic and import transactions of hydrochloric and sulfuric acids but not including anhydrous hydrogen chloride.

(b) Exports, transshipments, and international transactions of hydrochloric (including anhydrous hydrogen chloride) and sulfuric acids, except for exports, transshipments and international transactions to the following countries:

* * * * *

(f) Import and export transactions of iodine.

(g) Import transactions of anhydrous hydrogen chloride.

(h) Domestic distribution of anhydrous hydrogen chloride weighing 12,000 pounds (net weight) or more in a single container.

(i) Domestic distribtuion of anhydrous hydrogen chloride by pipeline.

Dated: May 18, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–19289 Filed 8–1–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–00–027]

RIN 2115–AE46

Special Local Regulations for Marine Events; Thunder on the Narrows Hydroplane Races, Prospect Bay, Kent Island Narrows, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations during the "Thunder on the Narrows" hydroplane races to be held on the waters of Prospect Bay near Kent Island Narrows, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Prospect Bay during the event.

DATES: This rule is effective from 10:30 a.m., August 5, 2000 until 6:30 p.m., August 6, 2000.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or deliver them to the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. Comments and materials received from the public as well as

documents indicated in this preamble as being available in the docket, are part of docket CGD05–00–027 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, phone (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Request for Comments

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, we encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number (CGD05–00–027), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related materials in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The Coast Guard received confirmation of the request for special local regulations on June 16, 2000. We were notified of the event with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. We had insufficient time to prepare and publish this rule in the **Federal Register** 30 days in advance of the event. To delay the effective date of the rule would be contrary to the public interest since a timely rule is necessary to protect mariners from the hazards associated with the event.

Background and Purpose

On August 5 and August 6, 2000, the Kent Narrows Racing Association will sponsor the "Thunder on the Narrows" hydroplane races, on the waters of Prospect Bay, Kent Island Narrows, Maryland. The event will consist of 75 hydroplanes racing in heats counter-clockwise around an oval race course. A large fleet of spectator vessels is anticipated. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of Prospect Bay. The temporary special local regulations will be enforced from 10:30 a.m. to 6:30 p.m. on August 5 and August 6, 2000. The effect will be to restrict general navigation in the regulated areas during the event. Except for participants in the "Thunder on the Narrows" hydroplane races and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will allow non-participating vessels to transit the event area between races. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of Prospect Bay during the event, the effect of this regulation will not be significant due to the limited duration of the regulation, the fact that the Patrol Commander will allow non-participating vessels to transit the event area between races, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of Prospect Bay during the event.

Although this regulation prevents traffic from transiting or anchoring in a portion of Prospect Bay during the event, the effect of this regulation will not be significant because of its limited duration, the fact that the Patrol Commander will allow non-participating vessels to transit the event area between races, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive

Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We prepared an "Environmental Assessment" in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary section, § 100.35–T05–027 is added to read as follows:

§ 100.35–T05–027 Special Local Regulations for Marine Events; Thunder on the Narrows Hydroplane Races, Prospect Bay, Kent Island Narrows, Maryland.

(a) Definitions.

(1) *Regulated area.* (i) The waters of Prospect Bay enclosed by the following points:

Latitude	Longitude
38°57′52.0″ N	076°14′48.0″ W, to
38°58′02.0″ N	076°15′05.0″ W, to
38°57′38.0″ N	076°15′29.0″ W, to
38°57′28.0″ N	076°15′23.0″ W, to
38°57′52.0″ N	076°14′48.0″ W.

(ii) All coordinates reference Datum NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(3) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) *Participant.* Includes all vessels participating in the Thunder on the Narrows Hydroplane Races under the auspices of the Marine Event Permit, issued to the Event Sponsor and approved by Commander, Coast Guard Activities Baltimore.

(b) *Special Local Regulations*

(1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(c) *Effective Dates.* This section is effective from 10:30 a.m., on August 5, 2000, until 6:30 p.m., August 6, 2000. This section will be enforced from 10:30 a.m. to 6:30 p.m., each day.

Dated: July 20, 2000.

J.E. Shkor,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 00–19509 Filed 7–28–00; 2:23 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–146]

RIN 2115–AA97

Security Zone: Dignitary Arrival/ Departure and United Nations Meetings, New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two permanent security zones near the United Nations Headquarters located on the East River at East 43rd Street, Manhattan, New York. This action is necessary to protect the Port of New York/New Jersey and visiting dignitaries against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' meetings at the United Nations Headquarters. This action establishes two permanent exclusion areas that are active from shortly before the dignitaries' arrival at the United Nations General Assembly meetings until shortly after their departure.

DATES: This rule is effective September 1, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–146) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York, 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 8, 2000, we published a notice of proposed rulemaking (NPRM) entitled Security Zone: Dignitary Arrival/Departure and United Nations Meetings, New York, NY. We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

New York City is often visited by the President and Vice President of the United States, as well as visiting heads of foreign states or foreign governments, on the average of 12 times per year. Often these visits are on short notice. The President, Vice President, and visiting heads of foreign states or foreign governments require Secret Service protection. Due to the sensitive nature of these visits, a security zone is needed. Standard security procedures are enacted to ensure the proper level of protection to prevent sabotage or other subversive acts, accidents, or other activities of a similar nature. In the past, temporary security zones were requested by the U.S. Secret Service with limited notice for preparation by the U.S. Coast Guard and no opportunity for public comment. Establishing permanent security zones by notice and comment rulemaking gave the public the opportunity to comment on the location and size of the zones. This regulation establishes two permanent security zones that can be activated upon request of the U.S. Secret Service pursuant to their authority under 18 U.S.C. 3056.

These security zones have been narrowly tailored, in consultation with

the United States Secret Service and the maritime industry, to impose the least impact on maritime interests yet provide the level of security deemed necessary. Entry into or movement within these security zones is prohibited unless authorized by the Coast Guard Captain of the Port, New York. The activation of a particular security zone will be announced via facsimile and marine information broadcasts. The two security zones are as follows (all nautical positions are based on North American Datum of 1983):

The first security zone at United Nations Headquarters includes all waters of the East River bound by the following points: 40°44′37″N, 073°58′16.5″W (the base of East 35th Street, Manhattan), then east to 40°44′34.5″N, 073°58′10.5″W (about 175 yards offshore of Manhattan), then northeasterly to 40°45′29″N, 073°57′26.5″W (about 125 yards offshore of Manhattan at the Queensboro Bridge), then northwesterly to 40°45′31″N, 073°57′30.5″W (Manhattan shoreline at the Queensboro Bridge), then southerly to the starting point at 40°44′37″N, 073°58′16.5″W. The security zone prevents vessels from transiting a portion of the East River. Marine traffic will still be able to transit through the eastern 100 yards of the western channel of the East River. Additionally, vessels may transit through the eastern channel of the East River during this security zone. This zone is generally enacted from 8 a.m. until 7 p.m. during the United Nations General Assembly meetings. Generally, these meetings take place from Monday through Saturday for two consecutive weeks. Normally this occurs between the final two weeks of September and the first two weeks of October.

This security zone is necessary to protect the Port of New York/New Jersey and visiting dignitaries against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' meetings at the United Nations Headquarters. This security zone has been narrowly tailored, in consultation with the United States Secret Service and the maritime industry, to impose the least impact on maritime interests yet provide the level of security deemed necessary.

The second security zone at United Nations Headquarters includes all waters of the East river north of a line drawn from approximate position 40°44′37″N, 073°58′16.5″W (the base of East 35th Street, Manhattan), to approximate position 40°44′23″N, 073°57′44.5″W (Hunters Point, Long Island City), and south of the Queensboro Bridge. Marine traffic will not be able to transit through this portion of the East River because the zone extends bank to bank, and there are no alternate routes available in the river to go around the zone. This zone extends bank to bank while the President of the United States addresses, or is in attendance at, the United Nations General Assembly. Generally, this zone will only be activated once per year during one day of the annual U.N. General Assembly meeting during the Presidential address or while the President is in attendance. This address has been held during the final week of September for the past two years. However, due to the late notification of the daily security requirements from the Secret Service, there was insufficient time to follow notice and comment rulemaking to give the public the opportunity to comment on the location and size of the zones. The Coast Guard expects this zone to be activated for only 2.5 hours during the morning and 3 hours during the afternoon.

This security zone is necessary to protect the Port of New York/New Jersey, the President of the United States, and visiting dignitaries against terrorism, sabotage or other subversive acts and incidents of a similar nature during visits by the President of the United States and dignitaries' meetings at the United Nations Headquarters. This security zone has been narrowly tailored, in consultation with the United States Secret Service and the maritime industry, to impose the least impact on maritime interests yet provide the level of security deemed necessary.

The actual dates that these security zones will be activated are not known by the Coast Guard at this time. Coast Guard Activities New York will give notice of the activation of each security zone by all appropriate means to provide the widest publicity among the affected segments of the public. Marine information broadcasts will normally be made for these security zones beginning 24 to 48 hours before the zone is enacted. Facsimile broadcasts will also be made to notify the public. The Coast Guard expects that the notice of the activation of each permanent security zone in this rulemaking will normally be made less than seven days before the zone is actually activated.

The two new security zones are being enacted to ensure the Coast Guard can provide the U.S. Secret Service with the services they require to protect the Port of New York/New Jersey and visiting dignitaries in a timely manner. This zone also gave the marine community the opportunity to comment on the zones location and size.

This rule revises 33 CFR 165.164 by renaming the section heading to "Dignitary Arrival/Departure and United Nations Meetings, New York, NY" and adding two new East River locations to the listed zones.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to this rulemaking.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on the fact that we anticipate these security zones will be activated on an average of 12 times per year, and the minimal time that vessels will be restricted from the zones. Marine traffic will still be able to transit through the eastern 100 yards of the western channel and recreational traffic will also be able to transit through the eastern channel of the East River while the first, smaller security zone at the United Nations Headquarters is enacted. We anticipate that the second security zone at the United Nations Headquarters, shutting down the East River in the vicinity of the United Nations Headquarters, will only be activated once per year during one day of the annual U.N. General Assembly meeting during the Presidential address. This zone that shuts down the East River will normally only be in effect for 2.5 hours during the morning and 3 hours during the afternoon. Extensive advance notifications will be made to the maritime community via facsimile and marine information broadcasts. These security zones have been narrowly tailored to impose the least impact on maritime interests yet provide the level of security deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities.

The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Port of New York/New Jersey during the times these zones are activated.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can transit through the eastern 100 yards of the western channel of the East River during the smaller security zone that is enacted when the President of the United States is not addressing the Assembly. Recreational traffic can also transit through the eastern channel of the East River during this same security zone. Before the effective period, we will issue maritime advisories widely available to users of the Port of New York/New Jersey by facsimile and marine information broadcasts.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes two security zones. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. In § 165.164, revise the Section Heading and paragraphs (a)(4) and (a)(5), and add new paragraphs (a)(6) and (a)(7) to read as follows:

§ 165.164 Security Zones: Dignitary Arrival/Departure and United Nations Meetings, New York, NY.

(a) * * *

(4) *Location.* All waters of the East River bound by the following points: 40°44′37″ N, 073°58′16.5″W (the base of East 35th Street, Manhattan), then east to 40°44′34.5″N, 073°58′10.5″W (about 175 yards offshore of Manhattan), then northeasterly to 40°45′29″ N, 073°57′26.5″W (about 125 yards offshore of Manhattan at the Queensboro Bridge), then northwesterly to 40°45′31″ N, 073°57′30.5″W (Manhattan shoreline at the Queensboro Bridge), then southerly to the starting point at 40°44′37″ N, 073°58′16.5″W. All nautical positions are based on North American Datum of 1983.

(5) *Location.* All waters of the East River north of a line drawn from approximate position 40°44′37″ N, 073°58′16.5″W (the base of East 35th Street, Manhattan), to approximate position 40°44′23″ N, 073°57′44.5″W (Hunters Point, Long Island City), and south of the Queensboro Bridge. All nautical positions are based on North American Datum of 1983.

(6) The security zone will be activated 30 minutes before the dignitaries' arrival into the zone and remain in effect until 15 minutes after the dignitaries' departure from the zone.

(7) The activation of a particular zone will be announced by facsimile and marine information broadcasts.

* * * * *

Dated: July 25, 2000.

R.E. Bennis,

Captain, U. S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00–19486 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–184]

RIN 2115–AA97

Safety Zone: Fireworks Display, Peekskill Bay, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks display located on Peekskill Bay. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Peekskill Bay.

DATES: This rule is effective from 8:30 p.m. (e.s.t.), until 10 p.m. (e.s.t.) on August 6, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–184) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4012.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM for the event. Further, it is a local, community supported event with minimal impact on the waterway, vessels may still transit through Peekskill Bay Channel during the display, and the zone is only in effect for 1½ hours and vessels can be given permission to transit the zone except for about 20 minutes during this time. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterways and protect the maritime public from the hazards associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: It is an annual event with local community support, it is a local event with minimal impact on the waterway, the zone is only in effect for 1½ hours and vessels can be given permission to transit the zone except for about 20 minutes during this time, and marine traffic will be able to transit through Peekskill Bay Channel during the display. Finally, this rule creates a safety zone that will only be enforced if the annual event, scheduled for Saturday, August 5, 2000, is cancelled due to inclement weather.

Background and Purpose

The Coast Guard has received an application to hold a fireworks program on the waters of Peekskill Bay. This regulation establishes a safety zone in all waters of Peekskill Bay within a 360-yard radius of the fireworks barge in approximate position 41°17′16″ N 073°56′18″ W (NAD 1983), about 500 yards northeast of Peekskill Bay South Channel Buoy 3 (LLNR 37955). The safety zone is in effect from 8:30 p.m. (e.s.t.) until 10 p.m. (e.s.t.) on Sunday, August 6, 2000. This is an annual event regulated by 33 CFR 100.114 for the first Saturday in August. This rule is for the rain date of August 6, 2000, which is not addressed in the current regulation. This safety zone will not be enforced on Sunday, August 6, if the fireworks display is held on Saturday, August 5, 2000. The safety zone prevents vessels from transiting a portion of Peekskill Bay and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Peekskill Bay Channel during the event. This safety zone precludes the waterway users from entering only the safety zone itself. Public notifications will be made prior to the event via the Local Notice to Mariners. Furthermore, marine traffic will not be precluded from mooring at, or getting underway from, any piers in the vicinity of this event.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through Peekskill Bay Channel during the fireworks display, and advance notifications which will be made. Additionally, this is an annual event with local community support.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 12" mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have implications for federalism under that Order.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A Federal mandate is

a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–184 to read as follows:

§ 165.T01–184 Safety Zone: Fireworks Display, Peekskill Bay, NY.

(a) *Location.* The following area is a safety zone: All waters of Peekskill Bay within a 360-yard radius of the fireworks barge in approximate position 41°17′16″ N 073°56′18″ W (NAD 1983), about 500 yards northeast of Peekskill Bay South Channel Buoy 3 (LLNR 37955).

(b) *Effective period.* This section is effective from 8:30 p.m. (e.s.t.) until 10 p.m. (e.s.t.) on Sunday, August 6, 2000.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: July 24, 2000.

R. E. Bennis,

Captain, U. S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00–19485 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 20

Global Direct—Canada Admail Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Global Direct—Canada Admail is a service based on the Admail service offered by Canada Post Corporation. Canada Post Corporation is changing rates and the rate structure for items mailed in this service. Accordingly, the Postal Service is changing Global Direct—Canada Admail to comply with these changes.

EFFECTIVE DATE: August 2, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, International Pricing, International Business, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 370–IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the International Business Unit, 10th Floor, 901 D Street SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 314–7256.

SUPPLEMENTARY INFORMATION: In cooperation with Canada Post Corporation (CPC), the Postal Service offers Global Direct—Canada Admail. This international mail service is primarily intended for major printing firms, direct marketers, mail order companies, and other high-volume mailers seeking easier access to the Canadian domestic postal system. It is intended to provide mail delivery in an average of 5 to 10 business days in major urban areas throughout Canada. Ancillary services for local business reply and the return of undeliverable mail are also provided for use with Global Direct—Canada Admail.

CPC has announced a rate change for Admail. This makes it necessary for the Postal Service to adjust the rates it charges for Global Direct—Canada Admail.

The Postal Service is also eliminating discounts for Global Direct—Canada Admail. Discounts will no longer be available for Global Direct—Canada Mail; however, revenue from Global Direct—Canada Admail will count toward the revenue requirements for International Priority Airmail and International Surface Air Lift discounts. This enables the Postal Service to reduce the rate for Global Direct—Canada Admail.

Effective August 2, 2000, the following rates are adopted for Global Direct—Canada Admail:

	Standard	Large
Letter Carrier Presort (LCP)—Up to First 1.76 oz. (0.11 lbs.) (50 grams):		
Delivery Mode Direct	$0.216	$0.267
Delivery Facility	0.245	0.296
DCF	0.245	0.296
Residue	0.304	0.354
Over 1.76 oz. (.11 lbs.) (50 grams)	0.548	0.713
Per additional pound		
National Distribution Guide (NDG):		
First 1.76 oz.(0.11 lbs.) (50 grams)	0.275	0.325
Over 1.76 oz. (0.11 lbs.) (50 grams)	0.548	0.713
Per additional pound		

Note: An extra charge of 3.5 cents may be charged for the number of items not meeting address accuracy requirements.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service is amending Subchapter 612, Global Direct—Canada Admail, International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 6 of the International Mail Manual is amended by as follows:

CHAPTER 6—SPECIAL PROGRAMS

610 Global Direct Service

* * * * *

612 Global Direct—Canada Admail

* * * * *

612.3 Postage

612.31 Rates

The rate of postage is determined by size, weight, and level of the items being mailed as specified in Exhibit 612.3. Global Direct postage dollars may be added to the ISAL/IPA total for the purpose of determining the discount earned; however, the discount will not be applied to the Global Direct—Canada published rates.

Exhibit 612.3 Canada Admail Rates

	Standard	Large
Letter Carrier Presort (LCP)—Up to First 1.76 oz. (0.11 lbs.) (50 grams):		
Delivery Mode Direct	$0.216	$0.267
Delivery Facility	0.245	0.296
DCF	0.245	0.296
Residue	0.304	0.354
Over 1.76 oz. (.11 lbs.) (50 grams) Per additional pound	0.548	0.713
National Distribution Guide (NDG):		
First 1.76 oz.(0.11 lbs.) (50 grams)	0.275	0.325
Over 1.76 oz. (0.11 lbs.) (50 grams) Per additional pound	0.548	0.713

Note: An extra charge of 3.5 cents may be charged for the number of items not meeting address accuracy requirements.

* * * * *

A transmittal letter changing the relevant pages in the International Mail Manual will be published and automatically transmitted to all subscribers. Notice of issuance of the transmittal will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–19578 Filed 8–1–00; 8:45 am]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

48 CFR Chapter 15

[Docket No. FRL–6487–4]

Change of Official EPA Mailing Address; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule

SUMMARY: EPA is relocating the majority of its Headquarter offices in the Washington Metropolitan area to new offices in downtown Washington, DC. Because of the relocations, EPA has changed its official mailing address and is amending the Code of Federal Regulations (CFR) to reflect this change where applicable. Although the official mailing address has changed, the physical location of the public information centers and dockets has not yet changed. This relocation effort will eventually consolidate the EPA Headquarter offices in the Washington Metropolitan area providing for increased savings, efficiency, and enhancement of customer services. The EPA mailing address change will be phased in for all EPA correspondence, publications, forms, and other documents.

DATES: This final rule is effective on August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Lapsley, Director of Regulatory Management, Office of Policy and Reinvention (2136A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–5480; e-mail address: lapsley.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, and has particular applicability to anyone who might need or want to communicate in writing with EPA, or submit information to the Agency. Since this action may apply to anyone, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document?

You may obtain electronic copies of this document, and other information about EPA programs from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

III. What Action is the Agency Taking?

EPA is announcing a change in its official mailing address and is amending the CFR to reflect this change. EPA is relocating its Headquarter offices in the Washington Metropolitan area to new offices in downtown Washington, DC. This effort will consolidate the majority of the EPA Headquarter offices in the Washington Metropolitan area providing for increased savings, efficiency, and enhancement of customer services. To date, approximately two-thirds of the EPA Headquarter offices have been successfully relocated to the new location, with the remaining offices expected to move within the next 2 years. Although not all of the offices have been relocated, the Agency will begin to phase in the new address for all of its documents over the next 12 months. This announcement and amendments to the CFR will begin the implementation of this change.

Although EPA's official mailing address has changed, EPA will continue to receive mail with the old address until the EPA relocation is complete. The EPA mailing center which processes all of EPA's mail has not be relocated yet, so EPA will continue to physically receive and process all of its mail at its current location until this operation is relocated.

If you wish to inspect a rulemaking record or deliver documents (e.g., your comments on a rulemaking) directly to the public record centers, which are also referred to as the public docket or locations for the public version of the official record, you should pay particular attention to information about the specific location of the particular public record center, because these record centers have not been relocated. EPA intends to consolidate these centers in the new location, and will announce the relocation when it occurs. For information about the location of these centers go to http://www.epa.gov/epahome/dockets.htm.

In certain cases, the EPA mailing address provided in the regulations, or in instructions for submitting a form or other information to EPA, may be an address other than the official mailing address for EPA Headquarter offices. In amending the CFR to reflect the address change, this FR document specifically identifies those CFR sections where the EPA address provided should not be changed. In addition, if you are responding to a request for comments, or otherwise wish to deliver your submission directly to a public docket or a particular office, please be sure to verify the relevant location to ensure that you identify the proper delivery address.

EPA intends to review existing regulatory documents, particularly forms and instructions for submitting information to the Agency, to ensure that the EPA mailing address is properly identified. If necessary, EPA intends to amend these documents over the next 2 years.

IV. What is the Agency's Authority for Taking this Action?

EPA is issuing this document under its general rulemaking authority, Reorganization Plan No. 3 of 1970 (5 U.S.C. app.).

In addition, section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment. EPA has determined that these amendments are technical and non-substantive. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

V. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. This final rule implements technical amendments to 40 CFR chapter I and 48 CFR chapter 15 to reflect a change in the EPA Headquarters' official mailing address, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical correction is not a "significant regulatory action" subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Nor does this rule contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

Because this action is not economically significant as defined by section 3(f) of Executive Order 12866, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This action will not result in environmental justice related issues and does not, therefore, require special consideration under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute (see Unit IV.), this action is not subject to provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. Nor does this action significantly or uniquely affect the communities of tribal governments as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

VI. Will EPA Submit this Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. CRA section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA, if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of August 2, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Chapter I

Environmental protection.

48 CFR Chapter 15

Acquisition, procurement, contracts.

Dated: June 23, 2000.

Carol M. Browner,

Administrator.

Therefore, under the authority of Reorganization Plan No. 3 of 1970 (5 U.S.C. app.), 40 CFR chapter I and 48 CFR chapter 15 are amended as follows:

40 CFR CHAPTER I——AMENDED]

1. Remove the phrase "401 M St., SW." everywhere it appears and add in

its place "1200 Pennsylvania Ave., NW." except in the following places in 40 CFR chapter I: §§ 725.95, 761.19(b), 796.1950(b)(2)(i), 796.1955(a)(1), 796.3500(b)(1)(ii), 796.4360(d)(7)(i)(B), 799.1575(c)(1)(ii)(C), 799.1575(c)(2)(ii)(C), 799.1575(c)(3)(ii), 799.1575(d)(2), 799.2155(a)(1), 799.4360(d)(7)(i)(B), 799.9135(h), 799.9346(h), 799.9370(h), 799.9380(g), 799.9420(g), 799.9510(g), 799.9530(g), 799.9538(g), 799.9539(g), 799.9620(g), and 799.9780(j).

2. Remove the phrase "401 M St., S.W." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW."

3. Remove the phrase "401 M St., SW" everywhere it appears and add in its place "1200 Pennsylvania Ave., NW."

4. Remove the phrase "401 M. St. SW." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in the following place in 40 CFR chapter I: § 68.115(b)(2).

5. Remove the phrase "401 M. St. SW" everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in the following place in 40 CFR chapter I: part 430, Appendix A (sections 18.11 and 18.12).

6. Remove the phrase "401 M. St., SW." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW."

7. Remove the phrase "401 M. Street SW." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in §§ 62.12(b) and 435.41(h), the address is revised to read "401 M St., SW.".

8. Remove the phrase "401 M Street, SW." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in §§ 52.50(b)(3), 52.420(b)(3), 52.470(b)(3), 52.520(b)(3), 52.570(b)(3), 52.820(b)(3), 52.869(b)(3), 52.920(b)(3), 52.1270(b)(3), 52.1320(b)(3), 52.1420(b)(3), 52.1770(b)(3), 52.2120(b)(3), 52.2220(b)(3), 55.14(e), 59.213(a), 60.17(i), 60.17(k), 60.17(l), 63.14(a), 63.14(d), 63.404(a), 76.4(a), 79.56(d)(5(ii), 79.61(c)(3)(B), 80.2(w), 80.2(y), 80.2(z), 80.30(g)(2)(ii), 80.46(h), 80.125(f), Appendix E (sections 3.9 and 7.2) of part 80, 82.104(h), Appendix A (sections 2.1, 5.1, 5.3.2, and 5.4.3) of subpart F of part 82, 85.2231(a), 85.2231(c), 86.1(a), 86.094–8(h)(1)(ii)(A), 86.094–17(h), 86.094–35(h)(2)(i), 86.095–35(h)(2), 86.096–8(h)(1)(ii)(A), 86.099–17(h), 86.111–94(b)(3)(vii)(B), 86.1806–01(h), 86.1808–01(f), 87.82, 91.6(a), 92.5(a), 141.21(f)(8), 141.23 (footnotes 3, 4, 7, and 11), 141.24(e), 141.25 (footnote), 141.40(n)(11), 141.74(a), 141.143(d), 143.4 (footnotes), 147.2650(a), 272.1151(a)(1)(ii), 435.11(f), 503.8(b), 600.113–93(c)(3)(i), 720.95, 763.90(i)(5), 766.12, and 795.232(c)(2), the address is revised to read "401 M St., SW.".

9. Remove the phrase "401 M Street, S.W." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in §§ 52.03(d)(1) and 90.7(a), the address is revised to read "401 M St., SW.".

10. Remove the phrase "401 M Street, SW" everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in §§ 52.170(b)(3), 52.970(b)(3), 52.1620(b)(3), 59.110(b), 59.412(a), 75.6, 85.2207(d), 85.2222(c), 86.1105–87(e), 141.131(a)(2), and 260.11(a)(11), the address is revised to read "401 M St., SW.".

11. Remove the phrase "401 M. Street, SW." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW."

12. Remove the phrase "401 M Street SW" everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in §§ 72.13, 86.094–26(a)(6)(iii), 86.094–28(a)(4)(i)(B)(*2*)(*ii*), and 435.41(n), the address is revised to read "401 M St., SW.".

13. Remove the phrase "401 M Street, Southwest" everywhere it appears and add in its place "1200 Pennsylvania Ave., NW." except in §§ 80.164(a)(5), 80.165(a), 80.165(b), 80.165(c), 87.64, 87.71, 87.89, and 88.104–94(k)(2)(ii), the address is revised to read "401 M St., SW.".

14. Remove the phrase "Washington, DC., 20460" everywhere it appears and add in its place "Washington, DC 20460."

15. Remove the phrase "Washington, DC, 20460" everywhere it appears and add in its place "Washington, DC 20460."

16. Remove the phrase "Washington, DC. 20460" everywhere it appears and add in its place "Washington, DC 20460."

17. Remove the phrase "EPA Freedom of Information Officer, A–101" everywhere it appears and add in its place "Headquarters Freedom of Information Operations (1105)."

18. Remove the phrase "(PM–226F)" everywhere it appears and add in its place "(2734R)."

19. Remove the phrase "Hearing Clerk, A–110" everywhere it appears and add in its place "Office of the Hearing Clerk (1900)."

20. Remove the phrase "Grants Operation Branch (PM–216)" everywhere it appears and add in its place "(3903R)."

21. Remove the phrase "Waste Management Rules Docket" everywhere it appears and add in its place "Resource and Conservation Recovery Act (RCRA) Docket Information Center (5305G)."

22. Remove the phrase "OUST Docket" everywhere it appears and add in its place "UST Docket, located at 1235 Jefferson Davis Highway, First Floor , Arlington, VA 22202 (telephone number: 703–603–9231), or send mail to Mail Code 5305G."

23. Remove the phrase "Characteristics Section (OS–333)" everywhere it appears and add in its place "Waste Identification Branch (5304)."

24. Remove the phrase "the Section Chief, Variances Section, PSPD/OSW (OS–343)" everywhere it appears and add in its place "PSPD/OSW (5303W)."

25. Remove the phrase "the Section Chief, Delisting Section, OSW" everywhere it appears and add in its place "HWID/OSW (5304W)."

26. In part 112, Appendix E, section 10.1, remove the phrase "Room M2615, at the U.S. Environmental Protection Agency" and add in its place "at 1235 Jefferson Davis Highway, First Floor , Arlington, VA 22202, or send mail to Mail Code 5305G."

27. In § 265.1080(f)(2)(vii)(H)(*2*), remove "2129" and add in its place "1812."

28. In § 272.651(a)(1), remove the phrase "room 2427" and add in its place "Mail Code 5305G."

29. In § 300.905(a)(1), remove the phrase "1–202–260–2342" and add in its place "703–603–8760."

30. In § 300.915, footnotes 1 and 2, after the phrase "Environmental Protection Agency" add the phrase "Superfund Docket, located at 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202 or send mail to Mail Code 5305G," and remove the phrase "Room LG."

31. In part 307, Appendix D, remove "William O. Ross" and add in its place "Phyllis Anderson," and remove "603–8798" and add in its place "603–8971."

32. In § 374.6, remove "(A–100)" and add in its place "(1101)."

48 CFR CHAPTER 15—[AMENDED]

1. Remove the phrase "401 M Street, S.W. Washington, D.C." everywhere it appears and add in its place "1200 Pennsylvania Ave., NW., Washington, DC".

2. Remove the phrase "401 M Street, SW" everywhere it appears and add in its place "1200 Pennsylvania Ave., NW."

00–18165 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OK–14–1–7367; FRL–6727–1]

Approval and Promulgation of Implementation Plans; Oklahoma; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The EPA is revising the format 40 CFR part 52, subpart LL, for materials submitted by Oklahoma that are incorporated by reference (IBR) into the Oklahoma State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by the respective State agency and approved by EPA.

EFFECTIVE DATE: This action is effective August 2, 2000.

ADDRESSES: The SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket (6102A), Room M1500, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

The current Oklahoma SIP-approved regulations listed in table (c) in the rulemaking section of this action are available for public inspection by selecting "Oklahoma" at the following web site: http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm (Must be all lower case). You can also get to this address via the EPA home page (http://www.epa.gov/) by selecting in order: Offices, Labs & Regions; Regions; Region 6; Air Programs; State Implementation Plans (SIP); SIP regulations; and selecting "Oklahoma" from the list of Region 6 States.

FOR FURTHER INFORMATION CONTACT: Bill Deese, Air Planning Section (6PD–L) at the Region 6 address or at (214) 665–7253.

SUPPLEMENTARY INFORMATION:

I. Background

Each State is required by section 110(a)(1) of the Federal Clean Air Act (the Act), to have a SIP that contains the control measures and strategies which will be used to attain and maintain the national ambient air quality standards. The SIP is extensive, containing such elements as emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms. The control measures and strategies must be formally adopted by each State after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures are approved by EPA pursuant to section 110(k) of the Act, after notice and comment, they are incorporated into the SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans) of 40 CFR. The actual State regulations which are approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are "incorporated by reference," which means that the citation of a given State regulation with a specific effective date has been approved by EPA. This format allows both EPA and the public to know which measures are contained in a given SIP and ensures that the State is enforcing the regulations. It also allows EPA to take enforcement action or the public to bring citizen suits, should a State not enforce its SIP-approved regulations.

The SIP is an active or changing document which can be revised by the State as necessary to address the unique air pollution problems in the State as long as changes are not contrary to Federal law. Therefore, EPA, from time to time, must take action to incorporate into the SIP, revisions of the State program which may contain new and/or revised regulations. Regulations approved into the SIP are then incorporated by reference into part 52. Pursuant to section 110(h)(1) of the Act and as a result of consultations between EPA and the Office of Federal Register, EPA revised the procedures May 22, 1997 (62 FR 27968), for incorporating by reference federally-approved SIPs and began the process of developing: (1) a revised SIP document for each State that would be incorporated by reference under the provisions of 1 CFR part 51, (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR, and (3) a revised format of the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

II. Content of Revised IBR Document

The new SIP compilations contain the federally-approved portion of State regulations and source specific permits submitted by each State agency. These regulations and source-specific permits have all been approved by EPA through previous rulemaking actions in the **Federal Register**. The SIP compilations are stored in 3-ring binders and will be updated primarily on an annual basis.

If no significant changes are made for any State to the SIP during the year, an update will not be made during that year. If significant changes occur during the year, an update could be done on a more frequent basis, as applicable. Typically, only the revised sections of the compilation will be updated. Complete resubmittals of a State SIP compilation will be done on an as-needed basis.

Each compilation contains two parts. Part 1 contains the regulations and Part 2 contains the source-specific permits that have been approved as part of the SIP. Each part has a table of contents identifying each regulation or each source specific permit. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for these States. The EPA Regional offices have the primary responsibility for ensuring accuracy and updating the compilations. The Region 6 EPA Office developed and will maintain the compilations for Oklahoma. A copy of the full text of the State's current SIP-approved regulations will also be maintained at the Office of the Federal Register and EPA's Air Docket and Information Center in Washington, DC. The EPA is phasing in the SIP compilations for individual States. This revised format is consistent with the SIP compilation requirements of section 110(h)(1) of the Act.

III. Revised Format of the "Identification of plan" Sections in Each Subpart

In order to better serve the public, EPA is revising the organization of the "Identification of plan" section of 40 CFR section 52.1920. The EPA is including additional information which will more clearly identify the provisions that constitute the enforceable elements of the SIP.

The revised "Identification of plan" section will contain five subsections: (a) Purpose and scope; (b) Incorporation by reference; (c) EPA approved regulations; (d) EPA approved source-specific permits; and (e) EPA approved nonregulatory provisions, such as

transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

IV. Enforceability and Legal Effect

This change to the procedures for incorporation by reference announced today will not alter in any way the enforceability or legal effect of approved SIP materials, including both those approved in the past or to be approved in the future. As of the effective date of the final rule approving a SIP revision, all provisions identified in the **Federal Register** document announcing the SIP approval will be federally enforceable, both by EPA under section 113 of the Act and by citizens under section 304 of the Act, where applicable. All revisions to the applicable SIP are federally enforceable as of the effective date of EPA approval even if they have not yet been incorporated by reference. To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA is retaining the original "Identification of Plan" section, previously appearing in the CFR as the first or second section of part 52 for each State subpart.

V. Notice of Administrative Change

Today's action constitutes a "housekeeping" exercise to ensure that federally approved State plans are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA Regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

The EPA has determined that today's rule falls under the "Good Cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding good cause, authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is unnecessary since the codification only reflects existing law. Immediate revision to the CFR benefits the public by removing outdated citations.

VI. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

Executive 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612, "Federalism," and Executive Order 12875, "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it approves a State program.

D. Executive Order 13084

Under Executive Order 13084, 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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, Executive Order 13084 requires EPA to develop an effective process permitting elected officials 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. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small 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 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, 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 annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule is effective August 2, 2000.

H. Petitions for Judicial Review

The EPA has determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions approving each individual component of Oklahoma SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" reorganization action for Oklahoma.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 19, 2000.

Carl E. Edlund,

Acting Regional Administrator, Region 6.

Part 52 of chapter I, title 40, 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 LL—Oklahoma

2. Section 52.1920 is redesignated as § 52.1960 and the section heading and paragraph (a) are revised to read as follows:

§ 52.1960 Original Identification of plan section.

(a) This section identifies the original "State of Oklahoma Air Quality Control Implementation Plan" and all revisions submitted by Oklahoma that were federally approved prior to June 1, 2000.

* * * * *

3. A new § 52.1920 is added to read as follows:

§ 52.1920 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan (SIP) for Oklahoma under section 110 of the Clean Air Act, 42 U.S.C. 7410, and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date on or before June 1, 2000, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after June 1, 2000, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 6 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of June 1, 2000.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region 6 Office at 1445 Ross Avenue, Suite 700, Dallas, Texas, 75202–2733; the Office of Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.; or at the Air and Radiation Docket (6102A), Room M1500, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

(c) EPA approved regulations.

EPA Approved Oklahoma Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
Oklahoma Air Pollution Control Regulations Regulation 1.4. Air Resources Management Permits Required 1.4.1. General Permit Requirements				
1.4.1(a)	Scope and Purpose	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.1(b)	General Requirements	06/04/1990	07/23/1991, 56 FR 33715	Ref: 52.1960(c)(41)
1.4.1(c)	Necessity to Obtain Permit	06/04/1990	07/23/1991, 56 FR 33715	Ref: 52.1960(c)(41)
1.4.1(d)	Permit fees	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.2. Construction Permit				
1.4.2(a)	Standards Required	06/04/1990	07/23/1991, 56 FR 33715	Ref: 52.1960(c)(41)
1.4.2(b)	Stack Height Limitation	06/11/1989	08/20/1990, 55 FR 33905	Ref: 52.1960(c)(34)
1.4.2(c)	Permit Applications	06/04/1990	07/23/1991, 56 FR 33715	Ref: 52.1960(c)(41)
1.4.2(d)	Action on Applications	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.2(e)	Public Review	06/11/1989	08/20/1990, 55 FR 33905	Ref: 52.1960(c)(34)
1.4.2(f)	Construction Permit Conditions	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.2(g)	Cancellation of Authority to Construct or Modify.	02/06/1984	07/27/1984, 49 FR 30184	Ref: 52.1960(c)(31)
1.4.2(h)	Relocation Permits	11/14/1990	07/23/1991, 56 FR 33715	Ref: 52.1960(c)(41)
1.4.3. Operating Permit				
1.4.3(a)	Requirements	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.3(b)	Permit Applications	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.3(c)	Operating Permit Conditions	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.4. Major Sources—Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas				
1.4.4(a)	Applicability	05/19/1983	08/25/1983, 48 FR 38635	Ref. 52.1960(c)(26)
1.4.4(b)	Definitions: Restricted Section 1.4.4.	06/04/1990	07/23/1991, 56 FR 33715	Ref: 52.1960(c)(41)
1.4.4(c)	Source Applicability Determination.	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.4(d)	Review, Applicability, and Exemptions.	06/04/1990	07/23/1991, 56 FR 33715	Ref: 52.1960(c)(41)
1.4.4(e)	Control Technology	05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.4(f)	Air quality impact evaluation	08/10/1987	11/08/1999, 64 FR 60683	Ref: 52.1960(c)(49)
1.4.4(g)	Source Impacting Class I areas	08/10/1987	11/08/1999, 64 FR 60683	Ref: 52.1960(c)(49)
1.4.4(h)	Innovative Control Technology	[1] 05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.5. Major Sources—Nonattainment Areas				
1.4.5(a)	Applicability	[1] 05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.5(b)	Definitions: Restricted to Section 1.4.5.	06/11/1989	02/12/1991, 56 FR 05653	Ref: 52.1960(c)(38)
1.4.5(c)	Source Applicability Determination.	06/11/1989	02/12/1991, 56 FR 05653	Ref: 52.1960(c)(38)
1.4.5(d)	Exemptions	[1] 05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
1.4.5(e)	Requirements for Sources Located in Nonattainment Areas.	[1] 05/19/1983	08/25/1983, 48 FR 38635	Ref: 52.1960(c)(26)
Regulation 3.8. Control of Emission of Hazardous Air Contaminants				
3.8(a)	Purpose	04/19/1982	08/15/1983, 48 FR 36819.	
3.8(b)	Definitions	04/19/1982	08/15/1983, 48 FR 36819.	
3.8(c)	Emission Standards for Hazardous Air Contaminants.	04/19/1982	08/15/1983, 48 FR 36819.	
Oklahoma Administrative Code, Title 252. Department of Environmental Quality, Chapter 100 (OAC 252:100). Air Pollution Control (Oklahoma Air Pollution Control Rules) Subchapter 1. General Provisions				
252:100–1–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–1–2	Statutory definitions	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–1–3	Definitions	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 3. Air Quality Standards and Increments				
252:100–3–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–3–2	Primary standards	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–3–3	Secondary standards	05/26/1994	11/03/1999, 64 FR 59629.	

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100–3–4	Significant deterioration increments.	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 5. Registration of Air Contaminant Sources				
252:100–5–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–5–2	Registration of potential sources of air contaminants.	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–5–3	Confidentiality of proprietary information.	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 9. Excess Emission and Malfunction Reporting Requirements				
252:100–9–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–9–2	Definitions	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–9–3	General requirements	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–9–4	Maintenance procedures	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–9–5	Malfunctions and releases	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–9–6	Excesses resulting from engineering limitations.	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 13. Prohibition of Open Burning				
252:100–13–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–13–2	Definitions	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–13–3	Scope	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–13–4	Effective date	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–13–5	Open burning prohibited	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–13–6	Salvage operations utilizing open burning prohibited.	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–13–7	Permissible open burning	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 15. Motor Vehicle Pollution Control Devices				
252:100–15–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–15–2	Definitions	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–15–3	Scope	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–15–4	Prohibitions	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–15–5	Maintenance, repair, or testing	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–15–6	Liquefied petroleum gas	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 17. Incinerators				
252:100–17–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–17–2	Effective date; applicability	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–17–3	Prohibition on density of emissions.	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–17–4	Prohibition on pounds per hour of emissions.	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–17–5	Incinerator design requirements	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–17–6	Allowable emission of particulates.	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 19. Particulate Matter Emissions From Fuel-Burning Equipment				
252:100–19–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–19–2	Emission of particulate matter prohibited.	05/26/1994	11/03/1999 64 FR 59629.	
252:100–19–3	Existing equipment	05/26/1994	11/03/1999 64 FR 59629.	
252:100–19–4	New equipment	05/26/1994	11/03/1999 64 FR 59629.	
252:100–19–5	Refuse burning prohibited	05/26/1994	11/03/1999 64 FR 59629.	
252:100–19–6	Allowable emission of particulate matter.	05/26/1994	11/03/1999 64 FR 59629.	
252:100–19–7	Particulate matter emission limits	05/26/1994	11/03/1999 64 FR 59629.	
Subchapter 23. Control of Emissions From Cotton Gins				
252:100–23–1	Purpose	05/26/1994	11/03/1999 64 FR 59629.	
252:100–23–2	Definitions	05/26/1994	11/03/1999 64 FR 59629.	
252:100–23–3	General provisions; applicability	05/26/1994	11/03/1999 64 FR 59629.	
252:100–23–4	Smoke, visible emissions, and particulates.	05/26/1994	11/03/1999 64 FR 59629.	

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100–23–5	Emission control equipment	05/26/1994	11/03/1999 64 FR 59629.	
252:100–23–6	Fugitive dust controls	05/26/1994	11/03/1999 64 FR 59629.	
Subchapter 25. Smoke, Visible Emissions and Particulates				
252:100–25–1	Purpose	05/26/1994	11/03/1999 64 FR 59629.	
252:100–25–2	General prohibition	05/26/1994	11/03/1999 64 FR 59629.	
252:100–25–3	Smoke, visible emissions and particulates.	05/26/1994	11/03/1999 64 FR 59629.	
252:100–25–4	Alternative for particulates	05/26/1994	11/03/1999 64 FR 59629.	
Subchapter 27. Particulate Matter Emissions from Industrial and Other Processes and Operations				
252:100–27–1	Purpose	05/26/1994	11/03/1999 64 FR 59629.	
252:100–27–2	Process emission limitations	05/26/1994	11/03/1999 64 FR 59629.	
252:100–27–3	Exception to emission limits	05/26/1994	11/03/1999 64 FR 59629.	
252:100–27–4	Sampling and testing	05/26/1994	11/03/1999 64 FR 59629.	
252:100–27–5	Allowable rate of emission	05/26/1994	11/03/1999 64 FR 59629.	
Subchapter 29. Control of Fugitive Dust				
252:100–29–1	Purpose	05/26/1994	11/03/1999 64 FR 59629.	
252:100–29–2	Prohibitions	05/26/1994	11/03/1999 64 FR 59629.	
252:100–29–3	Precautions required in maintenance or nonattainment areas.	05/26/1994	11/03/1999 64 FR 59629.	
252:100–29–4	Exception for agricultural purposes.	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–29–5	Variance	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 31. Control of Emission of Sulfur Compounds Part 1. General Provisions				
252:100–31–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–31–2	Definitions	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–31–3	Performance testing	05/26/1994	11/03/1999, 64 FR 59629.	
Part 3. Existing Equipment Standards				
252:100–31–12	Sulfur oxides	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–31–13	Sulfuric acid mist	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–31–14	Hydrogen sulfide	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–31–15	Total reduced sulfur	05/26/1994	11/03/1999, 64 FR 59629.	
Part 5. New Equipment Standards				
252:100–31–25	Sulfur oxides	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–31–26.	Hydrogen sulfide	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 33. Control of Emission of Nitrogen Oxides				
252:100–33-1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–33–2	Emission limits	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–33–3	Performance testing	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 35. Control of Emission of Carbon Monoxide				
252:100–35–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–35–2	Emission limits	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–35–3	Performance testing	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 37. Control of Emissions of Organic Materials Part 1. General Provisions				
252:100–37–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–37–2	Definitions	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–37–3	Applicability and compliance	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–37–4	Exemptions	05/26/1994	11/03/1999, 64 FR 59629.	
Part 3. Control of Volatile Organic Compounds				
252:100–37–15	Storage of volatile organic compounds.	05/26/1994	11/03/1999, 64 FR 59629.	

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State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100–37–16	Loading of volatile organic compounds.	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–37–17	Effluent water separators	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–37–18	Pumps and compressors	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–37–36	Fuel-burning and refuse-burning equipment.	05/26/1994	11/03/1999; 64 FR 59629.	
Subchapter 39. Control of Emission of Organic Materials in Nonattainment Areas				
Part 1. General Provisions				
252:100–39–1	Purpose	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–2	Definitions	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–3	General applicability	05/26/1994	11/03/1999; 64 FR 59629.	
Part 3. Petroleum Refinery Operations				
252:100–39–15	Petroleum refinery equipment leaks.	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–16	Refinery process unit turnaround	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–17	Refinery vacuum producing system.	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–18	Refinery effluent water separators.	05/26/1994	11/03/1999; 64 FR 59629.	
Part 5. Petroleum Processing and Storage				
252:100–39–30	Liquid storage in external floating roof tanks.		05/26/1994	11/03/1999; 64 FR 59629
Part 7. Specific Operations				
252:100–39–40	Cutback asphalt (paving)	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–41	Vapor recovery systems	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–42	Metal cleaning	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–43	Graphic arts systems	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–44	Manufacture of pneumatic rubber tires.	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–45	Petroleum (solvent) dry cleaning	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–46	Coating of parts and products	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–47	Control of VOS emissions from aerospace industries coatings operations.	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–48	Vapor recovery systems	05/26/1994	11/03/1999; 64 FR 59629.	
252:100–39–49	Manufacturing of fiberglass reinforced plastic products.	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 43. Sampling and Testing Methods				
Part 1. General Provisions				
252:100–43–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–43–2	Test procedures	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–43–3	Conduct of tests	05/26/1994	11/03/1999, 64 FR 59629.	
Part 3. Specific Methods				
252:100–43–15	Gasoline vapor leak detection procedure by combustible gas detector.	05/26/1994	11/03/1999, 64 FR 59629.	
Subchapter 45. Monitoring of Emissions				
252:100–45–1	Purpose	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–45–2	Monitoring equipment required	05/26/1994	11/03/1999, 64 FR 59629.	
252:100–45–3	Records required	05/26/1994	11/03/1999, 64 FR 59629.	

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Appendices				
Appendix A	Allowable Emissions for Incinerators with Capacities in Excess of 100 lbs/hr.	05/26/1994	11/03/1999, 64 FR 59629.	
Appendix B	Allowable Emissions for Incinerators with Capacities less than 100 lbs/hr.	05/26/1994	11/03/1999, 64 FR 59629.	
Appendix C	Particulate Matter Emission Limits for Fuel-Burning Equipment.	05/26/1994	11/03/1999, 64 FR 59629.	
Appendix E	Primary Ambient Air Quality Standards.	05/26/1994	11/03/1999, 64 FR 59629.	
Appendix F	Secondary Ambient Air Quality Standards.	05/26/1994	11/03/1999, 64 FR 59629.	
Appendix G	Allowable Rate of Emissions	05/26/1994	11/03/1999, 64 FR 59629.	
Oklahoma Administrative Code, Title 595. Department of Public Safety, Chapter 20 (OAC 595:20). Inspection and Equipment for Motor Vehicles				
Subchapter 3. Emission and Mechanical Inspection of Vehicles				
595:20–3–1	General instructions	05/26/1994	02/29/1996, 61 FR 7709	Subsection (2) only.
595:20–3–3	When emission anti-tampering inspection required where population less than 500,000.	5/26/1994	02/29/1996, 61 FR 7709.	
595:20–3–5	Emission inspection areas	05/26/1994	02/29/1996, 61 FR 7709.	
595:20–3–6	Documentation for every inspection.	05/26/1994	02/29/1996 61 FR 7709.	
595:20–3–12	Inspection required each year	05/26/1994	02/29/1996 61 FR 7709.	
595:20–3–25	Motorcycle or motor-driven cycles (Class "B").	05/26/1994	02/29/1996 61 FR 7709.	
595:20–3–26	Trailer and semitrailer trucks, (Class "C").	05/26/1994	02/29/1996 61 FR 7709.	
595:20–3–27	School Buses (Class "D")	05/26/1994	02/29/1996 61 FR 7709.	
595:20–3–41	Supervisory responsibility of inspection station owners and operators.	05/26/1994	02/29/1996 61 FR 7709	Subsection (o) only.
595:20–3–42	Responsibility for signs, forms, *etc.*	05/26/1994	02/29/1996 61 FR 7709.	
595:20–3–46	Security measures	05/26/1994	02/29/1996 61 FR 7709	Subsections (a) and (b) only.
595:20–3–61	Refund of unused stickers	05/26/1994	02/29/1996 61 FR 7709	Subsections (a), (b), (e), and (f) only.
595:20–3–63	Rejected vehicles	05/26/1994	02/29/1996 61 FR 7709	Subsections (b) and (g) only.
Subchapter 7. Inspection Stickers and Monthly Tab Inserts for Windshield and Trailer/Motorcycle				
595:20–7–1	General	05/26/1994	02/29/1996 61 FR 7709	Subsections (c) and (f) only.
595:20–7–2	Inspection certificate	05/26/1994	02/29/1996 61 FR 7709	Subsection (a) only.
595:20–7–3	Rejection receipt—Form VID 44	05/26/1994	02/29/1996 61 FR 7709.	
595:20–7–4	Station monthly report—Form VID 21.	05/26/1994	02/29/1996 61 FR 7709	Subsection (a) only.
595:20–7–5	Signature card—Form VID 17	05/26/1994	02/29/1996 61 FR 7709	Subsection (a) only.
595:20–7–6	Request for inspection stickers—Form VID 19.	05/26/1994	02/29/1996 61 FR 7709	Subsection (a) only.
595:20–7–7	Request for refund—Form VID 25.	05/26/1994	02/29/1996 61 FR 7709	Subsection (a) only.
Subchapter 9. Class AE Inspection Station, Vehicle Emission Anti-Tampering Inspection				
595:20–9–1	General	05/26/1994	02/29/1996 61 FR 7709	Subsection (a) only.
595:20–9–3	Vehicle emission inspection	05/26/1994	02/29/1996 61 FR 7709	Subsections (l) and (m) only.
595:20–9–7	Catalytic Converter System (C.A.T.).	05/26/1994	02/29/1996, 61 FR 7709.	
595:20–9–10	Evaporative emission control system (E.N.P.).	05/26/1994	02/29/1996, 61 FR 7709	Subsections (a), (b), and (c) only.
595:20–9–11	Air injection system (A.I.S. or A.I.R.).	05/26/1994	02/29/1996, 61 FR 7709	Subsection (a) only.

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
595:20–9–12	Positive crankcase ventilation system (P.C.V. Valve).	05/26/1994	02/29/1996, 61 FR 7709	Subsection (a) only.
595:20–9–13	Oxygen sensor	05/26/1994	02/29/1996, 61 FR 7709	Subsection (a) only.
595:20–9–14	Thermostatic air intake system (T.A.C.).	05/26/1994	02/29/1996, 61 FR 7709	Subsections (a) and (b) only.
595:20–9–15	Exhaust gas recirculation system (E.G.R.).	05/26/1994	02/29/1996, 61 FR 7709	Subsection (a) only.
Subchapter 11. Annual Motor Vehicle Inspection and Emission Anti-Tampering Inspection Records and Reports				
595:20–11–1	General	05/26/1994	02/29/1996, 61 FR 7709.	
595:20–11–2	Inspection certificate—VEC–1	05/26/1994	02/29/1996, 61 FR 7709	Subsection (a) only.
595:20–11–3	Rejection certificate—VIID–44	05/26/1994	02/29/1996, 61 FR 7709	Subsection (a) only.
595:20–11–4	Appeal procedure	05/26/1994	02/29/1996, 61 FR 7709.	

[1] Submitted.

(d) EPA approved state source-specific requirements.

EPA APPROVED OKLAHOMA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State submittal date	EPA approval date	Explanation
General Motors, Oklahoma City: Addendum I to Chapter 4, Emissions Offset Agreement for Permit Application.		03/28/1977	12/20/1977, 42 FR 63781	Ref: 52.1960(c)(10).
McAlester Army Ammunition Plant McAlester, OK.	Variance	09/21/1979	05/26/1981, 46 FR 28159	Ref: 52.1960(c)(21).
Mesa Petroleum Company	Variance	02/06/1984	07/27/1984, 49 FR 30184	Ref: 52.1960(c)(31).
Rockwell International, Tulsa	Alternate RACT	03/09/1990	06/12/1990, 55 FR 23730	Ref: 52.1960(c)(36).
McDonald Douglas, Tulsa	Alternate RACT	03/09/1990	06/12/1990, 55 FR 23730	Ref: 52.1960(c)(36).
American Airlines, Tulsa	Alternate RACT	03/09/1990	06/12/1990, 55 FR 23730	Ref: 52.1960(c)(36).
Nordam Lansing Street facility, Tulsa.	Alternate RACT	03/09/1990	06/12/1990, 55 FR 23730	Ref: 52.1960(c)(36).
Conoco Refinery, Ponca City	88–116–C	11/07/1989	03/06/1992, 57 FR 08077	Ref: 52.1960(c)(42).
Conoco Refinery, Ponca City	88–117–O	11/07/1989	03/06/1992, 57 FR 08077	Ref: 52.1960(c)(42).

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

EPA APPROVED OKLAHOMA NONREGULATORY PROVISIONS

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
Chapter 1, Abstract	Statewide	10/16/1972	05/14/1973, 38 FR 12696	Ref: 52.1960(c)(6).
Chapter 2, Description of Regions.	Statewide	01/28/1972	05/31/1972, 37 FR 10842	Ref: 52.1960(b).
Chapter 3, Legal Authority	Statewide	10/16/1972	05/14/1973, 38 FR 12696	Ref: 52.1960(c)(6).
Chapter 4, Control Strategy	Statewide	10/16/1972	05/14/1973, 38 FR 12696	Ref: 52.1960(c)(6).
A. Part D Requirements	Nonattainment areas	04/02/1979	02/13/1980, 45 FR 09733	Ref: 52.1960(c)(14).
B. Photochemical Oxidants (Ozone).	Statewide	04/02/1979	02/13/1980, 45 FR 09733	Ref: 52.1960(c)(14).
C. Carbon Monoxide	Statewide	04/02/1979	02/13/1980, 45 FR 09733	Ref: 52.1960(c)(14).
D. Total Suspended Particulates	Statewide	04/02/1979	02/13/1980, 45 FR 09733	Ref: 52.1960(c)(14).
E. Public notification	Statewide	04/02/1979	05/14/1982, 47 FR 20771	Ref: 52.1960(c)(17).
F. Lead SIP	Statewide	03/05/1980	04/16/1982, 47 FR 16328	Ref: 52.1960(c)(18).
G. PM10 SIP	Statewide	08/22/1989	02/12/1991, 56 FR 05653	Ref: 52.1960(c)(38).
H. Tulsa County Ozone Plan	Tulsa County	02/20/1985	01/31/1991, 56 FR 03777	Ref: 52.1960(c)(39).
I. Oklahoma County Carbon Monoxide Plan.	Oklahoma County	10/17/1985	08/08/1991, 56 FR 37651	Ref: 52.1960(c)(40).
Chapter 5, Compliance Schedules.	Statewide	10/16/1972	05/14/1973, 38 FR 12696	Ref: 52.1960(c)(6).
Chapter 6, Emergency Episode Control Plan.	Statewide	08/22/1989	02/12/1991, 56 FR 05653	Ref: 52.1960(c)(38).
Chapter 7, Atmospheric Surveillance System.	Statewide	03/07/1980	08/06/1981, 46 FR 40005	Ref: 52.1960(c)(22).
Chapter 8, Source Surveillance System.	Statewide	10/16/1972	05/14/1973, 38 FR 12696	Ref: 52.1960(c)(6).
Chapter 9, Resources	Statewide	04/02/1979	02/13/1980, 45 FR 09733	Ref: 52.1960(c)(14).

EPA APPROVED OKLAHOMA NONREGULATORY PROVISIONS—Continued

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
Chapter 10, Intergovernmental Cooperation.	Statewide	04/02/1979	05/14/1982, 47 FR 20771	Ref: 52.1960(c)(17).
Small Business Assistance Program.	Statewide	11/19/1992	06/23/1994, 59 FR 32365	Ref: 52.1960(c)(45).
Oklahoma Vehicle Anti-Tampering Program.	Statewide	05/16/1994	02/29/1996, 61 FR 07709	Ref: 52.1960(c)(46).
Oklahoma Visibility Protection Plan.	Statewide	06/08/1990	11/08/1999, 64 FR 60683	Ref: 52.1960(c)(49).

EPA APPROVED STATUTES IN THE OKLAHOMA SIP

State citation	Title/subject	State effective date	EPA approval date	Explanation
1992 Oklahoma Clean Air Act (63 O.S.A. 1992, Sections 1–1801 to 1–1819)				
Section 1–1801	Citation	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1802	Purpose	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1803	Municipal Regulations	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1804.1	Definitions	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1805.1	Administrative Agency Powers	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1806.1	Adoption of Rules	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1807.1	Air Quality Council	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1808.1	Powers and Duties of the Air Quality Council.	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1809	Chief of Air Quality Council/Citizen Complaints.	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1810	Variances	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1811	Compliance Orders	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1812	Field Citation Program/Administrative Penalties.	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1813	Permitting Program	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1814	Fees	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1815	Emission Standards/Toxic Air Contaminant Emissions/Oil and Gas Emissions.	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1816	Small Business Assistance Program	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1817	Criminal Penalties	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1818	Civil Action	05/15/1992	06/23/1994, 59 FR 32365.	
Section 1–1819	Keeping Certain Rules and Enforcement Actions Effective.	05/15/1992	06/23/1994, 59 FR 32365.	
1992 Oklahoma Environmental Quality Act (27A O.S.A., Sections 1 to 12)				
Section 1	Citation	06/12/1992	06/23/1994, 59 FR 32365.	
Section 2	Purpose	06/12/1992	06/23/1994, 59 FR 32365.	
Section 3	Definitions	06/12/1992	06/23/1994, 59 FR 32365.	
Section 4	Transition	06/12/1992	06/23/1994, 59 FR 32365.	
Section 5	Pollution Control Coordinating Board and Department of Pollution Control.	06/12/1992	06/23/1994, 59 FR 32365.	
Section 6	Jurisdictional Areas of Environmental Responsibility.	06/12/1992	06/23/1994, 59 FR 32365.	

EPA APPROVED STATUTES IN THE OKLAHOMA SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 7	Environmental Quality Board	06/12/1992	06/23/1994, 59 FR 32365.	
Section 8	Executive Director	06/12/1992	06/23/1994, 59 FR 32365.	
Section 9	Department of Environmental Quality	06/12/1992	06/23/1994, 59 FR 32365.	
Section 10	Advisory Councils	06/12/1992	06/23/1994, 59 FR 32365.	
Section 11	Time Periods for Certain Permits and Complaints.	06/12/1992	06/23/1994, 59 FR 32365.	
Section 12	Resolution	06/12/1992	06/23/1994, 59 FR 32365.	

[FR Doc. 00–19376 Filed 8–1–00; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN100–1a, IN120–1a; FRL–6728–2a]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to total suspended particulate (TSP) and Sulfur Dioxide (SO_2) emissions regulations for National Starch and Chemical Company (National Starch), and TSP regulations for Allison Transmission (Allison). Both of these facilities are located in Marion County, Indiana. The Indiana Department of Environmental Management (IDEM) submitted the revised regulations on February 3, 1999, August 30, 1999, and May 17, 2000, as amendments to its State Implementation Plan (SIP). The revisions include the relaxation of some limits, the tightening of one limit, and the elimination of limits for several sources which are no longer operating. The revisions also include the combination of annual emissions limits for several boilers, and recordkeeping requirements. These SIP revisions results in an overall decrease in allowed TSP emissions of about 406 tons per year (tpy) for National Starch, and no change in overall annual emissions for Allison.

DATES: This rule is effective on October 2, 2000, unless EPA receives relevant adverse written comments by September 1, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to:

J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" are used we mean EPA.

Table of Contents

I. What is the EPA Approving?

We are approving revisions to TSP and SO_2 emissions regulations for National Starch, and TSP regulations for Allison, both of which are located in Marion County, Indiana. IDEM submitted the revised regulations on August 30, 1999, February 3, 1999, and May 17, 2000, as amendments to its SIP.

The revisions for National Starch include the elimination of TSP limits for 35 units and SO_2 limits for 4 boilers, all of which have shut down permanently. The National Starch revisions also include increases to the TSP limits of 6 units, and a decrease of the TSP limit for one unit. These SIP revisions results in an overall decrease in allowed TSP emissions of about 406 tpy of TSP.

For Allison, the revisions include combining the annual TSP emissions limits for 5 boilers into one, and the addition of recordkeeping requirements for these boilers. There are no changes to the short-term emissions limits for individual boilers. These revisions will not change the overall allowed emissions for Allison.

II. What are the changes from current rules?

A. Sources eliminated from the rules.

Indiana has eliminated 35 emission units at National Starch from TSP rule 326 IAC 6–1–12, and 4 boilers from SO_2 rule 326 IAC 7–4–2. The annual TSP emission limits for these eliminated sources totaled 519.7 tpy.

B. Revised limits.

Indiana has revised some short-term and some long-term TSP emissions limits for sources at National Starch. Indiana has increased the annual limits for processes 61–9, 56–2, 56–1, 40–4, 40–3, and 40–2 from 2.3, 1.1, 0.2, 6.7, 7.9, and 8.6 tpy to 4.1, 11.3, 7.02, 44.1, 42.3, and 31.9 tpy, respectively. Indiana has increased the hourly concentration limits for processes 56–2, 56–1, 40–4,

40–3, and 40–2 from 0.001, 0.001, 0.005, 0.005, 0.005 grains per dry standard cubic foot (gr/dscf) to 0.010, 0.020, 0.020, 0.020. 0.020 gr/dscf, respectively. Indiana has decreased the hourly concentration limit for process 575–2 from 0.018 to 0.011 gr/dscf.

C. Combined annual limits.

Indiana combined the annual emissions limits for boilers 1 through 5 at Allison into one overall limit. The previous version of the rule contained limits of 0.6, 3.9, 6.4, 19.9, and 8.5 tpy for boilers 1, 2, 3, 4, and 5, respectively. The revised rule contains one PM limit of 39.3 tpy for boilers 1 through 5 combined.

D. Recordkeeping requirements.

Indiana added recordkeeping requirements for Allison. Under these requirements, Allison is to maintain fuel type, fuel usage, and fuel heat content information for each boiler. Allison must also submit quarterly reports of this information to IDEM, and maintain the records for 5 years.

III. Analysis of supporting materials provided by Indiana.

The general criteria used by the EPA to evaluate such emissions trades, or "bubbles", under the Clean Air Act and applicable regulations are set out in the EPA's December 4, 1986, Emissions Trading Policy Statement (ETPS) (see 51 FR 43814). Emissions trades which result in an overall decrease in allowable emissions require a "Level II" modeling analysis under the ETPS to ensure that the NAAQS will be protected. A Level II analysis must include emissions from the sources involved in the trade, and must demonstrate that the air quality impact of the trade does not exceed set significance levels. For particulate matter, the significance levels are 10 micrograms per cubic meter ($\mu g/m^3$) for any 24-hour period, and 5 $\mu g/m^3$ for any annual period.

While the limits for Marion County, Indiana apply to TSP, the current National Ambient Air Quality Standards apply to particulate matter 10 microns or less in diameter (PM_{10}). In applying the ETPS, Indiana calculated allowed PM_{10} emissions from the sources involved in the trade based on published emissions fractions. These PM_{10} emissions estimates were used in determining the type of modeling analysis needed (i.e., Level II), and were also used in conducting the modeling analysis.

Indiana's PM_{10} analysis showed that these SIP revisions will result in a decrease in allowable emissions of 316 tpy of PM_{10} for National Starch, and no change in allowable PM_{10} emissions for Allison.

The modeling analyses submitted by the IDEM in support of the requested SIP revisions are consistent with a Level II analysis. The analyses shows that the SIP revisions will not cause or contribute to any exceedances of the PM_{10} NAAQS. The maximum modeled PM_{10} air quality impacts for National Starch were 9.18 $\mu g/m^3$ in 24-hours, and 0.0 $\mu g/m^3$ on an annual basis. The maximum modeled PM_{10} air quality impacts for Allison were 0.9 $\mu g/m^3$ in 24-hours, and 0.08 $\mu g/m^3$ on an annual basis. Therefore, IDEM has demonstrated that these SIP revisions will not have a significant adverse impact on air quality.

IV. What are the environmental effects of these actions?

These SIP revisions will result in a decrease in allowable TSP emissions of 406 tons per year for National Starch, and no change in overall annual TSP emissions for Allison. This equates to a reduction of 316 tpy of PM_{10} from National Starch, and no change in overall annual PM_{10} emissions for Allison. In addition, air quality modeling analyses conducted by IDEM show that the maximum daily and annual impacts of these SIP revisions are below established significance levels. Therefore, these SIP revisions will not have an adverse effect on air quality.

V. EPA rulemaking actions.

We are approving, through direct final rulemaking, revisions to TSP and SO_2 emissions regulations for National Starch, and TSP regulations for Allison, both of which are located in Marion County, Indiana. We are publishing these actions without prior proposal because we view these as noncontroversial revisions and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revisions should adverse written comments be filed. These actions will be effective without further notice unless we receive relevant adverse written comment by September 1, 2000. Should we receive such comments, we will publish a final rule informing the public that these actions will not take effect. Any parties interested in commenting on these actions should do so at this time. If no such comments are received, you are advised that these actions will be effective on October 2, 2000.

VI. Administrative requirements.

A. Executive Order 12866

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

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, 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 EPA to develop an effective process permitting elected officials 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. These

actions do not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

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 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 create any new requirements, I certify that these actions will not have a significant economic 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 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, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 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 actions promulgated do 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. These Federal actions approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from these actions.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding these actions under section 801 because this is a rule of particular applicability.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to these actions. Today's actions do not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 2000. 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. These actions may not be challenged later in proceedings to enforce their 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.

Dated: June 16, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, 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 P—Indiana

2. Section 52.770 is amended by adding paragraphs (c)(124) and (c)(136) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(124) On February 3, 1999, and May 17, 2000, Indiana submitted revised particulate matter emissions regulations for Allison Transmission in Marion County, Indiana. The submittal amends 326 IAC 6–1–12, and includes the combination of annual emissions limits for 5 boilers into one overall limit as well as new recordkeeping requirements.

(i) Incorporation by reference.

Emissions limits and recordkeeping requirements for Allison Transmission in Marion County contained in Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, Section 12: Marion County. Added at 22 In. Reg. 416. Effective October 16, 1998.

* * * * *

(136) On August 30, 1999, and May 17, 2000, Indiana submitted revised particulate matter and sulfur dioxide emissions regulations for National Starch in Marion County, Indiana. The submittal amends 326 IAC 6–1–12, and includes elimination of shut down sources from the rules, increases in some limits, and a decrease in one limit.

(i) Incorporation by reference.

(a) Emissions limits for National Starch in Marion County contained in Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, Section 12: Marion County. Added at 22 In. Reg. 1953. Effective March 11, 1999.

(b) Emissions limits for National Starch in Marion County contained in Indiana Administrative Code Title 326: Air Pollution Control Board, Article 7: Sulfur Dioxide Rules, Rule 4: Emission Limitations and Requirements by County, Section 2: Marion County Sulfur Dioxide Emission Limitations. Added at 22 In. Reg. 1953. Effective March 11, 1999.

[FR Doc. 00–19369 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV045–6012; FRL–6730–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revision to the State Implementation Plan (SIP) Addressing Sulfur Dioxide in Marshall County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the West Virginia State Implementation Plan (SIP). The revisions consist of Consent Orders modifying the sulfur dioxide (SO_2) allowable emissions at three stationary sources in Marshall County, West Virginia. The Orders are separate, enforceable agreements between PPG Industries, Inc.; Bayer Corporation; and Columbian Chemicals Company, and the West Virginia Office of Air Quality (WVOAQ). EPA is approving these revisions to incorporate the three Consent Orders into the federally approved State Implementation Plan (SIP). The intention of this action is to regulate SO_2 emissions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on October 2, 2000 without further notice, unless EPA receives adverse written comment by September 1, 2000. If EPA receives such comments, it 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 should be mailed to Ms. Makeba Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or West Virginia Division of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Denis Lohman, (215) 814–2192, or by e-mail at lohman.denny@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 17, 2000, the West Virginia Division of Environmental Protection submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of Consent Orders prescribing sulfur dioxide (SO_2) emission limits and operating practices for three facilities in Marshall County, West Virginia.

A. What Action Is EPA Taking in This Rulemaking?

The EPA is approving as a SIP revision, and incorporating by reference into the West Virginia SIP, three Consent Orders containing new SO_2 emission limits for three facilities located in Marshall County. The facilities are PPG Industries, Bayer Corporation, and Columbian Chemicals Company. Changes to the emission limits were enforceably established by the WVOAQ through Consent Orders. This action approves these Consent Orders into the SIP and makes them federally enforceable.

B. Why Were Changes in Emission Rates Necessary?

These three sources, and others, were modeled as "nearby background sources" in the preliminary modeling of the Kammer power plant in Marshall County. The preliminary modeling indicated that these sources, at their existing allowable emission rates, were substantial contributors to predicted violations of the national ambient air quality standards (NAAQS) for SO_2. The WVOAQ initiated action to complete a refined modeling analysis and determine appropriate emission limits for these sources and other sources in and near to Marshall County.

With the emission limits and work practice requirements being approved for these three facilities and the existing SIP-approved emission rates for the other sources modeled, the refined modeling results predict worst-case concentrations for the 3-hour, 24-hour, and annual averaging periods of 1294 micrograms per cubic meter of air (µg/m3), (for the secondary 3-hour), 352 µg/m3, (for the primary 24-hour standard) and 62 µg/m3, (for the primary annual standard) respectively. Therefore, upon approval of this SIP revision, the West

Virginia SIP for SO_2 in Marshall County ensures that all ambient concentrations are below the applicable NAAQS of 1300 µg/m3, 365 µg/m3, and 80 µg/m3, respectively.

C. What Is a SIP?

Section 110 of the Clean Air Act requires states to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS established by the EPA. These ambient air quality standards are established under the Clean Air Act and they address six criteria air pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter and sulfur dioxide.

Each State must submit regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect its air quality. These SIPs are extensive, containing regulations, enforceable emission limits, emission inventories, monitoring networks, and modeling demonstrations. The West Virginia SIP contains various "Consent Orders" (Orders) to meet the SIP requirements and other State statutory requirements. The Orders are developed to contain specific conditions for a particular source and can provide specific conditions such as, emission limits, hours of operation, record keeping requirements, production rates, compliance demonstration requirements, etc. Once properly issued State-enforceable Consent Orders are approved by EPA as SIP revisions, those Orders are incorporated by reference into the SIP, and become federally enforceable.

D. What Are the Procedural Requirements West Virginia Must Follow for EPA Approval?

The Clean Air Act requires States to observe certain procedural requirements while developing SIP revisions for submission to and approval by the EPA. Section 110(l) of the Clean Air Act requires that a revision to a SIP must be adopted by such State after reasonable notice and public hearing. The EPA must also determine whether a submittal is complete and warrants further action (see Section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP revision submittals are found at 40 Code of Federal Regulations (CFR) Part 51, appendix V.

West Virginia's February 17, 2000 SIP submittal for Marshall County was determined to be administratively complete by EPA through a letter to the Chief of the WVOAQ dated March 6, 2000.

The State of West Virginia held a public hearing on this SIP revision on July 22, 1999. The SIP revision request was then submitted by the Director of the West Virginia Division of Environmental Protection to the EPA by cover letter dated February 17, 2000. The SIP revision demonstrates attainment of the SO_2 NAAQS in Marshall County, West Virginia.

All State regulations and supporting information approved by the EPA under Section 110 of the Act are incorporated into the federally approved SIP. Records of such SIP actions are maintained in the 40 CFR Part 52. The actual State regulations and Orders which are approved as SIP revisions are not reproduced in their entirety in the CFR but are "incorporated by reference," with a specific effective date.

E. What Are the Health Effects Associated With This Criteria Pollutant?

Sulfur dioxide belongs to the family of sulfur oxide gases. These gases are formed when fuel containing sulfur, such as coal and oil, is burned and during metal smelting, and other industrial processes. Sulfur dioxide is a rapidly-diffusing reactive gas that is very soluble in water. Sulfur dioxide and oxides of nitrogen are the major precursors to acidic deposition (acid rain), and are associated with the acidification of lakes and streams, corrosion of buildings and monuments. They are also associated with reduced visibility. Sulfur dioxide in the Marshall County area is emitted principally from combustion, or processing, of sulfur-containing fossil fuels and ores. At elevated concentrations, sulfur dioxide can adversely affect human health. The major health concerns associated with exposure to high concentrations of SO_2 include effects on breathing, respiratory illness, alterations in the lungs' defenses, and aggravation of existing cardiovascular disease. Sulfur dioxide can also produce damage to the foliage of trees and agricultural crops.

F. What Are the NAAQS for SO_2?

The primary national ambient air quality standards for sulfur oxides, measured as SO_2, are 0.14 parts per million (ppm), or 365 µg/m3, averaged over a period of 24 hours and not to be exceeded more than once per year, and an annual standard of 0.030 ppm, or 80 µg/m3, never to be exceeded. The secondary standard for SO_2 is 0.50 ppm, or 1300 µg/m3 averaged over a three-hour period. The secondary standard may not be exceeded more than once per year.

II. Summary of This SIP Revision

The purpose of this revision is to ensure the federal enforceability of Consent Orders entered between the West Virginia Division of Environmental Protection, Office of Air Quality, and three facilities in Marshall County, West Virginia. The essential compliance provisions of the three Consent Orders are presented below. Each Consent Order also contains generic provisions requiring compliance with 45CSR10, the West Virginia regulation to prevent and control air pollution from the emissions of sulfur oxides as well as good air pollution control practice.

A. CO–SIP–2000–1, PPG Industries, Inc., Dated January 25, 2000

1. Effective immediately:

a. Emissions of sulfur dioxide from Process #004, Inorganics Flare, shall not exceed 91.3 lbs. SO_2/hour.

b. Process #014 CS_3, Vaporizer A; Process #015, CS_3 Vaporizer B; Process #018, Molten Salt Furnace; and Process #019, Chlorine Recovery shall be fired only with natural gas.

c. Process #016, CS_3 Flare, shall only be operated during periods limited to start-up, shutdown or malfunctions for periods no greater than a total of one hour in any three-hour period. The flare shall not be operated for more than three non-contiguous hours in a calendar day. Emissions of sulfur dioxide shall not exceed 1011.6 lbs. SO_2/hour during periods of start-ups and shutdowns.

d. Emissions of sulfur dioxide from Process #017, Raw Brine Flare, shall not exceed 11.65 lbs. SO_2/hour.

e. Emissions of sulfur dioxide from Process #036, CS_3 Sulfur Recovery Unit, shall not exceed 300 lbs. SO_2/hour. The CS_3 Sulfur Recovery Unit shall not process more than 2.5 tons of sulfur per hour nor more than 60 tons of sulfur per day.

2. Effective on or after June 1, 2002:

a. All exhaust gases from Process #004, Inorganics Flare; Process #036, CS_3 Sulfur Recovery Unit; and Process #016, CS_3 Flare shall be exhausted from stacks having heights of 65 meters above grade, and all exhaust gases from Process #017, Raw Brine Flare, shall be exhausted from a stack having a height of 40 meters above grade.

B. CO–SIP–2000–2, Bayer Corporation, Dated January 26, 2000

1. Effective immediately:

a. The Company shall not operate Boiler Number 3.

b. The Company shall burn only natural gas in Boilers Number 4, Number 6, Number 7, and Number 8.

c. SO_2 emissions from Boiler Number 9 and Boiler Number 10 shall not exceed 86 lbs./hour and 62.5 lbs./hour respectively.

i. Sulfur content of the fuel oil burned in Boilers Number 9 and 10 shall not exceed 0.72%.

ii. The total combined fuel oil burn rate to Boilers Number 9 and 10 shall not exceed 22 gallons per minute.

d. SO_2 emissions from Incinerator #1, Solids Incinerator, shall not exceed 9.5 lbs./

hour. The unit's burners shall only fire natural gas.

e. SO_2 emissions from Incinerator #4, Fluidized Bed Incinerator, shall not exceed 7.1 lbs./hour and 28.4 tons per year.

f. SO_2 emissions from the Iron Oxide Pigment Kiln shall not exceed 10.4 lbs./hour.

i. Sulfur content of the #2 fuel oil burned at the Iron Oxide Pigment Kiln shall not exceed 0.5%.

ii. Total combined fuel oil burn rate to the Iron Oxide Pigment Kiln shall not exceed 146 gallons per hour.

C. CO–SIP–2000–3, Columbian Chemicals Company, Dated January 31, 2000

1. Effective immediately:

a. Boilers #1 and #2 shall be fired only with natural gas

b. The sulfur content of the feedstock used in the reactor furnaces shall not exceed 2.5% by weight.

2. Within 180 days the Company shall submit a permit application to the WVOAQ under 45CSR14.

The California Puff model (CALPUFF) was selected as the tool for the attainment demonstration. CALPUFF is a multi-layer, multi-species non-steady-state puff dispersion model that simulates the effects of time- and space-varying meteorological conditions on pollutant transport, transformation and removal. CALPUFF can be applied on scales of tens of meters to hundreds of kilometers. CALPUFF is a Lagrangian puff model. The model is programmed to simulate continuous puffs of pollutants being emitted from a source into the ambient wind flow. As the wind flow changes from hour to hour, the path each puff takes changes to the new wind flow direction. Puff diffusion is Gaussian and concentrations are based on the contributions of each puff as it passes over or near a receptor point.

CALPUFF is not a recommended model in EPA's *Guideline on Air Quality Models* [40 CFR Part 51, Appendix W], and, therefore, EPA approval of its use is required. This approval is generally given on a case-specific basis for an individual permit or SIP. In a joint memorandum to the EPA Model Clearinghouse, EPA Regions III and V recommended the use of CALPUFF for the Marshall County application. In a letter dated May 5, 1998 to the State of West Virginia, Marcia L. Spink, Associate Director, Air Programs, Air Protection Division, Region III, approved the modeling protocol and the use of the CALPUFF model for the development of the Marshall County SIP.

The final dispersion modeling, based upon current SIP allowable SO_2 emission limits and the SO_2 emission limits of sources amended through Consent Orders, demonstrates that the maximum SO_2 impacts do not exceed the SO_2 NAAQS. The maximum modeled impacts, including background concentrations, are presented in Table 1 below:

TABLE 1.—PREDICTED SULFUR DIOXIDE IMPACTS (MICROGRAMS PER CUBIC METER)

Period	CALPUFF	NAAQS	Percent of NAAQS
3-Hour ..	1293.95	1300	99.53
24-Hour	352.22	365	96.50
Annual ..	61.54	80	76.93

In addition, as part of the study leading to the development of this SIP revision, emission limitations were determined for the Ormet Aluminum facility in Monroe County, Ohio. An attachment to the SIP revision request is a letter from Ormet Primary Aluminum Corporation to the Ohio EPA consenting to the development of an appropriate rulemaking to establish allowable emission limits as modeled under Table 8, of *Dispersion Modeling of Sulfur Dioxide Emissions in and Near Marshall County, West Virginia* (Revised, October 1999). The Ohio EPA has agreed to revise the Ohio SIP as it pertains to Ormet.

Finally, of special note, Attachment VI to the SIP Revision request contains a proposed revision to West Virginia State Regulation X at 45CSR10 "To Prevent and Control Air Pollution From the Emission of Sulfur Oxides" and a January 12, 2000, letter from American Electric Power to the USEPA certifying compliance with Civil Action No. 5:94–CV–100. The revision to West Virginia State Regulation X at 45CSR10 will once again make it consistent with the applicable SIP limit of 2.7 lbs.(SO_2)/mmBTU for the Kammer power plant.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment given the fact that the affected sources have all agreed to the SIP revision's provisions. This rule approving a SIP revision based upon a cooperative study in which all stakeholders and their respective interests were considered. Furthermore, the comments from the public hearing on this rule do not indicate any dissatisfaction with the rule. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to [approve the SIP revision] if adverse comments are filed. This rule will be effective on October 2, 2000 without further notice unless EPA receives adverse comment by September 1, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Final Action

EPA is approving a revision to the West Virginia State Implementation Plan (SIP) submitted by the West Virginia Division of Environmental Protection on February 17, 2000. The revision consists of Consent Orders modifying the sulfur dioxide (SO_2) allowable emissions at three stationary sources in Marshall County, West Virginia.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power

and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from Section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under Section 801 because this is a rule of particular applicability.

C. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action approving a revision to the Marshall County, West Virginia, SO_2 SIP, must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 2000. 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, Reporting and record keeping requirements, Sulfur oxides.

Dated: June 23, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart 2520—West Virginia

2. Section 52.2520 is amended by adding paragraphs (c)(44) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(44) Revisions to the West Virginia Regulations to attain and maintain the sulfur dioxide national ambient air quality standards in Marshall County submitted on February 17, 2000, by the Director, West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of February 17, 2000, from the Division of Environmental Protection transmitting a revision to the State Implementation Plan (SIP) for Attainment and Maintenance of Sulfur Dioxide National Ambient Air Quality Standards.

(B) Consent Orders entered between the West Virginia Office of Air Quality and:

(*1*) CO–SIP–2000–1, PPG Industries, Inc., Dated January 25, 2000.

(*2*) CO–SIP–2000–2, Bayer Corporation, Dated January 26, 2000.

(*3*) CO–SIP–2000–3, Columbian Chemicals Company, Dated January 31, 2000.

(ii) Additional Material.—Remainder of February 17, 2000 SIP revision submittal.

[FR Doc. 00–19371 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 302

[FRL–6843–3]

RIN 2060–AI08

Redefinition of the Glycol Ethers Category Under Section 112(b)(1) of the Clean Air Act and Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rules.

SUMMARY: This action deletes each individual compound in a group called the surfactant alcohol ethoxylates and their derivatives (SAED) from the glycol ethers category in the list of hazardous air pollutants (HAP) established by section 112(b)(1) of the Clean Air Act (CAA). Under section 112(b)(3)(D) of the CAA, EPA may delete specific substances from certain listed categories, including glycol ethers. To implement this action, EPA is revising the definition of glycol ethers to exclude the deleted compounds. This action is also making conforming changes with respect to designation of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). These final rules are being issued by EPA in response to an analysis of potential exposure and hazards of SAED that was prepared by the Soap and Detergent Association (SDA) and submitted to EPA. Based on this information, EPA has made a final determination that there are adequate data on the health and environmental effects of these substances to determine that emissions, ambient concentrations, bioaccumulation, or deposition of these substances may not reasonably be anticipated to cause adverse human health or environmental effects.

EFFECTIVE DATE: August 2, 2000.

ADDRESSES: The docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Docket, Room

M1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For information concerning this final rule, contact Dr. Roy L. Smith, Risk and Exposure Assessment Group, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5362, facsimile number (919) 541–0840, electronic mail address smith.roy@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket

Docket number A–98–39 contains the supporting information for this promulgated rule, including SDA's report on SAED and EPA's analysis of that report. The docket also includes public comments on the proposed rule for this action, published on January 12, 1999 (64 FR 1780). The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) An index for each docket, as well as individual items contained within the dockets, may be obtained by calling (202) 260–7548 or (202) 260–7549. Alternatively, docket indexes are available by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at http://www.epa.gov/oar/docket. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of this final rule will be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Effective Dates

These rules will take effect on August 2, 2000. Although section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), provides that substantive rules must be published at least 30 days prior to their effective date, this requirement does not apply to these rules. First, the rule deleting specified substances from the glycol ethers category in the CAA section 112(b)(1) HAP list was promulgated pursuant to CAA section 307(d), and that provision expressly states that the provisions of section 553 do not apply to this action. Second, even under section 553, the requirement that a rule be published 30 days prior to its effective date does not apply to a rule "which grants or recognizes an exemption or relieves a restriction," and both rules incorporated herein fit that criterion.

Judicial Review

The final rule deleting specified substances from the glycol ethers category in the CAA section 112(b)(1) HAP list is based on a determination of nationwide scope and effect. A petition for judicial review of this final rule may be filed solely in the United States Court of Appeals for the District of Columbia. Any such petition for judicial review of this rule must be filed no later than October 2, 2000, except for judicial review challenging solely the amendment to the CERCLA regulations in 40 CFR part 302, which must be filed no later than October 31, 2000. In any resulting action, no objection can be made which was not raised with reasonable specificity during the period for public comment.

Outline

The information presented in this preamble is organized as follows:

I. What Is the Background for This Rule?

Section 112 of the CAA contains a mandate for EPA to evaluate and control emissions of HAP. Section 112(b)(1) includes an initial list of HAP that is composed of specific chemical compounds and groups of compounds. This list is used to identify source categories for which we will subsequently promulgate emissions standards.

Section 112(b)(2) requires EPA to conduct periodic reviews of the initial list of HAP set forth in section 112(b)(1) and outlines criteria to be applied in deciding whether to add or delete particular substances. Section 112(b)(2) identifies pollutants that should be added to the list as:

> * * * pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, * * *.

Section 112(b)(3) establishes general requirements for petitioning the Agency to modify the HAP list by adding or deleting a substance. In general, the burden is on a petitioner to include sufficient information to support the requested addition or deletion under the substantive criteria set forth in section 112(b)(3)(B) and (C). The Administrator must either grant or deny a petition within 18 months of receipt. If the Administrator decides to grant a petition, we publish a written explanation of the Administrator's decision, along with a proposed rule to add or delete the substance. The proposed rule is open to public comment and public hearing and any additional information received is considered prior to issuance of a final rule. If the Administrator decides to deny the petition, we publish a written explanation of the basis for denial. A decision to deny a petition and/or the issuance of a final rule granting a petition is final Agency action subject to review in the D.C. Circuit Court of Appeals under section 307(b).

To promulgate a final rule deleting a substance from the HAP list, section 112(b)(3)(C) provides that the Administrator must determine that:

> * * * there is adequate data on the health and environmental effects of the substance to

determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

We will grant a petition to delete a substance and publish a proposed rule to delete that substance if we make an initial determination that this criterion has been met. After affording an opportunity for comment and for a hearing, we will make a final determination whether the criterion has been met.

The Administrator may also act to add or delete a substance on her own initiative. In this instance, we have been engaged in a substantive dialogue with the SDA, a national trade association representing manufacturers of cleaning products and ingredients, concerning the toxicity of and exposure to SAED, a group of compounds that is within the definition of the glycol ethers category as listed in section 112(b)(1). The SDA initiated this dialogue by requesting that we revise the definition of glycol ethers to exclude SAED. We asked the SDA to support its request by compiling information to satisfy the statutory criteria for delisting this class of compounds under section 112(b)(3). The SDA submitted this information in a report to us. Although SDA elected not to formally petition us to delete SAED compounds from the HAP list, we chose to evaluate the SDA report against the standards by which substances may be removed from the list of HAP. We made an initial determination that the statutory criteria for delisting SAED were satisfied and published a notice of proposed rulemaking (64 FR 1780, January 12, 1999).

We do not interpret section 112(b)(3)(C) to require absolute certainty that a pollutant will not cause adverse effects to human health or the environment before it may be deleted from the list. The use of the terms "adequate" and "reasonably" indicate that we should weigh the potential uncertainties and their likely significance. Uncertainties concerning the risk of adverse health or environmental effects may be mitigated if we can determine that projected exposures are sufficiently low to provide reasonable assurance that such adverse effects will not occur. Similarly, uncertainties concerning the magnitude of projected exposures may be mitigated if we can determine that the levels that might cause adverse health or environmental effects are sufficiently high to provide reasonable assurance that exposures will not reach harmful levels.

II. What Was Our Analysis of the Information SDA Submitted?

The SDA contended that the present definition of glycol ethers adopted by Congress in section 112(b)(1) was incorporated verbatim from the definition of glycol ethers utilized in section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11023. The SDA noted that we subsequently modified the definition of glycol ethers under EPCRA to exclude SAED compounds (59 FR 34386, July 5, 1994) and the SDA requested that we make a conforming change in the CAA list. We responded that the substantive criteria for deleting chemicals under EPCRA section 313(d) are materially different than the criteria for deleting a hazardous pollutant under section 112(b)(3). It is our view that whatever the origins of the glycol ethers definition in section 112(b)(1), we cannot redefine the glycol ethers category to exclude particular compounds without making a substantive determination that such compounds meet the applicable criteria for HAP delisting. Under section 112(b)(3)(D), we may delete specific substances included in certain listed categories without a Chemical Abstract Service number, including the glycol ethers category.

Although the SDA does not necessarily agree with us that deletion of individual compounds is the only manner in which we may adopt the requested redefinition of the glycol ethers category, the SDA agreed to assist us in this effort by collecting information concerning SAED compounds that would enable us to make a substantive assessment of potential risks under section 112(b)(3). On April 25, 1997, the SDA submitted a report entitled "Exposure Assessment Undertaken to Support the Evaluation of the HAP Definition of 'Glycol Ethers'."

Surfactant alcohol ethoxylates and their derivatives comprise a group of compounds that, individually, satisfy the following definition:

$R-(OCH_2CH_2)_n-OR'$

Where:

n = 1, 2, or 3;
R = alkyl C8 or greater
R′= any group.

Rather than asking the SDA to compile an exhaustive list of each specified SAED compound, we requested that the SDA undertake a generic analysis of the potential toxicity of, and potential exposure to, SAED compounds as a group. We requested that the analysis be based, to the extent possible, on worst-case assumptions that could be deemed to be conservative with respect to each and every individual compound in the SAED group. Such an approach to delisting would normally be impracticable due to the likelihood that use of such extreme assumptions would greatly exaggerate the magnitude of potential risks. In this instance, such an approach was considered practical only because of assertions by the SDA that SAED compounds present both very low potential toxicity and very limited exposure potential.

The report submitted by the SDA presented estimates of both the potential exposure to, and potential toxicity of, SAED compounds. The principal emissions estimate in the report was based on a hypothetical facility either manufacturing SAED or formulating products from an SAED precursor. The facility was assumed to use 600 million pounds per year of SAED, the total annual domestic production of Shell Chemical Company, the largest SAED manufacturer. The report developed conservative emissions estimates for this facility associated with the storage and transfer, processing, and fugitive releases of SAED compounds.

Emissions of SAED from raw materials during storage and transfer were estimated by assuming emissions of a volume of air, fully saturated with SAED, equal to the total volume of 600 million pounds of displaced SAED liquid per year. The estimated SAED concentration in this air was based on the vapor pressure of the lowest molecular weight compound in the SAED category, although typical SAED compounds have greater molecular weight and substantially lower volatility.

Additional SAED emissions from manufacture of SAED compounds and formulation of other products containing SAED were estimated by a process factor derived from industry experience. The process factor incorporated assumptions on the effect on emissions of higher temperatures and air contact rates that are characteristic of SAED processing. Potential SAED emissions during processing were estimated to be three times greater than during storage and transfer.

Finally, fugitive emissions were estimated by applying a proportionality factor of 41 percent to the sum of raw material and process emissions. This factor was derived from reported emissions for all glycol ethers in the EPA Toxics Release Inventory database, although it is likely that the proportion of total emissions attributable to fugitive releases would be much less for SAED

compounds than for the lower molecular weight glycol ethers.

This analysis estimated a total emissions rate for the hypothetical facility of 105 pounds of SAED per year from raw materials storage and transfer, manufacturing processes, and fugitive emissions combined.

Exposures at the fence line for the hypothetical facility were then estimated using the SCREEN3 dispersion model, the calculated total emissions rate, and a variety of assumptions concerning terrain, stack height and configuration, and distance to the fence line. The predicted annual average SAED concentration associated with an emissions rate of 105 pounds per year was 0.03 micrograms of SAED per cubic meter of air for a "representative" facility and 97.3 micrograms per cubic meter for a "hypothetical worst-case" facility.

The SDA submission also summarized the available toxicity data on SAED compounds. There have been few acute and no subchronic or chronic inhalation studies utilizing SAED compounds. Available animal study data do not indicate any adverse effects at air concentrations up to those produced by full saturation with SAED vapors. Acute toxicity has been demonstrated only when animals inhaled undiluted SAED in the form of a respirable aerosol. In one 10-day repeated inhalation study, test animals exhibited local respiratory irritation. Long-term animal studies of SAED administered by the oral or dermal routes have not reported any significant effects such as skin sensitization, reproductive or developmental toxicity, genetic mutations, or cancer. Evidence on the toxic potential of glycol ethers as a group strongly suggests that toxic potency decreases as molecular weight increases. Therefore, SAED (which have high molecular weights) are likely to be substantially less toxic than lighter glycol ether compounds for which more complete toxicity data are available.

There is no verified or proposed reference concentration (RfC) for any SAED compound. The SDA developed a proposed "key exposure index" for chronic exposure to SAED compounds based on the subchronic RfC for 2-methoxy-1-propanol (MP), a structurally similar compound which also has no demonstrated systemic toxicity by inhalation. 2-Methoxy-1-propanol has a lower molecular weight (90 grams per mole) than the lightest SAED compound (ethylene glycol octyl ether, 174 grams per mole). Therefore, MP is expected to be more toxic than any SAED compound, and its use as a surrogate should be conservative.

The SDA's analysis began with the subchronic RfC for MP, then reduced it by a factor of 10 to account for the differences between subchronic effects and chronic effects, and by an additional factor of between 1 and 10 to account for the use of data for a structurally related compound. This resulted in a proposed concentration range of 0.2 to 2.0 milligrams per cubic meter (mg/m^3) at which no adverse effects would be expected in human populations, including sensitive individuals. The SDA's proposed concentration range is approximately 1,000 to 10,000 times lower than the acutely toxic level for inhalation in rats. It is also approximately 1,000 to 10,000 times greater than the exposure estimated by the SDA for a "representative" facility and 2 to 20 times greater than the estimated exposure for a "hypothetical worst-case" facility.

The proposed chronic no-effect concentration range for SAED of 0.2 to 2.0 mg/m^3 is also consistent with chronic RfCs available from EPA's Integrated Risk Information System (IRIS) for lower-molecular weight, non-SAED glycol ethers (*i.e.*, 0.02 mg/m^3 for 2-methoxyethanol, 0.2 mg/m^3 for 2-ethoxyethanol, and 13 mg/m^3 for ethylene glycol monobutyl ether). The SDA's analysis has, therefore, treated SAED as if they were as toxic as much lighter glycol ether compounds, which EPA considers to be unlikely and conservative.

Although the SDA document does not include a discussion of levels of SAED that would be protective of non-human species, the toxicity data used to support the health impact assessment were obtained from animal studies. The derivation of human no-effect levels from these animal data, appropriately adjusted for uncertainty, should be protective of non-human animal species as well. Overall, there is no evidence to suggest that any species or any ecosystem would be harmed by any exposure below the SAED no-effect level proposed for humans.

III. What Is the Basis for Our Final Decision To Delete SAED Compounds From the Glycol Ethers Category Under the CAA?

Based on the SDA submission as a whole, we believe that the available data on potential exposure to, and toxicity of, SAED compounds are considerably more limited than would normally be necessary to support the findings required by section 112(b)(3) before we may delete a substance from the HAP list. However, there is a sufficiently large discrepancy between the maximum predicted exposure level for these compounds based on plausible worst-case assumptions and the lowest concentration likely to present any potential risk of adverse effects to compensate for the paucity of the data. The conservative techniques used by the SDA in its submission, which tend to overestimate both exposure to and toxicity of SAED, are appropriate in the context of the limited data that are available on SAED compounds.

We cannot construe the process by which Congress adopted the current definition of glycol ethers in section 112(b)(1) as relieving us of the obligation to apply the statutory criteria before deleting any substance included in the present definition. Nevertheless, it is important to observe that there is no evidence suggesting that the current broader definition of glycol ethers was adopted because of any actual concerns regarding the potential hazards of SAED compounds. We believe that the absence of any discernable affirmative rationale for the initial inclusion of SAED compounds in the statutory HAP list, while not dispositive in itself, lends additional support to our conclusion that the available evidence supports deletion of these compounds.

Based on the available information, we have made a final determination, with respect to each and every individual substance that satisfies the definition of SAED compounds set forth above, that there are adequate data on the health and environmental effects of those substances to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substances may not reasonably be anticipated to cause adverse human health or environmental effects. Based on that determination, we have decided to delete from the glycol ethers category in the HAP list established by CAA section 112(b)(1) each and every SAED compound. The EPA will implement this action to delete all SAED compounds by adopting a revised definition of the entire glycol ethers category that excludes each of the deleted substances.

IV. What Is the Basis for the Revised Designation of Glycol Ethers as Hazardous Substances Under CERCLA?

When a HAP is listed under section 112 of the CAA, it is also defined as a hazardous substance under section 101(14) of CERCLA, 42 U.S.C. 9601(14). In an April 4, 1985 final rule, under our authority in section 102(a) of CERCLA, we designated and listed, in the table at 40 CFR 302.4, all the elements and compounds and hazardous wastes incorporated as hazardous substances

by reference to other environmental statutes under section 101(14)(50 FR 13456). In a June 12, 1995 final rule, we revised Table 302.4 to add, among other HAP newly listed by the 1990 CAA Amendments, the broad generic category of glycol ethers (60 FR 30926). We designated the broad generic category of glycol ethers as hazardous under CERCLA based solely on its inclusion in the CAA HAP list. We have no independent basis upon which to retain the current definition of the glycol ethers category in order to include the SAED compounds as CERCLA hazardous substances. Therefore, in addition to revising the definition of glycol ethers in the HAP list in the CAA, we are also making a corresponding change to the list of CERCLA hazardous substances at 40 CFR part 302, Table 302.4.

V. How Have We Involved Stakeholders in This Rulemaking?

The SDA has worked with us for several years to compile evidence supporting this action. This evidence, submitted in April 1997 as a technical report, is summarized above and can be obtained in complete form from the docket. The proposed rules were signed on December 30, 1998 and published in the **Federal Register** on January 12, 1999 (64 FR 1780). We solicited public comments on the proposal for a 2-month period ending on March 15, 1999, and received letters conveying comments from the Chemical Manufacturers Association, the Chemical Specialties Manufacturers Association, the Illinois Environmental Protection Agency, and the SDA.

All commenters expressed full approval of the proposed action, its likely effects, and the rationale on which it is based. We received no negative comments.

VI. What Are the Administrative Requirements for These Final Rules?

A. Executive Order 12866

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Although EPA is not aware of any effects associated with the present inclusion of SAED compounds on the CAA HAP and the CERCLA hazardous substance lists, the effect of the final rules will be to reduce potential regulatory obligations. Neither of the final rules included in this action appear to meet any of the criteria enumerated above, and EPA, therefore, has determined that neither of these actions constitute a "significant regulatory action" under the terms of Executive Order 12866.

B. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, OMB must clear any reporting and recordkeeping requirements that qualify as an "information collection request" under the PRA. Neither of the final rules in this notice contain any new information collection requirements.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), (5 U.S.C. 601, et seq.)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 business, small organizations, and small governmental jurisdictions. For the purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that meets the definitions for small business based on the Small Business Association (SBA) size standards which, for this proposed action, can include manufacturing (SIC 20 and SIC 30) and air transportation (SIC 45) operations that employ less 1,000 people and engineering services (SIC 87) operations that earn less than $20 million annually; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000: and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." (5 U.S.C. sections 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The final rules will eliminate the burden of additional controls necessary to reduce SAED emissions and the associated operating, monitoring and reporting requirements. We have therefore concluded that today's final rules will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. 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 EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the

Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, it 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 officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's action 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, in any 1 year. Therefore, the requirements of sections 202 and 205 of the UMRA do not apply to this action. The EPA has likewise determined that today's action does not include regulatory requirements that would significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13045

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) for which the environmental health or safety risk addressed by the rule may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

Today's action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children. Nevertheless, the estimated human no-effect levels on which this action is based were derived in a manner designed to protect children and other sensitive members of human populations. The EPA, therefore, anticipates that the action will impose no disproportionate risks upon children.

F. Executive Order 13084

Under Executive Order 13084, 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to 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 EPA to develop an effective process permitting elected officials 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 rules do not significantly or uniquely affect the communities of Indian tribal governments because they will result in no increase either in air pollution or reporting requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these rules.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 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 rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards, and the requirements of the NTTAA do not apply.

H. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rules in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). These rules will be effective August 2, 2000.

I. Executive Order 13132

The Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the regulation.

These rules do not have federalism implications. They 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, as specified in

Executive Order 13132. Thus, the requirements of section 6 of Executive Order 13084 do not apply to these amendments.

List of Subjects

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Glycol ethers, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 302

Air pollution control, Chemicals, Glycol ethers, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: July 24, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, parts 63 and 302 of the Code of Federal Regulations are amended 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.*

Subpart C—[Amended]

2. Subpart C is amended by adding § 63.62 to read as follows:

§ 63.62 Redefinition of glycol ethers listed as hazardous air pollutants.

The following definition of the glycol ethers category of hazardous air pollutants applies instead of the definition set forth in 42 U.S.C. 7412(b)(1), footnote 2: Glycol ethers include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-$(OCH_2CH_2)_n$-OR′.

Where:

n = 1, 2, or 3;
R = alkyl C7 or less; or
R = phenyl or alkyl substituted phenyl;
R′= H or alkyl C7 or less; or
OR′ consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

2. In § 302.4, footnote d to Table 302.4 is revised to read as follows:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

* * * * * * *

[d] Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-$(OCH_2CH_2)_n$-OR′.
Where:
n = 1, 2, or 3;
R = alkyl C7 or less; or
R = phenyl or alkyl substituted phenyl;
R′ = H or alkyl C7 or less; or
OR′ consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

* * * * * * *

[FR Doc. 00–19375 Filed 8–1–00; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 130

RIN 0906–AA56

Ricky Ray Hemophilia Relief Fund Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Interim final rule; status of comments and confirmation of effective date.

SUMMARY: This document is to inform potential petitioners that the Department has received several comments on the Ricky Ray Hemophilia Relief Fund Program's interim final rule, published on May 31, 2000. The Department has reviewed all of these comments carefully and continues to consider the suggestions made in these comments. However, none of the comments received by the Department leads us to change the substance of the regulation, the petition form, or the confidential physician or nurse practitioner affidavit appended to the interim final rule at this time. In addition, these comments do not change the effective date of the interim final rule or the fact that July 31, 2000, will be the first date that petitions for payment may be postmarked or accompanied by a receipt from a commercial carrier or the U.S. Postal Service.

DATES: The interim final rule published on May 31, 2000, remains effective on July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul T. Clark, Program Manager, Ricky Ray Program Office, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–54, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; (301) 443–2330.

SUPPLEMENTARY INFORMATION: The Ricky Ray Hemophilia Relief Fund Act of 1998 established the Ricky Ray Hemophilia Relief Fund Program, which is designed to provide compassionate payments to certain individuals with blood-clotting disorders, such as hemophilia, who contracted HIV through the use of antihemophilic factor administered between July 1, 1982, and December 31, 1987. The Act also provides for compassionate payments for certain persons who contracted HIV from the foregoing individuals for for certain survivors of these individuals.

On May 31, 2000 (65 FR 34860), the Department published an interim final rule to establish procedures and requirements for documentation of eligibility and to establish a mechanism for providing compassionate payments to individuals who are eligible for payment under the Act. Attached to the rule was a confidential physician or nurse practitioner affidavit, a petition form, and petition instructions, which included a documentation checklist.

The May 31, 2000, document solicited public comments on the interim final rule and indicated that June 30, 2000, was the deadline for the submission of all such comments. The regulation further indicated that the interim final rule would become effective on July 31, 2000, and that petitions could be

postmarked, or accompanied by a receipt from a commercial carrier or the U.S. Postal Service, on but not before July 31, 2000. The interim final rule specified that should the Department receive any significant comments that would cause us to revise the rule in any way that would affect the filing of the petitions, the Department would be able to do so, or to advise potential petitioners of our intent to do so, before such potential petitioners took any final action to file petitions for compensation.

Since the date of the interim final rule's publication, the Department has received several comments. The Department has reviewed all of these comments carefully. Some of these comments may warrant minor modifications to the interim final rule and we may elect to publish a response to these comments at a later date. However, none of the comments received by the Department leads us to change the substance of the regulation, the petition form, or the confidential physician or nurse practitioner affidavit at this time. In addition, the documentation required for various categories of petitioners to file a complete petition has not changed. Finally, the comments received by the Department do not change the effective date of the interim final rule. thus July 31, 2000, will continue to be the effective date of the interim final rule. Petitions for compassionate payments may be postmarked, or accompanied by a receipt from a commercial carrier or the U.S. Postal Service, on but not before July 31, 2000.

Dated: July 18, 2000.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

Dated: July 28, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–19471 Filed 7–31–00; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 00–209]

Extending Wireless Telecommunications Services to Tribal Lands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission adopts rules and policies that provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands.

DATES: The rules are effective October 2, 2000.

FOR FURTHER INFORMATION CONTACT: Davida Grant, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 202–418–7050, or via the Internet at *dgrant@fcc.gov.*

SUPPLEMENTARY INFORMATION: Recognizing the unusually low telephone service penetration rates on tribal lands, the Commission released a Notice of Proposed Rulemaking on August 18, 1999, 64 FR 49128, seeking comment on the potential of various wireless technologies to provide service to tribal lands with low penetration rates. Specifically, the Notice sought comment on a variety of potential regulatory initiatives to encourage existing and new entrants to serve tribal lands, including: (1) Relaxing licensing and operational rules; (2) using unallocated spectrum to serve tribal residents; (3) awarding bidding credits as an incentive; (4) drawing geographic boundaries for spectrum licensing that recognize tribal boundaries; and (5) adopting satellite licensing policies to facilitate access to telecommunications services.

The record in this proceeding demonstrates that there is a substantial need for specific incentives targeted to the deployment of service on tribal lands. By virtually any measure, communities on tribal lands have historically had less access to telecommunications services than any other segment of the population. According to the 1990 Census, 23 of the 48 largest tribal reservations (those with 500 or more households) had telephone penetration rates below 60 percent, and 16 of these reservations had a penetration rate below 50 percent. Penetration rates at several of the largest reservations are lower still: 18.4 percent on the Navajo Reservation and Trust Lands in Arizona, New Mexico, and Utah; and 22.2 percent on the Gila River Reservation in Arizona. By contrast, the current nationwide telephone penetration rate is 94 percent.

The *Report and Order* adopts rules and policies that provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands. Specifically, the *Report and Order* expands the Commission's bidding credit policy to make bidding credits available to winning bidders who use their licenses to deploy facilities and provide service to federally-recognized tribal lands that have a telephone penetration rate equal to or below 70 percent ("qualifying tribal land"). Applicants who qualify for the tribal lands bidding credit may obtain this credit in addition to any other generally available bidding credit for which they are available.

The credit amount will be based on infrastructure costs and geographic area. A winning bidder may receive a $300,000 credit for up to the first 200 square miles (518 square kilometers) of qualifying tribal land within its license area. In instances where qualifying tribal lands within a license area exceed 200 square miles (518 kilometers), a winning bidder may receive an additional $1500 per square mile (2.59 square kilometer), or $300,000 for each additional 200 square miles (518 square kilometers). All credits will be subject to a maximum limit based on the gross bid amount for the license for which the credit is sought. Where the gross bid amount is $1 million or less, the cap will be 50 percent of the gross bid. Where the gross bid amount is greater than $1 million and equal to or less than $2 million, the cap will be $500,000. Finally, where the gross bid amount exceeds $2 million, the cap will be 25 percent of the gross bid. The credit will be subtracted from the applicant's final payment and will not impact the amount of the down payment required under § 1.2107 of our rules. 47 CFR 1.2107. The Commission will entertain waiver request for a higher credit where an applicant demonstrates that its infrastructure costs exceed the available credit under the formula. However, we will not grant waivers in excess of the applicable percentage caps.

A winning bidder interested in obtaining the tribal lands bidding credit for particular market must indicate on its long form application that it intends to serve qualifying tribal lands in that market. To receive the credit, an applicant must amend its long-form application within 90 days of the filing deadline for long-form applications to certify that it will comply with the bidding credit buildout requirements adopted in the *Report and Order* and consult with the tribal government(s) regarding the deployment of facilities and service on the tribal land. The applicant also must attach a certification from the tribal government that its land is a qualifying tribal land, that it will not enter into an exclusive agreement with the carrier precluding entry by other carriers or unreasonably discriminate against any carrier, and that it will consent to allow the applicant to deploy facilities on its tribal land. This requirement does not preclude tribal governments from

negotiating additional reasonable terms and conditions with carriers. After these certifications are received, the Commission will award the bidding credit and the applicant will pay the final net adjusted bid amount, which equals the gross high bid less the tribal lands bidding credit (for applicants entitled to the small business bidding credit, the final net adjusted bid equals the net high bid less the tribal lands bidding credit).

To retain the credit, any recipient of this bidding credit must file a notification of construction within 15 days of the third anniversary of the initial grant of its license that it has constructed and is operating a system capable of serving 75 percent of the population of the qualifying tribal land for which the credit was awarded. A licensee failing to comply with this condition will be required to repay the bidding credit plus interest 30 days after the conclusion of the three-year buildout period.

Licensees granted a higher credit pursuant to a waiver must also file a certification that the credit amount was spent on infrastructure to provide wireless coverage to qualifying tribal lands. This certification should include a final report prepared by an independent auditor retained by the licensee verifying that the infrastructure costs are reasonable to comply with our buildout requirements. If the credit amount obtained by waiver exceeds the infrastructure costs of providing service to a qualifying tribal land, the licensee must pay the difference between the credit amount and the infrastructure costs.

In addition, the *Report and Order* expresses the Commission's commitment to work with carriers seeking flexibility under our technical and operational rules to promote deployment of wireless services on tribal lands. We believe that parties should seek waivers of specific rules or file other requests for regulatory in instances where greater flexibility than the rules allows would facilitate the provision of service to tribal lands.

In cases where it would facilitate provisions of service to tribal lands; we specifically encourage carriers to seek such relief from the following rules: (1) Antenna height/power and other operational requirements; (2) buildout requirements, (3) private (non-CMRS) service policies; and (4) satellite policies. We also encourage applicants seeking to expand coverage into adjacent licensing areas to file waivers where such relief would facilitate the provision of service to tribal lands. Parties seeking a waiver are encouraged to provide evidence of an agreement with tribal authorities that includes a commitment to serve the tribal lands. Lastly, we commit to considering tribal land boundaries in establishing license areas for future services to avoid splitting tribal lands into multiple licensing areas.

Contemporaneous with the Report and Order, the Commission has issued a Further Notice of Proposed Rulemaking (published elsewhere in this publication) wherein it seeks comment on additional auctions-based incentives it could adopt to encourage the deployment of wireless telecommunications services to tribal and other underserved areas.

Final Regulatory Flexibility Analysis

As required by section 603 of the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (Notice) in WT Docket No. 99–266.[2] The Commission sought written comment on the policies and rules proposed in the Notice, including comment on the IRFA. The comment received is discussed below. This Final Regulatory Flexibility Analysis (FRFA) for the Report and Order conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

The record in this proceeding demonstrates that there is a substantial need for specific incentives targeted to the deployment of service on tribal lands. By virtually any measure, communities on tribal lands have historically had less access to telecommunications services than any other segment of the population. As set forth in Section III.A of the *Report and Order,* 1990 Census data indicates that 23 of the 48 largest tribal reservations (those with 500 or more households) had telephone penetration rates below 60 percent, and 16 of these reservations had a penetration rate below 50 percent. By contrast, the current nationwide telephone penetration rate is 94 percent. We believe telephone service is a necessity in today's world. The lack of basic telecommunications services puts affected tribal communities at a social and economic disadvantage.

The *Report and Order* adopts rules and policies that provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands. We make bidding credits available in future auctions to winning bidders who commit to deploy facilities to tribal areas that have a telephone service penetration rate at or below 70 percent. We also express our commitment to work with carriers seeking flexibility under our technical and operational rules to promote deployment of wireless services on tribal lands.

B. Summary of Significant Issues Raised by Public Comment in Response to the IRFA

The U.S. Small Business Administration, Office of Advocacy (SBA), submitted a response to the IRFA. SBA argues that the Commission's IRFA was insufficient because it did not assess the significant economic impact certain proposals may have on small businesses nor did it propose alternatives that might minimize any impact.[4] SBA also argues more specifically that the Commission's proposal to lift designated entity (DE) transfer restrictions may disadvantage small businesses.[5] Further, SBA claims that the proposal to award bidding credits to any entity, regardless of size, that commits to serve tribal lands may provide big businesses an unfair advantage.[6]

We disagree with SBA's argument that we did not consider alternatives to minimize any significant economic impact on small entities. We discussed in the IRFA the alternative of using unallocated or unlicensed spectrum by telecommunications providers, including small entities, to serve the needs of tribal lands. Similarly, we discussed the use of channels within licensed spectrum to achieve a similar result, and sought comment on these alternatives. SBA also argues against lifting the DE transfer restrictions, which was an alternative we set forth in the *Notice.* This argument is moot, however, because we do not adopt this proposal in the *Report and Order.* Last, SBA states that we proposed to "offer bidding credits in future auctions regardless of business size."[7] However, in this proceeding we have not changed the generally available bidding credit that is offered to small businesses, and our new tribal lands bidding credit is offered in addition to the small business bidding credit. This additional, targeted

[1] *See* 5 U.S.C. 603. The RFA, see 5 USC 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] Extending Wireless Telecommunications Services to Tribal Lands, *Notice of Proposed Rulemaking,* WT Docket No. 99–266 (rel. Aug. 18, 1999).

[3] *See* 5 U.S.C. 604.

[4] SBA Comments at 7–8.

[5] *Id.* at 7.

[6] *Id.* at 2, 3–6.

[7] SBA Comments at 7.

incentive for tribal areas does not detract from our separate effort to assist small businesses through the small business bidding credit. For small businesses, the two credits may be combined.[8]

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[9] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[10] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[11] A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[12] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[13] Nationwide, as of 1992, there were approximately 275,801 small organizations.[14] And finally, "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[15] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[16] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[17] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.[18] According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.[19] The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated.

Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the policies and rules adopted in the *Report and Order*.

Below, we further describe and estimate the number of wireless small business concerns that may be affected by the rules we adopt in the Report and Order.

Cellular Providers. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[20] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[21] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[22] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected by the rules adopted herein.

Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[23] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[24] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[25] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[26] Based on this information, we conclude that the number of small broadband PCS

[8] *See Report and Order* para. 30.

[9] 5 U.S.C. 603(b)(3).

[10] *Id.* at 601(6).

[11] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. 601(3).

[12] Small Business Act, 15 U.S.C. 632.

[13] 5 U.S.C. 601(4).

[14] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[15] 5 U.S.C. 601(5).

[16] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[17] *Id.*

[18] United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation*, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) ("1992 Census").

[19] 13 CFR 121.201, SIC Code 4812.

[20] 13 CFR 121.201, SIC code 4812.

[21] *1992* Census, Series UC92–S–1, at Table 5, SIC code 4812.

[22] Trends in Telephone Service, Table 19.3 (March 2000).

[23] See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96–278, WT Docket No. 96–59, paras. 57–60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); see also 47 CFR 24.720(b).

[24] See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96–278, WT Docket No. 96–59, para. 60 (1996), 61 FR 33859 (Jul. 1, 1996).

[25] *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581–84 (1994).

[26] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released Jan. 14, 1997).

licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

SMR Licensees. The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[27] In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[28] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[29] Therefore, if this general ratio continues in 2000 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

220 MHz Radio Service—Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[30] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[31] The SBA has approved these definitions.[32] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[33] Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.[34]

Paging Licensees. The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either: (1) An entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[35] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[36] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, herein adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

Narrowband PCS Licensees. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective narrowband licensees can be made, we assume, for purposes of this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[37] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[38] We will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[39] There are

[27] 47 CFR 90.814(b)(1).

[28] 13 CFR 121.201, Standard Industrial Classification (SIC) code 4812.

[29] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[30] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paras. 291–295 (1997).

[31] 220 MHz Third Report and Order, 12 FCC Rcd at 11068–69, para. 291.

[32] See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[33] See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98–36 (Wireless Telecom. Bur. Oct. 23, 1998).

[34] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC–18–H, DA No. 99–229 (Wireless Telecom. Bur. Jan. 22, 1999).

[35] 13 CFR 121.201, SIC code 4812.

[36] Trends in Telephone Service, Table 19.3 (February 19, 1999).

[37] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[38] BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[39] 13 CFR 121.201, SIC code 4812.

approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[40] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[41] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

Fixed Microwave Services. Microwave services include common carrier,[42] private-operational fixed,[43] and broadcast auxiliary radio services.[44] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with no more than 1,500 persons.[45] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[46] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

Wireless Communications Services. This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

Multipoint Distribution Systems (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[47] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[48] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[49] These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.[50] Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[51] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 2,050 MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This Report and Order requires entities taking advantage of the tribal lands bidding credit to satisfy several reporting and compliance requirements. Section III.B.5 requires an applicant to indicate on its long-form application that it intends to serve qualifying tribal lands in its license area(s). Also, the applicant will have 90 days after filing the long-form application to obtain a certification by the affected tribal government providing: (a) Its consent to allow the bidder to deploy facilities on its tribal land(s), in accordance with our rules; (b) a statement that the tribal government has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers and will not unreasonably discriminate against any carrier; and (c) confirmation that the tribal lands are qualifying tribal lands as defined in our rules.

In addition, an applicant must certify that it will comply with certain coverage requirements and consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land. Further, at the end of the three-year build-out period, licensees that receive the tribal lands bidding credit must file a certification that they have satisfied the build-out requirements. To the extent that licensees choose to take advantage of any additional flexibility that we adopt, they may be required to comply with other reporting requirements.

The rules we adopt allow entities 90 days from the filing deadline of the long-form application to obtain the consent of a tribal government to serve its tribal land. Negotiation periods will vary tremendously within this timeframe. We anticipate that some entities will employ an attorney (average of $200.00 per hour) to assist with negotiations. It is difficult to approximate how long it may take to obtain the consent of a tribal government, nevertheless, we estimate that the cost of obtaining tribal consent should not exceed $50,000.

Preparation of the requisite certifications should be relatively straightforward, particularly since technical analyses are not required. We

[40] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[41] 13 CFR 121.201, SIC code 4812.

[42] CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[43] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[44] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[45] 13 CFR 121.201, SIC 4812.

[46] This service is governed by subpart I of part 22 of the Commission's Rules. *See* 47 CFR 22.1001 through 22.1037.

[47] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

[48] 47 CFR 1.2110 (a)(1).

[49] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 10 FCC Rcd 9589 (1995). 60 FR 36524 (Jul. 17, 1995).

[50] 47 USC 309(j).

[51] *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. *See* Rand McNally *1992 Commercial Atlas and Marketing Guide*, 123rd Edition, pp. 36–39.

estimate that it will take two (2) hours to prepare the certifications and that entities will use in-house staff (average $50.00 per hour), which should minimize costs. Since long-form applications are already required, we conclude that it should not take additional time to indicate an intention to take advantage of the tribal lands bidding credit.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

SBA claims that we did not sufficiently assess in the IRFA how small businesses could be affected by our decisions to seek comment on eliminating designated entity ("DE") transfer restrictions and awarding bidding credits in future auctions to entities that commit to deploy facilities to tribal lands. We disagree. The Notice sought comment on an array of alternatives, including the aforementioned, that the Commission could adopt to encourage the provision of wireless services to tribal areas. The RFA requires that the Commission ensure that regulations we adopt do not inhibit the ability of small entities to compete. The Notice did not propose to eliminate DE transfer restrictions, but rather sought comment on this alternative. In any event, the Report and Order does not address DE transfer restrictions.

Likewise, we sought comment on whether to award bidding credits in future auctions to any entity, regardless of size, that commits to serve tribal lands. SBA claims that such a proposal would unfairly advantage large businesses. We disagree. The Notice sought comment on whether to combine any credit for serving tribal lands with the small business credits available under our rules. Thus, small entities could potentially receive two credits for a license area. We did not propose a specific implementation program, but rather sought comment from the industry as to how to structure the program, including whether to limit the credit to designated entities, the appropriate credit amount, and any necessary safeguards. In addition, we sought comment on how to minimize any economic impact on small entities.

The Report and Order expands our bidding credit policy to facilitate the provision of wireless telecommunications services to tribal lands. Entities taking advantage of the credit must comply with certain reporting and compliance requirements. Expected costs include: (1) Negotiating with and obtaining consent from tribal governments; (2) preparing the requisite certifications, and (3) deploying facilities to tribal areas. We conclude that obtaining tribal consent and deploying facilities to tribal areas may have a significant economic impact on small entities. Below, we discuss our efforts to minimize the economic impact on small entities in both of these areas.

Obtaining Tribal Consent

As discussed in Section III.B.1 of the Report and Order, we find that tribal governments are uniquely situated to ensure that carriers who obtain credits will meet their commitments to deploy facilities to the tribal areas with the greatest need. Therefore, tribal consent is key to meeting the objectives of our bidding credit initiative. We recognize that negotiations with a tribal government could prove lengthy and costly, particularly where an entity seeks the consent of multiple tribal governments. To minimize the economic impact on successful bidders, we rejected our proposal to require entities taking advantage of the credit to file an executed agreement with tribal governments setting forth all the terms and conditions for deploying facilities and initiating service on tribal lands. We concluded that this approach would expand the negotiations process and prove overly burdensome. Instead, entities need only obtain the consent of the tribal authority and file two certifications, as set forth in Section III.B.5 of the Report and Order.

Deployment of Facilities

Compliance with the coverage requirements may have a significant economic impact on small entities, particularly in instances where infrastructure costs for serving tribal lands exceed the available credit. The rules we adopt, however, should minimize the infrastructure costs for serving tribal areas. As set forth in Section III.B.4 of the Report and Order, we adopt several caps for the tribal lands bidding credit, depending on the gross bid amount of a license, which takes into account the potential recovery level for infrastructure costs. For example, for licenses with a gross bid amount up to $1 million, carriers may receive a bidding credit up to 50 percent of the value of the license.[52] Further, in instances where a carrier's infrastructure costs exceed the available credit, the carrier may seek a waiver to obtain additional credit, subject to the applicable caps. This should allow for substantial recovery of infrastructure costs, thus minimizing the economic impact on small entities.

The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to SBREFA, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Report and Order, including FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) also will be published in the **Federal Register**. See 5 U.S.C. 604(b).

[52] The total size of the qualifying tribal lands, however, is a significant factor in determining the amount of the availabale credit. See Section III.B.4.

Ordering Clauses

Accordingly, pursuant to Sections 1, 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(r), and 309(j), the *Report and Order* is hereby *Adopted.*

The Commission's rules *are amended* as set forth in Appendix B. The provisions of the Report and Order and the Commission's rules, as amended in Appendix B, shall become effective October 2, 2000.

The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this *Report and Order* to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Telecommunications, Penalties.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

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

Authority: 47 U.S.C. 325(e).

2. Section 1.2107 is amended by redesignating paragraph (e) as (f), and by adding a new paragraph (e) to read as follows:

§ 1.2107 Submission of down payment and filing of long-form applications.

* * * * *

(e) A winning bidder that seeks a bidding credit to serve a qualifying tribal land, as defined in § 1.2110(e)(3)(1), within a particular market must indicate on the long-form application (FCC Form 601) that it intends to serve a qualifying tribal land within that market.

* * * * *

3. Section 1.2110(e) is amended by adding paragraph (e)(3) to read as follows:

§ 1.2110 Designated entities

* * * * *

(e) * * *

(3) *Bidding credit for serving qualifying tribal land.* A winning bidder for a market will be eligible to receive a bidding credit for serving a qualifying tribal land within that market, provided that it complies with § 1.2107(e). The following definition, terms, and conditions shall apply for the purposes of this section and § 1.2107(e):

(i) Qualifying tribal land "means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments," (see 25 CFR 20.1(v)), that has a wireline telephone subscription rate equal to or less than seventy (70) percent based on the most recently available U.S. Census Data.

(ii)(A) *Certification.* Within ninety (90) days after the filing deadline for long-form applications, the winning bidder must amend its long-form application and attach a certification from the tribal government stating the following:

(*1*) The tribal government authorizes the winning bidder to site facilities and provide service on its tribal land;

(*2*) The tribal area to be served by the winning bidder constitutes qualifying tribal land; and

(*3*) The tribal government has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers, and will not unreasonably discriminate among wireless carriers seeking to provide service on the qualifying tribal land.

(B) In addition, within ninety (90) days after the filing deadline for long-form applications, the winning bidder must amend its long-form application and file a certification that it will comply with the buildout requirements set forth in § 1.2110(e)(vi) and consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land.

(iii) *Bidding credit formula.* Subject to the applicable bidding credit limit set forth in § 1.2110(e)(3)(iv), the bidding credit shall equal three hundred thousand (300,000) dollars for the first twohundred (200) square miles (518 square kilometers) of qualifying tribal land, and fifteen hundred (1500) dollars for each additional square mile (2.590 square kilometer) of qualifying tribal land above two hundred (200) square miles (518 square kilometers).

(iv) *Bidding credit limit.* If the high bid is equal to or less than one million (1,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(e)(3)(iii) shall not exceed fifty (50) percent of the high bid. If the high bid is greater than one million (1,000,000) dollars, but equal to or less than two million (2,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(e)(3)(iii) shall not exceed five hundred thousand (500,000) dollars. If the high bid is greater than two million (2,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(e)(3)(iii) shall not exceed twenty five (25) percent of the high bid.

(v) *Application of credit.* The bidding credit amount, if approved by the Commission, will be subtracted from the final net bid amount. The bidding credit will not affect calculation of the down payment.

(vi) *Post-construction certification.* Within fifteen (15) days of the third anniversary of the initial grant of its license, a recipient of a bidding credit under this section shall file a certification that the recipient has constructed and is operating a system capable of serving seventy-five (75) percent of the population of the qualifying tribal land for which the credit was awarded.

(vii) *Performance penalties.* If a recipient of a bidding credit under this section fails to provide the post-construction certification required by § 1.2110(e)(3)(vi), then it shall repay the bidding credit amount in its entirety, plus interest. The interest will be based on the rate for ten year U.S. Treasury obligations applicable on the date the license is granted. Such payment shall be made within thirty (30) days of the third anniversary of the initial grant of its license.

[FR Doc. 00–19479 Filed 8–1–00; 8:45 am]

BILLING CODE 6712–01–U

Proposed Rules

Federal Register
Vol. 65, No. 149
Wednesday, August 2, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–48–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that currently requires wiring modifications to the engine and auxiliary power unit (APU) fire detection system. This action would require new wiring modifications for the engine and APU fire detection system. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the fire warning from terminating prematurely, which could result in an unnoticed, uncontained engine/APU fire.

DATES: Comments must be received by September 1, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–48–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–48–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 23, 1999, the FAA issued AD 99–27–10, amendment 39–11491 (65 FR 204, January 4, 2000), applicable to certain Airbus Model A310 and A300–600 series airplanes, to require wiring modifications to the engine and auxiliary power unit (APU) fire detection system. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent the fire warning from terminating prematurely, which could result in an unnoticed, uncontained engine/APU fire.

Actions Since Issuance of Previous Rule

Since the issuance of AD 99–27–10, the FAA has received a report that the modification procedures, specified in Airbus Service Bulletin A310–26–2024, Revision 04, dated March 5, 1999 (for Model A310 series airplanes) and A300–26–6038, dated March 5, 1999, and Revision 1, dated September 8, 1999 (for Model A300–600 series airplanes), were inadequate. Although those service bulletins were referenced as appropriate sources of information by AD 99–27–10, operators reported that they were unable to accomplish the hook-up procedures specified in those service bulletins. As a result, a later revision of French airworthiness directive 1999–238–286(B) R2, dated May 17, 2000, was issued, which references two new service bulletins that revise the modification procedures.

Explanation of Relevant Service Information

Airbus has issued the following service bulletins to replace the

procedures specified in earlier revisions of the service bulletins, which were referenced in AD 99–27–10.

• 310–26–2024, Revision 06, dated March 31, 2000 (for Model A310 series airplanes), specifies that additional work is necessary on certain airplanes that have accomplished Modification 06845 in accordance with Airbus Service Bulletin A320–26–2024, Revision 05, dated November 9, 1999. Revision 06 was issued to include improved hook-up and test procedures, change certain bundle part numbers, add a new kit number for certain airplanes, and update certain configuration numbers for certain airplanes.

• A300–26–6038, Revision 02, dated November 9, 1999, and Revision 03, dated March 30, 2000 (for Model A300–600 series airplanes) were issued to include improved hook-up procedures. Revision 02 specifies an additional Kit A03, and Revision 03 changes certain bundle part numbers, updates certain configuration numbers, and increases the work hours for accomplishing the modification.

The wiring modification procedures provided by these service bulletins include the use of new kits for the engine and APU fire detection system in relay box 282VU and the electronics rack 90VU. Procedures also specify new wiring modifications to the avionics compartment, which include the 20VU overhead panel, 282VU relay box, and 90VU electronics rack. After accomplishing the actions specified in those service bulletins, the manufacturer reports that it will no longer be necessary to manually disengage a faulty loop, and that the fire warning system will remain activated even if one loop becomes inoperative. The actions specified by the service bulletins are intended to significantly improve the airplane fire detection system.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive 1999–238–286(B) R2, dated May 17, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99–27–10 to propose new wiring modifications for the engine and APU fire detection system. Such modifications include the use of new kits for the fire detection system in relay box 282VU and the electronics rack 90VU, changes to the configuration numbers and bundle part numbers for certain airplanes, and revisions to the hook-up charts. The actions would be required to be accomplished in accordance with the applicable service bulletins described previously.

Cost Impact

There are approximately 113 Model A310 and A300–600 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are proposed in this AD action would take approximately 26 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $484 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $230,972, or $2,044 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect 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, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11491 (65 FR 204, January 4, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 2000–NM–48–AD. Supersedes AD 99–27–10, Amendment 39–11491.

Applicability: Model A310 and A300–600 series airplanes, certificated in any category; except those on which Airbus Modifications 06267 and 07340 have been accomplished during production.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by

this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the fire warning from terminating prematurely, which could result in an unnoticed, uncontained engine/auxiliary power unit (APU) fire, accomplish the following:

Modifications

(a) Within 12 months after the effective date of this AD, accomplish the wiring modifications for the engine and APU fire detection system in accordance with Airbus Service Bulletin A300–26–6038, Revision 03, dated March 30, 2000 (for Model A300–600 series airplanes); or A310–26–2024, Revision 06, dated March 31, 2000 (for Model A310 series airplanes); as applicable.

Note 2: Accomplishment of the wiring modifications prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–26–6038, Revision 02, dated November 9, 1999, is considered acceptable for compliance with the applicable actions specified in this AD.

Alternative Method of Compliance

(b)(1) 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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–27–10, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French airworthiness directive 1999–238–286(B) R2, dated May 17, 2000.

Issued in Renton, Washington, on July 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–19265 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 342

[Docket No. RM00–11–000]

Five-Year Review of Oil Pipeline Pricing Index; Notice of Inquiry

July 27, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this Notice of Inquiry to seek comments on its five-year review of the oil pricing index, established in Order No. 561, Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 30,985 (1993). Specifically, the Commission is seeking comments on the adequacy of the Producer Price Index for Finished Goods minus one percent as an index to measure actual cost changes in the oil pipeline industry.

DATES: Written comments must be received by the Commission by September 1, 2000. Reply comments must be received by the Commission 30 days after the filing date for initial comments.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0224.

SUPPLEMENTARY INFORMATION: In this notice of inquiry (NOI), the Federal Energy Regulatory Commission (Commission) presents an opportunity for comments regarding its five-year review of the oil pricing index, established in Order No. 561.[1] Specifically, the Commission has undertaken a review of the effectiveness of the change in the Producer Price Index for Finished Goods, expressed as a percent, minus one percent (PPI–1)[2] as an index to measure actual cost changes in the oil pipeline industry, and welcomes comments on the result of that review. The annual percentage change in the PPI–1 Index is applied to the prior year's ceiling level for oil pipeline rates to derive the current year's ceiling rate.

I. Background

Oil pipelines have been subject to rate regulation under the Interstate Commerce Act (ICA)[3] since the enactment of the Hepburn Act in 1906.[4] From the enactment of the Hepburn Act until jurisdiction over oil pipeline rates was transferred from the Interstate Commerce Commission to the Commission in 1977,[5] oil pipeline rates were fixed according to a cost-of-service methodology grounded upon use of a valuation rate base—a mixture of original and replacement costs, or a "fair value" methodology. The Commission was required to utilize for oil pipeline ratemaking the ICA as it existed on October 1, 1977. The first adjudicated case decided by the Commission under the ICA was the Williams Pipe Line case, which resulted in the issuance of Opinion No. 154–B in 1985.[6] Opinion No. 154–B established a fairly traditional cost-of-service methodology for determining oil pipeline rates. This methodology used a trended original cost rate base, and a rate of return based on the actual embedded debt cost and equity costs reflecting the pipeline's risks. This Opinion No. 154–B methodology became the standard methodology for setting oil pipeline rates under the ICA.

Adjudicated proceedings for oil pipelines, though few in number, were long, complicated and costly, and required considerable expenditure of participants' time and resources, including those of the Commission.[7] As a result, Congress, in the Energy Policy

[1] Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Energy Policy Act, FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 30,985 (1993), 58 F.R. 58753 (Nov. 4, 1993); *order on reh'g*, Order No. 561–A, FERC Stats. & Regs. [Regs Preambles, 1991–1996] ¶ 31,000 (1994), 59 F.R. 40243 (Aug. 8, 1994), *affirmed, Association of Oil Pipelines* v. *FERC*, 83 F.3d 1424 (D.C. Cir. 1996).

[2] The PPI represents the Producer Price Index for Finished Goods, also written PPI–FG. The PPI–FG is determined and issued by the Bureau of Labor Statistics, U.S. Department of Labor. Pursuant to 18 CFR Section 342.3(d)(2), "The index will be calculated by dividing the PPI–FG for the calendar year immediately preceding the index year by the previous calendar year's PPI–FG, and then subtracting 0.01." Multiplying the rate ceiling on June 30 of the index year by the resulting number gives the rate ceiling for the year beginning the next day, July 1.

[3] 49 U.S.C. app. 1 (1988).

[4] Pub. L. No. 59–337, 34 Stat.584.

[5] Jurisdiction over oil pipeline rates was transferred to the Commission pursuant to the Department of Energy Organization Act of 1977, 42 U.S.C. 7101.

[6] Williams Pipe Line Co. 31 FERC ¶ 61,377 (1985).

[7] The *Williams* case, which culminated in Opinion No. 154–B, took fourteen years to resolve, although some of the time was attributable to the transfer of jurisdiction of oil pipelines to the Commission from the Interstate Commerce Commission.

Energy Policy Act (Energy Policy Act),[8] required the Commission to establish a "simplified and generally applicable" ratemaking methodology for oil pipelines, consistent with the just and reasonable standard of the ICA. On October 22, 1993, the Commission issued Order No. 561 (final rule), promulgating regulations pertaining to the Commission's jurisdiction over oil pipelines under the ICA, and to fulfill the requirements of the Energy Policy Act. In so doing, the Commission found that using an indexing methodology to regulate oil pipeline rate changes, accompanied with certain alternative rate-changing methodologies where either the pipeline or the shipper could justify departure from the indexing methodology, would satisfy both the mandate of Congress and comply with the requirements of the ICA.

The final rule reflects the Commission's compliance with the mandate of Congress.[9] The final rule, in accordance with section 1801 of the Energy Policy Act, provided a "simplified and generally applicable" approach to changing just and reasonable rates through use of an index system to establish ceiling levels for such rates. The indexing methodology adopted in the final rule was designed to fulfill both the simplification directive of the Energy Policy Act and the just and reasonable standard of the ICA. The Commission found that the indexing methodology adopted in the final rule would simplify, and thereby expedite, the process of changing rates by allowing, as a general rule, such changes to be made in accordance with a generally applicable index, and that it would ensure compliance with the just and reasonable standard of the ICA by subjecting the chosen index to periodic monitoring and, if necessary, adjustment.

In determining which index to use, the Commission obtained the views of interested parties on its proposal to change its ratemaking methodology for oil pipelines. After extensive analysis of various suggested indices, the Commission adopted the PPI–1 index for the purpose of allowing oil pipelines to change rates without making a cost-of-service filing. This index was chosen over others considered because it comes the closest to tracking the historical changes in actual costs as reported in FERC Form No. 6. The Commission publishes the final annual change in the PPI–FG expressed as a percent minus one percent after the final PPI–FG is available in May of each calendar year. Pipelines are required to calculate the new ceiling level applicable to their indexed rates, and if the rates being charged by a pipeline exceed the new ceiling level, the pipeline must file to reduce the rates to a level not exceeding the new ceiling level. If the new ceiling level is higher than the rates being charged, the pipeline may file to increase such rates at any time in the index year to which the new level is applicable.

The Commission determined that the cost changes experienced by oil pipelines, which essentially do business at the wholesale level, had more closely resembled the cost changes experienced by producers of finished goods than by the economy as a whole, and that they would likely continue to do so in the future. Therefore, on a broad conceptual basis, the Commission determined that the PPI–FG is an appropriate choice for an oil pipeline industry-wide index.[10] Based on the evidence of record, the Commission determined that a modification of that index to include the "minus one percent" factor, or PPI–1, was the index that most closely approximated the reported costs of oil pipelines.[11]

Further, the Commission found that application of the index of the change in the PPI–1 to the whole rate, rather than applying the index to specific components of a rate, would, in addition to tracking economy-wide cost changes closely, obviate the need to incur the additional regulatory work and unintended consequences involved in breaking down rates to adjust some components and not adjust others.

The Commission stated in the final rule that the selection of the PPI–1 was not necessarily a choice for all time. The Commission recognized that its responsibilities under the ICA, to both shippers and pipelines, required it to monitor the relationship between the change in the PPI–1 Index and the actual cost changes experienced by the industry. The Commission undertook to review the effectiveness of the index every five years. This is the first of such reviews. The Commission stated that it would use the Form No. 6 information for this purpose. Staff's review is reflected in this NOI.

II. Review of PPI–1 Index and Oil Pipeline Industry Costs

The Commission requested that Staff review the change in the PPI–1 index as an effective means of tracking the historical changes in industry costs.[12] The PPI–1 index went into effect on January 1, 1995.[13] This section reviews industry cost experience with PPI–1 index for the period indexing has been in effect and for which data are available—January 1, 1995 through December 31, 1999.

According to Staff, this review compares the change in industry-wide operating costs with the change in the PPI–1 index during 1995–1999. Staff began by calculating the industry-wide annual operating costs per barrel mile from FERC Form No. 6 data and the year-to-year percentage changes in those costs. Next, Staff compared the percentage changes in the PPI–1 index [14] with the percentage changes in industry costs. This step is necessary because the newly published index is applied to the period from July through the following June, whereas the FERC Form No. 6 data are reported on a calendar year basis. Finally, Staff compared the annual changes in the PPI–1 index with the annual changes in industry-wide operating costs per barrel mile.

In this review Staff used the industry-wide annual operating cost per barrel mile as the primary measure of industry costs. Staff used operating costs as reported by pipelines in FERC Form No. 6 [15] as the most appropriate single measure because these costs include both operating expenses incurred during in the relevant year and charges for amortization and depreciation for that year. [16] Staff divided these costs by

[8] 42 U.S.C.A. 7172 note (West Supp. 1993). The Energy Policy Act "grandfathered" certain oil pipeline rates then in effect.

[9] In the final rule, the Commission recognized that Congress deemed certain rates to be just and reasonable, thereby forming a baseline for many future oil pipeline rate changes and obviating future debate over the appropriateness of existing rates, many of which are based on valuation or trended original cost methodologies.

[10] For a more detailed discussion, *see* Order No. 561–A, FERC Stats. and Regs. [Regs. Preambles] ¶ 31,000 (1994).

[11] Order No. 561, FERC Stats. & Regs. [Regs. Preambles] ¶ 30,985 at p. 30,951.

[12] Order No. 561 at p. 30,952.

[13] Staff calculated the initial change in the PPI–1 using the PPI figures for 1992 and 1993. These are the most recent final figures for the PPI available prior to January 1, 1995, when the index was first applied. The index is updated each year when the final PPI figures become available (usually mid-May), to be applied to rates for the period from July to the following June. Thus, for example, the PPI–1 index calculated and published in May 2000 applies to rates effective from July 1, 2000 to June 30, 2001.

[14] The PPI–1 index is adjusted to a calendar year basis. See Table 2, column 5, *infra*.

[15] Operating expenses were taken from Form No. 6, page 304, line 22, column m.

[16] Form No. 6 data were obtained in electronic form from OPRI, a subsidiary of Research Data International (RDI), which in turn is owned by the Financial Times. OPRI receives FERC Form No. 6 data, puts them into a database and sells the database to the public. Staff compared these data with the data filed with the Commission. In preparation for this comparison, Staff conducted a

Continued

barrel miles shipped because the pipelines' rates, to which the PPI–1 index is applied, are stated in dollars per barrel mile.

For purposes of this review, Staff excluded the Trans Alaska Pipeline System (TAPS) and those pipelines delivering oil directly or indirectly to TAPS.[17] Staff used only companies whose reports included both barrel mile and total cost information in calculating the overall average (these companies' reports comprised 99% of total reported costs for the period 1994 through 1999). Table 1 summarizes the industry cost data.

TABLE 1.—SUMMARY OF REPORTED COSTS FROM FERC FORM NO. 6, 1994 TO 1999

Year	Total Operating Costs Total Barrel Miles		Operating Cost ($/Thousand Barrel Miles)
	(Million $)	(Billions)	
1	2	3	4
1994	$3,182	3,111	$1.023
1995	3,176	3,125	1.016
1996	3,277	3,293	0.995
1997	3,375	3,267	1.033
1998	3,305	3,147	1.050
1999	3,139	3,150	0.997

The PPI–1 index is calculated and published each May when the final PPI values become available and applied to the period from July of the same year to June of the following year. For any calendar year, rates from January 1 to June 30 are subject to the index published the previous year, and rates from July 1 to December 31 are subject to the index published in that calendar year.

To compare how well the PPI–1 index tracks the costs, Staff constructed an index that applies to the specific period of the cost data, *i.e.*, to the calendar year of the reported information. Since each calendar year is affected by two PPI–1 indexes of six months' duration, Staff calculated the calendar year PPI–1 index as the simple average of the two applicable PPI–1 indexes. Table 2 presents the results of this calculation PPI and the calculation of the calendar year changes in the PPI–1 index to be applied to changes in the FERC Form No. 6 cost information.

TABLE 2.—CALCULATION OF PPI–1 INDEX FOR COMPARISON WITH FERC FORM NO. 6 COSTS

Year	PPI(FG)	Percent change in PPI(FG)	Percent change in PPI–1	Percent change in PPI–1 for calendar year
1	2	3	4	5
1992	123.2	.....	.....	.....
1993	124.7	.....	.....	.....
1994	125.5	1.22	0.22	.....
1995	127.9	0.64	−0.36	−0.07
1996	131.3	1.91	0.91	0.28
1997	131.8	2.66	1.66	1.29
1998	130.7	0.38	−0.62	0.52
1999	133.0	−0.83	−1.83	−1.23

Notes: Column 3 is computed by taking column 2 for the immediately prior year minus column 2 for the second prior year divided by the latter number. For example, (124.7—123.2)/123.2=.0122=1.22%. Subtracting 1 from column 3 gives column 4.

Column 4 contains the number by which a pipeline's rate ceiling on June 30 of a particular year is changed to determine its rate ceiling for the year beginning July 1 of that year.

Column 5 is calculated by taking one-half of column 4 for the prior year plus one-half of column 4 for the current year. For example, (0.22/2)+(−0.36/2)=0.11—0.18=−0.07. In summary, column 5 converts the July—June year corresponding to the index's application to the calendar year so it can be compared to Form No. 6 cost data.

Table 3 compares the percentage changes in the PPI–1 index and industry operating costs for the period 1995 through 1999. Year-to-year differences in the index and costs are to be expected, since the period used for the index lags the reporting period by up to 18 months. Staff compared an average of percentage changes in the index to percentage changes in industry-wide costs over a five-year period, which reduces the influence of year-to-year fluctuations and enables us to better evaluate the five-year relationship between the index and industry-wide costs. Over the entire period, the PPI–1 index averaged small, positive changes (0.16%) while the industry costs averaged small, negative changes (−0.47%). Thus, for the five-year

comprehensive review of operating cost data for the period 1990 to 1997 and a selected review of cost per barrel mile data to identify apparently anomalous values in cost per barrel mile figures. See Appendix A for a listing of the corrections staff made to the OPRI data.

[17] 18 CFR Section 342.0 (b).

period, the differences between the index and the costs are relatively small.

TABLE 3.—COMPARISON OF YEAR-TO-YEAR CHANGES IN OPERATING COSTS PER BARREL MILE AND PPI–1 INDEX

Year	Percent change in PPI–1 index	Percent change in operating costs per barrel mile
1	2	3
1995	−0.07	−0.68
1996	0.28	−2.07
1997	1.29	3.82
1998	0.52	1.65
1999	−1.23	−5.05
Average, 1995–1999	0.16	−0.47

Notes: Column 2 is column 5 of Table 2.

Column 3 is computed from data in Table 1, column 4, current year minus column 4, prior year divided by the latter number. For example, ($1.016—$1.023)/$1.023=−0.0068=−0.68%.

Based on the foregoing Staff review, it appears that the changes in the PPI–1 Index have closely approximated the changes in the reported cost data for the oil pipeline industry during the five-year period covered by this review.

III. Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Upon evaluation of those comments, the Commission will determine what further action, if any, will be appropriate. The Commission intends to conclude any such further action by May 2001.

The original and 14 copies of such comments must be received by the Commission before 5 p.m. September 1, 2000. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426 and should refer to Docket No. RM00–11–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or below, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM00–11–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM00–11–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS links. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

IV. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

By direction of the Commission.

David P. Boergers,

Secretary.

Appendix A

Below is a list of six instances in which the OPRI data were found to reflect barrel rather than barrel-mile information. In the first instance, Form No. 6 contained only barrel information, and as a result both the Total Cost and Barrel Mile information reported were removed from Staff's data set. In the five other instances, barrel-mile data were found in Form No. 6 and, as a result, the OPRI data were adjusted to reflect the barrel-mile rather than the barrel figures.

Company	Year	Barrel miles reported	
		OPRI	Form No. 6
1. American Petrofina Pl. Co.	1995	27,877,793	N/A
2. Calnev Pipe Line Company	1996	37,894,152	[18] 8,367,187,000
3. Calnev Pipe Line Company	1997	39,018,728	[19] 8,569,572,000
4. West Gulf Coast P.L. Co.	1999	22,057,426	[20] 22,057,425,363
5. Sun Pipe Line Company	1998	96,155,360	[21] 14,695,314,496
6. Ashland Pipe Line LLC	1997	109,786,344	[22] 91,327,743,733

[18] See 1997 Form No. 6, page 700, col (c), line 4.
[19] See 1997 Form No. 6, page 700, col (b), line 4.
[20] See 1999 Form No. 6, page 700, col (b), line 4.
[21] See 1998 Form No. 6, page 700, col (b), line 4.
[22] See 1997 Form No. 6, page 700, col (b), line 4.

[FR Doc. 00–19506 Filed 8–1–00; 8:45 am]
BILLING CODE 6717–01–P

POSTAL SERVICE

39 CFR Part 111

Invalid Ancillary Service Endorsements

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Domestic Mail Manual to eliminate the transitional provisions for the handling of mail bearing invalid ancillary service endorsements. Under the proposal, the Postal Service may reject mail bearing invalid endorsements. Items bearing invalid or conflicting ancillary service endorsements that are found in the mailstream will be treated as unendorsed mail.

DATES: Comments must be received on or before September 1, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Delivery Policies and Programs, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 7142, Washington, DC 20260–2802. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday. Comments may not be submitted via fax or email.

FOR FURTHER INFORMATION CONTACT: Jackie Estes, 202–268–3543.

SUPPLEMENTARY INFORMATION: In July 1997, the Postal Service simplified the endorsements for requesting ancillary services by eliminating the existing endorsements and substituting four choices: Address Service Requested, Change Service Requested, Forwarding Service Requested, and Return Service Requested (including Temp—Return Service Requested, for use with First-Class Mail only).

As a transitional accommodation to mailers with stationery bearing the former endorsements, the Postal Service adopted Domestic Mail Manual (DMM) F030.1.2 to provide for the handling of mail bearing invalid endorsements. This mail was to be accepted and handled in accordance with a current valid endorsement, based on the expectations implied by the improper endorsement on the mail.

In view of the length of time since the adoption of the current endorsements, and to reduce the risk of confusion and error created by conflicting and obsolete endorsements, the Postal Service considers it appropriate to eliminate the transitional provision. Accordingly, it proposes to revise DMM F030.1.2 to provide ancillary services only in accordance with the valid endorsements shown in DMM F010. Mail bearing invalid or conflicting ancillary service endorsements will no longer be considered acceptable for mailing, and the Postal Service may refuse to accept this mail. If mail bearing invalid or conflicting endorsements is discovered in the mailstream, it will be handled as unendorsed mail. In the case of Standard Mail (B), "treatment as unendorsed mail" effectively means that it will be treated as if endorsed "Forwarding Service Requested." This provision recognizes that the general public (in contrast with business mailers) is unfamiliar with ancillary service endorsements, and ensures its packages will be delivered or returned.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (39 U.S.C 410 (a)), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following section of the Domestic Mail Manual (DMM) as follows:

F Forwarding and Related Services

F000 Basic Services

* * * * *

F030 Address Correction, Address Change, FASTforward, and Return Services

1.0 ADDRESS CORRECTION SERVICE

* * * * *

1.2 Invalid Endorsement

Any obsolete ancillary service endorsement or similar sender endorsement not shown in F010 is considered invalid for address update service purposes. Material bearing invalid or conflicting ancillary service endorsements will not be accepted for mailing. If discovered in the mailstream, mail bearing an invalid ancillary service endorsement or conflicting endorsements is treated as unendorsed mail. Exception: Standard Mail (B) pieces that are unendorsed, or that bear invalid or conflicting ancillary service endorsements and are undeliverable, will be treated as if endorsed "Forwarding Service Requested."

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 00–19576 Filed 8–1–00; 8:45 am]
BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN100–1b, IN120–1b; FRL–6728–1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to total suspended particulate (TSP) and sulfur dioxide (SO_2) emissions regulations for National Starch and Chemical Company (National Starch), and TSP regulations for Allison Transmission (Allison). Both of these facilities are located in Marion County, Indiana. The Indiana Department of Environmental Management (IDEM) submitted the revised regulations on February 3, 1999, August 30, 1999, and May 17, 2000, as amendments to its State Implementation Plan (SIP). The revisions include the relaxation of some limits, the tightening of one limit, and the elimination of limits for several sources which are no longer operating. The revisions also include the combination of annual emissions limits for several boilers, and recordkeeping requirements. These SIP revisions result in an overall decrease in allowed TSP emissions of about 406 tons per year for National Starch, and no change in overall annual emissions for Allison. Air quality modeling analyses conducted by IDEM show that the maximum daily and annual impacts of these SIP revisions are below established significance levels. Therefore, these SIP revisions will not have an adverse effect on air quality.

DATES: EPA must receive written comments by September 1, 2000.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

Table of Contents

I. What Actions is EPA Taking Today?

We are proposing to approve revisions to TSP and SO_2 emissions regulations for National Starch, and TSP regulations for Allison. Both of these facilities are located in Marion County, Indiana. The revised regulations were submitted by IDEM on February 3, 1999, August 30, 1999, and May 17, 2000, as amendments to its SIP. The revisions include relaxation of some limits, tightening of one limit, and the elimination of limits for several sources which are no longer operating. The revisions also include the combination of annual emissions limits for several boilers, and recordkeeping requirements.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 16, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–19370 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV045–6012b; FRL–6730–2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revision to the State Implementation Plan (SIP) Addressing Sulfur Dioxide in Marshall County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing federally enforceable sulfur dioxide emission limits at three facilities in Marshall County. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal 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 action, no further activity is contemplated. 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. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 1, 2000.

ADDRESSES: Written comments should be addressed to Ms. Makeba Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Denis Lohman, (215) 814–2192, at the EPA Region III address above, or by e-mail at lohman.denny@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: June 23, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–19372 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6844–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Newsom Brothers Superfund Site from

the National Priorities List (NPL): Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces the intent to delete the Newsom Brothers Superfund Site from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). EPA and the State of Mississippi (State) have determined that all appropriate CERCLA actions have been implemented and that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of this Site will be accepted until September 1, 2000.

ADDRESSES: Comments may be mailed to: Carolyn B. Thompson, Remedial Project Manager, South Site Management Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303.

Comprehensive information on this Site, as well as information specific to this proposed deletion, is available through the EPA Region 4 public docket and at the Site information repository. The Regional Docket Center is located at EPA's Region 4 office and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed to the EPA Region 4 Docket Office.

The address for the Regional Docket Office is: Ms. Debbie Jourdan, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Telephone No.: (404) 562–8862.

The regional public docket is also available for viewing at the Site information repository located at the following address: South Mississippi Regional Library, 900 Broad Street, Columbia, Mississippi 39429.

FOR FURTHER INFORMATION CONTACT: Carolyn B. Thompson, Remedial Project Manager, South Site Management Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303, (404) 562–8913; Michael T. Slack, P.E., CERCLA Division, Mississippi Department of Environmental Quality, Office of Pollution Control, 101 West Capitol Street, Jackson, MS 39201, (601) 961–5217.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The United States Environmental Protection Agency (EPA) Region 4 announces its intent to delete the Newsom Brothers/Reichhold Chemicals Superfund Site (the Site), in Columbia, Marion County, Mississippi from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. EPA and the State of Mississippi have determined that the remedial action for this site has been successfully implemented.

EPA will accept comments on the proposal to delete this Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for the deletion of sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), releases may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Pursuant to 40 CFR 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions in the event that conditions at the site warrant such action. Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of this site, no waste sources remain at the site. Thus, a five year review will not be required in the future.

If new information becomes available which indicates a need for further action, EPA may initiate further response actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site:

(1) The Site was listed on the NPL in 1986. Records of Decision were signed for Operable Unit One (OU1) on September 18, 1989, and for Operable Unit 2 (OU2) on August 8, 1997. All appropriate response actions under CERCLA have been implemented and no further action by EPA is appropriate. The site history is discussed in detail in Section IV.

(2) The Mississippi Department of Environmental Quality (Mississippi DEQ) concurs with the proposed deletion decision.

(3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete.

(4) All relevant documents have been made available for public review in the local Site information repository.

Deletion of a site from the NPL does not itself, create, alter, or revoke any individual rights or obligations. The NPL is designated primarily for information purposes and to assist EPA management. As mentioned in Section II of this document, 40 CFR 300.425 (e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

Comments from the local community may be the most pertinent to deletion decisions. EPA will accept and evaluate

public comments before making a final decision to delete. EPA will prepare a Responsiveness Summary, if necessary, which will address any comments received during the public comment period.

A deletion occurs after the EPA Region 4 Regional Administrator places a notice in the **Federal Register**. Generally, the NPL will reflect any deletions in the final update following the Notice of Deletion. Public notices and copies of the Responsiveness Summary will be made available to local residents by EPA Region 4.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this site from the NPL.

A. Site Location

The Newsom Brothers Site (Site) is located in Columbia, Marion County, Mississippi. The 81-acre Site is surrounded by residential neighborhoods which, in some cases, are located directly adjacent to the Site boundaries. There are numerous businesses located along High School Avenue which borders the western boundary of the Site. The Site is completely fenced and access to the Site is restricted.

B. Site History

The Site was used for industrial and commercial activities for over 50 years. From the early 1930s until 1943, J.J. White Lumber Company operated a sawmill on the Site. The Southern Naval Stores Company, Limited, concurrently ran an operation, called Naval Stores, on various parcels of the Site, from 1936 to 1951. Naval Stores produced wood derivatives such as resin, turpentine, pine oil, and tall oil. The ownership and operation of Naval Stores changed several times between 1936 and 1951, but the plant consistently produced the same wood-derived products. From the 1950s until 1965, the Site was owned and operated by Leach Brothers, Incorporated. Reasor Chemical Corporation owned the Site from 1965 to 1972, and Chem-Pro International Inc. owned it from 1972 to 1974.

Southern Naval Stores Company, Reasor Chemical Corporation, and Chem-Pro International ran similar production processes. These processes involved grinding pine stumps and digesting them with a boiling liquor of sodium hydroxide and sodium sulfite. The products were tall oils, which are 35 to 40 percent resin and 50 to 60 percent fatty acids. Turpentine was also extracted from the pine stumps using naphtha. In addition, Reasor Chemical Corporation specifically manufactured calcium and zinc resinates, polymerized resin, and rubber resins.

In January 1975, Reichhold Chemicals, Inc., (Reichhold) purchased the property. Reichhold's operation included mixing pentachlorophenol (PCP) with diesel oil. In other operations, boron trifluoride was mixed with phenol and di-isobutylene to form octal phenol resin. Xylenes were also used in a number of processes.

Reichhold continued operations at the property until March 1977, when an explosion and fire in one of the boiler units destroyed most of the processing facility. No operations were conducted at the Site from 1977 to 1980.

In 1980 and 1981, ownership of the 81-acre Site transferred to R.R. Newsom, Sr. and R.R. Newsom, Jr. (owners of New-Cros Construction Company) and Mr. William Earl Stogner (owner of Stogner Trucking Company). The Newsoms' owned 49 acres of the original 81 acres and Mr. Stogner owned the remaining 32 acres. Both Stogner and the Newsoms had buildings on the property from which they operated their respective trucking and construction businesses. In November 1988, Reichhold regained complete ownership of the Site in connection with resolution of legal proceedings brought by Mr. Stogner and the Newsoms.

EPA performed two emergency removal actions at the Site in 1984 and 1987. The 1984 action involved the removal of over 600 55-gallon drums and the draining of two onsite ponds. EPA filled the South Pond with clay and graded it. The North Pond was allowed to refill with rainwater and was investigated further during subsequent remedial investigations. EPA performed a second removal action in 1987 involving the removal of approximately 1,920 tons of contaminated soil and 3,900 empty and partially filled drums.

EPA conducted the Remedial Investigation and Feasibility Study (RI/FS) on OU1 and signed the ROD in September 1989. On July 25, 1990, the U.S. District Court for the Southern District of Mississippi entered a consent decree between EPA and Reichhold, R.R. Newsom, Jr., and R.R. Newsom, Sr., for the performance of the Remedial Design and Remedial Action (RD/RA) associated with OU1 at the Site. On October 20, 1994, an amendment to the OU1 consent decree was entered by the Court to include the RI/FS associated with OU2.

C. Remedial Investigations and Actions

The Site was listed on the NPL in 1986, and the initial ROD was signed on September 18, 1989 (1989 ROD). A detailed history of the Site is presented in the Phase I and Phase II Remedial Investigation (RI) Reports dated September 21, 1987, and November 8, 1988, respectively. The Feasibility Study (FS) was completed in December of 1988.

In addition to the drummed materials mentioned previously, soils, sediments and groundwater were found to be impacted at the site. A wide variety of inorganic and organic constituents were found in these different media. Organic compounds detected in soils included toluene, ethyl benzene, phenol, pentachlorophenol and xylenes; the major inorganic chemicals detected were barium, chromium, copper, nickel and vanadium. In sediments, the major constituents included copper, phenols, ethyl benzene and xylenes. No contaminant groundwater plume could be identified, but detections of benzene, ethyl benzene, 1,1,1-trichloroethane, phthalates, and other organics were identified. Various inorganic metals were also detected above background.

The list of constituents of concern (COCs) determined by the investigation included benzene, ethyl benzene, xylenes, various carcinogenic polyaromatic hydrocarbon compounds (PAHs) and pentachlorophenol. Cleanup goals for soil and sediment were selected based upon an increased potential cancer risk of 10^{-6}. Applicable or Relevant and Appropriate Requirements (ARARs) were utilized to develop Groundwater Protection Standards (GWPS) as cleanup criteria for groundwater. The establishment of the GWPS was based upon the Safe Drinking Water Act (SDWA) in the form of Maximum Contaminant Levels (MCLs) and Maximum Contaminant Level Goals (MCLGs). In cases where an MCL or MCLG had not been established, Federal Ambient Water Quality Criteria (AWQC) adjusted for drinking water, were used to establish the GWPS. Due to the sporadic detections and low concentration of the contaminants, groundwater remediation was not required by the 1989 ROD.

Remedial activities specified in the 1989 ROD included removal of asbestos-containing material; removal of above ground and underground storage tanks; drainage of on-site ponds; excavation and off-site disposal of contaminated pond sediments, contaminated soils and black tar-like waste; actions to prevent erosion; and groundwater monitoring. This work was performed by Reichhold pursuant to the consent decree. Substantial completion of remedial activities under the 1989 ROD was achieved for all areas in September 1993. A 5-year Operation and

Maintenance (O&M) period followed and included the groundwater monitoring activities described below and maintenance of the 1989 ROD remedy.

In the final stages of remedial activities under the 1989 ROD, contamination not previously identified was discovered in the North Pond area, located in the northeast corner of the Site adjacent to the Site boundary near Chinaberry Street. However, residual soil and drums which were found during the North Pond excavation contained different contaminants than those which were cited for disposal in the 1989 ROD. This material was stockpiled for further analysis. Due to the excavation of these materials, it was suspected that contamination extending below the bottom of the pond into the groundwater existed. In order to address the stockpiled excavated materials and the potential for groundwater contamination at the North Pond, EPA designated this area as a separate unit, OU2. The remedial activities covered under the 1989 ROD were thereinafter referred to as OU1 activities.

The RI for OU2 was completed in February of 1995. Since the contaminated soils and materials had already been removed (with the exception of the stockpiled materials from the North Pond, which were disposed off-site in October 1995), the primary focus of the OU2 RI was to determine the extent of the groundwater contamination at the Site. As described in the OU2 ROD, no discernable groundwater plume of contamination could be identified and detections of COCs were sporadic. The OU2 ROD, signed on August 8, 1997, specified that no remedial action was necessary for OU2. However, to ensure that possible groundwater contaminants did not pose a future threat to the off-site residents, the OU2 ROD specified a 3-year period of groundwater monitoring.

D. Groundwater Monitoring Network

In accordance with the OU1 Post Remedial Groundwater Monitoring Plan and the OU2 Revised Groundwater Monitoring Program, Reichhold has been conducting groundwater monitoring on selected OU1 monitoring wells since May 1994. The five-year OU1 monitoring was performed quarterly during the first year and semi-annually for the subsequent four years of the required 5-year O&M period. The OU2 wells have been monitored since May 1997 on a quarterly basis during the first year and on a semi-annual basis during the subsequent two years. The list of COCs included in these monitoring events remained constant throughout the groundwater monitoring program for both OU1 and OU2. A current analysis of the ARARs indicates that the GWPS established in the ROD are still consistent with the NCP. The last required monitoring event for OU1 took place in November 1998 and for OU2 in December 1999.

The results of the groundwater monitoring are thoroughly discussed in the *Final Summary Report, April 2000,* prepared by Malcolm, Pirnie, Inc., for Reichhold. The results of the groundwater monitoring program do not indicate the presence of any COCs in concentrations exceeding GWPS or ROD performance standards.

E. Characterization of Risk

As discussed in the OU2 ROD, the soil exposure pathway was eliminated when the stockpiled soils were removed from the site in 1995. The only remaining pathway was the potential effects caused by uncontrolled groundwater migration to off-site residential wells located down gradient from the site. However, this exposure pathway is incomplete because there are no receptors. The site is wholly owned by Reichhold and its access is restricted. All on-site water is supplied by the City of Columbia water system. No municipal or private drinking water wells are located offsite in the direction of the groundwater migration from the site. As described, above, the groundwater monitoring performed does not indicate the presence of any COCs in concentrations exceeding GWPS or ROD performance standards. Therefore, the groundwater does not pose a current or future threat to off-site residents.

F. Community Involvement

This site has always been of interest to the surrounding communities. EPA has been directly involved with the community since the NPL listing in 1986. Several community groups have formed to represent concerned citizens over the years. The most recent group is the Jesus People Against Pollution (JPAP), which formed in 1992. JPAP has been an active participant ever since and currently is the only active group around the site. JPAP was awarded the Technical Assistance Grant (TAG) for the Site.

G. Applicable Deletion Criteria

EPA must demonstrate that any of the three criteria for deletion described in Section II are satisfied. EPA, with concurrence from the Mississippi DEQ, believes that the responsible party, Reichhold, has implemented all appropriate response actions required for OU1 and OU2. Furthermore, with concurrence of the Mississippi DEQ, EPA has determined that all appropriate responses under CERCLA have been completed, and that no further action is necessary. The State of Mississippi concurred with the proposal to delete this site from the NPL, in a letter dated June 8, 2000, from Charles H. Chisholm, Mississippi DEQ, to Mario E. Villamarzo, Jr., EPA.

Therefore, EPA proposes to delete the Site from the NPL and requests public comments on the proposed deletion. Documents supporting this action are available in the site information repository and from the regional public docket.

Dated: July 21, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 4.

[FR Doc. 00–19537 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 00–209]

Extending Wireless Telecommunications Services to Tribal Lands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission is issuing a Report and Order contemporaneous with this document that adopts rules and policies to encourage the deployment of wireless services to tribal lands. In this document, the Commission seeks comment on additional auctions-based incentives it could adopt to encourage the deployment of wireless telecommunications services to tribal and other underserved areas.

DATES: Comments are due on or before September 1, 2000. Reply comments are due on or before September 18, 2000.

ADDRESSES: Submit comments and reply comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, TW–A306, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Davida Grant, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 202–418–7050, or via the Internet at *dgrant@fcc.gov.*

SUPPLEMENTARY INFORMATION: Contemporaneous with the Further

Notice, the Commission is publishing a Report and Order (published elsewhere in this publication) which adopts initiatives to encourage the deployment of facilities, and ultimately service, to the most underserved tribal communities. We recognize, however, that there are other areas, both tribal and non-tribal, that have penetration levels above 70 percent, but significantly below the nationwide average. In the Further Notice, we seek comment on other possible uses of bidding credits to encourage deployment of wireless services to tribal communities and other areas. Specifically, we seek comment on whether to: (1) Award bidding credits to entities that commit to serve non-tribal areas and/or tribal areas with penetration levels above 70 percent, but significantly below the national penetration average; (2) expand the bidding credit program by awarding credits for use in future auctions to licensees in already-established wireless services who deploy facilities to unserved tribal communities; and (3) make credits available to licensees that enter into partitioning agreements with tribal authorities that allow the tribal government to provide service, either directly or through negotiation with a third-party carrier.

ELECTRONIC AND PAPER FILING: Comments and reply comments may be filed with the FCC using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998). Parties may also submit an electronic comment by Internet e-mail. Parties who choose to file by paper must file an original and four copies of each filing. If you want each Commissioner to receive a copy of your comments, you must file an original plus eleven copies. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, TW–A306, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette. A 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word for Windows or compatible software Diskettes should be submitted to: Davida Grant, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street, SW., Room 4–C241, Washington, DC 20554. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case—WT Docket No. 99–266), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label also should include the following phrase, "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

INITIAL REGULATORY FLEXIBILITY ANALYSIS: As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the Further Notice of Proposed Rulemaking (Further Notice).[2] Written public comments are requested on this IRFA. These comments must be filed in accordance with the filing deadlines for comments on the rest of the Further Notice, provided in Section V.D, and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the Further Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.[3] In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.[4]

A. Need for, and Objectives of, the Proposed Rules

The initiatives we adopt in the Report and Order should facilitate the deployment of facilities, and ultimately service, to the most underserved tribal communities. We recognize however, that there are other areas, both tribal and non-tribal, that have penetration levels above 70 percent, but still significantly below the nationwide average of 94 percent. It is our goal to ensure that all Americans have access to telecommunications service. In the Further Notice, we seek comment on other possible uses of bidding credits to encourage deployment of wireless facilities, and ultimately service, to these areas.

B. Legal Basis

We have authority under Sections 4(i), 303(r), 309(j) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303(r), 309(j) and 706, to adopt the proposals set forth in the Further Notice.

C. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[8]

A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[9] Nationwide, as of 1992, there were approximately 275,801 small organizations.[10] And finally, "small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[11] As of 1992, there were approximately 85,006 such jurisdictions in the United

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] Extending Wireless Telecommunications Services to Tribal Lands, Further Notice of Proposed Rulemaking, WT Docket No. 99–266, FCC 00–209 (adopted June 8, 2000).

[3] See 5 U.S.C. 603(a).

[4] See *id.*.

[5] 5 U.S.C. 603(b)(3).

[6] Id. at 601(6).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. section 601(3).

[8] Small Business Act, 15 U.S.C. 632.

[9] 5 U.S.C. 601(4).

[10] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[11] 5 U.S.C. 601(5).

States.[12] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[13] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.[14] According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.[15] The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the policies and rules proposed in this Further Notice.

We further describe and estimate the number of wireless small business concerns that may be affected by the rules we propose in the Further Notice.

Cellular Providers. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[16] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[17] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[18] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected by the rules adopted herein.

Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[19] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[20] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[21] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[22] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

SMR Licensees. The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[23] In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[24] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more

[12] 12 U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[13] Id.

[14] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) ("1992 Census").

[15] 13 CFR 121.201, SIC Code 4812.

[16] 13 CFR 121.201, SIC code 4812.

[17] 1992 Census, Series UC92–S–1, at Table 5, SIC code 4812.

[18] Trends in Telephone Service, Table 19.3 (March 2000).

[19] See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96–278, WT Docket No. 96–59, paras. 57–60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); see also 47 CFR 24.720(b).

[20] See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96–278, WT Docket No. 96–59, para. 60 (1996), 61 FR 33859 (Jul. 1, 1996).

[21] 21 See, *e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84 (1994).

[22] FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released Jan. 14, 1997).

[23] 47 CFR 90.814(b)(1).

[24] 13 CFR 121.201, Standard Industrial Classification (SIC) code 4812.

employees.[25] Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

220 MHz Radio Service—Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[26] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[27] The SBA has approved these definitions.[28] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[29] Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.[30]

Paging Licensees. The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either: (1) An entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[31] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent Telecommunications Industry Revenue data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[32] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the rules adopted herein. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

Narrowband PCS Licensees. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[33] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[34] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[35] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[36] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[37] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

Fixed Microwave Services. Microwave services include common carrier,[38] private-operational fixed,[39] and broadcast auxiliary radio services.[40] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons.[41] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA

[25] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[26] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paras. 291–295 (1997).

[27] 220 MHz Third Report and Order, 12 FCC Rcd at 11068–69, para. 291.

[28] See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[29] See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98–36 (Wireless Telecom. Bur. Oct. 23, 1998).

[30] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC–18–H, DA No. 99–229 (Wireless Telecom. Bur. Jan. 22, 1999).

[31] 13 CFR 121.201, SIC code 4812.

[32] Trends in Telephone Service, Table 19.3 (February 19, 1999).

[33] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[34] BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[35] 13 CFR 121.201, SIC code 4812.

[36] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[37] 13 CFR 121.201, SIC code 4812.

[38] 47 CFR 101 *et seq* (formerly, part 21 of the Commission's Rules).

[39] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[40] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. See 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[41] 13 CFR 121.201, SIC 4812.

definition for radiotelephone companies.

Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[42] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

Wireless Communications Services. This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

Multipoint Distribution Systems (MDS). This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[43] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[44] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[45] These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.[46] Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[47] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 2,050 MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Further Notice does not propose any specific reporting, recordkeeping or compliance requirements. However, we seek comment on what, if any, such requirements we should impose if we adopt the proposals set forth in the Further Notice.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The Further Notice seeks broad comment on additional uses of bidding credits to facilitate the provision of service to tribal and non-tribal areas.[48] The Further Notice does not make specific implementation proposals, but rather seeks guidance from the industry on how to further expand our bidding policies. We tentatively conclude that these initiatives should not have a significant economic impact on small carriers. Importantly, small business many combine any additional tribal lands bidding credits with the small business bidding credits available under our existing rules. Commenters are encouraged to discuss the alternatives proposed in the Further Notice, and specifically how to minimize any significant economic impact on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Pursuant to Sections 1, 4(i), 303(r), 309(j) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(r), 309(j), and 706, that the *Further Notice of Proposed Rulemaking is hereby Adopted.*

List of Subjects in 47 CFR Part 1

Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19480 Filed 8–1–00; 8:45 am]

BILLING CODE 6712–01–U

[42] This service is governed by subpart I of part 22 of the Commission's Rules. See 47 CFR 22.1001 through 22.1037.

[43] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

[44] 47 CFR 1.2110(a)(1).

[45] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

[46] 47 U.S.C. 309(j).

[47] Id. A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. See Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pp. 36–39.

[48] See Further Notice paras. 23–25.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1396, MM Docket No. 00–111, MM Docket No. 00–112, MM Docket No. 00–113, RM–9900, RM–9901, RM–9904]

Radio Broadcasting Services; Fallon, NV, Weiser, OR, Randolph, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on three petitions for rule making. FBB requests the allotment of Channel 281C to Fallon, NV, as the community's third local FM service. WE Broadcasting requests the allotment of Channel 280C1 to Weiser, OR, as the community's first local aural service. New Testament Christian Ministries, Inc., requests the allotment of Channel 290A to Randolph, NY, as the community's first local aural service.

DATES: Comments must be filed on or before August 14, 2000, and reply comments on or before August 29, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: A. Wray Fitch III, Gammon & Grange, P.C., 8280 Greensboro Drive, 7th Floor, McLean, VA 22102–3807 (Counsel to FBB Broadcasting, petitioner in RM–9900, and WE Broadcasting, petitioner in RM–9901); David G. O'Neil, Rini, Coran & Lancellotta, P.C., 1350 Connecticut

Avenue, N.W., Suite 900, Washington, D.C. 20036–1701 (Counsel to New Testament Christian Ministries, Inc., petitioner in RM–9904).

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. 00–111, MM Docket No. 00–112, MM Docket No. 00–113, adopted June 14, 2000, and released June 23, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, 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.

Channel 281C can be allotted to Fallon, NV, with a site restriction of 8.4 kilometers (5.2 miles) east, at coordinates 39–28–30 WL; 118–40–43 NL, to avoid a short-spacing to Station KODS, Channel 279C1, Carnelian Bay, CA, and Station KDOT, Channel 283C, Reno, NV. Channel 280C1 can be allotted to Weiser, OR, with a site restriction of 17.8 kilometers (11 miles) northwest, at coordinates 44–20–39 WL; 117–07–14 NL, to avoid a short-spacing to Station KARO, Channel 277C, Caldwell, ID, and Station KLTB, Channel 282C, Boise, ID. Channel 290A can be allotted to Randolph, NY, without the imposition of a site restriction, at coordinates 42–09–43 WL; 78–58–31 NL. However, the allotment will be short-spaced to Station CHRE-FM, Channel 289B, St. Catherines, Ontario, Canada. Therefore, concurrence in the allotment by the Canadian Government, as a specially negotiated, short-spaced allotment, must be obtained.

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.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–19476 Filed 8–1–00; 8:45 am]

BILLING CODE 6712–01–U

Notices

Federal Register
Vol. 65, No. 149
Wednesday, August 2, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV00–985–5NC]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for a currently approved information collection for the Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West, M.O. No. 985.

DATES: Comments on this notice must be received by October 2, 2000.

ADDITIONAL INFORMATION OR COMMENTS: Contact Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Tel: (202) 720–8139, Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C., 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West, M.O. No. 985.

OMB Number: 0581–0065.

Expiration Date of Approval: April 30, 2001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the program, which has operated since 1980.

The Far West spearmint marketing order regulates the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order authorizes the issuance of allotment provisions for producers and regulates the quantities of spearmint oil handled. The order also has research and development authority.

The order, and rules and regulations issued thereunder, authorize the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the order, to require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The Committee has developed forms as a means for persons to file required information with the Committee relating to spearmint supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the Act and order. The marketing year for the order is June 1 through May 31, with production occurring in the months of June through September. Forms are utilized throughout the year. A USDA form is used to allow producers to vote on amendments to or continuance of the marketing order. In addition, the Committee is composed of spearmint oil producers, nominated by their peers, to serve as representatives on the Committee. All nominees must file nomination forms with the Secretary.

Formal rulemaking amendments to the order must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the order. Handlers are asked to sign an agreement to indicate their willingness to abide by the provisions of the order whenever the order is amended.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order, and the rules and regulations issued under the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information, and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .12 hours per response.

Respondents: Far West Spearmint producers and handlers and two public members in the production area.

Estimated Number of Respondents: 217.

Estimated Number of Responses per Respondent: 6.06.

Estimated Total Annual Burden on Respondents: 162 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) 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 reference OMB No. 0581–0102 and the Spearmint Marketing Order No. 985, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, D.C. 20090–6456; Fax (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave., SW., Washington, DC, room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 28, 2000.

Robert C. Kenney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19565 Filed 8–1–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Reinstatement and Revision of a Previously Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request a reinstatement and revision of a previously approved information collection in support of the Cooperative Marketing Association Program.

DATE: Comments on this notice must be received on or before October 2, 2000, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Chris Kyer, Price Support Division, USDA, FSA, 1400 Independence Avenue, S.W., STOP 0512, Washington, DC 20250–0512, telephone (202) 720–7935: e-mail chris_kyer@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 1425, Cooperative Marketing Association Regulations

OMB Control Number: 0560–0040

Type of Request: Reinstatement and revision of a previously approved information collection.

Abstract: This information is needed to administer the CCC's Cooperative Marketing Association Program. The information will be gathered from marketing cooperatives desiring to become Cooperative Marketing Associations (CMA) under 7 CFR 1425. The information will be used to determine whether applicants are eligible to become approved CMA's for CCC and whether approved CMA's can continue approved CMA status.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.38 hours per response.

Respondents: Cooperative Marketing Associations.

Estimated Number of Respondents: 41.

Estimated Number of Responses per Respondent: 100.

Estimated Total Annual Burden: 5,662 hours.

Proposed topics for comments are: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Chris Kyer, USDA-Farm Service Agency-Price Support Division, 1400 Independence Avenue, S.W., STOP 0512, Washington, D.C. 20250–0512; telephone (202) 720–7935 or e-mail chris_kyer@wdc.fsa.usda.gov. Copies of the information collection may be obtained from Chris Kyer at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on July 25, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–19450 Filed 8–1–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Farm Service Agency's (FSA) intention to request an extension for a currently approved information collection. This information collection is used to support the USDA service center agencies (FSA, Natural Resources Conservation Service, and Rural Development) in conducting business and accepting signatures on certain documents via telefacsimile.

DATE: Comments on this notice must be received on or before October 2, 2000.

FOR FURTHER INFORMATION CONTACT: Virgil Ireland, Agricultural Program Specialist, Emergency Preparedness and Program Branch, Production, Emergencies, and Compliance Division, FSA, at (202) 720–5103.

SUPPLEMENTARY INFORMATION:

Title: Facsimile Signature Authorization and Verification.

OMB Control Number: 0560–0203.

Expiration Date of Approval: October 31, 2000.

Type of Request: Extension of currently approved information collection.

Abstract: Persons wanting to conduct business and provide certain signed documents to the USDA service center agencies via telefacsimile machines must complete a FSA–237, Facsimile Signature Authorization and Verification, form. The FSA–237 serves as evidence that the person is willing to conduct business and provide signed documents through telefacsimile machines. The FSA–237 also provides the agencies a source to authenticate signatures and transactions in the event of errors or fraud that require legal remedies. The information collected on the FSA–237 is limited to the person's name, signature, and identification number. Persons must agree to the terms and conditions of conducting business via telefacsimile machines. Without the

collection of this information, USDA service center agencies cannot ensure the authenticity of signatures received via telefacsimile unless they are supplemented with the original signature.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average .02 hours per response.

Respondents: Individuals who have signature authority for themselves and/or also for partnerships, corporations, tribes, and other legal entities.

Estimated Number of Respondents: 2,598,266.

Estimated Number of Annual Responses per Respondent: Collection of the information is a one-time occurrence. The FSA–237 will be maintained indefinitely.

Estimated Total Annual Burden on Respondent: Collection of the information is a one-time occurrence with an estimated reporting burden of .02 hours per response.

Proposed topics for comment include: (a) whether the collection of information is necessary for the proper performance of the functions of the USDA service center the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) methods to enhance the usefulness of the information collected; (d) accepting electronic signatures via the internet; or (e) ways to minimize the burden of the collection of the information on those who respond. Comments must be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Virgil Ireland, Agricultural Program Specialist, USDA–FSA–PECD, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250; telephone (202) 720–5103; or telefacsimile (202) 690–3610. Copies of the information collection may be obtained from Mr. Ireland at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on July 24, 2000.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 00–19451 Filed 8–1–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request an extension of a currently approved information collection, the Supplemental Qualifications Statement.

DATES: Comments on this notice must be received by October 6, 2000 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Qualifications Statement.

OMB Control Number: 0535–0209.

Expiration Date of Approval: October 31, 2000.

Type of Request: To extend a currently approved information collection.

Abstract: Under Interagency Agreement Number DOA–1, between the Department of Agriculture and Office of Personnel Management, the Administrative and Financial Management Staff examines, rates, and certifies applicants for Agricultural Statistician positions, GS–1530 and Mathematical Statistician (Agricultural) GS–1529 positions within the National Agricultural Statistics Service. The Interagency Agreement was made under provisions of 5 U.S.C. Section 1104, as amended by Pub. L. No. 104–52 (1995).

Resumes, curriculum vitae, and the "Optional Application for Federal Employment" (OF–612) are general purpose forms used to evaluate applicants for positions in the Federal service. While these forms request specific information about an applicant, they do not always obtain detailed references to those knowledge, skills, and abilities (KSA's) that are critical to the job. The Supplemental Qualifications Statement for agricultural statistician and mathematical statistician positions (agricultural) allows applicants the opportunity to describe their achievements or accomplishments as they relate to the required KSA's.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Individual Job Applicants.

Estimated Number of Respondents: 200.

Estimated Total Annual Burden on Respondents: 600 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 5336 South Building, Washington, D.C. 20250–2009. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, D.C., July 14, 2000.

Rich Allen,

Associate Administrator.

[FR Doc. 00–19504 Filed 8–1–00; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board;

[Docket 41–2000]

Foreign-Trade Zone 82—Mobile, AL Expansion of Manufacturing Authority—Subzone 82E, Zeneca Inc. (Agricultural Chemical Products), Mobile County, AL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Mobile, Alabama, grantee of FTZ 82, requesting on behalf of Zeneca, Inc. (Zeneca), to expand the scope of manufacturing authority under zone procedures within Subzone 82E, at the Zeneca plant in Mobile County, Alabama. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 21, 2000.

The Zeneca facility (75 acres; 250 employees) is located at mile marker 21 on Highway 43, near Bucks (Mobile County), Alabama, some 20 miles north of Mobile. The facility is used to produce and/or distribute a wide range of agricultural chemical products, including herbicides, pesticides, insecticides and organic intermediate chemicals.

Zeneca is now proposing to expand the scope of manufacturing activity conducted under zone procedures at Subzone 82E to include the agricultural chemical Mesotrione (a broadleaf herbicide), which currently has a duty rate of 8.9%. Foreign-sourced inputs for this production would be Nitromethylsulfonyl benzoic acid (9.3% duty rate) and Cyclohexandione (4.8% duty rate). Zeneca indicates that initial U.S. value added will be 40 percent of finished product's value, with subzone savings equivalent to one percent of the finished product's value.

Zone procedures would exempt Zeneca from Customs duty payments on foreign components used in production for export (anticipated to be 30% of total production). On its domestic sales, Zeneca would be able to choose the 8.9 percent duty rate that applies to the finished product for the foreign input with the 9.3 percent duty rate (noted above). Zeneca would be able to avoid duty on foreign inputs which become scrap/waste, estimated at 10 percent of imported inputs. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 16, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

U.S. Department of Commerce Export Assistance Center, 365 Canal Street, Suite 1170 (One Canal Place), New Orleans, LA 70130

Dated: July 24, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–19557 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 40–2000]

Foreign-Trade Zone 219—Yuma, AZ; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Yuma County Airport Authority, Inc., grantee of FTZ 219, requesting authority to expand its general-purpose zone site to include an additional parcel at the Yuma International Airport. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 20, 2000.

FTZ 219 was approved by the Board on April 2, 1997 (Board Order 874, 62 FR 17850, 4/10/97). The zone currently consists of 79 acres within the Yuma International Airport Complex, owned by Yuma County and leased to the Yuma County Airport Authority, Inc.

The applicant is now requesting authority to expand the existing zone site to include an additional parcel (46 acres) adjacent to the existing site at the Yuma International Airport located at 2191 East 32nd Street, Yuma County, Arizona. The parcel is owned by the Yuma County Airport Authority, Inc. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 16, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Yuma Main Library, 350 South 3rd Avenue, Yuma, AZ 85364

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington DC 20230

Dated: July 21, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19556 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 43–2000]

Foreign-Trade Zone 154—Greater Baton Rouge, Louisiana Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Greater Baton Rouge Port Commission, grantee of Foreign-Trade Zone 154, requesting authority to expand and reorganize its zone in the Baton Rouge, Louisiana area, within the Baton Rouge Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 26, 2000.

FTZ 21 was approved on November 2, 1988 (Board Order 396, 53 FR 48003, 11/29/88). The zone project currently consists of the following sites (2,674 acres) in the Baton Rouge area: *Site 1* (16 acres)—within the Port's terminal area,

Ernest Wilson Drive, just inside the south city limits of the City of Port Allen; *Site 2* (244 acres)—Industriplex Park, East Baton Rouge Parish; *Site 3* (580 acres)—Sun Plus Industrial Park, Louisiana Highway 1, Port Allen; and, *Site 4* (1,834 acres)—industrial/chemical complex, Louisiana Highway 1, one mile north of the City of Plaquemine, within the Parishes of West Baton Rouge and Iberville.

The application proposes a significant revision of the zone plan for FTZ 154. As proposed, the zone would be expanded and reorganized to enlarge Site 1, to remove all of the existing Site 2, to add a new Site 2 in its place, and to reduce the acreage at Site 3. *Site 1* will be expanded from 16 acres to 370 acres to include the port's entire deep-water complex. The existing *Site 2* is being deleted in its entirety and it will be replaced by the new *Proposed Site 2*, which will consist of 1,277 acres at the Baton Rouge Metropolitan Airport (owned by the Greater Baton Rouge Airport District) in north Baton Rouge. *Site 3* at the Sun Plus Industrial Park will be reduced from 580 acres to 157 acres. The site has also been renamed the Inland Rivers Marine Terminal FTZ site. *Site 4* remains unchanged. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 16, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port of Greater Baton Rouge, 2425 Ernest Wilson Drive, Port Allen, LA 70767.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 26, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19553 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 42–2000]

Foreign-Trade Zone 70—Detroit, Michigan Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70, requesting authority to expand its zone to include an additional site in the Detroit, Michigan area, within the Detroit Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 24, 2000.

FTZ 70 was approved on July 21, 1981 (Board Order 176, 46 FR 38941, 7/30/81) and expanded on April 15, 1985 (Board Order 299, 50 FR 16119, 4/24/85); November 27, 1989 (Board Order 453, 54 FR 50258, 12/5/89); April 20, 1990 (Board Order 471, 55 FR 17775, 4/27/90); February 20, 1996 (Board Order 802, 61 FR 7237, 2/27/96); and, August 26, 1996 (Board Order 843, 61 FR 46763, 9/5/96). The general-purpose zone project currently consists of 15 sites (some 300 acres) for warehousing/storage operations in the Detroit, Michigan area.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site *Proposed Site 16* (31 acres)—Buske Lines logistics complex, 17300 Allen Road, Brownstown Township (Wayne County). The site will be used for warehousing/distribution activities for companies such as General Motors, Ford Motor Company, Anheuser-Busch, DaimlerChrysler, Seagrams and BASF Corporation. The site is owned by TMT Properties, which is the parent company of Buske Lines, Inc. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 16, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 211 W. Fort Street, Suite 2220, Detroit, MI 48226.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 25, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19552 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 39–2000]

Foreign-Trade Zone 44—Mt. Olive, NJ; Request for Extension of Manufacturing Authority; Quest International Fragrances USA, Inc. (Flavor and Fragrance Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the New Jersey Commerce and Economic Growth Commission, Trenton, NJ, grantee of FTZ 44, on behalf of Quest International Fragrances USA, Inc. (Quest), requesting extension of authority to manufacture flavor and fragrance products under FTZ procedures. The application was formally filed on July 18, 2000.

Quest received approval for manufacturing authority on August 31, 1989 (A–22–89), subject to a 5-year time limit (to 8/31/94; extended to 8/31/01), and to special reporting requirements. Quest is now requesting that the authority to manufacture under zone procedures be extended on a permanent basis and without the special reporting requirements.

FTZ procedures exempt Quest from Customs duty payments on the foreign components used in export production. On its domestic sales, the company is able to defer Customs duty payments on foreign materials and choose the duty

rate that applies to the finished products (duty free) instead of the rates otherwise applicable to the foreign materials (duty rates on these items range from duty-free to 12.7%). The company is exempt from duty payments on foreign merchandise that becomes scrap/waste. The application indicates that savings from zone procedures would continue to help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period of their receipt is October 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period October 16, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 21, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19555 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 38–2000]

Foreign-Trade Zone 57—Asheville, North Carolina; Application for Foreign-Trade Subzone Status; Volvo Construction Equipment North America, Inc. (Construction Equipment) Asheville, NC, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the North Carolina Department of Commerce, grantee of FTZ 57, requesting special-purpose subzone status for the manufacturing facilities (construction equipment) of Volvo Construction Equipment North America, Inc. (Volvo), located at sites in the Asheville, North Carolina area. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 17, 2000.

The Volvo facilities are located at two sites in the Asheville, North Carolina, area (64 acres, 531,700 sq. ft. total): *Factory Site* (6 buildings/399,700 sq. ft.)—office and main manufacturing facilities, located at 2169 Hendersonville Rd. (U.S. Rt. 25), Skyland; and *Feeder Distribution Warehouse Site* (1 building/132,000 sq. ft.)—located at 1856 Hendersonville Rd., Asheville.

The facilities (400 employees) are used for the fabrication, assembly, and testing of Volvo's articulated haulers and loaders. Some of the components used in the manufacturing process are purchased from abroad (ranging from 36.1% to 82.8% of finished product value), including: Cabs; sheet metal (non-steel); hydraulic cylinders; axles; transmissions; engines; wheels; rims; tires; buckets; caulking materials; anti-corrosive preparations; locks; spanners and wrenches; electrical instruments and apparatuses; and lamps and lighting (duty rates on imported items range from duty-free to 9.0%). The company indicates that any foreign-produced steel products will be admitted to the proposed subzone in domestic (duty-paid) status.

Zone procedures would exempt Volvo from Customs duty payments on foreign components used in export production. FTZ procedures will help Volvo to implement a more efficient and cost-effective system for handling Customs requirements. On its domestic sales, Volvo would be able to choose the lower duty rate that applies to the finished products (duty-free) for foreign components, including those noted above. The company also would benefit from duty savings on scrap and waste resulting from the production process. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the facilities' international competitiveness, and could enable the company to shift additional production from overseas to the Asheville-area facilities.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 2, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 16, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

U.S. Department of Commerce Export Assistance Center, 521 East Morehead St., Suite 435, Charlotte, NC 28202.

Dated: July 21, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–19554 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Cold-Rolled Carbon Steel Flat Products From the Netherlands; Final Results of Full Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: cold-rolled carbon steel flat products from the Netherlands.

SUMMARY: On March 27, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands (65 FR 16168) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On April 7, 2000, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands (65 FR 16168) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). In our preliminary results, we found that revocation of the order would likely result in continuation or recurrence of dumping with net margins of 7.96 percent for Hoogovens Stal BV ("HSBV") and Hoogovens Steel USA, Inc. ("HS–USA"), and 7.96 percent for "all others."

On April 26, 2000, Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland, Inc., and LTV Steel Company, Inc. (collectively "domestic interested parties") requested a hearing in the sunset review. On May 3, 2000, Dofasco also requested a hearing. Subsequently, interested parties withdrew their requests for a hearing.

On May 8, 2000, within the deadline specified in 19 CFR 351.209(c)(1)(i), we received case briefs on behalf of domestic interested parties and Corus Staal BV [1] and HS–USA (together, "Hoogovens"). On May 12, 2000, domestic interested parties requested an extension of the deadline for filing rebuttal briefs; on May 15, 2000, the Department granted an extension for interested parties to file rebuttal briefs until May 15, 2000.

[1] On April 3, 2000, Hoogovens Staal BV, the foreign producer/exporter of the subject merchandise changed its name to Corus Staal BV. For ease of reference, we have continued to refer to Corus Staal BV and Hoogoven's Steel USA, Inc., as "Hoogovens" herein.

Scope of Review

The products covered by this order include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this order is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra-flat, isotropic surface. These HTS item numbers are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 27, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the magnitude of the margin likely to prevail were the order revoked. Hoogovens argued that its margins had consistently decreased, thus warranting use of a more recent margin. However, we found that, in light of the increase in Hoogovens margin in the final results of the sixth administrative review, the appropriate rate to report to the Commission is the rate from the original investigation, 19.32 percent. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import—admin/records/frn/, under the heading "Netherlands." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Hoogovens Stal BV	19.32
All Others	19.32

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19559 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822]

Corrosion-Resistant Carbon Steel Flat Products From Canada; Final Results of Full Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Review: Corrosion-Resistant Carbon Steel Flat Products from Canada.

SUMMARY: On April 7, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada (65 FR 18286) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties and held a public hearing. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On April 7, 2000, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada (65 FR 18286) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). In our preliminary results, we found that revocation of the order would likely result in continuation or recurrence of dumping with net margins of 11.71 percent for Dofasco, Inc. ("Dofasco"), 22.70 percent for Stelco, Inc. ("Stelco") and 18.71 percent for "all others."

On April 26, 2000, Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland, Inc., and LTV Steel Company, Inc. (collectively "domestic interested parties") requested a hearing in the sunset review. On May 3, 2000, Dofasco also requested a hearing.

On May 8, 2000, within the deadline specified in 19 CFR 351.209(c)(1)(i), we received a case brief on behalf of Dofasco and Sorevco Inc., (collectively "Dofasco"). On May 12, 2000, domestic interested parties requested an extension of the deadline for filing rebuttal briefs; on May 15, 2000, the Department granted an extension for domestic interested parties to file a rebuttal brief until May 18, 2000. We received a case brief from domestic interested parties on May 18, 2000. On June 14, 2000, the Department held a public hearing.

On June 19, 2000, in response to the Department's request for further clarification of information on U.S. shipments of subject merchandise,[1] domestic interested parties submitted the underlying calculations to the data submitted in their October 15, 1999, rebuttal. On June 27, 2000, Dofasco submitted comments on domestic interested parties' underlying calculations.

Scope of Review

The scope of this order includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in the scope are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")— for example, products which have been bevelled or rounded at the edges. Excluded from the scope are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Additionally, excluded from the scope are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20–60–20 percent ratio.

[1] *See* June 20, 2000, Memo to File: Sunset Review of Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Request for Clarification of Information on U.S. Imports.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 27, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Record Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "Canada." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Dofasco, Inc	11.71
Stelco, Inc	22.70
All Others	18.71

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19560 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–826]

Corrosion-Resistant Carbon Steel Flat Products From Japan; Final Results of Full Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: Corrosion-Resistant Carbon Steel Flat Products from Japan.

SUMMARY: On March 27, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from Japan (65 FR 16169) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On March 27, 2000, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from Japan (65 FR 16169) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). In our preliminary results, we found that revocation of the order would likely result in continuation or recurrence of dumping with net margins of 36.41 percent for Nippon Steel Corporation ("NSC"), Kawasaki Steel Corporation ("Kawasaki") and "all others."

On April 26, 2000, Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation ("domestic interested parties") requested a hearing in the sunset review. On May 1, 2000, NSC notified the Department of its intent to participate in the hearing. Subsequently, interested parties withdrew their requests for a hearing.

On May 5, 2000, we received a request from NSC for an extension of the deadline for filing case briefs; the Department extended the deadline for filing case briefs and rebuttal briefs for all participants eligible to participate until May 12, 2000, and May 18, 2000, respectively.

On May 12, 2000, within the deadline specified in 19 CFR 351.309(c)(1)(i), we received a case brief on behalf of NSC. On May 17, 2000, domestic interested parties requested an extension of the deadline for filing rebuttal briefs. On May 19, 2000, the Department granted an extension for domestic interested parties to file rebuttal briefs until May 23, 2000. Also, on May 17, 2000, we received a request from NSC to file a letter in response to domestic interested parties' failure to file a case brief. On May 19, 2000, the Department, pursuant to 19 CFR 351.309(d)(2), rejected NSC's request.

We received a rebuttal brief from domestic interested parties on May 23, 2000.

Scope of Review

The order covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if

of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or, if of a thickness of 4.75 millimeters or more, are of a width which exceeds 150 millimeters and measures at least twice the thickness.[1] These products are currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges.

Excluded from order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20–60–20 percent ratio. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Also excluded are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99 percent zinc, 0.5 percent cobalt, and 0.5 percent molybdenum followed by a layer consisting of chromate, and finally, a layer consisting of silicate.

There have been three completed changed circumstances administrative reviews. On December 22, 1997, the Department published the final results of a changed circumstances review requested by Sudo Corporation.[2] In this review, the Department revoked the antidumping duty order with regard to certain electrolytic zinc-coated steel coiled rolls from Japan.

In the second changed circumstances review, requested by Uchiyama, the Department revoked the antidumping duty order with regard to certain corrosion-resistant carbon steel flat products used in the manufacture of rubber seals and metal inserts for ball bearings.[3]

The Department completed a third changed circumstances review, requested by Taiho Corporation of America, in which it determined to revoke the order with respect to (1) certain products meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, and (2) certain products meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.[4]

A fourth changed circumstances review was initiated on July 12, 2000.[5]

There has been one circumvention inquiry initiated regarding this proceeding. On October 30, 1998, the Department initiated an anticircumvention inquiry regarding boron-added corrosion-resistant carbon steel flat products from Japan.[6] The inquiry was subsequently enjoined by the Court of International Trade in *Nippon Steel v. United States,* Ct. No. 98–10–03102 (Ct. Int'l Trade). The case is now pending before the Court of Appeals for the Federal Circuit, No. 99–1379, 1386 (Fed.Cir.).

The Department has conducted one scope ruling at the request of Drive Automotive Industries of America, Inc. ("Drive Automotive"). On February 24, 1998, the Department found that steel coils imported by Drive Automotive and having a thickness of 0.8 mm and a width of 2000 mm, electrolytically coated with zinc, were within the scope of the order (63 FR 29700, June 1, 1998).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 27, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Record Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "Japan." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on corrosion-resistant carbon steel flat products from Japan would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Nippon Steel Corporation	36.41
Kawasaki Steel Corporation	36.41
All Others	36.41

[1] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Preliminary Results of Antidumping Duty Administrative Review,* 64 FR 44483 (August 16, 1999).

[2] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Change Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order,* 62 FR 66848 (December 22, 1997).

[3] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Change Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order,* 64 FR 14861 (March 29, 1999).

[4] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Change Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order,* 64 FR 57032 (October 22, 1999).

[5] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Notice of Initiation of Change Circumstances Review of the Antidumping Order and Intent to Revoke the Order in Part,* 65 FR 42986 (July 12, 2000).

[6] *See Corrosion-Resistant Carbon Steel Flat Products from Japan; Initiation of Anticircumvention Inquiry on Antidumping Duty Order,* 63 FR 58364 (October 30, 1998).

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19562 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Cut-to-Length Carbon Steel Plate From Romania; Final Results of Full Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Review: Cut-to-Length Carbon Steel Plate from Romania.

SUMMARY: On April 6, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on cut-to-length steel plate from Romania (65 FR 16171) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We did not receive comments from either domestic or respondent interested parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Departments conduct of sunset reviews is set forth in the Departments Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On April 6, 2000, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on cut-to-length steel plate from Romania, pursuant to section 751(c) of the Act. In our preliminary results, we found that revocation of the order would be likely to lead to continuation or recurrence of dumping, and we preliminarily determined the following dumping margins likely to prevail if the order were revoked:

Producer/exporter	Margin (In percent)
Metalexportimport, S.A.	75.04
All Others	75.04

We did not receive a case brief on behalf of either domestic or respondent interested parties within the deadline specified in 19 CFR 351.309(c)(1)(i).

Scope of Review

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7208.31.0000, 7208.32.0000, 7208.33.1000. 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.1000, 7212.40.1000, 7212.50.0000, and 7212.50.5000. Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this order is grade X–70 plate. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

The Department did not receive case briefs from either domestic or respondent interested parties. Therefore, we have not made any changes to our preliminary results of April 6, 2000 (65 FR 616171).

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below:

Producer/exporter	Margin (In percent)
Metalexportimport, S.A.	75.04
All Others	75.04

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19558 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–823]

Cut-to-Length Carbon Steel Plate From Canada; Final Results of Full Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: Cut-to-Length Carbon Steel Plate from Canada.

SUMMARY: On April 7, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on cut-to-length carbon steel plate from Canada (65 FR 18290) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–3173, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On April 7, 2000, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on cut-to-length carbon steel plate from Canada (65 FR 18290) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). In our preliminary results, we found that revocation of the order would likely result in continuation or recurrence of dumping with net margins of 68.70 percent for Stelco, Inc. ("Stelco") and 61.88 percent for "all others."

On April 26, 2000, Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland, Inc., and LTV Steel Company, Inc. (collectively "domestic interested parties") requested a hearing in the sunset review. On May 1, 2000, Stelco also requested a hearing.

On May 9, 2000, within the deadline specified in 19 CFR 351.209(c)(1)(i), we received a case brief on behalf of Stelco. On May 12 and May 17, 2000, domestic interested parties requested an extension of the deadline for filing rebuttal briefs; on May 19, 2000, the Department granted an extension for domestic interested parties to file rebuttal briefs until May 22, 2000.[1] Additionally, on May 17, 2000, because Stelco's case brief contained information from Gerdau MRM Steel's ("MRM") untimely submission to the notice of initiation, the Department requested that Stelco redact its case brief accordingly. Subsequently, we received Stelco's refiling of page 16 of its case brief. Additionally, the Department canceled the scheduled hearing in response to interested parties' withdrawal of their requests for a hearing.

Scope of Review

The scope of this order includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.5030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this order is grade X–70 plate. Also excluded is cut-to-length carbon steel plate meeting the following criteria: (1) 100 percent dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) 0.290 inches maximum thickness, plus 0.0, minus 0.030 inches; (3) 48.00 inch wide, plus 0.05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, 0.3 to 0.8 (maximum). On February 28, 1996, the Department revoked the order with respect to certain cut-to-length carbon steel plate free of cobalt-60 and other radioactive nuclides; and with certain dimensions and other characteristics.[2] On February 12, 1999, the Department revoked the order with respect certain cut-to-length carbon steel plate free of cobalt-60 and other radioactive nuclides; and with certain dimensions and other characteristics.[3] In addition, there has been one circumvention inquiry initiated with respect to imports of

[1] *See* May 19, 2000, Letter from Jeffrey A. May, Office of Policy, to John Mangan of Skadden, Arps, Slate, Meagher & Flom LLP, Regarding Extension of Deadline for Filing Rebuttal Briefs.

[2] *See Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 61 FR 7471 (February 28, 1996).

[3] *See Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 7167 (February 12, 1999).

boron-added grader blade and draft key steel.[4] These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 27, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the suspension investigation terminated. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Record Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "Canada." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Stelco, Inc	68.70
All Others	61.88

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19561 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Cut-to-Length Carbon Steel Plate from Canada; Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 63 FR 29179 (May 28, 1998).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–827]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0165.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 1999).

Preliminary Determination

We preliminarily determine that stainless steel butt-weld pipe fittings from Germany are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On January 31, 2000, the Department initiated antidumping duty investigations of imports of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia, and the Philippines. *See Initiation of Antidumping Duty Investigations: Stainless Steel Butt-Weld Pipe Fittings From Germany, Italy, Malaysia, and the Philippines*, 65 FR 4595 (January 31, 2000) ("Notice of Initiation"). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage (*see Notice of Initiation* at 4596). A response was received from Coprosider S.p.A. ("Coprosider") on February 1, 2000, agreeing with the scope of the investigation. On February 3, 2000, Wilh. Schulz GmbH and its affiliates ("Schulz") submitted comments to the Department requesting that the scope be limited only to specification ASTM 403/403M fittings below 14 inches in diameter.

On January 21, 2000, the Department issued proposed product concordance criteria to all interested parties. On February 4, 2000, the following interested parties submitted comments on our proposed product concordance criteria: Kanzen Tetsu Sdn. Bhd. ("Kanzen"); Coprosider; and Alloy Piping Products, Inc.; Flowline Division of Markovitz Enterprises, Inc.; Gerlin, Inc.; and Taylor Forge Stainless, Inc. ("petitioners"). On February 8, 2000 and February 18, 2000, we received comments on our proposed product concordance criteria from Schulz.

On February 14, 2000, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Germany, Italy, Malaysia and the Philippines. On February 24, 2000, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Germany, Italy, Malaysia and the Philippines (65 FR 9298).

On January 27, 2000, the Department issued Section A of its antidumping questionnaire to Schulz, Butting Edelstahlrohre GmbH ("Butting"), Hage Fittings GmbH ("Hage Fittings GmbH"), Kremo-Werke Hermanns GmbH ("Kremo-Werke"), Uhlig-Rohrbogen GmbH ("Uhlig-Rohrbogen"), and Nirobo Metalverarbeitungs GmbH ("Nirobo Metalverarbeitungs"). On February 7, 2000, the Department received a letter from Kremo-Werke stating that it has not sold, directly or indirectly, subject merchandise to the United States. Also, on February 7, 2000, the Department received a letter from Uhlig-Rohrbogen stating that it has at no time delivered, directly or indirectly, subject merchandise to the United States. On February 18, 2000, Schulz submitted its

response to Section A of the questionnaire. On February 19, 2000, Butting submitted a letter to the Department stating that it does not produce the subject merchandise and did not supply the subject merchandise to the United States during the period of investigation ("POI"). On March 9, 2000, we issued Sections B, C, D, and E of the antidumping questionnaire to Schulz. On March 27, 2000, we issued a supplemental questionnaire on Section A. On April 10, 1999, Schulz submitted its supplemental questionnaire response for Section A. On May 8 and May 19, 2000, Schulz submitted its response to Sections B, C, and D of the antidumping questionnaire. On June 2, 2000 we issued a supplemental cost questionnaire and on June 6, 2000, we issued a supplemental sales questionnaire. Schulz submitted its response to the supplemental cost and sales questionnaires on June 20, 2000. On June 30, 2000, we issued a second supplemental questionnaire to Schulz, and on July 10, 2000, we received Schulz's response. On June 30, 2000, petitioners made a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise from Germany. On July 5, 2000, the Department sent a letter to Schulz requesting shipment data. On July 13, 2000, the Department issued a third supplemental questionnaire to Schulz. Petitioners submitted comments on Schulz's questionnaire responses in May, June, and July 2000. On July 21, 2000, Schulz submitted a letter withdrawing its participation in the investigation. Additionally, it requested that the Department return all business proprietary data submitted by Schulz during the course of the investigation.

On April 13, 2000, the Department published in the **Federal Register** a notice postponing the preliminary determination until July 26, 2000 (*see Notice of Postponement of Preliminary Antidumping Duty Determinations: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia, and the Philippines*, 65 FR 19876 (April 13, 2000)).

Period of Investigation

The POI is October 1, 1998 through September 30, 1999.

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel butt-weld pipe fittings. Certain stainless steel butt-weld pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The fittings subject to this investigation is generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by these investigations.

This investigation does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The stainless steel butt-weld pipe fittings subject to this investigation are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. In accordance with sections 776(a)(2)(A) and (C), because Hage Fittings and Nirobo Metalverarbeitungs failed to respond to our questionnaire and thus significantly impeded the investigation, and because subsection 782(d) of the Act therefore does not apply, we must use facts otherwise available to determine the dumping margin for Hage Fittings and Nirobo Metalverarbeitungs. Also, although Schulz initially responded to the Department's questionnaires, upon notification that it was withdrawing its participation from the investigation, Schulz requested that the Department return all business proprietary data that had been provided by Schulz during the course of the proceeding. Therefore, the Department has no data on the record for Schulz upon which to base its margin calculation, nor would the Department be able to verify the information received in any event. Accordingly, we have determined that use of facts available is also appropriate for Schulz in accordance with sections 776(a)(2)(A) and (C).

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences when an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) . Based on Hage Fittings' and Nirobo Metalverarbeitungs' failure to respond to the Department's antidumping questionnaire and Schulz's subsequent withdrawal of its business proprietary data, we have determined that Hage Fittings, Nirobo Metalverarbeitung, and Schulz have not acted to the best of their ability to comply with the Department's information requests. Therefore, pursuant to 776(b) of the Act, we used an adverse inference in selecting a margin from the facts available. As adverse facts available, the Department has applied a margin of 76.24 percent, the highest margin alleged in the petition.

Section 776(c) of the Act provides that, when the Department relies on secondary information, such as the petition, as facts available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation *Id.; see also* 19 CFR Sec 351.308(d).

We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, data from U.S. producers, foreign market research

reports, and import statistics). *See Initiation Checklist: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia, and the Philippines* (January 18, 2000), which is on file in the Central Records Unit ("CRU") of the Main Commerce Department Building. In order to determine the probative value of the petition margin for use as adverse facts available in this preliminary determination, we have re-examined evidence supporting the petition calculation. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the U.S. price and normal value calculations on which the petition margin was based and found that the information has probative value (*see* the July 26, 2000 memorandum to the file regarding Facts Available Corroboration, which is on file in the CRU of the Main Commerce Department building). Moreover, we note that, because no information is available for any respondent in this investigation, the issues of relevance addressed by the Court of Appeals in *DeCecco* v. *United States,* App. No. 99–1318 (Fed. Cir. June 20, 2000) are not present in this case.

Critical Circumstances

On June 30, 2000, petitioners made a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise from Germany. According to section 733(e)(1) of the Act, if critical circumstances are alleged under section 733(e) of the Act, the Department must examine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends: and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports during the "relatively short period" described in section 351.206(i) of over 15 percent may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" normally as the period beginning on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later. Because we are not aware of and there is no record evidence of any antidumping order in any country on stainless steel butt-weld pipe fittings from Germany, we find that there is no reasonable basis to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. Therefore, we must look to whether there was importer knowledge under section 733(e)(1)(A)(ii).

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the stainless steel butt-weld pipe fittings at less than fair value, the Department's normal practice is to consider for EP sales margins of 25 percent or more sufficient to impute knowledge of dumping. *See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China,* 62 FR 31972, 31978 (June 11, 1997). As discussed above, we have applied, as adverse facts available for Hage Fittings, Nirobo Metalverarbetiungs, and Schulz the highest of the dumping margins presented in the petition and corroborated by the Department. These margins are in excess of 25 percent. Therefore, we impute knowledge of dumping in regard to exports by these companies.

Moreover, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department may look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department normally determines that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. *Id.* The ITC has found that a reasonable indication of present material injury exists in regard to Germany. *See ITC Preliminary Determination.* As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports in this case.

In determining whether there are "massive imports" over a "relatively short period," the Department ordinarily bases its analysis on import data for at least the three months preceding (the base period) and following (the comparison period) the filing of the petition. *See* 19 CFR 351.206(i). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. *See* 19 CFR 351.206(h). Since there is no verifiable information on the record with respect to Hage Fittings', Nirobo Metalverarbeitungs', and Schulz's import volumes, we must use the facts available in accordance with section 776(a) of the Act. Accordingly, we examined U.S. Customs data on imports of stainless steel butt-weld pipe fittings from Germany in order to determine whether these data reasonably preclude an increase in shipments of 15 percent or more within a relatively short period for any of these companies. However, these statistics, in the case of stainless steel butt-weld pipe fittings from Germany, cover an HTS category (HTS no. 730723000 "Stainless Steel Tube or Pipe Butt Welding Fittings") that includes merchandise other than subject merchandise. Therefore, we cannot rely on this data in determining if massive shipments of stainless steel butt-weld pipe fittings from Germany occurred over a relatively short time. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan ("Stainless Steel from Japan"),* 64 FR 30574, 30586 (June 8, 1999). Moreover, these data do not permit the Department to ascertain the import volumes for any individual company that failed to provide verifiable information. Nevertheless, in accordance with section 776(b) of the Act, the Department may used an adverse inference in applying facts available for non-responsive companies; thus we determine, as adverse facts available, that there were massive imports from Hage Fittings, Nirobo Metalverarbeitungs, and Schulz during a relatively short period. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan ("Roofing Nails from Taiwan"),* 62 FR 51427 (October 1, 1997) and *Notice of Final Determination of Sales at Less Than Fair Value and Final Affirmative Finding of Critical Circumstances: Elastic Rubber Tape from India ("Elastic Rubber Tape from India"),* 64 FR 19123 (April 19, 1999). Because all of the necessary criteria

have been met, in accordance with section 733(e)(1) of the Act, the Department preliminarily finds that critical circumstances exist with respect to stainless steel butt-weld pipe fittings imported from Hage Fittings, Nirobo Metalverarbeitungs, and Schulz.

It is the Department's normal practice to conduct its critical circumstances analysis of companies in the "all others" group based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey ("Rebars from Turkey")*, 62 FR 9737, 9741 (March 4, 1997) (the Department found that critical circumstances existed for the majority of the companies investigated, and therefore concluded that critical circumstances also existed for companies covered by the "all others" rate). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the "all others" rate. *See Stainless Steel from Japan* 64 FR at 30585. Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the "all others"' rate. Consistent with *Stainless Steel from Japan*, the Department has, in this case, applied the traditional critical circumstances criteria to the "all others" category for the antidumping investigation of stainless steel butt-weld pipe fittings from Germany. First, the dumping margin for the "all others" category, 51.34 percent, exceeds the 25 percent threshold necessary to impute knowledge of dumping. Second, based on the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from sales of the dumped merchandise by respondents other than Hage Fittings, Nirobo Metalverarbeitungs, and Schulz. *See Critical Circumstances Determination: Honey from the People's Republic of China*, 60 FR 29824, (June 6, 1995). However, the Department has not found that there are massive imports for the "all others" companies in this investigation. First, we have not used adverse facts available concerning massive imports. Unlike the companies that refused to provide information upon request at the outset of the case or withdrew their information from the record, the "all others" companies have not failed to act to the best of their ability. The Department does not use adverse inferences with respect to firms whose individual data have not been analyzed (as far as the Department has been able to determine, there were only the three producers/exporters of subject merchandise from Germany during the POI). Second, there is no evidence of massive imports from "all others" companies in this investigation. While we normally rely on our findings for the selected mandatory respondents, in this case our determinations with respect to all of the mandatory respondents were based on adverse facts available. Therefore, we have not used these findings as a basis for our determination with respect to all other companies. Further, in accordance with *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24338 (May 6, 1999), the Department considered whether U.S. Customs data on imports of stainless steel butt-weld pipe fittings from Germany could be used to make a determination regarding the "all others" category. In this case, however, these statistics cover an HTS category that includes merchandise other than subject merchandise. Therefore, we cannot rely on these data in determining if there were massive imports for the "all others" category. *See Stainless Steel from Japan*. The Department does not have any other data indicating massive imports from the any other exporter/producer of stainless steel butt-weld pipe fittings from Germany. Therefore, the Department does not find massive imports with regard to the "all others" category in this case. Because the massive imports criterion necessary to find critical circumstances has not been met with respect to firms other than Hage Fittings, Nirobo Metalverarbeitungs, and Schulz, the Department preliminarily finds that critical circumstances do not exist for the "all others" category in this case.

The All-Others Rate

All known foreign manufacturers/exporters in this investigation are being assigned dumping margins on the basis of facts otherwise available. Section 735(c)(5)(B) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated dumping margins determined for the exporters and producers individually investigated. In this case, the margins assigned to the only companies investigated are based on adverse facts available. Therefore, consistent with the statute and the SAA at 873, we are using an alternative method. As our alternative, we are basing the all-others rate on a weighted-average of all the margins alleged in the petition. As a result, the all-others rate is 51.34 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Act, for Hage Fittings, Nirobo Metalverarbeitungs, and Schulz we are directing the Customs Service to suspend liquidation of all entries of subject merchandise from Germany that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior date of publication of this notice in the **Federal Register**. For all other companies, we are directing the Customs Service to suspend liquidation of entries of subject merchandise from Germany that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the constructed export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (In percent)
Hage Fittings	76.24
Nirobo Metalverarbeitungs	76.24
Schulz	76.24
All-Others	51.34

ITC Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. *See* 19 CFR Sec. 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries

should be limited to five pages total, including footnotes. 19 CFR Sec. 351.309(c) and (d). Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be scheduled to be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several stainless steel butt-weld pipe fittings cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. 19 Sec. CFR 351.310(c). Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination. 19 CFR Sec. 351.210(b)(1).

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: July 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19548 Filed 8–1–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–828]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Butt-Weld Pipe Fittings From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Phyllis Hall at (202) 482-0405 and (202) 482–1398, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR Part 351 (April 1999).

Preliminary Determination

We preliminarily determine that stainless steel butt-weld pipe fittings ("pipe fittings") from Italy are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the "Suspension of Liquidation" section of this notice.

Case History

On January 18, 2000, the Department initiated antidumping investigations of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines. See Initiation of Antidumping Duty Investigation: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines, 65 FR 4595 (January 31, 2000). Since the initiation of this investigation the following events have occurred.

On January 18, 2000, the Department initiated antidumping investigations of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines. See Initiation of Antidumping Duty Investigation: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines, 65 FR 4595 (January 31, 2000) ("Notice of Initiation"). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage (see Notice of Initiation at 4596). A response was received from Coprosider S.p.A. ("Coprosider") on February 1, 2000, agreeing with the scope of the investigation. On February 3, 2000, Wilh. Schulz GmbH and its affiliates ("Schulz") submitted comments to the Department requesting that the scope be limited only to specification ASTM 403/403M fittings below 14 inches in diameter.

On January 21, 2000, the Department issued proposed product concordance criteria to all interested parties. On February 4, 2000, the following interested parties submitted comments on our proposed product concordance criteria: Kanzen Tetsu Sdn. Bhd. ("Kanzen"); Coprosider; and Alloy Piping Products, Inc.; Flowline Division of Markovitz Enterprises, Inc.; Gerlin, Inc.; and Taylor Forge Stainless, Inc. ("petitioners"). On Feburary 8, 2000 and February 18, 2000, we received comments on our proposed product concordance criteria from Schulz.

On February 14, 2000, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Germany, Italy, Malaysia and the Philippines. On February 24, 2000, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Germany, Italy, Malaysia and the Philippines (65 FR 9298).

On February 14, 2000, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Germany, Italy, Malaysia and the Philippines. On February 24, 2000, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Germany, Italy, Malaysia and the Philippines (65 FR 9298).

On January 27, 2000, the Department issued Section A of its antidumping duty questionnaire to Coprosider S.p.A. ("Coprosider"). On February 9, 2000, the Department received Coprosider's

response to Question 1 of Section A. On March 9, 2000, the Department issued Sections B–E of its antidumping duty questionnaire to Coprosider. On the same day, petitioners filed comments on Coprosider's section A response. On March 10, 2000, the Department issued a supplemental questionnaire for Coprosider's Section A response. Coprosider responded on March 24, 2000.

On April 13, 2000, the Department published in the **Federal Register** a notice postponing the preliminary determination until July 26, 2000 (Notice of Postponement of Preliminary Antidumping Duty Determinations: Stainless Steel Butt-weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines (65 FR 19876)).

Coprosider filed its Sections B and C response on May 1, 2000. On May 17, 2000, petitioners requested that the Department initiate a cost investigation. Petitioners submitted comments on Coprosider's Sections B and C response on May 19, 2000. The Department issued a supplemental questionnaire on May 23, 2000. On May 24, 2000, Coprosider filed comments on petitioners' request for a cost investigation. The Department initiated a cost investigation on June 1, 2000. On June 20, 2000, Coprosider filed its supplemental Section B and C response. The Department issued a second supplemental questionnaire on June 22, 2000. Coprosider filed its cost and second supplemental responses on July 3, 2000. Petitioners filed comments on these responses on July 10 and July 17, 2000, and Coprosider filed a rebuttal on July 12, 2000. Due to the late initiation of the sales below cost portion of this investigation, the Department did not receive the Section D questionnaire response, as noted above, until July 3, 2000. Consequently, there has been insufficient time for the Department to issue a supplemental section D questionnaire response to Coprosider and receive it back prior to the preliminary determination. Therefore, we are using the respondent's data for purposes of the preliminary determination, with one exception, as submitted. We will continue to analyze the cost response and petitioner's comments and will seek clarifications and corrections to the data as necessary.

On June 30, 2000, petitioners alleged that critical circumstances exist with respect to imports of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines. The Department requested monthly shipment data from Coprosider for calendar year 1998 through May 2000 on July 6, 2000. Coprosider submitted data for October 1998 through March 2000 on July 13, 2000. On July 18, 2000, Coprosider submitted shipment data for April 2000 through June 2000.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On June 29, 2000, Coprosider requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. On June 30, 2000, Coprosider also agreed to an extension of the provisional measures to not more than six months. Therefore, in accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant portion of exports of subject merchandise, and (3) there is no compelling reason for denial, we are granting the respondent's request and are postponing the final determination until not later than 135 days after the date of the publication of the preliminary determination. Similarly, we are extending the application of the provisional measures.

Period of Investigation

The Period of Investigation ("POI") is October 1, 1998 through September 30, 1999. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, December 1999), and is in accordance with our regulations. See section 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel butt-weld pipe fittings. Pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The fittings subject to these investigations are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by these investigations.

This investigation does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The stainless steel butt-weld pipe fittings subject to this investigation are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Product Comparisons

Pursuant to section 771(16) of the Act, all products produced by the respondent that are within the scope of the investigation, above, and were sold in the comparison market during the POI, are considered to be foreign like products. We have relied on six criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: type, grade, whether seamless or welded, size, schedule (wall thickness) and finished or blank. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's March 9, 2000, questionnaire.

Fair Value Comparisons

To determine whether sales of stainless steel butt-weld pipe fittings from Italy were made in the United States at LTFV, we compared the export price ("EP") to the normal value ("NV"),

as described in the Export Price and Normal Value sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated POI weighted-average EPs for comparison to POI weighted-average NVs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act because Coprosider sold the subject merchandise directly to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States prior to the date of importation, and because CEP methodology was not otherwise appropriate. We based EP on CIF duty unpaid prices to unaffiliated customers in the United States. In accordance with section 772(c)(2), we made deductions from the starting price for movement expenses, including foreign inland freight, warehouse handling expense, customs brokerage and international freight, and discounts, where appropriate.

Normal Value

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

Coprosider had a viable home market, and reported home market sales data for purposes of the calculation of NV. In deriving NV, we made certain adjustments described in detail in Calculation of Normal Value Based on Home Market Prices, below.

Cost of Production Analysis

Based on our analysis of the cost allegations submitted by petitioners on May 17, 2000, the Department found reasonable grounds to believe or suspect that Coprosider had made sales of pipe fittings manufactured in Italy at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. See Cost Memorandum, June 1, 2000. As a result, the Department initiated an investigation to determine whether Coprosider made home market sales during the POI at prices below the cost of production ("COP") within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Coprosider's cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative expenses ("SG&A"), including interest expenses, and packing costs. The Department relied on the COP data submitted by Coprosider on July 3, 2000, with the exception that in those instances in which Coprosider submitted two costs for the same control number, we weight averaged those costs.

B. Test of Home Market Sales Prices

We compared the weighted-average COP for Coprosider to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, and discounts.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Coprosider's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of Coprosider's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to fiscal year average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded those below-cost sales.

Calculation of Normal Value Based on Home Market Prices

We calculated NV based on ex-factory prices and made deductions from the starting price for inland freight to Coprosider's warehouse and warehouse and packing expense. In addition, we made circumstance of sale (COS) adjustments for discounts and commissions, where applicable, and direct expenses (i.e., credit expenses), in accordance with section 773(a)(6)(C)(iii) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same level of trade ("LOT") as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment pursuant to section 773(a)(7)(A) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we examined information from Coprosider regarding the marketing stages involved in the reported home market and EP sales, including a description of the selling activities performed by Coprosider for each channel of distribution. In identifying LOT for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments.

Coprosider claimed two LOTs in each market: LOT 1 including sales to end-users, engineering companies, equipment manufacturers and trading companies, and LOT 2 including sales to distributors/stockists, and claimed a LOT adjustment for differences in selling prices. We examined the chains

of distribution and customer categories reported in the home market and in the United States. In both the home and U.S. markets, Coprosider reported two channels of distribution, one which was identical to LOT 1, and another which was identical to LOT 2. We further examined the selling functions related to those sales. Coprosider claimed in its June 20, 2000, supplemental response (Exhibit SB1), that it provided technical advice and after-sale services and warranties for customers in the end-user, equipment manufacturer, and engineering company categories in both the home market and the U.S. market, and also to the trading company category in the United States, but not to distributors. However, in its Section B and C response of May 1, 2000, it stated it incurred no warranty and technical service expenses during the POI (other than quality control expenses reported under indirect selling expenses). Thus, the only remaining differences in reported selling functions between the claimed LOTs are inventory maintenance, order solicitation and order processing. We do not consider these differences in selling functions sufficient to find different LOTs. On this basis, it appears that there is insufficient evidence on the record to establish different LOTs in either market. Therefore, Coprosider has not met its burden of proof to establish its claim for a LOT adjustment for comparisons of EP sales to home market sales. Accordingly, the Department has preliminarily denied a LOT adjustment.

Currency Conversions

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).)

Critical Circumstances

On June 30, 2000, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of pipe fittings from Italy. In accordance with 19 CFR 351.206(c)(2)(i), given that this allegation was filed at least 20 days prior to the preliminary determination, the Department must issue its preliminary critical circumstances determination no later than the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

History of Dumping or Importer Knowledge of Dumping

To determine whether there is a history of injurious dumping of the merchandise under investigation, the Department considers evidence of an existing antidumping order on stainless steel butt-weld pipe fittings from other countries to be sufficient. We are unaware of any antidumping order against Italy on stainless steel butt-weld pipe fittings worldwide. Therefore, the Department must examine part (ii) of the first prong of the critical circumstances test.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling stainless steel butt-weld pipe fittings at less than fair value, the Department normally considers margins of 25 percent or more for EP sales sufficient to impute knowledge of dumping and of resultant material injury. (See, *e.g.*, Preliminary Determination of Critical Circumstances: Certain Small Diameter Carbon and Alloy Steel Seamless Standard, Line and Pressure Pipe from the Czech Republic, 65 FR 33803, 33803 (May 25, 2000)). In the instant case, we have preliminarily determined that the margin for the respondent, Coprosider, is 32.12 percent. Therefore, we have imputed knowledge of dumping to importers of the subject merchandise from Coprosider.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the International Trade Commission ("ITC"). If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. In this case, the ITC has found that a reasonable indication of present material injury due to dumping exists for subject imports of stainless steel butt-weld pipe fittings from Italy. See Certain Stainless Steel Butt-weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines, 65 FR 9298 (February 24, 2000). As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports of the subject merchandise from Italy.

Massive Imports

In determining whether there are "massive imports" over a "relatively short time period," pursuant to section 733(e)(1)(B) of the Act, section 351.206(h)(1) of the Department's regulations provides that the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. On July 19, 2000, Coprosider submitted a letter to the Department arguing that the import data it provided on July 13, 2000, establish that its exports of the subject merchandise during the three months immediately following the filing of the petition did not increase by more

than 15 percent over imports during the three months preceding the petition, and that the Department should therefore issue a negative critical circumstances determination.

The Department's Antidumping Manual states:

> We generally consider the period beginning with the filing of the petition and ending with the preliminary determination. We then compare this period to a period of equal duration immediately prior to the filing of the petition to determine whether imports had been massive over a relatively short period of time.[1]

The petition was filed on December 29, 1999, and Coprosider provided data through June 2000 for its imports into the United States of the subject merchandise. Thus, in accordance with Department practice as described above, we compared Coprosider's average monthly imports during the second half of 1999 to its average monthly imports during the first half of 2000 to determine changes in the quantity of imports. Average monthly imports increased in the first half of 2000 by over 15 percent in volume over the base period of 1999. See Memorandum for Richard O. Weible from Helen M. Kramer Re: Analysis of Critical Circumstances in the Antidumping Investigation of Stainless Steel Butt-weld Pipe Fittings from Italy (July 21, 2000).

Although in our letter of July 6, 2000, we asked Coprosider to provide data for shipments of the subject merchandise to the United States for 1998, Coprosider provided data for only the last quarter of the year. The Department is therefore unable to make a complete analysis of the existence of seasonal factors affecting the imports of this product. However, Coprosider's imports of the subject merchandise into the United States fell by over 48 percent in volume between the last quarter of 1998 and the first quarter of 1999, but increased by over 14 percent between the last quarter of 1999 and the first quarter of 2000. Furthermore, U.S. Census Bureau monthly data for January 1998 through May 2000 show no seasonal pattern for imports of stainless steel butt-weld pipe fittings from Italy (including non-scope merchandise). Neither our analysis of the monthly imports data provided by Coprosider, nor petitioners' comments suggest that seasonality can explain the increase in imports during the first half of 2000. Thus, we do not consider seasonality to be relevant to the massive increase in imports of the subject merchandise.

With respect to item (iii), concerning the share of domestic consumption accounted for by the imports, we requested additional data from the petitioners. In response to this request, on July 20, 2000, petitioners submitted supplemental information regarding the share of domestic consumption accounted for by imports of stainless steel butt-weld pipe fittings from Italy. As current domestic producer U.S. shipments data are not publicly available, petitioners estimated these on the basis of ITC data from the preliminary determination in this case for the period January—September 1999. (See Certain Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines, Inv. 731-TA–864–867 (Pub. 3281), February 2000.) Petitioners state that domestic shipments have not increased between the first three quarters of 1999 and the September—December 1999 or January—April 2000 comparison periods used in their critical circumstances allegation, and that average shipments have actually declined. Petitioners used official U.S. import statistics to estimate the share of imports in domestic consumption. For Italy, the share of imports in the U.S. market for stainless steel butt-weld pipe fittings (including non-scope merchandise) increased from 7.7 to 11.5 percent in the comparison periods.

Given that Coprosider's average monthly imports into the United States increased by over 15 percent in a relatively short period of time, and taking into account that seasonal factors do not appear to be present, and that imports from Italy appear to have increased their share of the domestic market, we preliminarily determine that imports of stainless steel butt-weld pipe fittings from Italy have been massive.

Based on our determination that there is a reasonable basis to believe or suspect that importers had knowledge of dumping and the likelihood of material injury, and that there have been massive imports of stainless steel butt-weld pipe fittings from Italy over a relatively short period of time, we preliminarily determine that critical circumstances exist for imports of stainless steel butt-weld pipe fittings from Italy produced by Coprosider. Accordingly, we will require Customs to suspend liquidation of imports produced by Coprosider in accordance with section 733(e)(2) of the Act. (See Suspension of Liquidation, below.)

All Other Exporters

We have also analyzed the issue of critical circumstances for companies in the "all others" category. During the initiation of the current investigation, the Department determined that Coprosider was the only exporter of the subject merchandise from Italy to the United States during the POI. Therefore, we believe that the additional imports of stainless steel butt-weld pipe fittings from Italy entered under HTS No. 7307.23.0000 consist of non-scope merchandise, and there are no other companies affected by this critical circumstances determination.

Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

All Others

Pursuant to section 735(5)(A) of the Act, the estimated all-others rate is equal to the estimated weighted average dumping margin established for Coprosider, the only exporter/producer investigated.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, for Coprosider, the Department will direct the Customs Service to suspend liquidation of all entries of subject merchandise from Italy that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. For all other companies, the Department will direct the Customs Service to suspend liquidation of all entries of subject merchandise from Italy that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

The margin in the preliminary determination is as follows:

Exporter/Manufacturer	Margin (In percent)
Coprosider	32.12
All others	32.12

Final Critical Circumstances Determination

We will make a final critical circumstances determination when we

[1] Import Administration Antidumping Manual, chapter 10 (Critical Circumstances), p. 4 (January 22, 1998).

issue our final determination in the less-than-fair-value investigation.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several stainless steel butt-weld pipe fittings cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: July 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19549 Filed 8–1–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–565–801]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings From the Philippines.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James at (202) 482-2924 and (202) 482–0649, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 1, 2000).

Preliminary Determination

We preliminarily determine that stainless steel butt-weld pipe fittings from the Philippines are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the "Suspension of Liquidation" section of this notice.

Case History

On January 18, 2000, the Department initiated antidumping investigations of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia, and the Philippines. *See Initiation of Antidumping Duty Investigation: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines*, 65 FR 4595, (January 31, 2000) (*Initiation Notice*). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage (*see Initiation Notice*, 65 FR at 4596). We received a response from Coprosider S.p.A. (Coprosider) on February 1, 2000, agreeing with the scope of the investigation. On February 3, 2000, Wilh. Schulz GmbH (Schulz) submitted comments to the Department requesting that the scope be limited only to specification ASTM 403/403M fittings below 14 inches in diameter.

On January 21, 2000 the Department issued proposed product concordance criteria to all interested parties. On February 4, 2000, the following interested parties submitted comments on our proposed product concordance criteria: Kanzen Tetsu Sdn. Bdh.; Coprosider; and Alloy Piping Products, Inc.; Flowline Division of Markovitz Enterprises, Inc.; Gerlin, Inc.; and Taylor Forge Stainless, Inc. (petitioners). On February 8, 2000 and February 18, 2000, Schulz filed its comments on our proposed concordance.

On February 14, 2000, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Germany, Italy, Malaysia and the Philippines. On February 24, 2000, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Germany, Italy, Malaysia and the Philippines. *See Certain Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia, and the Philippines*, 65 FR 9298, (February 24, 2000) (*ITC Preliminary Determination*).

On January 24, 2000, the Department issued Section A of its antidumping duty questionnaire to Enlin Steel Corporation (Enlin) and Tung Fong Industrial Co., Inc., (Tung Fong). On February 7, 2000, the Department received Enlin's and Tung Fong's responses to Question 1 of Section A. The Department received the remainder of Enlin's and Tung Fong's section A responses on February 22, 2000. On March 1, 2000, the Department issued a memorandum announcing its determination that it would only be able to analyze the response of Enlin in this investigation. On March 2, 2000, petitioners filed comments on Tung Fong's section A response. On March 6, 2000, Tung Fong requested to be a voluntary respondent. On March 9, 2000, the Department issued sections B–E of its antidumping duty questionnaire to Enlin, requesting that Enlin respond

to sections B and C. On March 15, 2000, petitioners submitted comments on Enlin's section A response. On May 1, 2000, the Department received from Enlin its response to sections B and C of the Department's questionnaire. Also on May 1, 2000, Tung Fong submitted a voluntary section B and C questionnaire response. On May 19, 2000, petitioners submitted comments on Enlin's sections B and C responses. On May 21, 2000, petitioners alleged that sales had been made below the cost of production (COP) in Enlin's third-country market. On June 1, 2000, the Department issued to Enlin a supplemental questionnaire with respect to its sections A, B and C responses. Also on June 1, 2000, the Department initiated a COP investigation with respect to Enlin's third-country sales. On June 2, 2000, the Department requested that Enlin respond to section D of the March 9, 2000 questionnaire. On June 22, 2000, six days after the due date for Enlin's response to the supplemental questionnaire, Enlin informed the Department that it would not respond any further to the Department's requests for information. On June 27, 2000, petitioners submitted comments on Tung Fong's sections B and C responses. On June 30, 2000, petitioners alleged critical circumstances exist with respect to imports of subject merchandise from the Philippines. Tung Fong made a voluntary section D response on July 5, 2000. On July 11, 2000, petitioners submitted comments on Tung Fong's section D response. On July 14, 2000, the Department issued a supplemental questionnaire to Tung Fong regarding its sections A, B, C, and D responses.

In addition, on April 13, 2000, the Department published in the **Federal Register** a notice postponing the preliminary determination until July 26, 2000. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Stainless Steel Butt-weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines,* 65 FR 19876 (April 13, 2000).

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel butt-weld pipe fittings. Certain stainless steel butt-weld pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The fittings subject to these investigations are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by these investigations.

These investigations do not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The stainless steel butt-weld pipe fittings subject to these investigations are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 1998 through September 30, 1999.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Acts gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can be reasonably examined.

After consideration of the complexities expected to arise in these proceedings and the resources available to the Department, we determined that it was not practicable in these investigations to examine all known producers/exporters of subject merchandise. With respect to the Philippines, we determined that, given our resources, we would be able to investigate only one such company. We selected Enlin as the mandatory respondent for the Philippines because it was the respondent with the greatest export volume. (For a more detailed discussion of respondent selection in these investigations, see the Department's Respondent Selection Memorandum dated March 1, 2000, available in room B–099 of the Department of Commerce building.) However, following Enlin's withdrawal from the investigation on June 22, 2000, the Department determined to investigate Tung Fong as a voluntary respondent. Upon review of Tung Fong's response, we found that we needed additional information from Tung Fong before we could calculate a dumping margin. We found, for instance, that there were inconsistencies in the reporting of some control numbers. Tung Fong had also failed to provide invoice dates on its sales listings, and had not supplied complete sample sales documentation. It had also not reported all of the sales adjustments necessary to make a dumping calculation. There also appeared to be discrepancies on the record regarding the amount of Tung Fong's input material costs. Thus, as noted above, we issued Tung Fong a supplemental questionnaire on July 14, 2000. However, insufficient time remained for Tung Fong to respond to the supplemental questionnaire and for the Department to analyze it prior to the due date for the preliminary determination. Tung Fong's response is due July 28, 2000. We will make a calculation of Tung Fong's dumping margin and issue an analysis following issuance of this preliminary determination as soon as practicable. We will disclose the results of this calculation and the analysis incorporated therein to the interested parties; a public version of this analysis will be available to the public in room B–099 of the main Commerce Building.

Facts Available

As noted above under "Case History," Enlin failed to respond to the Department's supplemental questionnaire regarding its sections A, B, and C responses, and notified the Department that it did not intend to respond any further to the Department's requests for information. Section 776(a)(2) of the Act provides that if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the

form or manner requested, subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use the facts otherwise available in reaching the applicable determination. Because Enlin failed to respond to our request for additional information, pursuant to section 776(a)(2) of the Act we resorted to the facts otherwise available to calculate the dumping margin for this company.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for necessary information. *See also,* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316 (1994) (SAA) at 870. Failure by Enlin to respond to the Department's supplemental questionnaire constitutes a failure to act to the best of its ability to comply with a request for information within the meaning of section 776 of the Act. Because Enlin failed to respond, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted in selecting the facts available for this company.

Because we were unable to calculate a margin for Enlin, we assigned it the highest margin alleged in the amended petition calculations, submitted January 10, 2000. *See, Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany,* 63 FR 10847 (March 5, 1998). The highest petition margin is 60.17 percent. *See Initiation Notice,* 65 FR at 4599.

Section 776(b)(1) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also,* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (*e.g.,* the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see,* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see,* SAA at 870).

We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition to the extent appropriate information was available for this purpose. *See, Import Administration AD Investigation Initiation Checklist* (January 18, 2000) for a discussion of the margin calculations in the petition. In addition, in order to determine the probative value of the margins in the petition for use as adverse facts available for purposes of this determination, we examined the evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petitions were based. Our review of the EP and NV calculations indicated that the information in the petition has probative value, as certain information included in the margin calculations in the petition is from public sources concurrent, for the most part, with the POI (*e.g.,* inland freight, international freight and insurance, import duties). For purposes of this preliminary determination, the Department compared the export prices alleged by the petitioners for sales to the first unaffiliated purchasers with contemporaneous, average unit prices values of U.S. imports classified under the appropriate HTS number. *See Import Administration AD Investigation Initiation Checklist,* January 18, 2000, pp. 3–4. We noted that the unit values of the U.S. price quotes submitted by the petitioners were well within the range of the average unit values reported by U.S. Customs. U.S. official import statistics are sources which we consider to require no further corroboration by the Department. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China,* 62 FR 51410, 51412, (October 1, 1997).

However, with respect to certain other data included in the margin calculations of the petition (*e.g.,* home market unit prices), neither respondents nor other interested parties provided the Department with further relevant information and the Department is aware of no other independent sources of information that would enable it to further corroborate the remaining components of the margin calculation in the petition. The implementing regulation for section 776 of the Act, 19 CFR 351.308(d), states "[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question." Additionally, we note that the SAA at 870 specifically states that, where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. Furthermore, as indicated above, the Department corroborated numerous parts of the petition, including the contemporaneity of the adjustments and the range of the U.S. price quotes as compared to U.S. selling prices recorded by Customs data. Accordingly, we find, for purposes of this preliminary determination, that this information is corroborated to the extent practicable. We will further consider this issue for the final determination based upon any additional information available to the Department at that time.

All Others

On March 6, 2000 Tung Fong requested that it be permitted to participate as a voluntary respondent in this investigation. It submitted voluntary responses to sections B and C of the questionnaire on March 1, 2000, and a voluntary section D response on July 5, 2000. (Tung Fong had submitted mandatory section A responses on February 7, 2000 and February 22, 2000.) It voluntarily submitted additional information in a June 27, 2000 submission following comments from petitioners submitted June 6 and June 23, 2000. We issued a supplemental questionnaire to Tung Fong on July 14, 2000, the response for which is due July 28, 2000. We will make a preliminary calculation of Tung Fong's dumping margin and issue an analysis following issuance of this preliminary determination. In this preliminary determination, we have assigned Tung Fong the non-adverse all-others rate, as described below, because currently there is insufficient information available for us to calculate a separate margin for Tung Fong.

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign as the "all others" rate the simple average of the margins in the petition. *See, e.g.,*

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada, 64 FR 15457 (March 31, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy*, 64 FR 15458, 15459 (March 21, 1999). In accordance with our recent practice, we are basing the "all others" rate in this investigation on the simple average of margins in the petition, which is 34.67 percent.

Critical Circumstances

On June 30, 2000, the petitioners made a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise from the Philippines. According to section 733(e)(1) of the Act, if critical circumstances are alleged under section 733(e) of the Act, the Department must examine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports during the "relatively short period" of over 15 percent may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" normally as the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.

Because we are not aware of any antidumping order in any country on stainless steel butt-weld pipe fittings from the Philippines, we do not find that there is a reasonable basis to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere. Therefore, we must look to whether there was importer knowledge under section 733(e)(1)(A)(ii) of the Act.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the subject merchandise at less than fair value, the Department's normal practice is to consider margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price sales (CEP), and margins of 25 percent or more sufficient to impute knowledge for EP sales. *See, Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 62 FR 31972, 31978 (June 11, 1997). As discussed above, we have applied, as adverse facts available for Enlin, the highest of the dumping margins presented in the petition and corroborated by the Department. This margin is in excess of 25 percent. Therefore, we impute knowledge of dumping in regard to exports by this company.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally looks to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department normally determines that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. The ITC has found that a reasonable indication of present material injury exists in regard to the Philippines. See *ITC Preliminary Determination* 65 FR at 9299. As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports from Enlin.

In determining whether there are "massive imports" over a "relatively short period," the Department typically compares the import volume of the subject merchandise for at least three months immediately preceding and following the filing of the petition. Imports normally will be considered massive when imports have increased by 15 percent or more during this "relatively short period." Since there is no verifiable information on the record with respect to Enlin's import volumes, we must use the facts available in accordance with section 776 of the Act. See also Comment 2 of the Decision Memo, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold Rolled Carbon Quality Steel Flat Products from Venezuela*, 65 FR 18047, 18049 (April 6, 2000). Accordingly, we examined U.S. Customs data on imports of stainless steel butt-weld pipe fittings from the Philippines in order to determine whether these data reasonably preclude an increase in shipments of 15 percent or more within a relatively short period for Enlin. These data do not permit the Department to ascertain the import volumes for any individual company that failed to provide verifiable information.

As discussed above in the "Facts Available" section, Enlin has not cooperated to the best of its ability in this investigation, and application of adverse facts available is appropriate. Since there is no verified information on the record with respect to Enlin's volume of imports, and U.S. import statistics are unavailable because stainless steel butt-weld pipe fittings are entered under an HTSUS basket category which includes products other than subject merchandise, we have no choice but to apply the adverse inference that Enlin has made massive imports of the subject merchandise over a relatively short period of time. Therefore, we find that the second criterion for determining whether critical circumstances exist with respect to Enlin's exports of subject merchandise has been met. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51429 (October 1, 1997) and *Notice of Final Determination of Sales at Less Than Fair Value and Final Affirmative Finding of Critical Circumstances: Elastic Rubber Tape from India*, 64 FR 19123, 19124 (April 19, 1999). Because all of the necessary criteria have been met, in accordance with section 733(e) of the Act, the Department preliminarily finds that critical circumstances exist with respect to fittings produced by Enlin.

In regard to the "all others" category, it is the Department's normal practice to conduct its critical circumstances analysis based on the experience of investigated companies. *See, Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey (Rebars from Turkey)*, 62 FR 9737, 9741 (March 4, 1997); *see also Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled, Flat-Rolled Carbon Steel Quality Products from Venezuela*, 64 FR 61826, 61832 (November 15, 1999). (For the purpose of this critical circumstances determination, are we including Tung

Fong among the "all other" companies because we have no relevant information on the record particular to Tung Fong.) In *Rebars from Turkey*, the Department determined that, because it found critical circumstances existed for three out of the four companies investigated, critical circumstances also existed for companies covered by the "all others" rate. However, in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan (Stainless Steel from Japan)*, 64 FR 30574 (June 8, 1999), the Department did not extend its affirmative critical circumstances findings to the "all others" category while finding affirmative critical circumstances for four of the five respondents, because the affirmative determinations were based on adverse facts available. Consistent with *Stainless Steel from Japan*, we believe it is appropriate to apply the traditional critical circumstances criteria to the "all others" category.

First, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the subject merchandise at less than fair value, we look to the "all others" rate, which is based, in the instant case, on facts available. The dumping margin for the "all others" category in the instant case, 34.67 percent, exceeds the 15 percent or more threshold necessary to impute knowledge of dumping for CEP sales, and the 25 percent or more sufficient to impute knowledge of dumping for EP sales. Second, based on the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from the dumped merchandise. Finally, with respect to massive imports, we are unable to base our determination on our findings for the mandatory respondent because our determination for the mandatory respondent was based on facts available. We have not inferred, as facts available, that massive imports exist for "all others" because, unlike Enlin, the "all others" companies have not failed to cooperate in this investigation. Therefore, an adverse inference with respect to shipment levels by the "all others" companies is not appropriate.

Instead, consistent with the approach taken in recent investigations, we examined U.S. Customs data on overall imports from the Philippines in order to see if we could ascertain whether an increase in shipments of greater than 15 percent or more occurred within a relatively short period following the point at which importers had reason to believe that a proceeding was likely. See *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan (Hot-Rolled Steel from Japan)*, 64 FR 24329, 24337 (May 6, 1999), *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand (Cold-Rolled Steel from Japan)* 65 FR 5520, 5527 (February 4, 2000), and *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Venezuela*, 64 FR 61826, 61832 (November 15, 1999).

For the purposes of this preliminary determination we examined data for the four months preceding and the four months following the filing of the petition. Information on the record indicates that these data cover an HTS category that includes merchandise other than subject merchandise. Therefore, we cannot rely on these data in determining whether there were massive imports for the "all others" category. Because we are unable to determine on the basis of record evidence that massive imports of subject merchandise from the producers included in the "all others" category did occur and, consequently, that the third criterion necessary for determining affirmative critical circumstances has been met, we have preliminarily determined that critical circumstances do not exist for imports from the Philippines of stainless steel butt-weld pipe fittings for companies in the "all others" category.

Suspension of Liquidation

In accordance with section 733(d) of the Act, for Enlin, we are directing the Customs Service to suspend liquidation of all entries of subject merchandise from the Philippines that are entered, or withdrawn from warehouse, for consumption on or after the date of publication which is 90 days prior to the date of publication of this notice in the **Federal Register**. For Tung Fong and all other companies, we will instruct the Customs Service to suspend liquidation of all entries of subject merchandise from the Philippines that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the dumping margin indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Exporter/manufacturer	Margin (percent)
Enlin Steel Corporation	60.17
Tung Fong Industrial Co., Ltd	34.67
All Others	34.67

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting comments would provide the Department with an additional copy of a public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several stainless steel butt-weld pipe fittings cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral

presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: July 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19550 Filed 8–1–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–809]

Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Stainless Steel Butt-Weld Pipe Fittings from Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Becky Hagen or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3362 (Hagen) and (202) 482–3818 (Johnson).

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR part 351 (April 1999).

Preliminary Determination

We preliminarily determine that stainless steel butt-weld pipe fittings ("pipe fittings") from Malaysia are not being sold, nor are likely to be sold, in the United States at less than fair value ("LTFV"), as provided in section 733(b) of the Act.

Case History

On January 18, 2000, the Department initiated antidumping investigations of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines. See Initiation of Antidumping Duty Investigation: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines, 65 FR 4595 (January 31, 2000) ("Notice of Initiation"). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage (see Notice of Initiation at 4596). A response was received from Coprosider S.p.A. ("Coprosider") on February 1, 2000, agreeing with the scope of the investigation. On February 3, 2000, Wilh. Schulz GmbH and its affiliates ("Schulz") submitted comments to the Department requesting that the scope be limited only to specification ASTM 403/403M fittings below 14 inches in diameter.

On January 21, 2000, the Department issued proposed product concordance criteria to all interested parties. On February 4, 2000, the following interested parties submitted comments on our proposed product concordance criteria: Kanzen Tetsu Sdn. Bhd. ("Kanzen"); Coprosider; and Alloy Piping Products, Inc.; Flowline Division of Markovitz Enterprises, Inc.; Gerlin, Inc.; and Taylor Forge Stainless, Inc. ("petitioners"). On Feburary 8, 2000 and February 18, 2000, we received comments on our proposed product concordance criteria from Schulz.

On February 14, 2000, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Germany, Italy, Malaysia and the Philippines. On February 24, 2000, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Germany, Italy, Malaysia and the Philippines (65 FR 9298).

On January 27, 2000, the Department issued Section A of its antidumping duty questionnaire to Kanzen, Schulz, and Amalgamated Industrial Stainless Steel Sdn. Bhd. ("AISS"). On February 10, 2000, the Department received responses to Question 1 of Section A from Kanzen and S.P. United Sdn. Bhd. ("SP United"). On February 14, 2000, the Department received a response to Question 1 of Section A from AISS, and on February 18, 2000, Schulz submitted a response to Question 1 of Section A of the questionnaire. On February 24, 2000, Schulz, SP United, and Kanzen submitted responses to Section A of the questionnaire. On March 1, 2000, the Department determined that it would not be practicable to investigate all four Malaysian producers/exporters, and therefore limited our examination to the largest producer/exporter, Kanzen (see "Selection of Respondents" section, below). On March 3, 2000, petitioners filed comments on Kanzen's Section A response. On March 8, 2000, the Department issued Sections B–E of its antidumping duty questionnaire to Kanzen. On March 22, 2000, the Department issued a supplemental questionnaire for Kanzen's Section A response. Kanzen responded on April 5, 2000.

On April 13, 2000, the Department published in the **Federal Register** a notice postponing the preliminary determination until July 26, 2000 (Notice of Postponement of Preliminary Antidumping Duty Determinations: Stainless Steel Butt-weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines (65 FR 19876)).

Kanzen filed its Sections B and C response on May 1, 2000. On May 15, 2000, petitioners filed comments on Kanzen's Section B and C and Section A supplemental questionnaire responses, and requested that the Department initiate a cost investigation. The Department issued a supplemental questionnaire on Sections B and C and initiated a cost investigation on May 26, 2000 (see Memorandum to Edward Yang, Petitioners' Allegation of Sales Below the Cost of Production for Kanzen Tetsu Sdn. Bhd., dated May 26, 2000). Kanzen submitted its Section B and C supplemental questionnaire responses on June 16, 2000. On June 23, 2000, Kanzen submitted its response to Section D of the questionnaire. Also, on June 23, 2000, petitioners submitted comments on Kanzen's June 16, 2000 Section B and C supplemental questionnaire responses. The Department issued a second supplemental questionnaire on Sections B and C on June 27, 2000. On June 30, 2000, petitioners submitted comments on Kanzen's Section D response. Also, on June 30, 2000, petitioners alleged that critical circumstances exist with respect to imports of pipe fittings from Malaysia. On July 5, 2000, the Department requested that Kanzen report monthly U.S. shipment data (including total quantity and value figures) from 1998 through May 2000. Kanzen submitted its responses to the second supplemental questionnaire on Sections B and C on July 10, 2000. On July 12, 2000, Kanzen submitted its monthly U.S. shipment data. On July 14, 2000, the Department issued a

supplemental questionnaire on Section D.

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on May 24, 2000 Kanzen requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. Kanzen also requested a two-month extension of the four-month limit on the imposition of provisional measures. Additionally, on May 30, 2000, petitioners requested that, in the event of a negative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. In accordance with Section 735(a)(2)(B) of the Act, because our preliminary determination is negative, we are granting petitioners' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. See also 19 CFR 351.210(b).

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel butt-weld pipe fittings. Certain stainless steel butt-weld pipe fittings ("pipe fittings") are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The pipe fittings subject to this investigation are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by these investigations.

This investigation does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The pipe fittings subject to this investigation are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is October 1, 1998 through September 30, 1999.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can be reasonable examined.

We examined producer-specific data accounting for total POI exports of pipe fittings from Malaysia. We identified four companies who exported pipe fittings to the U.S. during the POI. Due to constraints on our time and resources, we found it impracticable to examine all four of them. Therefore, because its export volume accounted for the vast majority of all exports from Malaysia, we selected Kanzen as the mandatory respondent. For a more detailed discussion of respondent selection in this investigation, see Respondent Selection Memorandum, dated March 1, 2000.

Fair Value Comparisons

To determine whether sales of pipe fittings from Malaysia to the United States were made at less than fair value, we compared the export price ("EP") to the normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Transactions Investigated

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales). we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Since Kanzen's aggregate volume of home market sales of the foreign like product was less than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was not viable. Therefore, we have based NV on third country (the United Kingdom) market ("foreign market") sales in the usual commercial quantities and in the ordinary course of trade, since Kanzen's aggregate volume of sales of the foreign like product in the United Kingdom were more than five percent of its aggregate volume of U.S. sales of the subject merchandise, and as such, considered viable.

B. Date of Sale

For both foreign market and U.S. transactions, Kanzen reported the date of the contract (*i.e.*, order confirmation) as the date of sale, *i.e.*, the date when price, quantity, and material specifications are finalized, because Kanzen stated that the contract confirms all major terms of sale—price, quantity, and product specification-–as agreed to by Kanzen and the customer. Because the frequency of changes in price and quantity between contract and invoice date indicate that the essential terms of sale are fixed at the contract date, the Department preliminarily determines that the contract date is the most appropriate date to use for the date of sale.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the "Scope of the Investigation" section, above, and sold in the foreign market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the foreign market to compare to U.S.

sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's March 9, 2000 questionnaire.

Export Price

Section 772(a) of the Act defines export price as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). Section 772(b) of the Act defines constructed export price as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For purposes of this investigation, Kanzen has classified its sales as EP sales.

We based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation. We based EP on CIF U.S. port prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for foreign inland freight (plant to port of exportation), brokerage and handling, credit, international freight, bank charges incurred by Kanzen, fumigation service charges, and marine insurance, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

After testing whether the foreign market sales were made at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-Constructed Value Comparison" sections of this notice.

Cost of Production ("COP") Analysis

Based on the cost allegation submitted by petitioners on May 15, 2000, and in accordance with section 773(b)(2)(A)(i) of the Act, the Department found reasonable grounds to believe or suspect that Kanzen had made sales in the foreign market at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. See Memorandum to Edward Yang, Petitioners' Allegation of Sales Below the Cost of Production for Kanzen Tetsu Sdn. Bhd., dated May 26, 2000. As a result, the Department initiated an investigation to determine whether Kanzen made foreign market sales during the POI at prices below its COP within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Kanzen's cost of materials and fabrication ("COM") for the foreign like product, plus amounts for selling, general, and administrative expenses ("SG&A"), financial expense, and packing costs. For the preliminary results, we relied on Kanzen's submitted COM without adjustment. However, we did adjust the reported general and administrative ("G&A") and financial expenses because we excluded certain offsets and expenses used to calculate the reported G&A and financial expense ratios. To calculate our revised G&A ratio, we excluded certain items from the reported numerator. In addition, we excluded packing and transportation expenses from the amount used as the denominator. To calculate each control number's (CONNUM's) G&A expense, we applied our revised G&A expense ratio to each CONNUM's reported cost of manufacturing. As for the calculation of our revised financial expense ratio, we disallowed the interest income offset that Kanzen had included in the reported numerator. In addition, we excluded packing and transportation expenses from the amount used as the denominator. To calculate each CONNUM's financial expense, we applied the revised financial expense ratio to each CONNUM's reported cost of manufacturing.

B. Test of Foreign Market Sales Prices

We compared COP to foreign market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to foreign market prices, less any applicable movement charges, discounts and rebates, and selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to POI or fiscal year average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

D. Calculation of Constructed Value ("CV")

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Kanzen's COM, SG&A, financial expense, packing and profit. As noted in the above COP section, we relied on Kanzen's submitted COM without adjustment. However, we did make adjustments to the reported G&A and financial expenses. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Kanzen in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to foreign market customers. We calculated NV based on FOB port of export prices to unaffiliated foreign market customers. We made adjustments to starting price, where appropriate, for billing adjustments. We made deductions for inland freight from the plant to the customer in accordance with section 773(a)(6)(B) of the Act and bank charges incurred by Kanzen, in accordance with section 773(a)(6)(C)(iii) of the Act. Normally, we deduct foreign market packing costs and add U.S. packing costs, in accordance with section 773(a)(6); however, in the instant case, we did not deduct foreign market packing costs nor add U.S. packing costs because Kanzen has stated that there is

no difference between its foreign market and U.S. packing costs.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a match of the foreign like product. We made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting foreign market direct selling expenses and adding U.S. direct selling expense, in accordance with section 773(a)(6)(C)(iii) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

Kanzen did not request a LOT adjustment. To ensure that no such adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and foreign markets, including the selling functions, classes of customer, and selling expenses. Kanzen stated that both U.S. and foreign market customers' products are made to order and that it did not maintain inventory. Technical advice and warranty services were not provided to either the U.S. or foreign market customers. Kanzen also stated that it did not incur any advertising expenses during the POI for its sales to the U.S. and the foreign market.

Regarding sales process, Kanzen stated that both the U.S. and foreign market customers normally solicited price quotations and available production capacity from Kanzen, via telephone or facsimile. Kanzen and the U.S. or foreign market customer then negotiated the terms of sales, after which the customer (U.S. or U.K.) would issue a purchase order to Kanzen based on the negotiated sales terms. If there were no discrepancies with the negotiated terms, Kanzen would then issue a contract, confirming the order. Kanzen did not use selling agents or pay commissions for its sales to the U.S. and foreign market. After production of the made-to-order fittings, they are shipped to the port near Kanzen's factory, loaded onto a vessel, and delivered directly to the United States or foreign market customer. At the time of shipment, Kanzen invoices both the United States and foreign market customer. Kanzen paid for freight and insurance for all its U.S. sales, while the foreign market customer paid for ocean freight and insurance. Additionally, while the foreign market customer takes title to the merchandise upon loading it onto the vessel, the U.S. customer takes title to the merchandise upon arrival at the U.S. port.

In both the U.S. and foreign market, Kanzen reported one sales channel, to unaffiliated distributors. Therefore, we preliminarily conclude that sales to unaffiliated distributors constitute one LOT in the foreign market. Further, we preliminarily conclude that because the U.S. LOT and the foreign market LOT included similar selling functions, as described above, these sales are made at the same LOT. Therefore, a LOT adjustment for Kanzen is not appropriate.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).)

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Critical Circumstances

On June 30, 2000, petitioners made a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise from Malaysia. According to section 733(e)(1) of the Act, if critical circumstances are alleged under section 733(e) of the Act, the Department must examine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of over 15 percent may be considered "massive" during the "relatively short period" described in 19 CFR 351.206(i). Section 351.206(i) of the Department's regulations defines "relatively short period" normally as the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. Because we are not aware of any antidumping order in any country on pipe fittings from Malaysia, we find that there is no reasonable basis to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. Therefore, we must look to whether there was importer knowledge under section 733(e)(1)(A)(ii) of the Act.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the pipe fittings at less than fair value, the Department's normal practice is to consider EP sales margins of 25 percent or more sufficient to impute knowledge of dumping. See Final Determination of Sales at Less Than Fair Value: Brake and Brake Rotors From the People's Republic of China, 62 FR 9160, 9164 (February 28, 1997). Since the company-specific margin for EP sales in our preliminary determination for pipe fittings is less than 25 percent for Kanzen, we have not imputed knowledge of dumping based on this margin. However, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department may look to the preliminary injury determination of the ITC. See Id. at 9164. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department normally determines that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. See Id. The ITC has found that a reasonable indication of present material injury exists in regard to Malaysia. See ITC Preliminary Determination. As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports in this case.

In determining whether there are "massive imports" over a "relatively short period," the Department ordinarily bases its analysis on import data for at least the three months preceding (the "base period") and following (the "comparison period") the filing of the petition. See 19 CFR 351.206(i). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. See 19 CFR 351.206(h). On July 12, 2000, Kanzen submitted shipment information which shows that its imports did not increase by 15 percent or more than during the comparison period (January–May, 2000) from the level of the preceding five months. See Preliminary Determination Analysis Memorandum, dated July 26, 2000 ("Analysis Memorandum"). Therefore, we do not find that critical circumstances exist for Kanzen, since it did not have massive imports nor did it have a margin high enough to impute importer knowledge of dumping.

Next, in accordance with the Department's practice, we have evaluated whether critical circumstances exist for the "all others" companies. We are unaware of any antidumping order against Malaysia on pipe fittings worldwide. Therefore, the Department must examine part (ii) of the first prong of the critical circumstances test for the "all others" companies. Since the "all others" rate in our preliminary determination for pipe fittings is less than 25 percent, we have not imputed knowledge of dumping based on this margin.

Finally, we have evaluated whether there are "massive imports" for the "all others" companies in terms of both the imports of the investigated company and country-specific import data. See Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan, 64 FR 30574, 30585 (June 8, 1999). As discussed above, an evaluation of Kanzen's shipment data did not show an increase of fifteen percent or more during the relevant comparison periods, and we therefore found that Kanzen's data provided no evidence of massive imports. In accordance with our decision in the Final Determination of Sales at Less Than Fair Value: Hot-Rolled Steel from Japan, 64 FR 24329 (May 6, 1999), we also considered U.S. customs data on overall imports from Malaysia of the products at issue. These statistics, however, include merchandise other than subject merchandise. As such, we have not relied on this data in making our "massive imports" determination for "all others." Based on our review of Kanzen's data on massive imports, we find that imports from uninvestigated exporters (*e.g.*, "all others") were also not massive during the relevant comparison periods. Therefore, the Department determines that there are no critical circumstances with regard to "all other" imports of pipe fittings from Malaysia.

Suspension of Liquidation

Since the estimated weighted-average dumping margin for the examined company is 0.59 percent and therefore is de minimis, we are directing the Customs Service not to suspend liquidation of entries of stainless steel butt-weld pipe fittings from Malaysia. These instructions not suspending liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our negative preliminary determination. If our final determination is affirmative, the ITC will determine within 75 days after the date of our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several stainless steel butt-weld pipe fittings cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: July 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19551 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–822]

Stainless Steel Plate In Coils From Italy; Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: In response to a request from Acciai Speciali Terni S.p.A. ("AST"), an Italian producer of stainless steel plate in coils, and Acciai Speciali Terni USA, Inc. ("AST USA"), collectively referred to as AST/AST USA, the Department of Commerce ("the Department") initiated an administrative review of the antidumping duty order on stainless steel plate in coils from Italy on July 7, 2000, for one manufacturer/exporter of the subject merchandise, AST/AST USA, for the period November 4, 1998 through April 30, 2000. The Department received a timely request for withdrawal on July 19, 2000, from AST/AST USA. This review has now been rescinded as a result of the withdrawal of the request for review by AST/AST USA, the only party which requested the review.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0165.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 1999).

Background

On May 31, 2000 AST/AST USA submitted a request for an administrative review of the antidumping duty order on stainless steel plate in coils from Italy pursuant to the *Notice of Opportunity to Request Administrative Review,* 65 FR 31141 (May 16, 2000).

On July 7, 2000, the Department initiated a review of the antidumping duty order on stainless steel plate in coils from Italy. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 65 FR 41942 (July 7, 2000). On July 19, 2000, AST/AST USA submitted a timely request for a withdrawal of its request for a review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1) of the Department's regulations, the Department will allow a party that requests an administrative review to withdraw such request within 90 days of the date of publication of the notice of initiation of the administrative review. Because AST/AST USA's withdrawal request was submitted within the 90-day time limit, and there were no requests for review from other interested parties, we are rescinding this review. We will issue appropriate appraisement instructions directly to the U.S. Customs Service.

This notice is in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: July 27, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–19544 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–819, A–427–811, and A–533–808]

Continuation of Antidumping Duty Orders: Stainless Steel Wire Rod From Brazil, France, and India

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Continuation of Antidumping Duty Orders: Stainless Steel Wire Rod from Brazil, France, and India.

SUMMARY: On February 3, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India, is likely to lead to continuation or recurrence of dumping (65 FR 5319; 5317; 5315).

On July 21, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 45409). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1999, the Department initiated, and the Commission instituted, sunset reviews of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India pursuant to section 751(c) of the Act (64 FR 35588 and 64 FR 35697). As a result of its reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders to be revoked. *See* Final Results of Expedited Sunset Reviews: Certain Stainless Steel Wire Rod from Brazil, France, and India, 65 FR 5319; 5317; 5315 (February 3, 2000).

On July 21, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Certain Stainless Steel Wire Rod from Brazil, France, and India, 65 FR 45409 (July 21, 2000) and USITC Pub. 3321, Investigations Nos. 731–TA–636–638 (Review) (July 2000).

Scope

Imports covered by these orders are shipments of stainless steel wire rods ("SSWR") from Brazil, France, and India. SSWR are products which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter. The SSWR subject to these reviews are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The HTSUS item numbers are provided for convenience and customs purposes only. The written product description of the scope of this order remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than July 2005.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19547 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–006R. Applicant: LDS Hospital (Intermountain Health Care), 8th Avenue & C Street, Salt Lake City, UT 84143. Instrument: Electron Microscope, Model JEM–1010. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used in support of ongoing research activities that involve three discrete ongoing projects: (a) Studies involving a large number of lung cancer trials that will include evaluation of lung cancer by electron microscopy, (b) evaluation of the sub-constituents of the vocal matrix using ultrastructural immunocytochemistry and histochemical procedures and (c) evaluation of cardiac muscle biopsies and transplant biopsies. Original notice of this resubmitted application was published in the **Federal Register** of April 6, 2000.

Docket Number: 00–016. Applicant: University of Washington, Physics Department, Physics-Astronomy Building, Box 351560, Seattle, WA 98195–1560. Instrument: Scanning Tunneling Microscope. Manufacturer: Omicron Associates, Germany. Intended Use: The instrument is intended to be used to study growth, etching and interface formation of inorganic materials, with primary emphasis on systems where at least one constituent is insulating or transparent. The materials of interest include calcium fluoride, gallium selenide, gallium-aluminum nitride, zinc oxide, silicon and water ice. The objectives of the investigations will include: (a) Developing new means to fabricate quantum nanostructure of desired morphology on insulating substrates, (b) establishing a unifying framework for growing wide band-gap material on dissimilar substrates and (c) obtaining quantifiable correlations between thermodynamic properties (heats of formation and adsorption), kinetic growth processing (islanding, nucleation), and nanostructure properties (catalytic activity, electron transport). In addition, the instrument will be used in various chemistry, physics and materials science and engineering courses to obtain data, learn how to conduct scientific research and how to interpret the results. Application accepted by Commissioner of Customs: June 22, 2000.

Docket Number: 00–017. Applicant: Lehigh University, Physics Department, 16 Memorial Drive East, Bethlehem, PA 18015. Instrument: Raman Fiber Laser. Manufacturer: Optocom Innovation, France. Intended Use: The instrument is intended to be used for further studies of stimulated Raman scattering in silica-based optical fibers. These studies will involve performing pump probe experiments, in which both a pump (the Raman converter) and a tunable signal are injected into an optical fiber. The pump energy will be transferred to the signal. The amount of energy transferred depends on the vibrational properties of the glass. By tuning the frequency difference between the pump and the sign, it is possible to probe the different vibrations in the glass, including those responsible for the Boson peak and broad band. Application accepted by Commissioner of Customs: May 30, 2000.

Docket Number: 00–018. Applicant: National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Gaithersburg, MD 20899–8371. Instrument: Auger Microprobe, Model JAMP–7830F. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for the study of metals, ceramics and glasses; semiconductor, microelectronic and optoelectronic devices; thin film samples, multi-layered materials and protective coatings, fracture surfaces diffusion couples, and failure analysis specimens; microprecipitates, microparticles and nanoparticles; analysis standards, candidates for reference materials and numerous other specimen types. The instrument will be used in investigations to: (a) Determine the thickness of surface coatings and layered material by combination of ion sputtering, Auger electron spectroscopy, multiple accelerating potential x-ray emission analysis, and ultimately

microfocusing x-ray photoelectron spectroscopy and (b) determine composition heterogeneity (both in terms of included phases and surface coatings in individual microparticles and nanoparticles). The objective of these experiments is to provide standards, standard data and standard measurement methods that strengthen the U.S. economy and improve the quality of life. Application accepted by Commissioner of Customs: June 14, 2000.

Docket Number: 00–019. Applicant: University of Illinois at Urbana-Champaign, 207 Henry Administration Building, 506 S. Wright Street, Urbana, IL 61801. Instrument: E-beam Evaporator and Flux Controller, Model EGN4. Manufacturer: Oxford Applied Research, United Kingdom. Intended Use: The instrument is intended to be used to carry out experiments with the following objectives: (a) Achieve in-depth understanding of the formation of epitaxial cobalt-silicide ($CoSi_2$) on silicon-germanium (SiGe) substrate, (b) study the interaction of cobalt atoms with silicon substrate with the presence of germanium atoms and understand the role of germanium atoms during expitaxial ($CoSi_2$) growth and (c) investigate the effect of cobalt flux and substrate temperature during cobalt evaporation on the properties of the final epitaxial ($CoSi_2$) film. Application accepted by Commissioner of Customs: June 1, 2000.

Docket Number: 00–022. Applicant: California Association for Research in Astronomy, 65–1120 Mamalahoa Highway, Kamuela, HI 96743. Instrument: (4) Outrigger Observatories. Manufacturer: Electro Optic Systems Pty Limited, Australia. Intended Use: The instrument is intended to be used to form an interferometer (a system of telescopes) which will be used to search for planets outside our solar system. Application accepted by Commissioner of Customs: July 5, 2000.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–19541 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Tulane University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 00–010. Applicant: Tulane University, New Orleans, LA 70118–5698. Instrument: Electron Microscope, Model JEM–2010. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 65 FR 34148, May 26, 2000. Order Date: December 6, 1999.

Docket Number: 00–015. Applicant: University of California, San Diego, La Jolla, CA 92093–0608. Instrument: Electron Microscope, Model JEM–3100. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 65 FR 37118, June 13, 2000. Order Date: January 12, 2000.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–19542 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Washington University; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Numbers: 00–012 and 00–014. Applicant: Washington University, St, Louis, WA 63110. Instruments: XY Shifting Tables, Model 240 with Accessories. Manufacturer: Luigs and Neuman, Germany. Intended Use: See notice at 65 FR 37117 and 37118, June 13, 2000. Advice received from: National Institutes of Health, July 3, 2000.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. Reasons: These are compatible accessories for instruments previously imported for the use of the applicant. The National Institutes of Health advises that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–19543 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Industry Sector Advisory Committee on Chemicals and Allied Products for Trade Policy Matters (ISAC 3); Request for Nominations

AGENCY: International Trade Administration, Trade Development.

ACTION: Request for nominations.

SUMMARY: The Secretary of Commerce (Commerce) and the United States Trade Representative (USTR) are seeking nominations for appointment of an environmental representative to the Industry Sector Advisory Committee on Chemicals and Allied Products for Trade Policy Matters (ISAC 3). Appointment will be effective for the charter term of this Committee, which expires March 17, 2002. In order to be considered for appointment to the Committee, a nominee must be a U.S. citizen, must have an interest in and specialized knowledge of environmental issues relevant to the work of the Committee, and may not be a registered foreign agent under the Foreign Agents Registration Act.

In order to receive full consideration, nominations for the current charter period should be received not later than August 25, 2000. Recruitment information is available on the International Trade Administration website at www.ita.doc.gov/icp.

FOR FURTHER INFORMATION CONTACT: Further inquiries may be directed to Dominic Bianchi, Acting Assistant USTR for Intergovernmental Affairs, Winder Building, Room 100, 600 17th Street, NW., Washington, DC 20230 or Tamara Underwood, Director, Industries Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 2015–B, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In section 135 of the 1974 Trade Act, as amended (19 U.S.C. 2155), Congress established a private-sector advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Section 135(a)(1) of the 1974 Trade Act directs the President to—"seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to:

(A) negotiating objectives and bargaining positions before entering into a trade agreement under [title I of the 1974 Trade Act and section 1102 of the Omnibus Trade and Competitiveness Act of 1988];

(B) the operation of any trade agreement once entered into; including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States. * * *"

Section 135(c)(2) of the 1974 Trade Act provides—

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

(A) Consult with interested private organizations; and

(B) Take into account such factors as—

(i) Patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) The character of the nontariff barriers and other distortions affecting such competition,

(iii) The necessity for reasonable limits on the number of such advisory committees,

(iv) The necessity that each committee be reasonably limited in size, and

(v) In the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

Pursuant to this provision, Commerce and USTR have established and co-chair seventeen Industry Sector Advisory Committees (ISACs) and four Industry Functional Advisory Committees (IFACs). The Committees' efforts have resulted in strengthening U.S. negotiating positions by enabling the United States to display a united front when it negotiates trade agreements with other nations. Committees meet an average of four times a year in Washington, DC. Members serve without compensation and are responsible for all expenses incurred in attending Committee meetings. For additional information regarding the functions and membership of these committees, and general qualifications for membership, *see* 64 FR 10448–10449, March 4, 1999 (Volume 64, Number 42).

On April 27, 2000, a lawsuit was brought against Commerce and USTR in the United States District Court for the Western District of Washington by a group of environmental organizations seeking environmental representation on ISAC 3. Commerce and USTR have determined not to contest this lawsuit, and now solicit nominations for qualified environmental representatives to serve on this committee.

Eligibility

Eligibility to serve as an environmental representative on ISAC 3 is limited to U.S. citizens who are not full-time employees of a governmental entity, who represent a "U.S. entity", and who are not registered with the Department of Justice under the Foreign Agents Registration Act. For purposes of the preceding sentence, a "U.S. entity" is an organization incorporated in the United States (or, if unincorporated, having its headquarters in the United States):

(1) That is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if more than 50 percent of its Board of Directors or membership is made up of non-U.S. citizens. If the nominee is to represent an organization more than 10 percent of whose Board of Directors or membership is made up of non-U.S. citizens, or non-U.S. entities, the nominee must demonstrate at the time of nomination that this non-U.S. interest does not constitute control and will not adversely affect his or her ability to serve as a trade advisor to the United States; and

(2) At least 50 percent of whose annual revenue is attributable to non-governmental, U.S. sources.

Selection Criteria

USTR and Commerce will select an environmental representative eligible for appointment to ISAC 3 based upon the following:

(1) The nominee should demonstrate personal interest in and knowledge of the formulation of environmental policies in the sector relevant to the work of the Committee, and ability to work with governmental and officials and industry representatives to reach consensus on complex environmental and trade issues affecting the relevant industry sector.

(2) Preference will be accorded nominees who also demonstrate knowledge of and familiarity with the relevant industry sector, as well as with international trade matters, including trade policy development, relevant to that sector.

The environmental representative, as a member of the Committee, will be required to have a security clearance. Members serve without compensation and are responsible for all expenses incurred in attending Committee meetings.

Application Procedures

Requests for applications should be sent to the Director of the Industry Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 2015–B, Washington, DC 20230.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C., app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: July 27, 2000.

Michael J. Copps,

Assistant Secretary for Trade Development.

[FR Doc. 00–19449 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–817]

Certain Corrosion-Resistant Carbon Steel Flat Products; Cold-Rolled Carbon Steel Flat Products; and Cut-to-Length Carbon Steel Plate Products From Germany; Final Results of Full Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Reviews: Certain Corrosion-Resistant Carbon Steel Flat Products; Cold-Rolled Carbon Steel Flat Products; and Cut-to-Length Carbon Steel Plate Products from Germany.

SUMMARY: On March 27, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset reviews of the countervailing duty orders on certain corrosion-resistant carbon steel flat products, cold-rolled carbon steel flat products, and cut-to-length carbon steel plate products (collectively the "steel products") from Germany (65 FR 16176) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. As a result of this review, the Department finds that revocation of these orders would be likely to lead to continuation or recurrence of a countervailiable subsidy.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3330, respectively.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On March 27, 2000, the Department published in the **Federal Register** a notice of preliminary results of the full sunset reviews of the countervailing duty orders on steel products from Germany pursuant to the Act. In our preliminary results, we determined that revocation of the orders would be likely to lead to continuation or recurrence of a countervailiable subsidy. In addition, we preliminarily determined that the following net countervailable subsidies are likely to prevail for respective manufactures/exporters of steel products if the orders were revoked: for corrosion-resistant carbon steel flat products, a country-wide rate of 0.54 percent ad valorem; for cold-rolled carbon steel flat products, country-wide rate of 0.55 percent ad valorem; for cut-to-length steel plate products, 1.62 percent ad valorem for Salzgitter, 0.51 percent ad valorem for TKS, and a 14.84 percent ad valorem country-wide rate (including Dillinger).

On May 19, 2000, the Government of Germany ("GOG") submitted its case brief, and the rest of the interested parties (both domestic and respondent) submitted their case briefs on May 22, 2000, within the deadline specified in 19 CFR 351.309(c)(1)(i). We also received rebuttal comments from the GOG on June 2, 2000, and from both domestic and respondent interested parties on June 5, 2000, within the deadline specified in a Department Memorandum dated May 26, 2000.[1] The Department held a hearing on June 26, 2000.

Scope of Review

The products covered by these reviews are certain corrosion-resistant carbon steel flat products, cold-rolled carbon steel flat products, and cut-to-length steel plate products from Germany.

(1) Certain corrosion-resistant carbon steel flat products: the scope of countervailing duty order of certain corrosion-resistant carbon steel flat products ("corrosion-resistant") includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in this scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been worked after rolling)—for example, products which have been bevelled or rounded at the edges. Excluded from this scope are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this scope are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this scope are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that

[1] On May 24, 2000, the domestic interested parties requested an extension of the deadline for filing rebuttal comments to respondents' case briefs. The Department extended the deadline until June 5, 2000 for all participants eligible to file rebuttal comments.

consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a "20 percent–60 percent–20 percent" ratio.

On September 22, 1999, the Department issued the final results of a changed circumstances review and revoked the order with respect to certain corrosion-resistant steel.[2]

(2) Certain cold-rolled carbon steel flat products: the scope of countervailing duty order of certain cold-rolled carbon steel flat products includes cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)— for example, products which have been bevelled or rounded at the edges. Excluded from this scope is certain shadow mask steel; *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

(3) Certain cut-to-length carbon steel plate products: the scope of countervailing duty order on certain cut-to-length carbon steel plate products ("cut-to-length steel") includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling) for example, products which have been bevelled or rounded at the edges. Excluded is grade X–70 plate.

On August 25, 1999, the Department issued the final results of a changed-circumstances review revoking the order in part, with respect to certain cut-to-length carbon steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project Specification XB MOO Y 15 0001, types 1 and 2.[3]

The HTS item numbers are provided for convenience and custom purposes. The written description remains dispositive.

ANALYSIS OF COMMENTS RECEIVED: All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 27, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of a countervailiable subsidy and the magnitude of the net subsidy likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://www.ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review: We determine that revocation of the countervailing duty orders would be likely to lead to continuation or recurrence of countervailable subsidies at the following percentage weighted-average margins:

Manufacturer/Exporters	Margin (percent)
Corrosion-resistant carbon steel flat products:	
Country-wide rate	0.54

[2] See Notice of Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Germany, 64 FR 51292 (September 22, 1999). The Department noted that the affirmative statement of no interest by petitioners, combined with the lack of comments from interested parties, is sufficient to warrant partial revocation. This partial revocation applies to certain corrosion-resistant deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140. The merchandise's chemical composition encompasses a core material of U St 23 (continuous casting) in which carbon is less than 0.08 percent; manganese is less than 0.30 percent; phosphorous is less than 0.20 percent; sulfur is less than 0.015 percent; aluminum is less than 0.01 percent; and the cladding material is a mininum of 99 percent aluminum with silicon/copper/iron of less than 1 percent. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3 percent/94 percent/3 percent to 10 percent/80 percent/10 percent.

[3] See Certain Cut-to-Length Carbon Steel Plate from Finland, Germany, and United Kingdom: Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews, and Revocation of Orders in Part, 64 FR 46343 (August 25, 1999).

Manufacturer/Exporters	Margin (percent)
Cold-rolled carbon steel flat products:	
Country-wide rate	0.55
Cut-to-length steel plate products:*	
Ilsenburg	0.80
Preussag	0.77
TKS	0.51
Country-wide (including Dillinger)	14.84

*Although Salzgitter is a successor-in-interest for both Ilsenburg and Preussag, without an appropriate review, we cannot discern the appropriate rate for the successor. Therefore, for Ilsenburg and Preussag, we are reporting the rates from the original investigation, as adjusted. The country-wide rate applies to Dillinger, and TKS is the successor-in-interests of Thyssen.

Nature of the Subsidy: The programs included in our calculation of the net countervailable subsidy likely to prevail if the orders were revoked do not fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: July 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19545 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–469–004]

Revocation of Countervailing Duty Order: Stainless Steel Wire Rod From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of countervailing duty order: stainless steel wire rod from Spain.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the United States International Trade Commission ("the Commission") determined that revocation of the countervailing duty order on stainless steel wire rod from Spain is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, 65 FR 45409 (July 21, 2000). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department of Commerce ("the Department") is revoking the countervailing duty order on stainless steel wire rod from Spain. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2) the effective date of revocation is January 1, 2000.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: For Further Information Contact: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

BACKGROUND: On July 1, 1999, the Department initiated and the Commission instituted, sunset reviews of the countervailing duty order on stainless steel wire rod from Spain, pursuant to section 751(c) of the Act. *See* 64 FR 35588 and 64 FR 35697. As a result of the review, the Department found that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. *See* Final Results of Expedited Sunset Review: Stainless Steel Wire Rod From Spain, 65 FR 6166 (February 8, 2000).

On July 21, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the countervailing duty order on stainless steel wire rod from Spain would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* 65 FR 45409 (July 21, 2000), and USITC Pub. 3321, Investigation No. 701–TA–178 (Review)(July 2000).

SCOPE: Imports covered by this order are shipments of stainless steel wire rod ("SSWR") from Spain, which includes coiled, semi-finished, hot-rolled stainless steel products of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, whether or not tempered or treated or partly manufactured, from Spain. This merchandise is currently classifiable under item numbers 7221.00.0020 and 7221.00.0040 of the Harmonized Tariff Schedule ("HTS") of the United States. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

DETERMINATION: As a result of the determination by the Commission that revocation of this countervailing duty order is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), is revoking the countervailing duty order on stainless steel wire rod from Spain. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), this revocation is effective January 1, 2000.

The Department will instruct the U.S. Customs Service to discontinue the suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative review of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: July 27, 2000.

Troy H. Cribb.

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–19546 Filed 8–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)/Joint Electronic Commerce Program Office.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Acquisition, Technology and Logistics)/Joint Electronic Commerce Program Office, announces the proposed

extension of a public information collection and seeks public comment on the provisions thereof. The Department of Defense (DoD) invites comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information shall have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through November 30, 2000. DoD proposes that OMB approve an extension of the information collection requirement, to expire 3 years after the approval date.

DATES: Consideration will be given to all comments received by October 2, 2000.

ADDRESSES: Interested parties should submit written comments and recommendations on the proposed information collection to: Joint Electronic Commerce Program Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Attention: Ms. J. Lisa Romney, Ft. Belvoir, VA, 22060–6205. E-mail comments submitted via the Internet should be addressed to: *lisa romney@hq.dla.mil.*

FOR FURTHER INFORMATION CONTACT: To request further information on the proposed information collection, please write to the above address or call Ms. J. Lisa Romney at (703) 767–6920.

Title, Associated Form, and OMB Number: Central Contractor Registration (CCR), OMB Control Number 0704–0400.

Needs and Uses: The CCR provides a single point of entry for vendors that want to do business with the DoD. As of June 1, 1998, both current and potential DoD vendors are required to register in the CCR in order to do business with the DoD if the contract solicitation occurred after May 31, 1998. Vendors are required to complete a one-time registration to provide basic information relevant to procurement and financial transactions. Vendors must update or renew their registration annually to maintain an active status. The CCR validates the vendor's information and electronically shares the secure and encrypted data with the Defense Finance and Accounting Service (DFAS) to facilitate paperless payments through electronic funds transfer (EFT). Additionally, CCR shares the data with several government procurement and electronic business systems.

Affected Public: Businesses or Other For-Profit; Not-For-Profit Institutions

Annual Burden Hours: 300,000

Number of Respondents: 300,000

Responses to Respondents: 1

Average Burden per Response: 1 hour

Frequency: On Occasion

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

In October 1993, the President issued a memorandum that mandated the Government reform its acquisition processes. Subsequently, the Federal Acquisition Streamlining Act (FASA) of 1994 was passed, requiring the establishment of a "single face to industry." To accomplish this, DoD identified a centralized, electronic registration process known as Central Contractor Registration (CCR) as the single point of entry for vendors that want to do business with the DoD. To this end, Defense Federal Acquisition Regulation Supplement (DFARS), Subpart 204.7300, requires vendors to register in the CCR to conduct business with the DoD. Prospective vendors must be registered in CCR prior to the award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–19417 Filed 8–1–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–45]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–45 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 50001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 JUL 2000
In reply refer to:
I-00/006822

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-45, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Japan for defense articles and services estimated to cost $27 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-45

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Japan**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 23 million
Other	$ 4 million
TOTAL	$ 27 million

(iii) **Description of Articles or Services Offered: Sixteen SM-2 Block III STANDARD missiles, containers, canisters, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support.**

(iv) **Military Department: Navy (AOI)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(vii) **Date Report Delivered to Congress: 10 JUL 2000**

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Japan - SM-2 Block III STANDARD Missiles

The Government of Japan has requested a possible sale of 16 SM-2 Block III STANDARD missiles, containers, canisters, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $27 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the East Asia.

Japan will use these missiles to update older or less reliable missiles currently in the Japanese Self Defense Force fleet. Japan, which already has STANDARD missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems Company of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-45

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The possible sale of STANDARD SM-2 missiles will result in the transfer of sensitive technology and information as well as classified and unclassified defense equipment and technical data. The STANDARD missile guidance section, Target Detecting Device (TDD), warhead, rocket motor, steering control section, safety and arming unit, and auto-pilot battery unit are classified Secret. Certain operating frequencies and performance characteristics are classified Secret. STANDARD missile documentation to be provided will include:

a. Parametric documents (C)
b. Missile Handling Procedures (U)
c. General Performance Data (C)
d. Firing Guidance (C)
e. Dynamics Information (C)
f. Flight Analysis Procedures (C)

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Japan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–19418 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–46].

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter of the Speaker of the House or Representatives, Transmittal 00–46 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 JUL 2000
In reply refer to:
I-00/007131

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-46, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to New Zealand for defense articles and services estimated to cost $32 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-46

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: New Zealand**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 20 million
Other	$ 12 million
TOTAL	$ 32 million

(iii) **Description of Articles or Services Offered: Twenty-four JAVELIN anti-tank missile systems (consisting of 24 JAVELIN command launch units and 164 JAVELIN missile rounds), simulators, trainers, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.**

(iv) **Military Department: Army (VJA)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(vii) **Date Report Delivered to Congress: 10 JUL 2000**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

New Zealand - JAVELIN Anti-tank Missile Systems

The Government of New Zealand has requested a possible sale for 24 JAVELIN anti-tank missile systems (consisting of 24 JAVELIN command launch units and 164 JAVELIN missile rounds), simulators, trainers, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is $32 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of New Zealand and further weapon system standardization and interoperability with U.S. forces.

New Zealand will use these JAVELIN anti-tank missile systems to enhance their anti-tank ground forces and to increase interoperability with U.S. forces. New Zealand will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be JAVELIN Joint Venture (Raytheon and Lockheed Martin) of Orlando, Florida. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team to New Zealand for a week to assist in the delivery and deployment of the missiles. Two contractor representatives will be required for two years to perform maintenance services.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-46

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vi

(vi) Sensitivity of Technology:

1. The JAVELIN anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major tactical components; a reusable Command Launch Unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in the stand-alone mode for battlefield surveillance and target detection. JAVELIN's key technical feature is the use of fire-and-forget technology which allows the gunner to fire and immediately take cover. Additional special features are the top attack and/or direct fire modes (for targets under cover), integrated day/night sight, advanced tandem warhead, imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. If the software was compromised, it could result in a loss of sensitive technology, revealing the performance capabilities of the JAVELIN Missile System. Reverse engineering of the software would require a substantial effort. While the JAVELIN system is Unclassified, Secret disclosure are required in order to employ, operate, and train on the system.

2. A determination has been made that the Government of New Zealand can provide substantially the same degree of protection for the technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification portion of the notification. Further, the sale strengthens collective security and contributes to the standardization and interoperability in the case of coalition warfare. The benefits to be derived from the sale outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 00–19419 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–47]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–47 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 JUL 2000
In reply refer to:
I-00/007897

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-47, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Thailand for defense articles and services estimated to cost $90 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-47

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Thailand**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 40 million
Other	$ 50 million
TOTAL	$ 90 million

(iii) **Description of Articles or Services Offered: Two UH-60L BLACKHAWK helicopters with T-700 engines, two spare T-700 engines, M130 chaff dispenser, Supply Support Arrangements (FMSO I/II), External Stores Support System, non-MDE guns, ammunition, 2.75 rocket pods, receivers, spare and repair parts, gun pods, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support.**

(iv) **Military Department: Army (WEC, WEE, JDG, OCW, and KZE)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See annex attached.**

(vii) **Date Report Delivered to Congress: 18 JUL 2000**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Thailand - UH-60L BLACKHAWK Helicopters

The Government of Thailand has requested a possible sale of two UH-60L BLACKHAWK helicopters with T-700 engines, two spare T-700 engines, M130 chaff dispenser, Supply Support Arrangements (FMSO I/II), External Stores Support System, non-MDE guns, ammunition, 2.75 rocket pods, receivers, spare and repair parts, gun pods, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $90 million.

The Army Department has not completed the configuration requirements for Thailand's UH-60L, e.g. the Aircraft Survivability Equipment (ASE) suite. Once the configuration design for Thailand's UH-60L are completed, such as the ASE, communication group and etc., a formal notification under the provision of 36(b)(5) will be submitted.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in South East Asia.

This procurement will upgrade its air mobility capability and provide for the defense of vital installations and close air support for ground forces. Thailand will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be United Technology, Sikorsky Aircraft of Stratford, Connecticut. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment of several U.S. Government Quality Assurance Teams to Thailand. There will be five contractor representatives for one week intervals twice annually to participate in program management and technical reviews. Additional requirement of Mobile Training Team will be determined in joint negotiations as the program proceeds through the final stages.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-47

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The UH-60L BLACKHAWK helicopter is Unclassified. The highest level of classified information required to be released for training, operation and maintenance of the BLACKHAWK is Confidential. The highest level which could be revealed through reverse engineering or testing of the end item is Confidential.

2. The UH-60L BLACKHAWK helicopter will include the following classified or sensitive components:

a. M-130 Chaff-Flare Dispenser is a multi-purpose system which dispenses decoys to confuse threat radar and missile IR seekers. Radar cross section and frequency coverage are sensitive elements. Hardware is Unclassified. Technical publications for operation and maintenance are Unclassified. Reverse engine is not a major concern.

3. A determination has been made that Thailand can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–19420 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–48]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b0(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–48 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 JUL 2000
In reply refer to:
I-00/007896

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-48, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Thailand for defense articles and services estimated to cost $78 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-48

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Thailand**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 50 million
Other	$ 28 million
TOTAL	$ 78 million

(iii) **Description of Articles or Services Offered: Three UH-60L BLACKHAWK helicopters with T-700 engines, radios, hoist, spare and repair parts, test and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support.**

(iv) **Military Department: Army (WEF and OCZ)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See attached annex.**

(vii) **Date Report Delivered to Congress: 18 JUL 2000**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Thailand - UH-60L BLACKHAWK Helicopters

The Government of Thailand has requested a possible sale of three UH-60L BLACKHAWK helicopters with T-700 engines, radios, hoist, spare and repair parts, test and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $78 million.

The Army Department has not completed the configuration requirements for Thailand's UH-60L, e.g. the Aircraft Survivability Equipment (ASE) suite. Once the configuration design for Thailand's UH-60L are completed, such as the ASE, communication group and etc., a formal notification under the provision of 36(b)(5) will be submitted.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in South East Asia.

This procurement will upgrade its air mobility capability and provide for the defense of vital installations and close air support for ground forces. Thailand will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be United Technology, Sikorsky Aircraft of Stratford, Connecticut. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment of several U.S. Government Quality Assurance Teams to Thailand. There will be five contractor representatives for one week intervals twice annually to participate in program management and technical reviews. Additional requirement of Mobile Training Team will be determined in joint negotiations as the program proceeds through the final stages.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-48

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The UH-60L BLACKHAWK helicopter is Unclassified. The highest level of classified information required to be released for training, operation and maintenance of the BLACKHAWK is Confidential. The highest level which could be revealed through reverse engineering or testing of the end item is Confidential.

2. A determination has been made that Thailand can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–19421 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–50]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–50 with attached transmittal and policy justification.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 JUL 2000
In reply refer to:
I-00/007451

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-50, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to United Kingdom for defense articles and services estimated to cost $75 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-50

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) **Prospective Purchaser: United Kingdom**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$75 million
TOTAL	$75 million

(iii) **Description of Articles or Services Offered: Logistics support for TOMAHAWK BLOCK III Land Attack Missiles (TLAM) including maintenance and repair services, spare and repair parts, software/hardware modifications, contractor technical assistance, test equipment, publications and technical documentation, and other related elements.**

(iv) **Military Department: Navy (GXQ)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None**

(vii) **Date Report Delivered to Congress: 10 JUL 2000**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

United Kingdom - Logistics Support for TOMAHAWK Block III Land Attack Missiles

The Government of United Kingdom has requested a possible sale of logistics support for TOMAHAWK BLOCK III Land Attack Missiles (TLAM) including maintenance and repair services, spare and repair parts, software/hardware modifications, contractor technical assistance, test equipment, publications and technical documentation, and other related elements. The estimated cost is $75 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by maintaining the military capabilities of United Kingdom while enhancing weapon system standardization and interoperability.

The United Kingdom needs this logistics support to maintain the operational level of its TLAM in NATO mission commitments. The United Kingdom will have no difficulty absorbing this additional logistics support in their armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The equipment and services will be provided by multiple U.S. Government and contractor representatives. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of an U.S. Government representative to United Kingdom for a period of up to five years. There may be several U.S. Government and contractor representative for one week intervals annually to participate in program review and technical assistance.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–19422 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–51]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–51 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 JUL 2000
In reply refer to:
I-00/007504

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-51, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Australia for defense articles and services estimated to cost $385 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-51

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) **Prospective Purchaser: Australia**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$375 million
Other	$ 10 million
TOTAL	$385 million

(iii) **Description of Articles or Services Offered: The F/A-18 Hornet Upgrade (HUG) Program (Phase II) will consist of 73 ALR-67(V)3 Radar Warning Receivers, 42 ALQ-165 Airborne Self-protection Jammers (ASPJ) or 42 ALQ-214(V)4 Radar Frequency (RF) Counter Measure System, 73 Joint Helmet Mounted Cueing Systems (JHMCS), 72 Multifunctional Information Distribution System (MIDS)/Low Volume Terminal (LVT), spare and repair parts, support and test equipment, maintenance and pilot training, software support, supply support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support.**

(iv) **Military Department: Navy (LAI, LAL, LAB, and LZL or LAD)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(vii) **Date Report Delivered to Congress: 10 JUL 2000**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Australia - F/A-18 Hornet Upgrade Program

The Government of Australia has requested a possible sale for the F/A-18 Hornet Upgrade (HUG) Program (Phase II). The upgrade program will consist of 73 ALR-67(V)3 Radar Warning Receivers, 42 ALQ-165 Airborne Self-protection Jammers (ASPJ) or 42 ALQ-214(V)4 Radar Frequency (RF) Counter Measure System, 73 Joint Helmet Mounted Cueing Systems (JHMCS), 72 Multifunctional Information Distribution System (MIDS)/Low Volume Terminal (LVT), spare and repair parts, support and test equipment, maintenance and pilot training, software support, supply support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support. The estimated cost is $385 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Asia Pacific region.

The HUG Phase II program upgrade enhances early warning and self-protective features bringing the F/A-18 up to capabilities found in neighboring military forces. The Royal Australian Air Force (RAAF) intends to purchase the HUG Phase II equipment to enhance survivability, communications connectivity and extend the useful life of its F-18 fighter aircraft. Australia will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Company of St. Louis, Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of several U.S. Government or contractor representatives to Australia for four months during the preparation, installation, test and checkout of the equipment.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-51

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AN/ALQ-165 Airborne Self-protection Jammer (ASPJ) is a U.S. Navy system designed to provide self-protection electronic countermeasures (ECM) capability for Navy tactical aircraft. The ASPJ provides a high degree of combat survivability in a hostile air defense environment. The ASPJ is installed internally and is capable of selectively generating a wide variety of ECM responses and directing them in order of priority against individual threat weapons systems on an "as-encountered" basis. ECM techniques and threat identification criteria are flexible to respond to new intelligence inputs via adaptive reprogramming.

2. The configuration is compatible for use in F-18 aircraft. The 7 LRU configuration consists of the following Weapons Replaceable Assemblies (WRA's): low band receiver, high band receiver, processor, low band transmitter, high band transmitter 1/2, and WRA 10/11. Each ASPJ requires an interface unit (rack) which consists of aircraft interface unit and preamplifier. The ASPJ WRA is classified as Confidential.

3. The AN/ALQ-214 Radar Frequency Counter Measure Systems (RFCMs) is an automated modular reprogrammable active radar frequency deception jammer, which provides electronic self-protection of the host tactical aircraft from a variety of air-to-air and surface-to-air radar frequency threats. It provides the same capabilities as the AN/ALQ-165 ASPJ. Additionally, the AN/ALQ-214 can provide total Countermeasures Response Management for the host aircraft. It can determine which countermeasure is best suited for a given threat.

4. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following WRA: receiver, modulator, low band transmitter, processor, and high band transmitter 2. Each RFCM requires an interface unit (rack) which consists of the aircraft interface unit and preamplifier. The RFCM WRA is classified as Confidential.

5. The AN/ALR-67(V)3 Radar Warning Receivers (RWR) is a radar-warning receiver which supersedes the AN/ALR-67E(V)2 with extended capabilities in detection and processing of air defense threat radar of the mid-1990s and beyond. It functions cooperatively with on-board suppression and defensive systems such as the High-Speed Anti-Radiation Missile (HARM), countermeasure dispensers, radio frequency jammers, and the fire control radar via data exchanged over the avionics multiplex bus and as controller of the EW multiplex bus. The ALR-67(V)3 provides an order of magnitude increase in processing power. Its data collection categories include high band pulse, high band continuous wave, low band pulse, and millimeter wave. It provides signal detection, direction finding, and identification of radar frequency and threat emitters

including scanning radar, pulse doppler and continuous wave tracking radar, acquisition and early warning radar, and missile guidance radar.

6. The configuration is compatible for use in F-18 aircraft. The configuration consists of the following WRA's: countermeasures computer/receivers, quadrant receivers, interface antenna detector, interface antenna detector bracket, radome (left/right), antenna detector, isolated antenna controller, radome, and control indicator night vision goggles modification kit. Australia may elect to use existing low band antennas already installed on aircraft or purchase low band interface antenna. The ALR-67(V)3 RWR is classified as Confidential.

7. The Multifunctional Information Distribution System (MIDS) Low Volume Terminal (LVT) is a secure data and voice communication network using the Link-16 architecture. The system provides enhanced situational awareness, positive identification of participants within the network, secure fighter-to-fighter connectivity, secure voice capability, and ARN-118 TACAN functionality. It provides three major functions: Air Control, Wide Area Surveillance, and Fighter-to-Fighter. The MIDS LVT can be used to transfer data in Air-to-Air, Air-to-Surface, and Air-to-Ground scenarios.

8. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following equipment: RT-1765 C/USQ-140(V)C MIDS/LVT and MIDS notch filter set. MIDS/LVT is classified as Confidential.

9. The Joint Helmet Mounted Cueing System (JHMCS) provides an off-boresight visual targeting of sensors and weapons with a head-out display where the pilot is looking. The system improves situational awareness in visual combat while providing off-boresight visual cueing and threat identification. Also, when combined with a high off-boresight missile, aircraft weapon system lethality is improved for short-range air-to-air engagements.

10. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following equipment: electronics unit, cockpit unit, magnetic transition unit, seat position sensor, mounting bracket, lower helmet vehicle interface, helmet display unit, visor day, visor night, visor high contrast, oxygen mask, helmet upper interface, JHMCS/ANVIS-9 Night Vision Goggles adapters. JHMCS helmet bag. The JHMCS is classified as Confidential.

11. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

12. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–19423 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–55]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–55 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 JUL 2000
In reply refer to:
I-00/007898

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-55, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and services estimated to cost $159 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-55

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Republic of Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$114 million
Other	$ 45 million
TOTAL	$159 million

(iii) Description of Articles or Services Offered: One hundred ten SM-2 Block IIIA Standard missiles, 110 Mk 13 Mod 0 canisters, containers, spare and repair parts, supply support, personnel training and training equipment, publications and technical data, contractor engineering services and other related elements of logistics support.

(iv) Military Department: Navy (AHU)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 18 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Korea - SM-2 Block IIIA Standard Missiles

The Republic of Korea has requested a possible sale of 110 SM-2 Block IIIA Standard missiles, 110 Mk 13 Mod 0 canisters, containers, spare and repair parts, supply support, personnel training and training equipment, publications and technical data, contractor engineering services and other related elements of logistics support. The estimated cost is $159 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Northeast Asia.

Korea will use these missiles as the primary defensive system aboard the KDX-II Destroyer for anti-missile ship protection. Korea will have no difficulty absorbing these missiles into its armed forces

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Systems Company of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government representatives in-country. There will be two contractor representatives for six months following the delivery of the missiles to Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-55

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The SM-2 Block IIIA Standard missile is a U.S. Navy surface-launched guided missile and classified Secret. It is operationally deployed on cruisers, destroyers, and frigates for use against air and surface threats (aircraft, missiles, and ships). The guidance system employs a continuous-wave radar link for homing to the target. Steering and roll commands from the adaptive auto-pilot system provide flight stability via four aft-mounted control surfaces. Propulsion is provided by a solid propellant, dual thrust rocket motor which is an integral part of the missile airframe. The target detecting device is a complex fuze with dual radar systems to optimize warhead lethality against a spectrum of target sizes and speeds.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–19424 Filed 8–01–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–56]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–56 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 JUL 2000
In reply refer to:
I-00/007950

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-56, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $400 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-56

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser:** Egypt

(ii) **Total Estimated Value:**

Major Defense Equipment*	$250 million
Other	$150 million
TOTAL	$400 million

(iii) **Description of Articles or Services Offered:** Upgrade of 35 AH-64A to AH-64D model Attack helicopters excluding AH-64D Longbow Fire Control Radar, 35 Target Acquisition Designation Sight/Pilot Night Vision Sensor (TADS/PNVS), two Spare Target Acquisition Designation, spare and repair parts, support equipment, publications and technical documentation, U.S. Quality Assurance Teams, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support.

(iv) **Military Department:** Army (UTN)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(vii) **Date Report Delivered to Congress:** 20 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - AH-64A to AH-64D Model Attack Helicopters

The Government of Egypt has requested a possible sale for the upgrade of 35 AH-64A to AH-64D model Attack helicopters excluding AH-64D Longbow Fire Control Radar, 35 Target Acquisition Designation Sight/Pilot Night Vision Sensor (TADS/PNVS), two Spare Target Acquisition Designation, spare and repair parts, support equipment, publications and technical documentation, U.S. Quality Assurance Teams, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $400 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt desires these articles to fulfill their strategic commitments for self-defense, with coalition support, in the region. The proposed sale will upgrade its anti-armor day/night missile capability, provide for the defense of vital installations and provide close air support for the military ground forces. Egypt, which already has APACHE helicopters in its inventory, will have no difficulty absorbing these helicopters.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be the Boeing Company of Mesa, Arizona and Lockheed Martin Electronics and Missiles of Orlando, Florida. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of several U.S. Government Quality Assurance Teams to Egypt for two weeks to assist in the delivery of deployment of the systems. There will be four U.S. Government and four contractor representatives for one week intervals twice annually to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-56
Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AH-64D APACHE Attack Helicopter includes the following classified or sensitive components:

a. The Target Acquisition and Designation Sight/Pilot Night Vision Sensor (TADS/PNVS) with Optical Improvements (OIP) system provides day, night, limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), television, and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware is Unclassified. Technical manuals for authorized maintenance levels are Unclassified. Reverse engineering is not a major concern.

b. The AN/APR-39A(V)(3) Radar Signal Detecting System provides warning of a radar directed air defense threat to permit appropriate countermeasures. Hardware is classified Confidential. Technical manuals for the maintenance levels are classified Confidential. Technical performance data is classified Secret. Reverse engineering is not a major concern.

c. AN/ALQ-162(V)(6) Radar Jammer provides radar jamming and protection against surface-to-air missiles and Airborne Intercept missiles that continuous wave (CW) radar for guidance.

d. AN/AVR-2A(V) Laser Detecting Set provides passive laser warning system which receives, processes and displays threat information resulting from aircraft illumination by lasers, on the IP-1150A indicator. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret. Reverse engineering and development of countermeasures are concerns if the hardware and releasable technical data are compromised by competent advisory, there would be a substantial technology loss/transfer.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

3. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 00–19427 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–57]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–57 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 JUL 2000
In reply refer to:
I-00/007951

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-57, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Kuwait for defense articles and services estimated to cost $150 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-57

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Kuwait

(ii) Total Estimated Value:

Major Defense Equipment*	$ 8 million
Other	$142 million
TOTAL	$150 million

(iii) Description of Articles or Services Offered: Various ammunition consisting of 4,110 M831 120mm and 10,728 M433 40mm cartridges, 15,000 M107 155mm projectiles; various caliber of standard U.S. and foreign ammunition; publications and technical documentation; contractor technical support and other related elements of logistics support.

(iv) Military Department: Army (UKL)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 20 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait - Various Ammunition

The Government of Kuwait has requested a possible sale of various ammunition consisting of 4,110 M831 120mm and 10,728 M433 40mm cartridges, 15,000 M107 155mm projectiles; various caliber of standard U.S. and foreign ammunition; publications and technical documentation; contractor technical support and other related elements of logistics support. The estimated cost is $150 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

This proposed sale will provide the required munitions for the tracked vehicles, towed artillery, and crew served weapons previously purchased. Kuwait will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

No prime or principal contractors are identified since there are multiple contractors involved in the procurement of the ammunition. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-59

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 50 million
Other	$250 million
TOTAL	$300 million

(iii) Description of Articles or Services Offered: Three hundred eleven AN/APX-113 Mark XII Airborne Identification Friend or Foe, Selective Identification Feature System, testing, aircraft integration, spares and repair parts, support equipment, personnel and maintenance training, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support.

(iv) Military Department: Air Force (DBE)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Date Report Delivered to Congress: 20 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

[FR Doc. 00–19428 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–60]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–60 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 JUL 2000
In reply refer to:
I-00/007954

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-60, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $182 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-60

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$137 million
Other	$ 45 million
TOTAL	$182 million

(iii) Description of Articles or Services Offered: Six SPS-48E Three Dimensional (3D) Land Based Radar, decoys, spare and repair parts, test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support.

(iv) Military Department: Navy (LDO)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 20 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - SPS-48E Three Dimensional Land Based Radar

The Government of Egypt (GOE) has requested a possible sale of six SPS-48E Three Dimensional (3D) Land Based Radar, decoys, spare and repair parts, test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $182 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

This radar will allow the GOE to have overlapping detection capability as well as frequency agility within their 3D radar detection capability. This will enhance their ability to detect, identify, and report on all aircraft and missiles within their area of responsibility with increased probability. This radar will provide the GOE an Air Defense Command with real time display of all air activity and is rugged to support a wide range of operations in all types of weather and terrain conditions. Egypt will have no difficulty absorbing these radar into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the ITT Gilfillan of Van Nuys, California. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of several U.S. Government and contractor representatives to Egypt for a year to assist in the installation of the systems. There will be two U.S. Government representatives for a month to assist in the delivery and resolve problems.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-60
Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The classification of the SPS-48 radar system and all associated hardware and software is Unclassified. The SPS-48E Electronic Counter-Counter Measures (ECCM) is critical technology, the ECCM is Unclassified. Threat and security concerns relative to the SPS-48E are founded solely upon the system's operational employment. There is significant anticipated consequence due to loss of this hardware technology to an advance or competent adversary.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

3. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 00–19429 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–58]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–58 with attached transmittal and policy justification.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 JUL 2000
In reply refer to:
I-00/007952

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-58 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Saudi Arabia for defense articles and services estimated to cost $475 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-58

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

Major Defense Equipment*	$350 million
Other	$125 million
TOTAL	$475 million

(iii) Description of Articles or Services Offered: Five hundred AIM-120C Advanced Medium Range Air to Air Missiles (AMRAAM), software updates to support AMRAAM operational and training devices, missile containers, LAU-128 missile launchers, Captive Air Training Missiles, spare and repair parts, publications and technical documentation, maintenance and pilot training, and other related elements of logistical and program support

(iv) Military Department: Air Force (YPY)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Date Report Delivered to Congress: 20 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia - AIM-120C Advanced Medium Range Air-to-Air Missiles

The Government of Saudi Arabia has requested a possible sale of 500 AIM-120C Advanced Medium Range Air to Air Missiles (AMRAAM), software updates to support AMRAAM operational and training devices, missile containers, LAU-128 missile launchers, Captive Air Training Missiles, spare and repair parts, publications and technical documentation, maintenance and pilot training, and other related elements of logistical and program support. The estimated cost is $475 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Saudi Arabia needs these missiles to replace their current inventory of AIM-7F missiles, which are rapidly becoming obsolete and unsupportable logistically (1960's technology), and enhance the air-to-air self defense capability of its F-15 fleet. Saudi Arabia will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Raytheon Missile Systems, Tucson, Arizona and Boeing Aircraft, St. Louis, Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–19430 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–59]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–59 with attached transmittal and policy justification.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 JUL 2000
In reply refer to:
I-00/007953

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-59 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $300 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-57

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) **Sensitivity of Technology:**

1. The M433 40mm cartridges are Unclassified; however, the terminal effect requirements and the test result evaluations are classified Confidential.. This data could be used by a technologically advanced adversary to develop countermeasures and evasive tactics

2. A determination has been made that Kuwait can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

POLICY JUSTIFICATION

Egypt - AN/APX-113 Mark XII Airborne Identification Friend or Foe, Selective Identification Feature System

The Government of Egypt has requested a possible sale of 311 AN/APX-113 Mark XII Airborne Identification Friend or Foe, Selective Identification Feature System, testing, aircraft integration, spares and repair parts, support equipment, personnel and maintenance training, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is $300 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Middle East.

Egypt will use this system to upgrade their identification capability and improve the overall air defense system within their country. The IFF system will be integrated into air, sea, and ground defense systems to provide identification of friendly aircraft within the Egyptian airspace. The system will increase interoperability with U.S. forces. Egypt will have no difficulty absorbing this system into their armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be BAE Systems, Advanced System of Greenlawn, New York and Lockheed Martin Tactical Aircraft System of Fort Worth, Texas. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–19431 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–49]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–49 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2000

In reply refer to:
I-00/007452

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-49, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Italy for defense articles and services estimated to cost $135 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-49

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: Italy

(ii) Total Estimated Value:

Major Defense Equipment*	$ 75 million
Other	$ 60 million
TOTAL	$135 million

(iii) Description of Articles or Services Offered: Fifty SM-2 Block IIIA STANDARD missiles with weapon system components, four MK 74 Mod 15 (X-band) Missile Fire Control System, containers, test sets, systems, transmitters, modification kits, spare and repair parts, support and test equipment, publications and technical documentation, training, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (LFT)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 21 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Italy - SM-2 Block IIIA STANDARD Missiles

The Government of Italy has requested a possible purchase of 50 SM-2 Block IIIA STANDARD missiles with weapon system components, four MK 74 Mod 15 (X-band) Missile Fire Control System, containers, test sets, systems, transmitters, modification kits, spare and repair parts, support and test equipment, publications and technical documentation, training, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $135 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Italy and further weapon system standardization and interoperability with U.S. forces.

Italy will use these missiles as replacements for older or less effective missiles currently in the Italian Self Defense Force fleet. Italy, which already has STANDARD missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be Raytheon Missile Systems Company of Tucson, Arizona; BAE Systems of Rockville, Maryland; Raytheon Electronic Systems of Sudbury, Massachusetts; United Defense of Minneapolis, Minnesota; and Litton Marine Systems of Charlottesville, Virginia. Typically the GOI imposes a 50% offset against U.S. contractors marketing weapons systems in Italy; however, at this time, there is no known offset agreement associated with this proposed sale.

Implementation of this proposed sale will require the assignment of four contractor representatives to Italy for four weeks to assist in the delivery and deployment of the missiles. Additionally, there will be 10 contractor representatives for one week intervals twice annually to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-49

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vi

(vi) Sensitivity of Technology:

1. The possible sale of STANDARD SM-2 missiles will result in the transfer of sensitive technology and information as well as classified and unclassified defense equipment and technical data. The STANDARD missile guidance section, Target Detecting Device (TDD), warhead, rocket motor, steering control section, safety and arming unit, and auto-pilot battery unit are classified Confidential. Certain operating frequencies and performance characteristics are classified Secret. STANDARD missile documentation to be provided will include:

a. Parametric documents (C)
b. Missile Handling Procedures (U)
c. General Performance Data (C)

2. The MK 612 Mod 4 Intermediate Maintenance Test Set is classified Secret due to the frequencies and formats contained in its software.

3. The MK 14 Weapon Direction System (WDS) is classified Confidential. The OT-134 Continuous Wave Illumination (CWI) Transmitter is unclassified, but considered sensitive. Technical documentation and publications for testing, operation and maintenance are Confidential.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that Italy can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–19432 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–52]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–52 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2000

In reply refer to:
I-00/007505

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-52 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Portugal for defense articles and services estimated to cost $100 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended by Section 1245 of H.R. 3427 enacted by P.L. 106-113 dated November 29, 1999, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-52

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Portugal

(ii) Total Estimated Value:

Major Defense Equipment*	$0 million
Other	$100 million
TOTAL	$100 million

(iii) Description of Articles or Services Offered: Twenty Mid-Life Update (MLU) modification kits for Portuguese Air Force (PAF) F-16A/B aircraft, radar, modem, receivers, installation, avionics, spare and repair parts, support equipment, training and training devices, technical assistance, publications and technical documentation, system drawings, U.S. Government and contractor engineering, and other related logistics elements necessary for full program support.

(iv) Military Department: Air Force (NMP, Amendment 2)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 21 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Portugal - F-16A/B Mid-Life Update Modification Kits

The Government of Portugal has requested a possible sale for 20 Mid-Life Update (MLU) modification kits for Portuguese Air Force (PAF) F-16A/B aircraft, radar, modem, receivers, installation, avionics, spare and repair parts, support equipment, training and training devices, technical assistance, publications and technical documentation, system drawings, U.S. Government and contractor engineering, and other related logistics elements necessary for full program support. The estimated cost is $100 million.

The MLU production phase is the continuation of the development program notified to the Congress in August 1990. This multi-national effort has included the countries of Belgium, Denmark, The Netherlands, Norway, and now Portugal who have participated with the United States Air Force in the full scale MLU engineering development and integration effort. The MLU is an avionics retrofit program for F-16 aircraft consisting of: Heads-Up Display Pilot's Display Unit, AN/APX-113 Advanced Identification Friend or Foe, Common Color Multi-Function Displays, Common Programmable Display Generator, Modular Mission Computer, Voice Message Unit, Common Data Entry Electronics Unit, Global Positioning System antennas, Interference Blanking Unit, configuration of APG-66(V)2 radar.

The proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Portugal and further weapon system standardization and interoperability with U.S. forces.

The proposed sale will enable Portugal to augment its current F-16 aircraft inventory and to develop a continuous air defense capability within its national boundaries.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Tactical Aircraft Systems of Fort Worth, Texas and Northrop-Grumman of Baltimore, Maryland. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of U.S. Government or contractor representatives to Portugal.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-52

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vi

(vi) Sensitivity of Technology:

1. The F-16 weapon system is unclassified except as noted below; however it possesses state-of-the art technology in weapon capabilities and manufacturing techniques. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters, munitions-related data, and similar critical information. If a technologically advanced adversary were to obtain knowledge of these specific hardware and software elements, it might be able to develop countermeasures or counter tactics that could reduce weapon system effectiveness.

2. The sensitive elements of the F-16 A/B Mid Life Update (MLU) configuration include the F-220(E) turbofan engine, the AN/APG-66(V)2 radar computer object code, the fly-by wire flight control system, AIM-7 and AIM-9, and AIM-120 (AMRAAM) missile capability. In addition, the MLU configuration contains cryptological equipment necessary for secure voice and data transmissions as well as the classified system, Advanced Identification Friend or Foe (AIFF). Classified elements of the F-16 also include the engine infrared signature, radar software documentation, Radar Cross Section (RCS) characteristics, signature reduction techniques, Operational Flight Program (OFP) and object code for the Fire Control Computer, Stores Management Set Computer, Multifunctional Display Computer and the Modular Mission Computer. Some operating manuals and maintenance technical orders (approximately 15) are also sensitive because they contain performance information, operating and test procedures, and other information related to support operations and repair.

3. A determination has been made that the Government of Portugal can provide substantially the same degree of protection for the technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification portion of the notification.

[FR Doc. 00–19433 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–53]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–53 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2000

In reply refer to:
I-00/007630

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-53 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Denmark for defense articles and services estimated to cost $40 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended by Section 1245 of H.R. 3427 enacted by P.L. 106-113 dated November 29, 1999, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-53

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Denmark

(ii) Total Estimated Value:

Major Defense Equipment*	$18 million
Other	$22 million
TOTAL	$40 million

(iii) Description of Articles or Services Offered: Four hundred GBU-31 Joint Direct Attack Munition (JDAM) tail kits, 120 BLU-109 Bombs, 400 Joint Programmable Fuzes, four Common Munitions Bit Reprogramming Equipment devices, three inert warheads, testing, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support.

(iv) Military Department: Air Force (YAH)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 21 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Denmark - Joint Direct Attack Munitions Tail Kits

The Government of Denmark has requested a possible purchase of 400 GBU-31 Joint Direct Attack Munition (JDAM) tail kits, 120 BLU-109 Bombs, 400 Joint Programmable Fuzes, four Common Munitions Bit Reprogramming Equipment devices, three inert warheads, testing, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support. The estimated cost is $40 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Denmark and further weapon system standardization and interoperability with U.S. forces.

Denmark will use these new munitions to upgrade and support their existing systems. This proposed sale will contribute significantly to U.S. strategic and tactical objectives by strengthening the unity and interoperability within NATO. Denmark will have no difficulty absorbing JDAM into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Company of St. Louis, Missouri. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of a U.S. Government or contractor representatives to Denmark.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-53

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The Joint Direct Attack Munition is actually a guidance kit that converts existing unguided free-fall bombs (such as MK 84 and BLU-109) into precision-guided "smart" munitions. By adding a new tail section containing an Inertial Navigation System (INS)/Global Positioning System (GPS) guidance to existing inventories of MK-84 bombs or BLU-109, the cost effective JDAM provides highly accurate weapons delivery in any "flyable" weather. The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins.

2. Weapons accuracy is dependent on target coordinates and present position inputs into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include:

Access to accurate target coordinates.
INS/GPS capability
Operational Test and Evaluation Plan.

3. The BLU-109/B is a penetrating bomb designed to penetrate 4-6 feet of concrete before detonation. The weapon is made of extremely hard steel casing material, with the shape optimized for penetration. It is Unclassified.

4. A determination has been made that the Government of Denmark can provide substantially the same degree of protection for the technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification portion of the notification.

[FR Doc. 00–19434 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–54]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–54 with attached transmittal, policy justification, Sensitivity of Technology, and Section 620C(d) of the Foreign Assistance Act of 1961.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2000

In reply refer to:
I-00/007810

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-54 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Turkey for defense articles and services estimated to cost $250 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-54

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: Turkey

(ii) Total Estimated Value:

Major Defense Equipment*	$ 16 million
Other	$234 million
TOTAL	$250 million

(iii) Description of Articles or Services Offered: Seven HAWK missiles, eight AN/MPQ-64 SENTINEL radar, support equipment, spare and repair parts, publications and technical data, personnel training and training equipment, U. S. Government Quality Assurance Teams and other related elements of logistics support.

(iv) Military Department: Army (JBB and VAL)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 21 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Turkey - HAWK Missiles with SENTINEL Radars

The Government of Turkey has requested a possible sale for seven HAWK missiles, eight AN/MPQ-64 SENTINEL radar, support equipment, spare and repair parts, publications and technical data, personnel training and training equipment, U. S. Government Quality Assurance Teams and other related elements of logistics support. The estimated cost is $250 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by maintaining the military capabilities of Turkey while enhancing weapon system standardization and interoperability.

Turkey will use these HAWK missiles to augment their inventory and maintain an air defense capability. The missiles will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Company of Andover, Massachusetts. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of five U.S. Government representatives for five years to support this program. There will be nine U.S. Government or contractor representatives for two weeks, twice annually, to participate in program management and technical reviews. Additionally, two contractor representatives will be required to Turkey for two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-54

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The HAWK missile system contains more than 500 components which are Classified as well as components that are sensitive but not classified. These items are so identified to protect the system from being defeated by exploiting specific system characteristics. Technology which must be protected is in the missile, radars, and control elements of the system. Continuous wave low noise Radio Frequency technology has been unique to HAWK for many years. The techniques for isolation of transmitter and receiver elements are difficult and sensitive.

2. The AN/MPQ-64 SENTINEL radar is a new generation, I/J-band, 3-Deminsional radar for the U.S. Army Forward Area Air Defense System (FAADS). It is used to generate track data to inform FAADS weapons of the location of targets approaching their front-line forces. Based on the TPQ-36A radar, the AN/MPQ-64 is the key to air surveillance and provides target acquisition/tracking information for division and corps weapons. The export version of SENTINEL radar hardware and software is Unclassified individually. The system classification is Confidential when software is loaded into the hardware.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Turkey can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Certification Under § 620C(d) Of The Foreign Assistance Act of 1961, As Amended

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (Sec. 1-201(a)(13)) and the Secretary of State's memorandum of December 15, 1997, I hereby certify that the furnishing to Turkey seven HAWK, eight AN/MPQ SENTINEL radars, support equipment, spare and repair parts, publications and technical data, personnel training and training equipment, U.S. Government Qualilty Assurance Teams and other related elements of logistics support with a value of $250 million is consistent with the principles contained in § 620C(b) of the Act.

This certification will be made part of the notification to Congress under § 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John D. Holum
Senior Adviser
for Arms Control and
International Security

[FR Doc. 00–19435 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–61]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–61 with attached transmittal and policy justification.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2000

In reply refer to:
I-00/007631

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-61, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Poland for defense articles and services estimated to cost $85 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
DEPUTY DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-61

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) **Prospective Purchaser:** Poland

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 2 million
Other	$83 million
TOTAL	$85 million

(iii) **Description of Articles or Services Offered:** Two SH-2G spare helicopter engines, aircraft activation, personnel training and training equipment, spare and repair parts, support equipment, facilities, calibration services, publications and technical documentation, supply support, U.S. Government and contractor technical and logistics personnel services and other related program elements to sustain the operational requirements of the excess helicopters.

(iv) **Military Department:** Navy (SAE)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** None

(vii) **Date Report Delivered to Congress:** 21 JUL 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Poland - SH-2G Spare Engines, Services and Logistics Support

The Government of Poland has requested a possible sale for two SH-2G spare helicopter engines, aircraft activation, personnel training and training equipment, spare and repair parts, support equipment, facilities, calibration services, publications and technical documentation, supply support, U.S. Government and contractor technical and logistics personnel services and other related program elements to sustain the operational requirements of the excess helicopters. The estimated cost is $85 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Poland and further weapon system standardization and interoperability with U.S. forces.

Poland will use the spare engines on their excess SH-2G helicopters and supporting ASW helicopters to modernize its defensive naval capabilities. Poland will have no difficulty absorbing these engines into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Kaman Corporation of Bloomfield, Connecticut. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of a U.S. Government or contractor representatives to Poland.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–19436 Filed 8–1–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:00 a.m. to 5:00 p.m. on September 7, 2000, and from 8:00 a.m. to 5:00 p.m. on September 8, 2000. The meeting will be held at The Inn at Newport Beach, Memorial Boulevard, Newport, Rhode Island. The purpose of the meeting is to review planned changes and progress in developing paper-and-pencil and computerized enlistment tests and renorming of the tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than August 18, 2000.

Dated: July 27, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–19416 Filed 8–1–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Date of Meeting: September 13, 2000 from 0830 to 1705, September 14, 2000 from 0830 to 1630, and September 15, 2000 from 0830 to 1115.

Place: Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, VA 22203.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

Dated: July 26, 2000.

C.M. Robinson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–19438 Filed 8–1–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Fourth Supplemental Record of Decision (FSROD) for the Disposal and Reuse of Grissom Air Force Base (AFB), Indiana

On July 14, 2000, the Air Force issued the Fourth Supplemental Record of Decision (FSROD) for the Disposal and Reuse of Grissom AFB, Indiana. The decision included in this FSROD has been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) for the disposal and reuse of Grissom AFB, filed with the Environmental Protection Agency and made available to the public on September 6, 1994.

Grissom AFB closed on September 30, 1994, pursuant to the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note) and the recommendations of the Defense Base Closure and Realignment Commission. The FEIS analyzed potential environmental impacts of the Air Force's disposal options by portraying a variety of potential land uses to cover a range of reasonably foreseeable future uses of the property and facilities by others.

The Air Force issued a ROD on October 11, 1994 and Supplemental RODs on June 30, 1997, April 14, 1998, and August 13, 1999, that documented decisions regarding the intended disposal of Government-owned property at the base. Since the issuance of the ROD and the Supplemental RODs, changing governmental priorities and economic situations have required a modification to the following Air Force disposal decisions: Parcel 01 (Electrical Distribution System, including approximately 1 acre of land) and 06 (Gas Distribution System) are made available for disposal by Economic Disposal Conveyance (EDC) rather than negotiated sale to utility companies.

The implementation of these conversion activities and associated environmental mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and the environment. The analyses contained in the FEIS are still valid. Any questions regarding this matter may be directed to Mr. John J. Corradetti, Jr., Program Manager, Division A, at 703–696–5250. Correspondence should be sent to AFBCA/DA, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–19439 Filed 8–1–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1986]

Oregon Trail Electric Consumers Cooperative Inc.; Notice Soliciting Applications

July 27, 2000.

On July 1, 1991, Oregon Trail Electric Consumers Inc., licensee for the rock Creek Hydroelectric Project No. 1986, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act). The original license for Project No. 1986 was issued effective June 30, 1946, and expired June 29, 1996. The project occupies 6.29 acres of land of the United States within the Whitman National Forest.

The project is located on the Rock Creek, a tributary of the Powder River, in Baker County, Oregon. The principal project works consist of: (a) low concrete diversion dam; (b) an8,800-foot-long flume; (c) a regulating forebay of about 7 acre-feet; (d) a 2,720-foot-long penstock; (e) a powerhouse with a total installed capacity of 800 kW; (f) a transmission line; and (g) appurtenant facilities.

The licensee did not file an application for new license which was due by June 29, 1994. Pursuant to section 16.25 of the Commission's Regulations, the Commission solicited applications from potential applicants other than the existing licensee. On June 19, 1995, a prospective applicant

responded to the notice soliciting applications. The Commission accepted the notice of intent to file a license application and has been waiting since June 19, 1995, for an adequate application. However to date this has not happened. Therefore, the Commission is again soliciting applications for the Rock Creek Project.

Pursuant to section 16.19 of the Commission's Regulations, the licensee is required to make available certain information described in Section 16.7 of the regulations. Such information is available from the licensee at 3275 Baker Street, Baker City, OR 97814.

A potential applicant that files a notice of intent within 90 days from the date of issuance of this notice: (1) may apply for a license under part 1 of the Act and part 4 (except section 4.38) of the Commission's Regulations within 18 months of the date on which it files its notice; and (2) must comply with the requirements of section 16.8 of the Commission's Regulations.

David P. Boergers,

Secretary.

[FR Doc. 00–19455 Filed 8–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–407–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

July 27, 2000.

Take notice that on July 19, 2000, Southern Natural Gas Company (Southern), 1900 5th Avenue North, Birmingham, Alabama 35203, filed in Docket No. CP00–407–000 a request pursuant to Section 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR sections 157.205 and 157.216) and Southern's blanket certificate authorization granted in Docket No. CP82–406–000 requests authorization to abandon certain facilities as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm*. Call (202) 208–2222 for assistance.

Specifically, Southern requests authorization to abandon by sale to Mississippi Valley Gas Company (MVGC): (1) The Clayton Village Meter Station in Oktibbeha County, Mississippi; and (2) the Starkville Meter Station in Oktibbeha County, Mississippi. Southern states that it will abandon these delivery points under section 157.216(b)(1). Southern also states that it will abandon by sale to MVGC: (a) Approximately 10 miles of the 6-inch Starkville Lateral in Lowndes and Oktibbeha Counties, Mississippi; and (b) the Starkville Tap Regulator Station which consists of two 3-inch regulators and a relief value and is located in Lowndes County, Mississippi, under the automatic authorization of section 157.216(a)(2). In addition, Southern also states that it will make such modifications as deemed necessary to effect delivery to MVGC's system after the purchase and sale of the Facilities. Specifically, Southern indicates that it will construct, install and operate a six-inch tap in Lowndes County, Mississippi. Southern has also indicated that it will construct, install and operate the tap as a delivery point facility under section 157.211(a) of the Commission's Regulations pursuant to its blanket certificate of public convenience and necessity. Southern states that MVGC will construct and own a new delivery station consisting of one six-inch and one four-inch meter run, one regulator station and appurtenant facilities, at its property located at Southern's tap.

Any person or the Commission's Staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 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 therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 00–19457 Filed 8–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–157–000, et al.]

Kiowa Power Partners, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

July 26, 2000.

Take notice that the following filings have been made with the Commission.

1. Kiowa Power Partners, L.L.C.

[Docket No. EG00–157–000]

Take notice that on July 13, 2000, Kiowa Power Partners, L.L.C. (the Applicant) whose address is 359 Lake Park Road, Suite 128, Lewisville, Texas 75057, filed with the Federal Energy Regulatory Commission, an amendment to its application for determination of exempt wholesale generator status submitted in the above-referenced proceeding.

Comment date: August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Duquesne Light Company

[Docket No. ER00–2571–001]

Take notice that on July 20, 2000, Duquesne Light Company (Duquesne) tendered for filing an Attachment A to an amended long-term service agreement between Duquesne and Orion Power Midwest, L.P. filed at the Commission on July 14, 2000. Duquesne reports that Attachment A was inadvertently omitted from the July 14th filing.

Comment date: August 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Energy Vermillion, LLC

[Docket No. ER00–2873–001]

Take notice that on July 21, 2000, Duke Energy Vermillion, LLC (Duke Vermillion) submitted for filing a response to the Staff's deficiency letter issued in this docket on June 22, 2000.

Duke Vermillion reiterates its request for an effective date of May 15, 2000, for its Service Agreement No. 1 under FERC Electric Tariff, Original Volume No. 1 with Duke Energy Trenton, LLC and Cincap VIII.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Energy Madison, LLC

[Docket No. ER00–2874–001]

Take notice that on July 21, 2000, Duke Energy Madison, LLC (Duke Madison) submitted for filing a response

to the Staff's deficiency letter issued in this docket on June 22, 2000.

Duke Madison reiterates its request for an effective date of May 29, 2000, for its Service Agreement No. 1 under FERC Electric Tariff, Original Volume No. 1 with Duke Energy Trenton, LLC and Cincap VIII.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Green Valley Hydro, LLC

[Docket No. ER00–2924–001]

Take notice that on July 21, 2000, Green Valley Hydro, LLC (Green Valley) filed an amendment to its application for a market rate tariff of general applicability under which it proposes to sell capacity and energy at market-based rates all as more fully described in the application.

Green Valley requests an effective date no later than July 24, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Rayburn Country Electric Cooperative, Inc.

[Docket No. ES00–49–000]

Take notice that on July 19, 2000, Rayburn Country Electric Cooperative, Inc. (Rayburn) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to borrow not more than $25 million under a Letter of Credit.

Rayburn also requests a waiver from the Commission's competitive bidding and negotiated placement requirements in 18 CFR 34.2.

Comment date: August 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER00–3004–001]

Take notice that on July 20, 2000, Virginia Electric and Power Company (Virginia Power or the Company), tendered an amended filing containing the executed versions of the following agreements with Sempra Energy Trading Corporation (Transmission Customer).

1. Second Amended Service Agreement for Firm Point-to-Point Transmission Service designated Second Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, First Revised Volume No. 5;

2. Second Amended Service Agreement for Non-Firm Point-to-Point Transmission Service designated Second Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Original Volume No. 5.

The amended filing was made to replace and supercede unexecuted versions of the agreements with the executed versions. The Company requests an effective date of June 1, 2000, the date service was first provided to the customer under the amended agreements.

Copies of the filing were served upon Sempra Energy Trading Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–3234–000]

Take notice that on July 21, 2000, Alliant Energy Corporate Services, Inc., tendered for filing an executed Service Agreement for Short-Term Firm Point-to-Point transmission service, establishing Central Minnesota Municipal Power Agency as a Short-Term Point-to-Point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of April 17, 2000 and accordingly seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER00–3235–000]

Take notice that on July 21, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Network Service Agreement, Network Operating Agreement, and Specifications for Network Integration Transmission Service under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and the City of Lebanon.

An Application for Network Integration Service for the City of Lebanon, Ohio has been included as an Exhibit to the Service Agreement under the OATT.

Copies of the filing were served upon the City of Lebanon, Ohio.

Cinergy and the City of Lebanon are requesting an effective date of July 1, 2000.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–3236–000]

Take notice that on July 21, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Energy and EnerZ Corporation, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 78.

GPU Energy requests that cancellation be effective September 18, 2000.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER00–3237–000]

Take notice that on July 21, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and FPL Energy Power Marketing, Inc.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Duquesne Light Company

[Docket No. ER00–3238–000]

Take notice that on July 21, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated July 20, 2000 with Cinergy Operating Companies under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Cinergy Operating Companies as a customer under the Tariff.

DLC requests an effective date of July 20, 2000, for the Service Agreement.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. **FirstEnergy Operating Companies**

[Docket No. ER00–3239–000]

Take notice that on July 21, 2000, Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (collectively, the FirstEnergy Operating Companies), tendered for filing a Generating Interconnection and Operating Agreement with Mid-Atlantic Energy Development Company (Mid-Atlantic) (the Interconnection Agreement).

The FirstEnergy Operating Companies state that Mid-Atlantic is installing three generating units with a total capacity of 390 MW at the site of the Richland peaking plant of Toledo Edison in Defiance, Ohio. The FirstEnergy Operating Companies further state that the Interconnection Agreement establishes the terms and conditions under which the generating units being installed by Mid-Atlantic will be permitted to interconnect and operate in parallel with the existing FirstEnergy Operating Companies' electric system.

The FirstEnergy Operating Companies are proposing to make the Interconnection Agreement effective as of July 22, 2000.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–19454 Filed 8–1–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visits and Soliciting Scoping Comments

July 27, 2000.

Take notice that the Commission intends to hold scoping meetings for the following hydroelectric applications which have been filed with the Commission:

a. *Type of Applications:* Two Original Major Licenses.

b. *Project Nos.:* 10461–002 and 10462–002.

c. *Date filed:* May 31, 1990.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Parishville Project and Allens Falls Project.

f. *Location:* On the West Branch of the St. Regis River, near the village of Parishville, St. Lawrence County, New York. The projects would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC § 791 (a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Erie Boulevard Hydropower, L.P., Suite 201, 225 Greenfield Parkway, Liverpool, NY 13088–6656, (315) 413–2700.

i. *FERC Contact:* Peter Leitzke, (202) 219–2803.

j. *Deadline for filing scoping comments:* September 18, 2000.

All documents (original and eight copies should be filed with: David P. Boergers. Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* The applications are not ready for environmental analysis at this time..

l. *Description of Projects:*

Parishville Project: The project consists of the following existing facilities: (1) a dam composed of an earthen dike and various concrete structures; (2) an intake structure; (3) a penstock 2,561 feet long and six to 10 feet in diameter; (4) a powerhouse housing a 2,400-kilowatt (kW) hydropower unit; (5) at tailrace 400 feet long; (6) a 4.8-kilovolt (kV) transmission line; and (7) appurtenant facilities.

Allens Falls Project: The project consists of the following existing facilities: (1) a concrete gravity type dam with flashboard two feet high; (2) an intake structure; (3) a pipeline 9,344 feet long and seven feet in diameter; (4) a differential surge tank; (5) a penstock 886 feet long and seven feet in diameter; (6) a powerhouse housing a 4,400-kW hydropower unit; (7) a tailrace 450 feet long; (8) a 115-kV transmission line; and (9) appurtenant facilities.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Scoping Process.

The Commission staff intends to prepare a Multiple Project Environmental Assessment (MPEA) for the Parishville Project (FERC No. 10461–002) and the Allens Falls Project (FERC No. 10462–002). The staff believes that combining both the projects into one environmental document would provide the best approach for analyzing potential cumulative environmental effects associated with both projects located relatively close to one another on the West Branch of the St. Regis River.

Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to identify the scope of issues to be addressed in the MPEA.

The evening scoping meeting is primarily for public input, while the daytime scoping meeting will focus on resource agency concerns. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the MPEA. The times and locations of these meetings are as follows:

Evening Meeting

Date: August 16, 2000
Time: 7 p.m.–10 p.m.
Place: Auditorium
Parishville-Hopkinton Central School
12 County Route 47
Parishville, NY 13762

Daytime Meeting

Date: August 17, 2000

Time: 9 a.m.–12:00 p.m.

Place: High School Library

Parishville-Hopkinton Central School

12 County Route 47

Parishville, NY 13762

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the MPEA to the parties on the Commission's mailing lists. Copies of the SD1 will also be available at the scoping meetings.

Site Visits

The Applicant and Commission staff will conduct a site to the projects on Wednesday, August 16, 2000, starting at 10 a.m. We will meet at the Parishville Project dam on Route 72 in Parishville. Those who wish to attend the site visit should contact Peter Leitzke of FERC at (202) 219–2803 or Jerry Sabattis of Erie Boulevard Hydropoer, L.P., at (315) 413–2700 on or before August 11, 2000.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the MPEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the MPEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the MPEA; (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis; and (6) identify how the projects contribute to cumulative impacts in each project area and the West Branch of the St. Regis River Basin.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding for these projects. Individuals presenting statements at the meetings will be asked to sign in before the meetings start and to identify themselves clearly for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in this MPEA.

David P. Boergers,

Secretary.

[FR Doc. 00–19456 Filed 8–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License, and Soliciting Comments, Motions To Intervene, and Protests

July 27, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Proposal to divert water released from Fairview Dam during concrete repairs.

b. *Project No.:* 2290–042.

c. *Date Filed:* June 27, 2000.

d. *Applicant:* Southern California Edison.

e. *Name of Project:* Kern River No. 3 Hydroelectric Project.

f. *Location:* The Project is located on the North Fork Kern River, Salmon and Corral Creeks in Tulare and Kern Counties, California.The project utilizes federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Mike Cruz, Southern California Edison, 300 N. Lone Hill Avenue, San Dimas, CA 91773. Tel. (909) 394–8694.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. John K. Novak at (202) 219–2828 or by e-mail at *John.novak@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* August 22, 2000.

Please include project number (P–2290–042) on any comments or motions filed.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Filing:* Southern California Edison (Edison) filed plans and specifications for resurfacing the Fairview Dam to repair spalled concrete and seal the surface with a protective waterproof coating. In order to conduct this work in dry conditions, Edison will divert the minimum flow released from the dam to a point about 200 feet downstream of the dam. Edison proposes to start activities in late August 2000 and expects to take about 8–10 weeks. The Fairview dam is listed on the National Register of Historic Places.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–19458 Filed 8–1–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00667; FRL–6594–3]

Data Acquisition for Registration; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): "Data Acquisition for Registration (EPA ICR No. 1503.03, OMB No. 2070–0122)." This is a request to renew an existing ICR that is currently approved and due to expire December 31, 2000. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00667, must be received on or before October 2, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00667 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: vogel.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide registrant with a product registered under section 3 or section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Potentially affected categories and entities may include, but are not limited to:

Category	NAICS codes	SIC codes	Examples of potentially affected entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide registrants

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes and the Standard Industrial Classification (SIC) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 6082 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPP–00667. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00667 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through

Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00667. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Data Acquisition for Registration

ICR numbers: EPA ICR No. 1503.03, OMB No. 2070–0122

ICR status: This a renewal of an existing ICR that is currently approved by OMB and is due to expire December 31, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is subject to the approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136) requires the EPA to register pesticides prior to distribution and sale within the United States. FIFRA also requires applicants for pesticide registration to provide EPA with the data needed to assess whether the registration of a pesticide would cause unreasonable adverse effects on human health or the environment, and grants EPA the authority to require registrants to provide additional data to maintain an existing registration.

Sometimes additional data are necessary for the Agency's Office of Pesticide Programs (OPP) to evaluate whether a current registration should be maintained. One common trigger for the requirement of additional data is the EPA's program to reduce the use of pesticide inert ingredients of toxicological concern, which may lead to additional data needed to support continued use of these ingredients in registered pesticides. When the need for additional data arises, OPP issues to affected registrants a Data Call-In notice (DCI) under the authority of FIFRA section 3(c)(2)(B). In addition, data supporting pesticide inert ingredients may be called-in based on OPP's policy statement on inert ingredients in pesticide products (52 FR 13305, April 22, 1987, and November 22, 1989, 54 FR 48314).

Registrants of products containing inert ingredients of toxicological concern (List 1, chemicals for which data already exist that demonstrate a defined toxicological effect) will be subject to a DCI. Since these inert ingredients have demonstrated certain toxic effects, OPP requires the submission of data equivalent to 40 CFR part 158 data requirements for active ingredients. The full complement of 40 CFR part 158 data requirements includes the submission of all applicable studies in the areas of product chemistry, residue chemistry, environmental fate, toxicology, wildlife and aquatic organisms, plant protection, and nontarget insects.

List 2 inert ingredients, which are potentially toxic may be subject to a lesser set of data. In these cases, after review of available studies, the data that will be required to be submitted will focus on the effects of concern that led to listing on List 2. The results of this testing will determine whether to elevate the inert ingredient to List 1.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time

needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden is estimated to be 91,196 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Nine

Frequency of response: Once annually

Estimated total/average number of responses for each respondent: One

Estimated total annual burden hours: 91,196

Estimated total annual burden costs: $7,571,569

VI. Are There Changes in the Estimates from the Last Approval?

The total annual burden hours and cost estimated for respondents have decreased from 208.132 to 91,196 due to a decrease in number of respondents and the associated cost from $16,011,809 to $7,571,569. While there was an increase in the number of responses from 5 to 6 for List 2 inert ingredients, the number of respondents for special studies decreased from 23 to respondents to one. Meeting the new FQPA standard has increased the burden hours for additional studies by 9%. Cost increases occurred in the estimated hourly rates for management, technical, and clerical reflect more current values from $114.2 to $123, $76.91 to $83, and from $34.96 to $38 respectively.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

Environmental protection, Reporting and recordkeeping requirements, Inert ingredients.

Dated: July 18, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–19348 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6843–8]

Agency Information Collection Activities Up for Renewal; Request for Comments: Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB); Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (OMB) #2060–0060, approved through 8/31/00). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the collections as described below.

DATES: Comments must be submitted on or before October 2, 2000.

ADDRESSES: Comments must be submitted to Chestine Payton, (6405J) U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Interested persons may request a copy of the ICR without charge, by calling Chestine Payton at (202) 564–9328.

FOR FURTHER INFORMATION CONTACT: Chestine Payton, Office of Transportation and Air Quality, Vehicle Programs and Compliance Division, (202) 564–9328, fax (202) 565–2057. E-mail address: *payton.chestine@epa.gov.*

SUPPLEMENTARY INFORMATION: Affected entities: Parties potentially affected by this action are those which automotive manufacturers and builders of automotive aftermarket parts.

Title: Emission Control Systems Performance Warranty Regulations & Voluntary Aftermarket Part Certification Program, OMB 32060–0060, Expiration date 8/31/00.

Abstract: The information required is the minimal necessary to ensure that the part to be certified actually performs as required. Without this information EPA would have no way to control and audit fraudulent or marginal submissions. Since information is only collected when the part is tested to be certified, if no information is collected at the time of testing there will be no means of showing later that the part was properly designed, EPA would not be able to control the self-certification of parts and this could, therefore, result in certified parts that cause vehicles to fail emissions standards.

The information collected is part of the requirement of Section 207(a) of the Clean Air Act, as described in section 40 CFR Part 85, Subpart V. This is a voluntary certification program and there is no requirement that any manufacturer participate.

The total estimated involvement of the aftermarket part industry 9 replacement and specialty parts) is 2 parts per year.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA's burden estimated for this information collection is broken down into three parts: reporting, testing and recordkeeping burden. EPA estimates that the reporting burden will be 116 hours, testing 260 hours and annual recordkeeping 3 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information;

adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Parties potentially affected by this action are automotive manufacturers and builders of automotive aftermarket parts;

Estimated Number of Respondents: 2.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 1,722 hours.

Estimated Total Annualized Cost Burden: $75,889.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following address. Please refer to EPA ICR No. 0116.05 and OMB Control No. 2060–0060 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: July 27, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–19539 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34233; FRL–6598–3]

Pesticides; Availability of Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of risk assessments that were developed as part of the EPA's process for making Reregistration Eligibility Decisions (REDs) for pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These risk assessments are the human health and ecological risk assessments and related documents for propargite. These risk assessments are being released to the public as part of the joint initiative between EPA and the Department of Agriculture (USDA) to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply.

DATES: The risk assessments and related documents are available in the OPP Docket. While there is no formal public comment period, the Agency will accept comments on the risk assessment documents. Comments submitted within the first 30 days are most likely to be considered.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit II. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number of the chemical of specific interest in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for propargite, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register** Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the pesticide risk assessments released to the public may also be accessed at http: www.epa.gov/pesticides.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34233. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number for the specific chemical of interest in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information

Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number of the chemical of specific interest. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

III. What Action is the Agency Taking?

EPA is making available to the public the risk assessments that have been developed as part of EPA's process for tolerance reassessment and reregistration. While there is no formal public comment period, the Agency will accept comments on the risk assessment documents. Comments submitted within the first 30 days are most likely to be considered. REDs for pesticides developed under the interim process will be made available for public comment.

EPA and USDA have been using a pilot public participation process for the assessment of organophosphate pesticides since August 1998. In considering how to accomplish the movement from the current pilot being used for the organophosphate pesticides to the public participation process that will be used in the future for non-organophosphates, such as propargite, EPA and USDA have adopted an interim public participation process for the non-organophosphate pesticides scheduled for tolerance reassessment and reregistration in 2000. The interim public participation process ensures public access to the Agency's risk assessments while also allowing EPA to meet its reregistration commitments. The interim public participation process for the non-organophosphate pesticides scheduled for tolerance reassessment and reregistration in 2000 and 2001 takes into account that the risk assessment development work on these pesticides is substantially complete. The interim public participation process involves: A registrant error correction period; a period for the Agency to respond to the registrant's error comments; the release of the refined risk assessments and risk characterizations to the public via the docket and EPA's internet website; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management document (i.e., RED) after the consideration of issues and discussions with stakeholders. USDA plans to hold meetings and conference calls with the public (i.e., interested stakeholders such as growers, USDA Cooperative Extension Offices, commodity groups, and other Federal government agencies) to discuss any identified risks and solicit input on risk management strategies. EPA will participate in USDA's meetings and conference calls with the public. This feedback will be used to complete the risk management decisions and the RED. EPA plans to conduct a close-out conference call with interested stakeholders to describe the regulatory decisions presented in the RED. REDs for pesticides developed under the interim process will be made available for public comment.

Included in the public version of the official record is the Agency's risk assessments and related documents for propargite. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the pesticides listed in this notice. These risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 27, 2000.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–19511 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66278; FRL–6736–7]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by, January 29, 2001, orders will be issued canceling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the "FOR FURTHER INFORMATION CONTACT."

B. How can I get additional information or copies of support documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

2. *In person.* Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall 2, Rm. 224, Arlington, VA, telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday thru Friday, excluding legal holidays.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel some 55 pesticide products registered under section 3 or 24 of FIFRA. These registrations are listed in sequence by registration number (or company number and 24 number) in the following Table 1.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000239–02483	Ortho Methoxychlor 70 Dust Base	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
000264–00512	Chlorinated Trisodium Phosphate	Chlorinated trisodium phosphate
000577–00546	Cuprinol Stain & Wood Preservative	Tetrachloroisophthalonitrile
		Bis(tributyltin) oxide
000787–00042	Mothine Mothprofing	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
000787–00043	Pro-Tec II Moth Proofing	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
001448–00030	Busan 25	2-(Thiocyanomethylthio)benzothiazole
		S-(2-Hydroxypropyl) thiomethanesulfonate
001448–00078	Busan 1005	*S*-(2-Hydroxypropyl) thiomethanesulfonate
001448–00090	Busan 1023	*S*-(2-Hydroxypropyl) thiomethanesulfonate
		Poly(oxyethylene(dimethy- liminio)ethylene(dimethyliminio) ethylene dichloride)
002217–00129	50% Methoxychlor Wettable Powder	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
002217–00131	Methoxychlor Emulsion Concentrate	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
002217–00527	Methoxychlor Tree Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
002217–00628	Methoxychlor 75 Dust Base	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
002935–00385	Methoxychlor 2 Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
002935 WA–92–0037	Busan 1020	Sodium *N*-methyldithiocarbamate
002935 WA–93–0016	Wilbur-Ellis Diazinon 4 Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
003125 ND–93–0006	Sencor Solupak 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 WA–97–0004	Sencor Solupak 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
004691–00096	Horse Spray & Rub-On	Butoxypolypropylene glycol
		Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
004708–00029	U-San-O Mothproofing Solution	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
005905–00239	Diazinon Methoxychlor Insecticide	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
006836–00262	Isocil OG 1.5	5-Chloro-2-methyl-3(2*H*)-isothiazolone
		2-Methyl-3(2*H*)-isothiazolone
007401–00118	Hi-Yield 2 lb. Methoxychlor Emulsifiable Concentrate	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
007401–00121	V P G Range Cattle Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
007401–00172	Ferti-Lome Fruit Tree Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
007401–00187	Hi-Yield Brand Cattle Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
007401–00254	Vegetable Garden Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
007401–00271	Hi-Yield Livestock Spray No.3	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
007401–00275	Hi-Yield Dairy and Livestock Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
007401–00328	Hi-Yield General Purpose Garden Insect Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
007401–00368	Ferti-Lome Bagworm & Tent Caterpillar Killer	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
007401–00380	American Brand Bulb Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		Tetramethyl thiuramdisulfide
007401–00397	Hi-Yield Methoxychlor Garden Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
008660–00043	Vertagreen 25% Methoxychlor	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
008660–00051	50% Methoxychlor WP	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
008660–00135	Dairy Cattle Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
028293–00298	Martin's Livestock Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
033955–00528	Acme Methoxychlor 50% Wettable	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
034704–00102	Clean Crop Methoxychlor 2 EC	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
034704–00205	Clean Crop Malathion/Methoxychlor Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
		O,O-Dimethyl phosphorodithioate of diethyl mercaptosuccinate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
034704–00652	Captan-Methoxychlor 75–3 WP Seed Protectant	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704–00660	Thiram-Methoxychlor 70–2 WP Seed Protectant	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) Tetramethyl thiuramdisulfide
034704–00670	Methoxychlor 25 EC	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
034704–00760	Fruit Tree Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
034704 OR–97–0018	Clean Crop Methoxychlor 2 EC	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
034911–00007	Hi-Yield General Purpose Insect Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
047000–00041	25% Methoxychlor Emulsifiable Insecticide	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
047000–00070	Spray Concentrate	Butoxypolypropylene glycol Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
050534 OR–77–0025	Bueno-6	Monosodium acid methanearsonate
058185–00017	Ornalin Contact Fungicide 50% Wettable Powder/turf	3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione
058185–00021	Ornalin Concentrate Fungicide	3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione
063281–00005	Beaucoup Germicidal Detergent	2-Benzyl-4-chlorophenol 4-tert-Amylphenol *o*-Phenylphenol
067517–00006	Horse Spray Concentrate Insecticide	Butoxypolypropylene glycol Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
067517–00016	Cattle Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
067619–00004	Cppc Ultra Bleach	Sodium hypochlorite
067760–00002	Cheminova Malathion—Methoxychlor Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate

Unless a request is withdrawn by the registrant within 180 days (30 days when requested by registrant) of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant during this comment period.

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000239	The Scotts Co., D/b/a The Ortho Group, Box 1749, Columbus, OH 43216.
000264	Aventis CropScience USA LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
000577	The Sherwin-Williams Co., Cuprinol Group/The Thompson's Co., 101 Prospect Ave, Cleveland, OH 44115.
000787	ADCO Inc., Po Box 999, Sedalia, MO 65301.
001448	Buckman Laboratories Inc., 1256 North Mclean Blvd, Memphis, TN 38108.
002217	PBI/Gordon Corp., Attn: Craig Martens, Box 014090, Kansas City, MO 64101.
002935	Wilbur Ellis Co., 191 W. Shaw Ave, #107, Fresno, CA 93704.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd, Box 4913, Kansas City, MO 64120.
004691	Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St Joseph, MO 64506.
004708	Laidlaw Corp., 1212 E. 5th Street, Metropolis, IL 62960.
005905	Helena Chemical Co, 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
006836	Lonza Inc., 17–17 Rte 208, Fair Lawn, NJ 07410.
007401	Brazos Associates, Inc., Agent For: Voluntary Purchasing Group Inc, c/o Voluntary Purchasing Groups Inc., Box 460, Bonham, TX 75418.
008660	Pursell Industries, Inc., Box 540, Sylacauga, AL 35150.
028293	Unicorn Laboratories, 12385 Automobile Blvd., Clearwater, FL 33762.
033955	PBI/Gordon Corp., Attn: Craig Martens, Box 014090, Kansas City, MO 64101.
034704	Jane Cogswell, Agent For: Platte Chemical Co., Inc., Box 667, Greeley, CO 80632.
034911	Brazos Associates, Inc., Agent For: Hi-Yield Chemical Co., c/o Voluntary Purchasing Groups, Box 460, Bonham, TX 75418.
047000	Chem-Tech Ltd, Attn: James Melton, 4515 Fleur Dr. #303, Des Moines, IA 50321.
050534	GB Biosciences Corp., c/o Zeneca Ag Products, 1800 Concord Pike Box 15458, Wilmington, DE 19850.
058185	Scotts-Sierra Crop Protection Co., Attn: Vincent Snyder, Jr, 14111 Scottslawn Rd, Marysville, OH 43041.
063281	RSP Private Label Packaging, Ecolab Inc., 370 N. Wabasha Street, St. Paul, MN 55102.
067517	PM Resources Inc., 13001 St. Charles Rock Rd, Bridgeton, MO 63044.
067619	Clorox Professional Products Co, c/o PS & RC Box 493, Pleasanton, CA 94566.
067760	Cheminova Inc., Oak Hill Park 1700 Route 23 – Ste 210, Wayne, NJ 07470.

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Loss of Active Ingredient

Unless the request for cancellation is withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of withdrawing their request for cancellation. The active ingredient is listed in the following Table 3, with the EPA company and CAS number.

TABLE 3.—DISAPPEARING ACTIVE INGREDIENT

CAS No.	Chemical Name	EPA Company No.
11084–85–8	Chlorinated trisodium phosphate	000264

V. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before January 29, 2001. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

VI. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received by the Agency. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** June 26, 1991; (56 FR 29362) (FRL–3846–4). Exception to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: July 25, 2000.

Richard D. Schmitt,

Associate Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 00–19510 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–950; FRL–6592–1]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical In or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–950, must be received on or before September 1, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–950 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–950. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–950 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov*," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–950. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 20, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Zeneca Ag Products

9F6058

EPA has received pesticide petition 9F6058 from Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850–5458 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of azoxystrobin (methyl (*E*-2-(2-

(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate)) and its Z isomer methyl (*Z*-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3- (methoxyacrylate)) in or on the raw agricultural commodities (RAC) apples at 1.5 parts per million (ppm); barley, bran at 0.2 ppm; barley, grain at 0.1 ppm; barley, hay at 15 ppm; barley, straw at 4 ppm; beet, sugar, dried pulp at 0.8 ppm; cattle, fat at 0.03 ppm; cattle, meat by-products at 0.07 ppm; citrus, oil at 15 ppm; coriander, leaves at 30 ppm; coriander, seed at 30 ppm; corn, field, forage at 10 ppm; corn, field, grain at 0.05 ppm; corn, field, refined oil at 0.3 ppm; corn, field, stover at 25 ppm; corn, pop, grain at 0.05 ppm; corn, pop, stover at 25 ppm; corn, sweet, kernal plus cob with husks removed at 0.02 ppm; corn, sweet, forage at 10 ppm; corn, sweet, stover at 25 ppm; cotton at 0.01 ppm; cotton, gin by-products at 0.01 ppm; fruit, citrus, group at 3 ppm; fruit, citrus, dried pulp at 7 ppm; goat, fat at 0.03 ppm; goat, meat by-products at 0.07 ppm; horse, fat at 0.03 ppm; horse, meat by-products at 0.07 ppm; peanut at 0.2 ppm; peanut, hay at 15 ppm; peanut, refined oil at 0.6 ppm; sheep, fat at 0.03 ppm; sheep, meat by-products at 0.07 ppm; soybean, seed at 0.5 ppm; soybean, forage at 25 ppm; soybean, hay at 55 ppm; soybean, hulls at 1.25 ppm; soybean, seed at 0.5 ppm; rice, wild at 5 ppm; vegetable, bulb, group at 7.5 ppm; vegetable, leafy, except brassica vegetables, group at 30 ppm; vegetable, leaves of root and tuber, group at 50 ppm; and vegetable, root and tuber, group at 0.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of azoxystrobin as well as the nature of the residues is adequately understood for purposes of the tolerances. Plant metabolism has been evaluated in four diverse crops: cotton, grapes, wheat, and peanuts, which should serve to define the similar metabolism of azoxystrobin in a wide range of crops. Parent azoxystrobin is the major component found in crops. Azoxystrobin does not accumulate in crop seeds or fruits. Metabolism of azoxystrobin in plants is complex with more than 15 metabolites identified. These metabolites are present at low levels, typically much less than 5% of the total recoverable residues (TRR).

2. *Analytical method.* An adequate analytical method, gas chromatography with nitrogen-phosphorus detection (GC-NPD) or in mobile phase by high performance liquid chromatography with ultra-violet detection (HPLC-UV), is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The analytical chemistry laboratory of the EPA concluded that the method(s) are adequate for enforcement. For azoxystrobin methods are also available for analyzing meat, milk, poultry, and eggs, and also underwent successful independent laboratory validations.

3. *Magnitude of residues.* Eleven onion trials (green and dry bulb) were carried out in the United States of America (U.S.) in 1998. Maximum residues of 6.9 ppm resulted from multiple foliar applications. Twenty–three citrus fruit trials (grapefruit, lemon and orange) were carried out in the U.S. in 1997–1998, Fourteen citrus fruit trials were carried out in South Africa in 1995–1998. Maximum residues of 2.9 ppm resulted from multiple foliar applications. Twenty corn trials were carried out in the U.S. in 1998. Maximum residues of 0.05 ppm in grain, 0.02 ppm in fresh kernals, 10 ppm in forage, and 25 ppm in stover resulted from multiple foliar applications. Twelve residue trials were carried out in the U.S. in 1997. Maximum residues of 0.01 ppm in cottonseed, and 0.01 ppm in cotton gin by-products resulted from in-furrow application. Twenty–four leafy vegetable (excluding brassica) trials were carried out in 1998. Maximum residues of 30 ppm resulted from multiple foliar applications. Twenty trials on the leaves of root and tuber vegetable group were carried out in the U.S. in 1998, resulting in maximum residues of 45 ppm from multiple foliar applications. Twenty root and tuber vegetable trials were carried out in the U.S. in 1998. Maximum residues of 0.46 ppm in root and tuber vegetables resulted from multiple foliar applications. Sixteen potato trials were carried out in the U.S. in 1997, previously submitted under pesticide petition 8F4995. Maximum residues of 0.03 ppm in potatoes resulted from multiple foliar applications. Twelve peanut trials were carried out in the U.S. in 1997. Maximum residues of 0.14 ppm in peanut, nutmeat, and 13.7 ppm in peanut hay resulted from multiple foliar applications. Twenty soybean trials were carried out in the U.S. in 1998. Maximum residues were 0.36 ppm in soybean, seed, 9.1 ppm in soybean, forage and 54 ppm in soybean, hay. Concentration of residues was observed in barley, bran; citrus, dried pulp; citrus oil; corn, oil; sugarbeet, dried pulp; peanut, oil; and soybean, hulls.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral toxicity study in rats of technical azoxystrobin resulted in a lethal dose 50% (LD_{50}) of >5,000 milligrams/kilogram (mg/kg) (limit test) for both males and females. The acute dermal toxicity study in rats of technical azoxystrobin resulted in an LD_{50} of >2,000 mg/kg (limit dose (LTD)).

The acute inhalation study of technical azoxystrobin in rats resulted in a lethal concentration 50% (LC_{50}) of 0.962 milligrams/liter (mg/L) in males and 0.698 mg/L in females. In an acute oral neurotoxicity study in rats dosed once by gavage with 0, 200, 600, or 2,000 mg/kg azoxystrobin, the systemic toxicity no observed adverse effect level (NOAEL) was <200 mg/kg and the systemic toxicity lowest observed adverse effect level (LOAEL) was 200 mg/kg, based on the occurrence of transient diarrhea in both sexes. There was no indication of neurotoxicity at the doses tested.

2. *Genotoxicty.* Azoxystrobin was negative for mutagenicity in the *salmonella/mammalian* activation gene mutation assay, the mouse micronucleus test, and the unscheduled deoxyribonucleic acid (DNA) synthesis in rat hepatocytes/mammalian cells in an *in vivo/in vitro* procedure study. In the forward mutation study using L5178 mouse lymphoma cells in culture, azoxystrobin tested positive for forward gene mutation at the TK locus. In the *in vitro* human lymphocytes cytogenetics assay of azoxystrobin, there was evidence of a concentration-related induction of chromosomal aberrations over background in the presence of moderate to severe cytotoxicity.

3. *Reproductive and developmental toxicity.* In a prenatal development study in rats gavaged with azoxystrobin at dose levels of 0, 25, 100, or 300 mg/kg/day during days 7 through 16 of gestation, lethality at the highest dose caused the discontinuation of dosing at that level. The developmental NOAEL was greater than or equal to 100 mg/kg/day and the developmental lowest observed adverse effect level (LOAEL) was >100 mg/kg/day because no significant adverse developmental effects were observed. In this same study, the maternal NOAEL was not established; the maternal LOAEL was 25 mg/kg/day, based on increased salivation.

In a prenatal developmental study in rabbits gavaged with 0, 50, 150, or 500 mg/kg/day during days 8 through 20 of gestation, the developmental NOAEL was 500 mg/kg/day and the developmental LOAEL was >500 mg/kg/day because no treatment-related adverse effects on development were seen. The maternal NOAEL was 150 mg/kg/day and the maternal LOAEL was 500 mg/kg/day, based on decreased body weight gain.

In a 2–generation reproduction study, rats were fed 0, 60, 300, or 1,500 ppm of azoxystrobin. The reproductive NOAEL was 32.2 mg/kg/day. The reproductive LOAEL was 165.4 mg/kg/day; reproductive toxicity was demonstrated as treatment-related reductions in adjusted pup body weights as observed in the F18 and F2 pups dosed at 1,500 ppm (165.4 mg/kg/day).

4. *Subchronic toxicity.* In a 90–day rat feeding study, the NOAEL was 20.4 mg/kg/day for males and females. The LOAEL was 211.0 mg/kg/day based on decreased weight gain in both sexes, clinical observations of distended abdomens and reduced body size, and clinical pathology findings attributable to reduced nutritional status.

In a subchronic toxicity study in which azoxystrobin was administered to dogs by capsule for 92 or 93 days, the NOAEL for both males and females was 50 mg/kg/day. The LOAEL was 250 mg/kg/day, based on treatment-related clinical observations and clinical chemistry alterations at this dose.

In a 21–day repeated-dose dermal rat study using azoxystrobin, the NOAEL for both males and females was greater than or equal to 1,000 mg/kg/day (the highest dosing regimen); a LOAEL was therefore not determined.

5. *Chronic toxicity.* In a 2–year feeding study in rats fed diets containing 0, 60, 300, and 750/1,500 ppm (males/females), the systemic toxicity NOAEL was 18.2 mg/kg/day for males and 22.3 mg/kg/day for females. The systemic toxicity LOAEL for males was 34 mg/kg/day, based on reduced body weights, food consumption, and food efficiency; and bile duct lesions. The systemic toxicity LOAEL for females was 117.1 mg/kg/day, based on reduced body weights. There was no evidence of carcinogenic activity in this study.

In a 1–year feeding study in dogs to which azoxystrobin was fed by capsule at doses of 0, 3, 25, or 200 mg/kg/day, the NOAEL for both males and females was 25 mg/kg/day and the LOAEL was 200 mg/kg/day for both sexes, based on clinical observations, clinical chemistry changes, and liver weight increases that were observed in both sexes.

In a 2–year carcinogenicity feeding study in mice using dosing concentrations of 0, 50, 300, or 2,000 ppm, the systemic toxicity NOAEL was 37.5 mg/kg/day for both males and females. The systemic toxicity LOAEL was 272.4 mg/kg/day for both sexes, based on reduced body weights in both at this dose. There was no evidence of carcinogenicity at the dose levels tested. According to the new proposed guidelines for Carcinogen Risk Assessment (April 1996), the appropriate descriptor for human carcinogenic potential of azoxystrobin is "not likely." The appropriate subdescriptor is "has been evaluated in at least two well conducted studies in two appropriate species without demonstrating carcinogenic effects."

6. *Animal metabolism.* In this study, azoxystrobin, either unlabeled or with a pyrimidinyl, phenylacrylate, or cyanophenyl label, was administered to rats by gavage as a single or 14–day repeated doses. Less than 0.5% of the administered dose was detected in the tissues and carcass up to 7 days post dosing and most of it was in excretion-related organs. There was no evidence of potential for bioaccumulation. The primary route of excretion was via the feces, though 9 to 18% was detected in the urine of the various dose groups. Absorbed azoxystrobin appeared to be extensively metabolized. A metabolic pathway was proposed showing hydrolysis and subsequent glucuronide conjugation as the major biotransformation process.

7. *Metabolite toxicology.* There are no metabolites of concern based on a differential metabolism between plants and animals.

8. *Endocrine disruption.* There is no evidence that azoxystrobin is an endocrine disrupter.

C. Aggregate Exposure

The Agency has concluded from review of available data that there is no acute toxicological endpoint of concern from the review of available data. Therefore, an acute risk assessment is not necessary. For azoxystrobin, only a chronic (noncancer) risk assessment is necessary.

1. *Dietary exposure.* Permanent tolerances have been established (40 CFR 180.507(a)) for the combined residues of azoxystrobin and its Z isomer in or on a variety of RAC at levels ranging from 0.01 ppm on tree nuts to 20.0 ppm on rice hulls. Included in these tolerances are the numerous ones for animal commodities which were established in conjuction with tolerances for rice and wheat commodities. Time-limited tolerances range from 0.1 ppm in soybeans to 100 ppm in fresh parsley.

i. *Food.* In conducting a chronic dietary risk assessment, Zeneca has made the very conservative assumptions that 100% of all commodities having azoxystrobin tolerances or proposed tolerances will contain azoxystrobin residues at the level of the tolerance. Default concentration factors have been removed where data show no concentration of residues (grapes, juice, grapes, raisins, tomatoes, juice, tomatoes, puree, and potatoes, white (dry)). The chronic RfD of 0.18 mg/kg/day that was used as the endpoint value was derived from the NOAEL of 18.2 mg/kg/day from the rat chronic toxicity/carcinogenicity feeding study. The endpoint effects were decreased body weight and bile duct lesions that were observed in male rats at the LOAEL of 34 mg/kg/day. This NOAEL was divided by an uncertainty factor of 100 to allow for intraspecies and interspecies variability.

The Novigen Dietary Exposure Evaluation Model (DEEM) system was used for this Chronic Dietary Exposure Analysis. The analysis evaluates individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) Continuing Surveys of Food Intake by Individuals (CSFII) survey that was conducted from 1989 through 1992. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure.

The existing azoxystrobin tolerances (both published and pending; section 18 tolerances have been excluded in this analysis because most are included as pending tolerances in this petition), result in a theoretical maximum residue contribution (TMRC) that is equivalent to the following percentages of the chronic reference dose (RfD). Since the 10x safety factor was removed by EPA, the chronic RfD is equal to the chronic population-adjusted dose (cPAD) and the exposure given as a percentage of the total allowable is reported as the percentage of the cPAD. The U.S. population group will have a food exposure that is estimated as 0.023894 mg/kg/day (13.3% of the cPAD), the subgroup all infants (less than 1–year old) will have an estimated exposure of 0.029771 mg/kg/day (16.5% of the cPAD), the subgroup nursing infants (less than 1 year old) will have an estimated exposure of 0.014637 mg/kg/day (8.1% of the cPAD), the subgroup non-nursing infants (less than 1–year old) will have an estimated exposure of

0.036140 mg/kg/day (20.1% of the cPAD), the subgroup children (1–6 years old) will have an estimated exposure of 0.047270 mg/kg/day (26.3% of the cPAD), the subgroup children (7–12 years old) will have an estimated exposure of 0.032101 mg/kg/day (17.8% of the cPAD), the subgroup hispanics will have an estimated exposure of 0.026050 mg/kg/day (14.5% of the cPAD), the subgroup non-hispanic/non-white/non-black will have an estimated exposure of 0.030275 mg/kg/day (16.8% of the cPAD), and the subgroup females (13+ years old, nursing) will have an estimated 0.028866 mg/kg/day (16.0% of the cPAD).

ii. *Drinking water.* There is no established maximum concentration level for residues of azoxystrobin in drinking water. No health advisory levels for azoxystrobin in drinking water have been established. The concentration of azoxystrobin in surface water is based on Generic Estimated Environmental Concentration (GENEEC) modeling and in ground water is based on Screening Concentration in Ground Water (SCI-GROW) modeling (both models belong to EPA).

Based on the chronic dietary (food) exposure estimates, chronic drinking water levels of concern (DWLOC) for azoxystrobin were calculated and are summarised below. The group and subgroups that were analyzed are the group U.S. population and the two general subgroups females 13–50 and children. Within each of these two general subgroups, the specific subgroup with the highest food exposure was chosen for the analysis. EPA has determined that the highest estimated environmental concentration (EEC) of azoxystrobin in surface water is from the application of azoxystrobin to grapes (39 micrograms per liter (µg/L)). The EEC for ground water is 0.064 µg/L resulting from use on turf. For purposes of risk assessment, the maximum EEC for azoxystrobin in drinking water (39 µg/L) should be used for comparison to the back-calculated human health DWLOC for the chronic (non-cancer) endpoint. The maximum (chronic) water exposure (in mg/kg/day) is calculated by starting with the value for the chronic RfD (in mg/kg/day) and subtracting the food exposure (in mg/kg/day). The DWLOC (in micrograms per liter) (µg/L) is calculated by multiplying the maximum water exposure (in mg/kg/day) by the body weight (in kilograms), then dividing by 10^{-3} times the water consumed daily (in liters per day). The default body weights used were 70 kilograms (kg) for the group U.S. population, 60 kg for subgroups of females (13+ years old), and 10 kg for the subgroups of infants and children. The default drinking water rates used were 2 liters per day (L/day) for adults and 1 L/day for children. The scenarios for various groups and subgroups, leading up to the DWLOC for each, are summarized as follows. For the group U.S. population, the RfD is 0.18 mg/kg/day, the theoretical maximum residue contribution (TMRC) food exposure is 0.023894 mg/kg/day, the maximum water exposure is 0.156106 mg/kg/day, and the DWLOC is 5,463.71 g/L. For the subgroup females (13+, nursing), the RfD is 0.18 mg/kg/day, the TMRC food exposure is 0.028866 mg/kg/day, the maximum water exposure is 0.151134 mg/kg/day, and the DWLOC is 4,534.02 g/L. For the subgroup children (1–6 years old), the RfD is 0.18 mg/kg/day, the TMRC food exposure is 0.047270 mg/kg/day, the maximum water exposure is 0.13273 mg/kg/day, and the DWLOC is 1,327.3 g/L.

2. *Non-dietary exposure.* Azoxystrobin is registered for residential use on ornamentals and turf. The Agency evaluated the existing toxicological data base for azoxystrobin and assessed appropriate toxicological endpoints and dose levels of concern that should be assessed for risk assessment purposes. Dermal absorption data indicate that absorption is less than or equal to 4%. No appropriate endpoints were identified for acute dietary or short-term, intermediate-term, and chronic-term (noncancer) dermal and inhalation occupational exposure. Therefore, risk assessments are not required for these exposure scenarios.

D. Cumulative Effects

Azoxystrobin is related to the naturally occurring strobilurins. There are two other members of this class of fungicides registered with EPA. Zeneca concluded that further consideration of a common mechanism of toxicity is not appropriate at this time since there are no data to establish whether a common mechanism exists with any other substance.

E. Safety Determination

The acute safety analysis was not applicable since no suitable toxicological end-point of concern was identified during Agency review of the available data. The short-term and intermediate-term safety assessment also was not applicable, in this case because no indoor and outdoor residential exposure uses are currently registered for azoxystrobin. Therefore, only a chronic analysis was needed.

The chronic RfD for azoxystrobin is 0.18 milligrams per kilogram per day (mg/kg/day), based on the NOAEL of 18.2 mg/kg/day from the rat chronic toxicity/carcinogenicity feeding study in which endpoint effects of decreased body weight and bile duct lesions were observed in male rats at the LOAEL of 34 mg/kg/day. This NOAEL was divided by an uncertainty factor of 100, to allow for interspecies sensitivity and intraspecies variability.

1. *U.S. population.* The chronic dietary exposure analysis showed that exposure from the proposed new tolerances in or on apples; barley; coriander; corn, field; corn, pop; corn, sweet; cotton; fruit, citrus, group; rice, wild; vegetable, bulb, group; vegetable, leafy, except brassica vegetables, group; vegetable, leaves of root and tuber, group; vegetable, root and tuber, group; and soybeans for the group U.S. population would be 13.3% of the RfD.

2. *Infants and children.* The chronic dietary exposure analysis showed that exposure from the proposed new tolerances in or on apples; barley; coriander; corn, field; corn, pop; corn, sweet; cotton; fruit, citrus, group; rice, wild; vegetable, bulb, group; vegetable, leafy, except brassica vegetables, group; vegetable, leaves of root and tuber, group; vegetable, root and tuber, group; and soybeans for the subgroup children (1–6 years old) (the subgroup with the highest exposure) would be 26.3% of the RfD.

FFDCA section 408 provides that EPA shall apply an additional ten–fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through a margin of exposure analysis or else through use of Uncertainty (Safety) Factors in calculation of a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the no observed effect level in the animal study appropriate to the particular risk assessment. This hundred–fold uncertainty (safety) factor/margin of exposure (safety) is designed to account for combined interspecies and intraspecies variability. EPA believes that reliable data support using the standard hundred–fold margin/factor without the additional ten–fold FQPA factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns

regarding the adequacy of the standard margin/factor. The Agency ad hoc FQPA safety factor committee removed the additional 10x FQPA safety factor that would otherwise be used to account for increased sensitivity of infants and children.

Zeneca has considered the potential aggregate exposure from food, water, and non-occupational exposure routes, concluding that aggregate exposure is not expected to exceed 100% of the RfD and that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to azoxystrobin residues.

F. International Tolerances

There are no Codex maximum residue levels established for azoxystrobin.

[FR Doc. 00–19378 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6843–9]

Notice of Proposed Settlement Trans Circuits, Inc. Superfund Site Lake Park, Palm Beach County, Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) proposes to enter into a "Prospective Purchaser Agreement" (PPA) concerning property located at 210 Newman Way in an industrial park in Lake Park, Palm Beach County, Florida. EPA proposes to enter into the PPA with the National Land Company (NLC).

The PPA obligates NLC to cooperate fully with any response action EPA may take on the Property. The PPA resolves NLC's potential liability for the Existing Contamination at the Site which would otherwise result from becoming the owner of the Site. This protection is contingent upon NLC fulfilling its obligations under the PPA.

EPA will consider public comment on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should public comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–3104.

Written comments may be submitted to Ms. Batchelor at the address noted above within thirty (30) calendar days of the date this notice is published.

Dated: July 18, 2000.

James L. Miller,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–19538 Filed 8–1–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 25, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 2, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: XXXXXX.

Title: Notification of Emergency Alert System Status.

Type of Review: New Collection.

Respondents: Business or other for-profit; and not-for-profit institutions, state, local or tribal government(s).

Number of Respondents: 125.

Estimate Time Per Response: 30 minutes.

Frequency of Response: On Occasion.

Total Annual Burden: 62 hrs.

Needs and Uses: The Resident Agent of the Agency's Alaska Office is developing a survey to assess whether FM translators located in isolated areas of Alaska are in compliance with the Emergency Alert System (EAS) rules adopted January 1, 1997. These rules state that FM translators not rebroadcasting the entire programming of other local FM broadcast stations must be in compliance by having EAS equipment installed and working properly. In remote areas of Alaska FM translators provide service to their communities by re-broadcasting programming from other local FM broadcast stations, however, in some cases the FM translators do not rebroadcast the entire contents of the program thus they could inadvertently eliminate any EAS warnings. EAS not only provides the President of the United States the capability to provide immediate communications and information to the general public during periods of national emergency, but it also allows the local and/or state officials the ability to warn the public in the remote areas of Alaska about avalanches, wildfires, etc. Due to its size, remoteness, and isolation, it is difficult for the Resident Agent to make on scene inspections to ensure that the FM translators are in compliance. Using the survey the Resident Agent can find out if licensed FM translators are either rebroadcasting local programming in their entirety including EAS warnings or, if not, then the FM translator station has EAS equipment installed and working properly. FM translator stations not in compliance could present a safety of life issue to the listening public.

OMB Control Number: 3060–0771.

Title: Procedure for Obtaining a Special Temporary Authorization in the Experimental Radio Service—Section 5.56.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities, State, Local or Tribal Government.

Number of Respondents: 500.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 500 hours.

Total Annual Cost: N.A.

Needs and Uses: The Commission may issue a special temporary authority (STA) under Part 5 of the rules in cases where a need is shown for operation of an authorized station for a limited time only, in a manner other than that specified in the existing authorization, but does not conflict with the Commission's rules. A request for STA may be filed as an informal application.

OMB Control No.: 3060–0854.

Title: Truth-in-Billing Format—CC Docket No. 98–170.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 3099.

Estimated Time Per Response: 505.3 Hours (avg.).

Total Annual Burden: 1,565,775 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $9,000,000.

Frequency of Response: On occasion; Third Party Disclosure.

Needs and Uses: Under Section 201(b) of the Communications Act, the charges, practices, and classifications of common carriers must be just and reasonable. The Commission believes that the telephone bill is an integral part of the relationship between a carrier and its customer. The manner in which charges are identified and articulated on the bill is essential to the consumer's understanding of the services that have been rendered, such that a carrier's provision of misleading or deceptive billing information may be an unjust and unreasonable practice in violation of Section 201(b). In the Truth-in-Billing and Billing Format Order on Reconsideration, the Commission addressed several petitions for reconsideration or clarification of the principles and guidelines contained in Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking (TIB Order), 64 FR 34487 (June 25, 1999). In the Order on Reconsideration, the Commission modified its collections of information to ensure that telephone bills contain information necessary for consumers to determine the validity of charges assessed on the bills and to combat telecommunications fraud. Telephone bills must clearly identify the name of the service provider associated with each charge. In the Order on Reconsideration, the Commission clarified that, where an entity bundles a number of services as a single package offered by a single company, such offering may be listed on the telephone bill as a single offering, rather than listed as separate charges by provider. Carriers providing bundled services in this manner must, however, make sure that an inquiry contact number or numbers appears on the bill for customer questions or complaints concerning the services provided through the bundle, as required by section 6.2401(d). The Commission also clarified that the carrier name of the telephone bill should be the name by which such company is known to its consumers for the provision of the respective service. In the TIB Order, the Commission required that all telephone bills containing wireline common carrier service (1) separate charges by service provider and (2) clearly and conspicuously show any change in service providers by identifying all service providers that did not bill for services on the previous billing statement and, where applicable, describing any new presubscribed or continuing relationship with the customer. In the Order on Reconsideration, the Commission modified its rule requiring highlighting of new service providers to only apply to providers that have a continuing arrangement with the subscriber that results in periodic charges on the subscriber's telephone bill. This change will ensure that services billed solely on a per-transaction basis, such as operator service and directory assistance, are not subject to the highlighting requirement. The TIB Order requires that (1) bills for wireline service include for each charge a brief, clear, plain-language description of the services rendered; and (2) when a bill for local wireline service contains additional carrier charges, the bill must differentiate between those charges for which non-payment could result in termination of local telephone service and those for which it could not. In the Order on Reconsideration, the Commission retained its requirement that carriers distinguish on telephone bills those charges that consumers may refuse to pay without jeopardizing the provision of basic, local service, and charges for which non-payment may result in such disconnection. The Commission, however, clarified that a carrier need not label every charge as either deniable or non-deniable. The TIB Order requires that all telephone bills display a toll-free number or numbers by which consumers may inquire about or dispute any charge on the bill. The number(s) must be displayed in a manner that permits a customer to identify easily the appropriate number to use to inquire about a particular charge. In the Order on Reconsideration, the Commission modified the requirement by creating a limited exception where the customer does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or internet. The information will be used by consumers to help them understand their telephone bills. Consumers need this information to protect themselves against fraud and to help them resolve billing disputes if they wish.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19477 Filed 8–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting

Thursday, August 3, 2000.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 3, 2000, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireless Telecommunications.	Title: Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; and Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services. Summary: The Commission will consider a Fifth Report on competitive conditions affecting the competitive mobile radio services industry.

Item No.	Bureau	Subject
2	Common Carrier, Cable Services, International, Wireless Telecommunications, Office of Engineering and Technology, and Office of Plans and Policy.	Title: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996 (CC Docket No. 98–146). Summary: The Commission will consider a Report concerning the deployment of advanced telecommunications capability to all Americans
3	Common Carrier	Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147). Summary: The Commission will consider an Order on Reconsideration and Second Further Notice of Purposed Rule Making regarding the collocation obligations of incumbent LECs.
4	International	Title: Applications of INTELSAT LLC for Authority to Operate and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit (File Nos. SAT–A/O–20000119–00002 to SAT–A/O–20000119–00018; SAT–AMD–20000119–00029 to SAT–AMD–20000119–00041; SAT–LOA–20000119–00019 to SAT–LOA–20000119–00028). Summary: The Commission will consider a Memorandum Opinion Order and Authorization concerning applications requesting (1) licenses to operate 17 existing C-band and Ku-band satellites, presently owned and operated by the International Telecommunications Satellite Organization (INTELSAT); (2) licenses to construct, launch and operate 10 planned satellites by INTELSAT for operation in these bands; and (3) for authority to relocate certain currently operating satellites to other orbit locations upon the launch of planned satellites.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is http://www.itsdocs.com/.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19610 Filed 7–28–00; 5:07 pm]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

DATE & TIME: Tuesday, August 8, 2000 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, August 10, 2000 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2000–16—Third Millennium: Advocates for the Future, Inc. by counsel, B. Holly Schadler and Brian G. Svoboda.

Draft Advisory Opinion 2000–18—Nader 2000 Primary Committee, Inc. by counsel, Michael B. Trister.

Draft Advisory Opinion 2000–19—Republican Party of Florida by counsel, Benjamin L. Ginsberg.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–19643 Filed 7–31–00; 11:25 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011290–026.

Title: International Vessel Operators Hazardous Material Association Agreement.

Parties:

APL Co. PTE Ltd.
Atlantic Container Line BV.
Australia-New Zealand Direct Line.
Crowley Maritime Corporation.
Delmas AAEL.
Evergreen Marine Corporation (Taiwan), Ltd.
Farrell Lines, Inc.
Hamburg-Sudamerikanische Dampfshifffahrtsgesellschaft Eggert & Amsinck (Columbus Line).
Hapag-Lloyd Container Linie GmbH.
Hoegh Lines.

Hyundai Merchant Marine Co., Ltd.
Independent Container Line, Ltd.
Italia di Navigazione, S.p.A.
Kawasaki Kisen Kaisha Ltd.
Lykes Lines Limited, LLC.
Mediterranean Shipping Co. S.A.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Sealand.
National Shipping Co. of Saudi Arabia.
Nippon Yusen Kaisha Line.
Orient Overseas Container Line, Inc.
P&O Nedlloyd B.V.
P&O Nedlloyd Limited.
Senator Lines GmbH.
Tecmarine Lines, Inc.
Wallenius Wilhelmsen Lines AS.
Zim Israel Navigation Company, Ltd.

Synopsis: The parties are amending their agreement to change the agreement name to that indicated above; to change the name of two member lines to reflect recent changes therein; and to provide for non-voting, associate membership in the agreement by any entity not qualified for membership as a vessel-operating common carrier.

Agreement No.: 011552–004.
Title: Colombia Express Joint Service Agreement.
Parties:
Associated Transport Line, L.L.C.
Smith & Johnson Carriers Inc.
Colombia Express, L.L.C.

Synopsis: The proposed modification expands the geographic scope of the agreement to include both Trinidad and Venezuela.

Agreement No.: 011715–001.
Title: IMC/Colombia Express Space Charter and Sailing Agreement.
Parties:
Industrial Maritime Carriers (U.S.A.) Inc.
Colombia Express, L.L.C.

Synopsis: The proposed modification expands the geographic scope of the agreement to include both Trinidad and Venezuela.

Agreement No.: 011718.
Title: Maersk Sealand/MOL Slot Transfer Agreement.
Parties:
A.P. Moller-Maersk Sealand.
Mitsui O.S.K. Lines, Ltd.

Synopsis: Under the agreement, Maersk Sealand will make available to Mitsui an average of 250 TEU slots eastbound and westbound on a weekly basis in the trade between U.S. East and Gulf ports and ports in Northern Europe. The parties request expedited review.

Agreement No.: 201105.
Title: Terminal Use Agreement between the Port of Oakland and China Shipping Container Lines.
Parties:
City of Oakland.
China Shipping Container Lines (Shanghai).

Synopsis: The agreement provides for the non-exclusive right to use areas within the Ben E. Nutter Container Terminal. The agreement runs through May 31, 2001.

By Order of the Federal Maritime Commission.

Dated: July 28, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–19581 Filed 8–1–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Terminations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been terminated pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

License Number: 16388N.
Name: Airgate Int'l (SFO) Corp.
Address: 484 Grandview Drive, South San Francisco, CA 94080.
Date Revoked: April 15, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3771.
Name: Alex G. Weimer d/b/a AGW International Export Service and Customs Broker.
Address: P.O. Box 1555, 1085 So. Highway 80, Benson, AR 85602.
Date Revoked: April 11, 2000.
Reason: Failed to maintain a valid bond.

License Number: 15393N.
Name: AMCO Cargo Systems, Inc.
Address: 1210 Koma Drive, Warehouse B, Compton, CA 90220.
Date Revoked: April 12, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3726NF.
Name: American Exhibition Services International, Inc.
Address: 1699 Wall Street, Suite 601, Mt. Prospect, IL 60056.
Date Revoked: July 6, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3969.
Name: Blue Sky Blue Sea, Inc. d/b/a International Shipping Company.
Address: Cargo Building 68, JFK Int'l Airport, Jamaica, NY 11430.
Date Revoked: July 8, 2000.
Reason: Failed to maintain a valid bond.

License Number: 15324N.
Name: Cargo Management Consultant, USA Inc.
Address: 154–09 146th Avenue, Jamaica, NY 11434.
Date Terminated: May 18, 2000.
Reason: Surrendered license voluntarily.

License Number: 14124N.
Name: Cargo Saver, Inc.
Address: 16602 South Broadway Street, Gardena, CA 90248.
Date Revoked: June 1, 2000.
Reason: Failed to maintain a valid bond.

License Number: 2489NF.
Name: Fuji Logitech America, Inc.
Address: 20434 Susana Road, Long Beach, CA 90810.
Date Terminated: May 8, 2000.
Reason: Surrendered license voluntarily.

License Number: 3375.
Name: General Air Freight Consolidators, Inc. d/b/a General Ocean Freight Container Line.
Address: 1031 W. Manchester Blvd., Unit A, Inglewood, CA 90301.
Date Revoked: June 7, 2000.
Reason: Failed to maintain a valid bond.

License Number: 8850N.
Name: Graybar Navigation, Inc.
Address: Graybar Building, 420 Lexington Ave., New York, NY 10170.
Date Revoked: June 11, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3206.
Name: Informa International, Ltd.
Address: 221 Woodbine Avenue, Narberth, PA 19072–0276.
Date Revoked: June 15, 2000.
Reason: Failed to maintain a valid bond.

License Number: 15468N.
Name: Interatlantic Cargo Group Corp.
Address: 6952 NW 51 Street, Miami, FL 33166.
Date Revoked: June 1, 2000.
Reason: Failed to maintain a valid bond.

License Number: 1348NF.
Name: International Cargo Group, Inc. d/b/a ASG USA.
Address: 301 Edgewater Place, Wakefield, MA 01880.
Date Revoked: June 30, 2000.
Reason: Failed to maintain a valid bond.

License Number: 13581N.
Name: International Freight Systems (Of Oregon), Inc.

Address: 604 NE 20th Avenue, Portland, OR 97232.
Date Revoked: May 25, 2000.
Reason: Failed to maintain a valid bond.

License Number: 13101N.
Name: International Moving Service, Ltd. d/b/a Tradewinds International Shipping Co.
Address: 1500 S.W. First Avenue, Suite 850, Portland, OR 97201.
Date Revoked: June 3, 2000.
Reason: Failed to maintain a valid bond.

License Number: 15076N.
Name: Jeff Chang d/b/a Kana Logestics.
Address: 20780 Leapwood Avenue, Carson, CA 90746.
Date Revoked: April 21, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3907NF.
Name: Logistics Services Incorporated.
Address: 1612 NW 84th Avenue, Miami, FL 33126.
Date Revoked: April 5, 2000.
Reason: Failed to maintain a valid bond.

License Number: 2477F.
Name: M D R Enterprises, Inc.
Address: 8031 West Center Road, Suite 206, Omaha, NE 68124.
Date Revoked: June 10, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4090.
Name: Mundus Shipping, Inc.
Address: 127 Schenck Blvd., Floral Park, NY 11001.
Date Revoked: July 5, 2000.
Reason: Failed to maintain a valid bond.

License Number: 16146NF.
Name: Murphy International Corporation d/b/a Murphy Overseas Corporation d/b/a International Transport & Logistics Corporation.
Address: 249 E. Ocean Blvd., #400, Long Beach, CA 90802.
Date Terminated: March 16, 2000.
Reason: Surrendered license voluntarily.

License Number: 10380N.
Name: Pana-York Maritima, Ltd.
Address: 411 A North Wood Avenue, Suite #5, Linden, NJ 07036.
Date Terminated: June 1, 2000.
Reason: Failed to maintain a surety bond.

License Number: 3238.
Name: Rewico America Inc.
Address: 420 Lexington Avenue, Suite 1630, New York, NY 10170.
Date Revoked: June 11, 2000.
Reason: Failed to maintain a valid bond.

License Number: 16367N.
Name: Rosario Antoniello d/b/a Paul Shipping Company.
Address: 45 John Street, New York, NY 10038.
Date Revoked: March 22, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4279N.
Name: SR International Logistics, LLC d/b/a High Country Maritime.
Address: 5310 Ward Road, Suite G–05, Arvada, CO 80002.
Date Revoked: July 7, 2000.
Reason: Failed to maintain a valid bond.

License Number: 14138N.
Name: Southern Overseas Express Line, Inc.
Address: 330 Shipyard Blvd., Wilmington, NC 28412.
Date Revoked: May 28, 2000.
Reason: Failed to maintain a valid bond.

License Number: 2810F.
Name: Travel All Over The World, Inc. d/b/a Shipping All Over The World and American Egyptian Shipping Company.
Address: 405 North Eola Road, Aurora, IL 60504.
Date Revoked: May 25, 2000.
Reason: Failed to maintain a valid bond.

License Number: 9735N.
Name: Vanderhelm International, Inc.
Address: 1851 Executive Center Drive, S–114, Jacksonville, FL 32207.
Date Revoked: June 9, 2000.
Reason: Failed to maintain a valid bond.

License Number: 14992N.
Name: Venex Transportation Logistics, Inc.
Address: 8282 N.W. 66th Street, Miami, FL 33166.
Date Revoked: March 4, 2000.
Reason: Failed to maintain a valid bond.

License Number: 14415N.
Name: Won Sik Kang d/b/a CMS Shipping Co.
Address: 11099 S. La Cienega Blvd., Suite 246, Los Angeles, CA 90045.
Date Revoked: April 26, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4158F.
Name: Winston International, Incorporated.
Address: 23131 Colony Park Drive, Carson, CA 90745–5566.
Date Terminated: May 22, 2000.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 00–19583 Filed 8–1–00; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

SHJ Int'l Express, LLC, 4339 Rowland Avenue, El Monte, CA 91731, Officers: Gary Yenkok Tan, Secretary, (Qualifying Individual), David Hsueh Wei Loo, President

Zust Ambrosetti SPA, Via Monteponi 26, 10135 Torino, Italy, Officer: Guido Porta, Director, (Qualifying Individual)

Delmas, 1 Gual Colbert, 76080 Le Harve France, Officer: Bernard Lugez, Vice President, (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Supply Chaw Services, LLC, 1250 Scottsville Road, Suite 7, Rochester, NY 14534, Officers: Thomas Hardenbrook Iuppa, President, (Qualifying Individual), James H. Wigton, Vice President

Global Cargo Corp., 8470 NW 30th Terrace, Miami, FL 33122, Officer: Patricia T. Suizu, Secretary, (Qualifying Individual)

General Express Group, Corp., 11455 NW 34th Street, Miami, FL 33178, Officers: Alejandro Orsini, President, (Qualifying Individual), Pedro Barreto, Vice President

Dated: July 28, 2000.

Bryant L. VanBrakle,
Secretary.

[FR Doc. 00–19582 Filed 8–1–00; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 16, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414.

1. National Australia Bank Limited, Melbourne, Australia; to acquire indirectly through its wholly owned subsidiary, 02–E Limited, a 60 percent interest in Thinorswim.com, Melbourne, Australia, a newly formed limited liability company and thereby engage *de novo* in providing brokerage services over the internet, pursuant to § 225.28(b)(7)(i) of Regulation Y.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Franklin Bancorp, Inc., d/b/a Sunrise Community Banks, St. Paul, Minnesota; to engage *de novo* in employee benefits consulting services, pursuant to § 225.28(b)(9)(ii) of Regulation Y and data processing, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, July 27, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–19459 Filed 8–1–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5) U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to provide review of contract proposals and recommendations to the Director, AHRQ, regarding the technical merit of proposals submitted in response to a Request for Proposals (RFPs) regarding "General Research and Support Services". The RFP was published in the Commerce Business Daily on May 17, 2000.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR section 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Healthcare Research and Quality—General Research and Support Services".

Date: August 16 & 17, 2000 (Closed to the public).

Place: Agency for Healthcare Research and Quality, 6010 Executive Blvd., 4th Floor Conference Center, Room B, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Tina Woodward, Division of Administrative Services, Office of Management, Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 601, Rockville, Mayland, 20852, 301–594–0342.

This notice is being published less than 15 days prior to the August 16–17 meeting due to the time constraints of reviews and funding cycles.

Dated: July 27, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–19490 Filed 8–1–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00144]

Environmental Signals and Sensors: A Virtual Center for Disease Prevention in Humans and Ecosystems; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a grant program to study the underlying biochemical and genetic mechanisms by which environmental chemicals affect human health and signal the onset of disease.

B. Eligible Applicant

Single Source

Assistance will be provided only to the University of Mississippi Medical Center. No other applications are solicited.

The University of Mississippi Medical Center (UMMC) is the most appropriate organization to conduct the work under this grant program for the following reasons:

1. The University of Mississippi and Tulane University have established a center for environmental medicine and toxicology at the University of Mississippi Medical Center in Jackson, Mississippi. [The Consolidated Appropriations Act, 2000, (Public Law 106–113) provided financial support which "shall be for the Center for Environmental Medicine and Toxicology at the University of Mississippi Medical Center at Jackson."]

2. The UMMC has taken a leadership role in forming a consortium with the University of Mississippi at Oxford and the Center for Bioenvironmental Research (CBR) at Tulane and Xavier Universities to assemble scientific teams to address environmental issues. Active collaborations between investigators at the participating institutions are in place to perform the required activities

of this program. UMMC is strategically located between the Tulane and Xavier Universities, and is the only university which focuses solely on biomedical research in the State of Mississippi. Ten investigators from the University of Mississippi Medical Center, six from the University of Mississippi at Oxford and seventeen from the Center for Bioenvironmental Research form the core of the consortium. Four clusters of investigators have been assembled to work jointly on important subsets of environmental research. Each cluster is co-chaired by investigators from two of the four participating institutions.

3. UMMC has formed a consortium with two other universities to conduct environmental research. Thus, UMMC may readily disseminate health and environmental data between participating partners which will be essential to completion of this project.

C. Availability of Funds

Approximately $2,634,547 is available in FY 2000 to fund this award. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: William Paradies, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone number: (770) 488–2721; E-mail address: WEP2@cdc.gov.

For program technical assistance, contact: Lawrence E. Posey, Acting Deputy Director, Division of Environmental Hazards and Health Effects, 1600 Clifton Road, NE, M/S E–19, Atlanta, GA 30333. Telephone number: (404) 639–7274; E-mail address: LEP1@cdc.gov.

Dated: July 27, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19466 Filed 8–1–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00129]

Outcome Evaluation of HIV/AIDS Prevention Programs Implemented by Community-Based Organizations; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces a program for competitive fiscal year (FY) 2000 cooperative agreement applications to conduct outcome evaluations of individual-level Health Education and Risk Reduction (HE/RR) HIV prevention interventions implemented by community-based organizations (CBOs). This program addresses the "Healthy People 2010" focus area(s) of Educational and Community-Based Programs, HIV, and Sexually Transmitted Diseases.

Although CDC has supported the development and implementation of community-based HIV prevention programs aiming to reduce sex-related and drug-related risk behaviors, to date these locally implemented community-based and community-developed interventions have not been rigorously assessed. Assessing the effectiveness of these HE/RR interventions is important for improving our understanding of the behavioral impact of these programs, providing useful information for CBO program planners and implementers, and improving future HIV prevention efforts.

The goals of this program announcement are to support evaluations that assess the effectiveness of locally implemented HIV prevention interventions and to provide evaluation resources to CBOs that might not otherwise have the resources or capacity to conduct an outcome evaluation. These funds are intended to support the evaluation, not the intervention. This evaluation will use methods common to rigorous outcome evaluation research (*e.g.* comparison groups, individual baseline data, cross-sectional surveys, and the ability to track clients over time). In addition, efforts will be made to use methods and designs that integrate both qualitative and quantitative data collection.

B. Eligible Applicants

Limited Competition

Applications may be submitted by community-based organizations who are currently receiving funds to implement individual-level HIV prevention HE/RR interventions. Specifically, these will include those recipients funded under the following program announcements: 00023—Human Immunodeficiency Virus (HIV) Prevention Projects for Community-Based Organizations, 99091—Community-Based HIV Prevention Services and Capacity-Building Assistance to Organizations Serving Gay Men of Color at Risk for HIV Infection, 99092—Community Based Human Immunodeficiency Virus (HIV) Prevention Projects for African Americans, and 99096—Cooperative Agreements for Human Immunodeficiency Virus Prevention Projects for African American Faith-based Organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $300,000 is available in FY 2000 to fund approximately three awards. It is anticipated that the average award will be $100,000, ranging from $75,000 to $125,000. It is expected that the awards will begin on or about September 30, 2000 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, collaborative activities, site visits, goals set forth, and the availability of funds.

Use of Funds

Funds are intended solely to implement the evaluation and not to support the intervention itself. Allocate up to $5000 to ensure your technological capability to conduct evaluation activities.

Funding Preference

In making awards, preference for funding will be given to applicants who target high-risk populations as identified by their local community planning groups (*e.g.* men who have sex with men, persons of color and other racial or ethnic populations, youth in high risk situations).

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under number 1. (Recipient Activities) and the CDC will be responsible for

activities under number 2. (CDC Activities) below.

1. Recipient Activities:

a. Develop a common evaluation methodology including a description of the intervention, the study research questions, sampling strategy, research design, and standardized data collection instruments.

b. Work with CDC to develop and submit application for IRB review and OMB approval as necessary.

c. Recruit study subjects and from existing interventions according to the evaluation design and methodology.

d. Conduct individual baseline and repeat assessments according to the evaluation methodology.

e. Collaborate and share evaluation data and programmatic experience with other grantees to answer specific evaluation research questions and strengthen program implementation.

f. Participate in regularly scheduled group conference calls, attend meetings with the project team, and participate in at least one site visit to each of the other participating CBOs.

g. Present findings and collaborate with other recipients and CDC in presenting findings at national meetings.

2. CDC Activities: To facilitate a successful research collaboration, CDC shall be responsible for conducting the following activities:

a. Assist the recipients as needed, in planning and implementing the evaluation methodology including providing technical guidance in the development of the evaluation methodology which includes data collection instruments, selection of comparison groups, data collection methodologies, and data analysis plans.

b. Conduct site visits as needed, to monitor activities and provide technical assistance when needed.

c. Assist the recipient as needed, in refining and establishing data management systems.

d. Assist as needed, in the data analysis of evaluation research information and in the presentation and publication of analytical findings.

E. Application Content

Competing Applications

Use the information in the Evaluation Criteria section to develop the application content. The application will be evaluated on the criteria listed, so it is important that applicants follow these criteria in their responses. Print all materials double-spaced, in a 12 point or larger font size, on one side of 8½" by 11" paper with at least 1" margins. Number each page. Submit your application unbound and unstapled. The application may not exceed 25 double-spaced pages (appendices are the appropriate location for references, publications, resumes, and other supportive documents).

F. Submission and Deadline

Submit the original and two copies of PHS–5161 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: www.cdc.gov/. . Forms, or in the application kit. On or before September 5, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each applicant will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Title and abstract (Not Scored). The title and abstract should be a clear 1-page summary of the applicants proposal.

2. Program Background (Not Scored). Title of the program, mission statement, years of service to the target population, recruitment venues for intervention participants, service setting(s), current funders, and the funding amounts.

3. Intervention Plan (30 Points). Describe the existing HE/RR intervention to be assessed and how it fits CDC individual-level intervention categorization (see attachment A). Indicate the degree to which the proposed goals and objectives of the intervention are specific, measurable, appropriate, realistic, and time-based, related to the proposed activities, and consistent with the program's long-term goals. Provide a detailed description of the scientific, theoretical, conceptual, or program experience foundation on which the proposed activities are based and the specific behaviors and practices the intervention is designed to promote and prevent (*e.g.*, increase in correct and consistent condom use). Clearly describe the target population(s), and the degree to which the target population reflects the community planning priorities. Clearly indicate how clients will be sufficiently recruited and tracked over time, and how the intervention activities are monitored for quality assurance.

4. Evaluation Capacity (30 points). Clearly describe current data collection, management, and reporting systems including a description of the types of data (variables) collected and how these data are collected. The extent to which current computer systems and Internet capabilities are used in managing data. Indicate areas in which technical assistance is anticipated in designing and implementing the evaluation methodology including staff training needs and refinement of current data management systems.

5. Staffing and Facilities (20 Points). Clearly describe the proposed staffing plan including number of staff (full, part-time, and volunteers) dedicated to the intervention and quality assurance. Specify the division of duties and responsibilities for the intervention and indicate percentages of each staff member's commitment to the intervention and other projects. Demonstrate the degree to which participating staff are qualified and available for carrying out the evaluation activities by providing copies of resumes or job descriptions of existing personnel. Indicate the number of staff with expertise in computer technology or describe personnel that would be hired for conducting the evaluation. Finally, describe the equipment and facilities to be used for the evaluation.

6. Collaboration Experience (20 points). Provide supporting evidence (letters and memorandums of agreement) that the applicant has experience working collaboratively with health departments, the local HIV prevention community planning group, or other community-based organizations to carry out community-based public health interventions, evaluations, or research. Specify the extent to which the applicant has the scientific and programmatic capacity in successfully designing, implementing, and completing similar evaluations, either alone or in partnership with a collaborator. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of

women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

7. Protection of Human Subjects (Not scored) Does the application adequately address the requirements of 45 CFR 46 for the protection of human subjects?

8. Budget (Not Scored). Provide a detailed, line-item budget for carrying out the evaluation activities, including travel expenses for meetings with other recipients and CDC staff and a budget narrative that justifies each line item.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Progress reports quarterly, no more than 30 days after the end of each 3 month period;

2. Financial status report, no more than 90 days after the end of the budget period;

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 2.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. 241(a) and 247b (a)], as amended. The Catalog of Federal Domestic Assistance number is 93.939.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements." To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Roslyn Currington, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146 telephone (770) 488–2720, Email: rcurrington@cdc.gov.

For program technical assistance, contact Francisco Sy, Behavioral Scientist, Program Evaluation Research Branch, Division of HIV/AIDS Prevention, Intervention, Research, and Support, National Center for HIV, STD, TB Prevention, Centers for Disease Control and Prevention (CDC), Atlanta, GA 30333, Telephone (404) 639–0566, Email: Fsy@cdc.gov.

Dated: July 27, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–19465 Filed 8–1–00; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978. Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility: (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Customer Satisfaction Surveys Among Recipients of CSAT Knowledge Application Program Products and Services—The Center for Substance Abuse Treatment (CSAT) in the Substance Abuse and Mental Health Services Administration is proposing a series of customer satisfaction surveys in support of objectives identified in its Government Performance and Results Act Strategic Plan. These surveys will measure the satisfaction of substance abuse services professionals with products and services that are part of CSAT's Knowledge Application programs. These programs provide training, technical assistance, and information products to promote the use of the best treatment strategies among substance abuse treatment professionals. Information products may also be distributed to other persons who are involved in substance abuse treatment.

Trainees include over 12,000 addictions treatment and public health/mental health personnel. Technical assistance is provided to state substance abuse agencies, academic institutions, community-based organizations and managed-care organizations.

Information products include pamphlets, newsletters, and fact sheets. These products may be sent on request or may be distributed on a periodic basis.

The proposed survey efforts are primarily focused on measuring the satisfaction of the various professionals receiving these products and services, as well as determining related outcomes such as sharing or using the knowledge. Substance abuse treatment professionals receiving training or participating in technical assistance events that are at least a half day in length will receive a brief survey to assess expectations for the event and satisfaction with the outcomes. Participants will also be

given an opportunity to complete a follow-up form at an appropriate interval after the session. This follow-up will again assess satisfaction with the training or technical assistance and will also ask two questions concerning the impact of the information in terms of sharing it with other appropriate professionals and using it in its appropriate manner. All qualifying training and technical assistance will target the complete attending population for the event survey. For technical assistance that includes grantee meetings only the follow-up survey will be distributed. For large events the follow-up survey may be administered to a sample of participants. For information products, requested information will include a feedback card to be returned once the product has been received and examined. For information products routinely sent to a subscription list, a sample will be drawn and a feedback form distributed to that sample. The list approach will be used on major information products only.

Annual burden estimates are contained in the following table. Numbers are approximate and represent maximums.

Type of product or service	Estimated maximum number of respondents	Average burden/response (hours)	Responses per respondent	Estimated annual burden (hours)
Training:				
at the event	12,000	.167	1	2,004
followup	6,000	.167	1	1,002
Technical assistance attendees:				
at the event	2,000	.167	1	334
followup	1,000	.167	1	167
Grantees (meetings)	200	.167	1	334
Requested information products	5,000	.167	1	835
Subscription/list based products	5,000	.167	1	835
Total	24,200			5,511

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 21, 2000

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–19467 Filed 8–1–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a Telephone Conference Call meeting of the Center for Mental Health Services (CMHS) National Advisory Council in August 2000.

The meeting will include the review, discussion and evaluation of individual grant applications.

Therefore the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b (c)(6) and 5 U.S.C. App. 2, Section 10 (d).

Substantive program information, a summary of the meeting and a roster of Council members may be obtained from the contact listed below.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Date: August 8, 2000 (Closed).

Time: 3:00 p.m. to 4:00 p.m.

Place(s): Parklawn Building, 5600 Fishers Lane, Conference Room 11C–10, Rockville, Maryland 20857.

Contact: Eileen S. Pensinger, M.Ed., 5600 Fishers Lane, Parklawn Building, Room 17C–27, Rockville, Maryland 20857. Telephone: (301) 443–4823.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: July 26, 2000.

Toian Vaughn, M.S.W.,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–19488 Filed 8–1–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board to be held in September 2000. A portion of the meeting will be open and will include a Department of Health and Human Services drug testing program update, a Department of Transportation drug testing program update, an update on the NLCP pilot PT program for alternative specimens, and an update on the draft guidelines for alternative specimen testing and on-site testing.

If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

The meeting will also include the review, discussion, and evaluation of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator in accordance with Title 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

A roster of the board members may be obtained from: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443–6014. The transcript for the open session will be available on the following website: www.health.org/workpl.htm. Additional information for this meeting may be obtained by contacting the individual listed below.

Committee Name: Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Meeting Date: September 6, 2000; 8:30 a.m.–4:30 p.m., September 7, 2000; 8:30 a.m.–3:30 p.m.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Type: Open: September 6, 2000; 8:30 a.m.–Noon, Closed: September 6, 2000; Noon–4:30 p.m., Closed: September 7, 2000; 8:30 a.m.–3:30 p.m.

Contact: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443–6014, and FAX: (301) 443–3031.

Dated: July 25, 2000.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 00–19487 Filed 8–1–00; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment on Proposed Special Regulations for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a draft environmental assessment for proposed special regulations for the Preble's meadow jumping mouse.

SUMMARY: This Notice advises the public of the availability of a draft environmental assessment on proposed special regulations for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*). These regulations apply within the range of the species which includes portions of Boulder, Douglas, El Paso, Jefferson, and Weld counties in Colorado and Laramie and Goshen counties in Wyoming.

The proposed special regulations identify specific locations and situations under which take of the Preble's meadow jumping mouse would not be prohibited by the Endangered Species Act. This environmental assessment considers the biological, environmental, and socio-economic effects of these proposed regulations. The assessment also evaluates four alternative actions and their potential impact on the environment. Written comments or recommendations concerning the proposal are welcomed and should be sent to the address below (see **ADDRESSEES**).

DATES: To be considered, written comments and materials should be received on or before September 1, 2000. All comments received by the end of this comment period will be considered in preparation of a Finding of No Significant Impact. All comments received on an environmental assessment become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Policy Act regulations (40 CFR 1506.6(f)). When requested, comment letters with the names and addresses of the individuals who wrote the comments will generally be provided. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law: Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish to withhold your name and/or address, you must state this prominently at the beginning of your comments.

ADDRESSES: Comments and requests for copies of the assessment should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 755 Parfet Street, Suite 61, Lakewood, Colorado 80215, telephone (303) 274–2370.

SUPPLEMENTARY INFORMATION The Preble's meadow jumping mouse is known to occur only in portions of Colorado and Wyoming. The final rule listing the Preble's as a threatened species under the Endangered Species Act was published in the **Federal Register** on May 13, 1998 (63 FR 26517). Section 4(d) of the Endangered Species Act (U.S.C. Section 1533) provides that whenever a species is listed as a threatened species, the Secretary of the Department of the Interior will issue regulations deemed necessary and advisable to provide for the conservation of the species. On December 3, 1998, we proposed special regulations for the Preble's meadow jumping mouse under Section 4(d) of the Act and published them in the **Federal Register** (63 FR 66777), and at the same time, a public review period on the proposed special regulations was initiated. The public comment period closed on February 1, 1999. We reopened the public comment period on March 16, 1999, (64 FR 12924) and it closed on April 30, 1999.

In these regulations, we proposed to designate specific locations known to be occupied or potentially occupied by this species as Mouse Protection Areas or Potential Mouse Protection Areas. Section 9 prohibitions against take of this species would not apply to activities occurring outside of these designated areas, but would remain applicable to activities conducted within these designated areas. In addition, we proposed that Section 9 prohibitions against take of the species would not apply to four categories of activities that might occur within the species' habitat. These four categories of activities for which take of the species was exempted are—(1) rodent control activities, (2) ongoing agricultural activities, (3) existing landscaping activities, and (4) existing uses of perfected water rights. We also described a fifth range-wide exemption pertaining to periodic maintenance of existing water supply ditches. We considered this fifth exemption but did not propose it.

We have prepared an environmental assessment of the proposed special regulations for the Preble's meadow jumping mouse and other alternatives that we considered and, at this time, we would like make this assessment available for public review and comment.

Dated: July 26, 2000.

Elliott Sutta,

Acting Deputy, Regional Director, Denver, Colorado.

[FR Doc. 00–19468 Filed 8–1–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for a Permit to Enhance the Survival of the Columbian Sharp-tailed Grouse in Wallowa County, Oregon Through a Candidate Conservation Agreement With Assurances

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Oregon Department of Fish and Wildlife (ODFW) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. The permit application includes a proposed Candidate Conservation Agreement with Assurances (Agreement) between the ODFW and the Service. The Agreement and permit application are available for public comment.

The purpose of the Agreement is for the ODFW and the Service to implement conservation measures for the Columbian sharp-tailed grouse (*Tympanuchus phasianellus*) in Wallowa County, Oregon, in support of ODFW's on-going efforts to reintroduce this species to areas that it historically

occupied. The conservation measures would be implemented by the ODFW, Service, and by Participating Landowners, and would generally consist of continued implementation of ODFW's Columbian sharp-tailed grouse reintroduction program, and protection and enhancement of sharp-tailed grouse habitat. Consistent with the Service's Candidate Conservation Agreement with Assurances Final Policy, the Agreement is intended to facilitate the conservation of Columbian sharp-tailed grouse by giving the State of Oregon and cooperating private landowners incentives to implement conservation measures. Participating Landowners would receive regulatory certainty concerning land use restrictions that might otherwise apply should the Columbian sharp-tailed grouse become listed under the Endangered Species Act. Participating Landowners, with property in an approximately 161,000-acre area, could sign up under the Agreement and the associated permit through a Certificate of Inclusion. The proposed term of the Agreement and the permit is 20 years. The Service has prepared an Environmental Assessment for approval of the Agreement and issuance of the permit.

We request comments from the public on the permit application, Agreement, and the Environmental Assessment. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

DATES: Written comments should be received on or before September 1, 2000.

ADDRESSES: Comments should be addressed to Dennis Mackey, Project Biologist, Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709 (telephone: 208/378–5267; facsimile: 208/378–5262).

FOR FURTHER INFORMATION CONTACT: Dennis Mackey at the above address or telephone 208/378–5267.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of the documents for review by contacting the individual named above. You also may make an appointment to view the documents at the above address during normal business hours. The documents are also available electronically on the World Wide Web at http://www.fws.gov/r1srbo.

Background

Under a Candidate Conservation Agreement with Assurances, participating landowners voluntarily implement conservation activities on their property to benefit species that are proposed for listing under the Endangered Species Act, candidate species, or other sensitive species. Candidate Conservation Agreements with Assurances encourage private and other non-Federal property owners to implement conservation efforts and reduce threats to unlisted species by assuring them they will not be subjected to increased property use restrictions if the species is listed in the future under the Endangered Species Act. Application requirements and issuance criteria for enhancement of survival permits through Candidate Conservation Agreements with Assurances are found in 50 CFR 17.22(d) and 17.32(d).

On October 26, 1999, the Service found that listing the Columbian sharp-tailed grouse under the Endangered Species Act may be warranted, and initiated a review of the species' status. The Columbian sharp-tailed grouse was extirpated from Oregon by the 1960's. The species persisted in Wallowa County until the late 1940's, and the last Columbian sharp-tails probably occurred in Baker County in northeast Oregon. Reintroduction of the Columbian sharp-tailed grouse in Oregon began in the spring of 1991. From 1991 through 1997, ODFW released a total of 179 Columbian sharp-tailed grouse in Wallowa County. Currently all known Columbian sharp-tailed grouse occur on private land. To date, landowners have been supportive of the Columbian sharp-tailed grouse reintroduction program, have cooperated with ODFW, and are providing habitat to support the birds. The ODFW is concerned that reintroduction efforts could result in land-use restrictions on cooperating landowners if this species is listed under the Endangered Species Act. Should this happen, landowners would have a disincentive to cooperate in future reintroduction efforts or to provide suitable grouse habitat. As a result of this potential regulatory concern of landowners, ODFW has developed a Candidate Conservation Agreement with Assurances for the Columbian sharp-tailed grouse in cooperation with the Service, and has applied to the Service for a permit under section 10(a) of the Endangered Species Act, which would authorize future incidental take of the birds by cooperating landowners.

Under the Agreement and permit, Participating Landowners would provide certain Columbian sharp-tailed grouse habitat protection or enhancement measures on their lands. Protection and enhancement measures will be directed towards sharp-tailed grouse lek, nest, roost, and/or winter habitat. If the Columbian sharp-tailed grouse is listed under the Endangered Species Act, and after a Participating Landowner has provided the agreed upon habitat conditions for the specified period of time, the permit would authorize incidental take of Columbian sharp-tailed grouse as a result of the landowner's agricultural-related activities: crop cultivation and harvesting, livestock grazing, and farm equipment operation.

We are providing this notice pursuant to section 10(c) of the Endangered Species Act and implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations. If we determine that the requirements are met, we will sign the Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act to ODFW for take of Columbian sharp-tailed grouse incidental to otherwise lawful activities in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: July 14, 1999.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 00–19469 Filed 8–1–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Agency Information Collection Activities; Submission to Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request, "Documented Petitions for Federal Acknowledgment as an Indian Tribe," is submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, for review and extension of this information collection.

DATES: Submit comments on or before September 1, 2000.

ADDRESSES: Send your written comments to Attention: Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102,725 17th Street, NW., Washington, DC 20503. Please send a duplicate copy to R. Lee Fleming, Chief, Branch of Acknowledgment and Research, Bureau of Indian Affairs, 1849 C Street, N.W., MS–4660 MIB, Washington, D.C. 20240. If you wish to submit comments by facsimile, the number is (202) 219–3008. You may submit comments by contacting R. Lee Fleming at (202) 208–3592. Please mention OMB Number 1076–0104.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information or copies of the information collection submission should be directed to R. Lee Fleming, Chief, Branch of Acknowledgment and Research, Bureau of Indian Affairs, 1849 C Street, N.W., MS–4660 MIB, Washington, D.C. 20240. You may also call (202) 208–3592.

All written comments will be available for public inspection in Room 4660 of the Main Interior Building, 1849 C Street, N.W., Washington, D.C. from 9:00 a.m. until 3:00 p.m., Monday through Friday, excluding legal holidays.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a government-to-government relationship with the United States. Federal recognition makes the group eligible for benefits from the federal government. No comments were received.

II. Method of Collection

The acknowledgment regulations at 25 CFR Part 83 contain seven criteria (§ 83.7) which unrecognized groups seeking Federal acknowledgment as Indian tribes must demonstrate that they meet. Information collected from petitioning groups under these regulations provide anthropological, genealogical and historical data used by the Assistant Secretary—Indian Affairs to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a government-to-government relationship with the United States. Respondents are not required to retain copies of information submitted to the Bureau of Indian Affairs but will probably maintain copies for their own use. No periodic reports are required which would impose a recordkeeping requirement.

III. Data

Title: Collection of Information for Federal Acknowledgment Under 25 CFR Part 83.

OMB Number: 1076–0104.

Expiration Date: July 31, 2000.

Type of Review: Extension of a currently approved collection.

Affected Entities: Groups petitioning for Federal acknowledgment as Indian tribes.

Response: Respondents are seeking to obtain a benefit.

Estimated Number of Petitioners: 10.

Estimated Time per Petition: 2,237.7 hours.

Estimated Total Annual Burden Hours: 22,377.

Estimated Annual Costs to petitioners: $895,080 (2,237.7 hrs × $40.00 per hr × 10 petitioners).

IV. Request for Comments

You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or the forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, and other contact information (such as Internet address, FAX, or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

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.

Dated: July 28, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–19584 Filed 8–1–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the thirty-third meeting of the Gettysburg National Military Park Advisory Commission.

DATE: The Public meeting will be held on September 21, 2000, from 7 p.m.–9 p.m.

LOCATION: The meeting will be held at the Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, Federal Consistency Projects Within the Gettysburg Battlefield Historic District, Operational Update on Park Activities, and Citizens Open Forum.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters

of the Gettysburg National Military Park located at 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: July 20, 2000.

John A. Latschar,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. 00–19473 Filed 8–1–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Draft Revision of the Vacation Cabin Site Policy at Lake Mead National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service announces the availability for public review of the draft revision of the Vacation Cabin Site policy at Lake Mead National Recreation Area.

COMMENTS: Written comments must be postmarked or transmitted by September 1, 2000.

If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

ADDRESSES: The draft revision of the Vacation Cabin Site policy is available on the Internet at *http://www.nps.gov/lame/concessions/vcs.html*. Requests for copies and written comments should be sent to Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005

FOR FURTHER INFORMATION CONTACT: Concessions Program Management at 702/293–8923.

SUPPLEMENTARY INFORMATION: The last revision of the Lake Mead National Recreation Area Vacation Cabin Site policy occurred in 1992. Cabin site lease extensions expired in 1999 and 2000 and are being reauthorized for a one-year extension upon expiration. When the revised cabin site policy is finalized new permits will be issued for a five year period, the maximum length of time allowed by law. The finalized policy will become part of the permit.

There are three vacation cabin site areas within Lake Mead National Recreation Area. Stewart's Point (54 sites), located along Lake Mead in Nevada, approximately two miles northeast of Rogers Spring. Temple Bar (32 sites), located along Lake Mead in Arizona, approximately one mile southeast of Temple Bar Resort. Katherine (35 sites), located along Lake Mohave in Arizona, approximately two miles north of Katherine Landing.

Dated: July 14, 2000.

Alan O'Neill,

Superintendent, Lake Mead National Recreation Area.

[FR Doc. 00–19474 Filed 8–1–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Interim Surplus Criteria

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of revised dates for public hearings on the proposed adoption of Colorado River Interim Surplus Criteria: INT–DES 00–25.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation), has issued a Draft Environmental Impact Statement (DEIS) on the proposed adoption of specific criteria under which surplus water conditions may be determined in the Lower Colorado River Basin during the next 15 years.

This notice updates the **Federal Register** notice published on July 7, 2000 (65 FR 42028) and provides notice of revised dates for public hearings on the proposed adoption of Colorado River Interim Surplus Criteria. Information on revised dates and locations for public hearings may be found below in the **DATES** section.

ADDRESSES: The comment period on the DEIS remains unchanged. Send comments on the DEIS to Ms. Jayne Harkins, Attention BCOO–4600, PO Box 61470, Boulder City, Nevada, 89006–1470, or fax comments to Ms. Harkins at (702) 293–8042. As provided in the **Federal Register** notice published on July 7, 2000 (65 FR 42028), comments on the DEIS must be received no later than September 8, 2000.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

DATES: The public comment period on the DEIS remains unchanged and comments on this DEIS must be received no later than September 8, 2000.

Public hearings will be held to receive written or verbal comments on the DEIS from interested organizations and individuals on the environmental impacts of the proposal. The public hearings identified in the **Federal Register** notice published on July 7, 2000 (65 FR 42028) will not be held. Instead, a revised schedule for the hearings follows. The hearings will be held at the following times and locations:

- August 21, Big Bear Room, Doubletree Hotel, 222 N. Vineyard Ave., Ontario, CA, 7 p.m.
- August 22, Comfort Dental Conference Room, Las Vegas Chamber of Commerce, 3720 Howard Hughes Parkway, Las Vegas, NV, 7 p.m.
- August 23, Jazz Room, Salt Lake City International Airport, 765 Terminal Drive, Salt Lake City, Utah, 7 p.m.
- August 24, Meeting Room 1 on Level 3, Terminal 4, Phoenix Sky Harbor Airport, Phoenix, Arizona, 7 p.m.

In addition to the public hearings, a separate hydrologic modeling meeting will be held in Las Vegas, NV. Reclamation will provide detailed assumptions and respond to questions regarding the model runs, use schedules, and post-processing analysis that was completed for this DEIS. The time and location for the hydrologic modeling meeting has not changed from the information provided in the **Federal Register** notice published on July 7, 2000 (65 FR 42028). The time and location for this technical meeting is as follows:

- August 15, Comfort Dental Conference Room, Las Vegas Chamber

of Commerce, 3720 Howard Hughes Parkway, Las Vegas, NV, 9 a.m. to 5 p.m.

The hearings and the hydrologic modeling meeting will accommodate those with hearing impairments or other special requirements upon request by calling Janet Steele at (702) 293–8551 at least 48 hours prior to the hearing.

The DEIS remains available for viewing on the Internet at *http://www.lc.usbr.gov* and *http://www.uc.usbr.gov*. Copies of the DEIS, in the form of a printed document or on compact disk, remain available upon written request to the following address: Ms. Janet Steele, Attention BCOO–4601, PO Box 61470, Boulder City, Nevada 89006–1470, Telephone: (702) 293–8785, or by fax at (702) 293–8042.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Ms. Jayne Harkins at the above address or telephone Ms. Harkins at (702) 293–8785.

Dated: July 28, 2000.

Erica Petacchi,

Federal Register Liaison.

[FR Doc. 00–19580 Filed 8–1–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–527 (Review)]

Extruded Rubber Thread From Malaysia

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on extruded rubber thread from Malaysia would likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on August 2, 1999 (64 FR 41954) and determined on November 4, 1999 that it would conduct a full review (64 FR 62689, November 17, 1999). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 20, 2000 (65 F.R. 3246). The hearing was held in Washington, DC, on June 1, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in this investigation to the Secretary of Commerce on July 27, 2000. The views of the Commission are contained in USITC Publication 3327 (July 2000), entitled *Extruded Rubber Thread from Malaysia (Inv. No. 731–TA–527 (Review))*.

Issued: July 27, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–19570 Filed 8–1–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–639 and 640 (Review)]

Forged Stainless Steel Flanges From India and Taiwan

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty orders on forged stainless steel flanges from India and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on December 1, 1999 (64 FR 67313, December 1, 1999) and determined on March 3, 2000 that it would conduct expedited reviews (65 FR 15009, March 20, 2000). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on July 26, 2000. The views of the Commission are contained in USITC Publication 3329 (July 2000), entitled *Forged Stainless Steel Flanges from India and Taiwan: Investigations Nos. 731–TA-639 and 640 (Review).*

Issued: July 27, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–19568 Filed 8–1–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–309–A–B and 731–TA–528 (Review)]

Magnesium From Canada

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the countervailing duty orders [2] and the antidumping duty order on magnesium from Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on August 2, 1999, (64 FR 41961) and determined on November 4, 1999, that it would conduct full reviews (64 FR 62690, November 17, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 10, 2000 (65 FR 6628). The hearing was held in Washington, DC, on May 31, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 25, 2000. The views of the Commission are contained in USITC Publication 3324 (July 2000), entitled *Magnesium from Canada: Investigations Nos. 701–TA–309–A–B and 731–TA–528 (Review).*

Issued: July 26, 2000.

[1] The record is defined in sec. 207 2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Thelma J. Askey dissenting.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–19567 Filed 8–1–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–663 (Review)]

Paper Clips From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on paper clips from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on December 1, 1999 (64 FR 67320, December 1, 1999) and determined on March 3, 2000 that it would conduct an expedited review (65 FR 15010, March 20, 2000). The Commission transmitted its determination in this review to the Secretary of Commerce on July 28, 2000. The views of the Commission are contained in USITC Publication 3330 (July 2000), entitled *Paper Clips From China: Investigation No. 731–TA–663 (Review).*

Issued: July 28, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–19569 Filed 8–1–00; 8:45 am]

BILLING CODE 7020–02–P

MERIT SYSTEMS PROTECTION BOARD

Opportunity to File Amicus Briefs in Jerry Gribcheck v. U.S. Postal Service, MSPB Docket Nos. CH–0752–99–0002–I–1, Ch–0752–99–0014–I–1, CH–0752–99–0337–I–1

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board has requested an advisory opinion from the Director of the Office of Personnel Management (OPM) concerning the interpretation of regulations promulgated by OPM. The Board is providing interested parties with an opportunity to submit amicus briefs on the same questions raised in the request to OPM as set forth in the summary below.

SUMMARY: The appellant, a Postal Service preference eligible, filed three appeals challenging a series of actions that the agency took in 1998–99 when it ordered him to undergo psychiatric fitness-for-duty examinations, allegedly refused to allow him to return to work, and ultimately placed him on enforced leave when he refused to submit to the third examination. The docket numbers are listed above. The administrative judge issued a single initial decision in the first two appeals, dismissing them as moot and finding that the appellant failed to establish his affirmative defenses of disability discrimination and retaliation for filing equal employment opportunity complaints. In the third appeal, which concerned the enforced leave, the administrative judge sustained the agency's action and found that the appellant failed to establish the same defenses.

In his petition for review in all three cases, the appellant reasserts that the agency's placement of him on enforced leave for refusing to submit to a fitness-for-duty examination was not sustainable because the agency did not fulfill the requirements of 5 CFR § 339.301.

Under 5 CFR § 339.301, an agency may order a psychiatric examination (including a psychological assessment) only when:

(i) The result of a current general medical examination which the agency has the authority to order under this section indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the individual or others, or

(ii) A psychiatric examination is specifically called for in a position having medical standards or subject to a medical examination program established under this part.

5 CFR § 339.301(e)(1)(i).

The agency placed the appellant on enforced leave because of his failure to submit to the third psychiatric fitness-for-duty examination. The appellant argues that OMP's regulations precluded the agency from ordering the final psychiatric fitness-for-duty examination, and the record contains no evidence that the agency ordered the appellant to undergo a physical examination prior to doing so, as required by 5 CFR § 339.301(e)(i). the agency has not argued, and the record does not show, that subsection (e) (ii) is applicable.

The Postal Service's Employee and Labor Relations Manual (ELM) permits management to order psychiatric examinations. In at least two cases, the Board has relied on the ELM as authority for the Postal Service to order psychiatric examinations, without mentioning Part 339 of Title 5. *See Sellman* v. *U.S. Postal Service,* 63 M.S.P.R. 145, 152 (1994), and *Gannon* v. *U.S. Postal Service,* 61 M.S.P.R. 41, 44 (1994). However, it appears that the ELM is inconsistent with several portions of Part 339, and the Board has held that an agency may not discipline an employee for disobeying an order to submit to a psychiatric examination that was invalid under 5 CFR § 339.301. *See Harris* v. *Department of the Air Force,* 62 M.S.P.R. 524, 528–29, *review dismissed,* 39 F.3d 1195 (Fed. Cir. 1994) (Table). The Board has not specifically determined whether 5 CFR part 339 applies to the Postal Service. Under 39 U.S.C. § 410(a), Federal laws regarding employees do not apply to the Postal Service, unless they are made specifically applicable.

The members of the Board therefore have requested that the Director provide an advisory opinion on whether OPM intended 5 CFR part 339 to apply to the Postal Service and, if so, whether OPM has the authority to regulate the Postal Service in this area, considering that the Postal Service is generally exempt from Title 5 of the United States Code.

DATES: All briefs in response to this notice shall be filed with the Clerk of the Board on or before September 1, 2000.

ADDRESSES: All briefs should include the case name and docket numbers noted above (*Jerry Gribcheck* v. *U.S. Postal Service,* MSPB Docket Nos. CH–0752–99–0002–I–1, CH–0752–99–0014–I–1, CH–0752–99–0337–I–1) and be entitled "Amicus Brief." Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419. **FOR FURTHER INFORMATION CONTACT:** Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, (202) 653–7200.

Dated: July 27, 2000.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–19463 Filed 8–1–00; 8:45 am]

BILLING CODE 7400–01–M

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–089)]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: Thursday, August 24, 2000, 9:00 a.m. to 4:00 p.m., and Friday, August 25, 2000, 9:00 a.m. to 12:00 Noon.

ADDRESSES: Kennedy Space Center (KSC), Florida 32899–0001. Headquarters Building Room 2201.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, Room 9K70, 300 E St., SW., Washington, DC 20546–0001, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview of KSC
—Small Disadvantaged Business Participation in Major KSC Contracts
—Report on Mentor-Protégé Program
—Action Items
—NASA KSC Small Disadvantaged Business (SDB) Program Update
—Report of Chair
—Public Comment
—Report on MBRAC Sub Panels
—Technology Transfer and Commercialization
—Report on SDB Participation on Agency-Wide Contract(s)

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 24, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–19440 Filed 8–1–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–090]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Information Technology Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Naticnal Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Technology Advisory Committee, Information Technology Subcommittee meeting.

DATES: Wednesday, August 30, 2000, 8:30 a.m. to 5:00 p.m. and Thursday, August 31, 2000, 8:30 a.m. to 12:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Glenn Research Center, Building 77, Room 217, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene L. Tu, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–4486.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview of Information Technology Base Research at Glenn
—Integrated Instrumentation and Testing Systems
—Intelligent System Controls and Operations
—Software Integrity, Productivity and Security
—Discussions

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: July 25, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–19441 Filed 8–2–00 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–091]

NASA Advisory Council (NAC), Aerospace Technology Advisory Committee (ASTAC); Flight Research Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Flight Research Subcommittee meeting.

DATES: Monday, August 21, 2000, 2:00 p.m. to 5:00 p.m., Tuesday, August 22, 2000, 8:00 a.m. to 5:00 p.m., and Wednesday, August 23, 2000, 8:00 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Dryden Flight Research Center, Building 4800, Executive Conference Room 2100, Edwards, CA 93535.

FOR FURTHER INFORMATION CONTACT: Mr. David McBride, National Aeronautics and Space Administration, Dryden Flight Research Center, Edwards, CA 93523, 661–276–2851.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda topics for the meeting are as follows:

—Review of Flight Research Base R&T Program
—High Altitude, Long Endurance Aircraft
—Advanced Systems Concepts
—Revolutionary Concepts (REVCON)
—Atmospheric Flight of Space Systems
—Innovative Transport and Testbed Experiments
—Flight Research Productivity

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: July 25, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–19442 Filed 8–1–00; 8:45 am]

BILLING CODE 7510–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

GPU Nuclear, Inc. and Jersey Central Power & Light Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear, Inc. and et al. (the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The proposed amendment would remove a shutdown requirement with regard to the relief valve position indication system in Section 3.13 of the Technical Specifications (TSs). The licensee requests that the proposed revision be considered under exigent conditions as the Oyster Creek Nuclear Generating Station is currently operating under a Notice of Enforcement Discretion and needs the requested revision to prevent a shutdown of the reactor plant. The acoustic monitors provide an indication that an electromagnetic relief valve (EMRV) has closed after opening. This is an indication only, and provides no safety function.

The exigent need for the proposed amendment to the TSs was a result of failed plant equipment. Realizing that the acoustic monitors could require a plant shutdown on short notice, the licensee had previously installed spare monitors on all five EMRVs and believed that the redundancy of the components in the drywell would increase the reliability of the instrumentation. This is the first time in the Oyster Creek history that both acoustic monitors on one EMRV were inoperable and unable to be repaired.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability [or consequences] of an accident previously evaluated; (or)

This proposal will not increase the probability of occurrence or consequences of an accident previously evaluated in the SAR [Safety Analysis Report]. The EMRV Position Indication System does not affect the operation of the EMRVs. No failure of the Position Indication System can affect the ability of these valves to perform their design functions or result in any condition where operation of one or more EMRVs is required. Failure of the Position Indication System to actuate in the event of an actual valve actuation does not affect the consequences of that event.

During an event when an EMRV malfunctions (SORV [stuck open relief valve]) there are alternate indications available to the operator to indicate the malfunction of the valve in the event that the Position Indication System fails. EMRV tail pipe temperature rise above normal levels is a reliable indication of EMRV actuation and a reliable indication of closure. The probability of a stuck open EMRV (SORV) Event is not affected by the lack of position indication for the EMRV. The ability to detect the stuck open EMRV condition is adequately covered by backup indication or secondary (e.g. RPV [reactor pressure vessel] level, RPV pressure, and suppression pool temperature) indicators, and will not result in an increase in the probability or consequences of an accident previously evaluated. Operators will be able to determine that a SORV has occurred and procedures are in place to mitigate this condition that do not depend on the EMRV acoustical monitoring system for indication.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; (or)

This proposal does not create the possibility for an accident or malfunction of a different type than any previously identified in the SAR. The EMRV Position Indication System performs no control or protective function. It only provides an indirect indication of valve position. Failure of this device will not cause an unanalyzed failure of an engineered safety feature. Because of the diverse and redundant indications available, failure of the position indication system will not cause a new accident, nor will it cause the operator to commit errors to create the possibility of a new or different type of accident. This proposal does not affect the method of operation or maintenance or surveillance requirements of the EMRV position indication system, only the LCOs associated with the EMRV position indication system.

3. Involve a significant reduction in a margin of safety

This change does not reduce the margin of safety of any Technical Specification. Operating without one of the two position indicators for an EMRV does not reduce the design or operating basis margin to safety. In the unlikely event of an SORV, sufficient backup indication is available to identify and mitigate the occurrence. The SORV analysis assumes that operator action is taken on bulk suppression pool temperature (including a time delay) and does not credit any operator actions initiated as a result of operation of the position indicator system.

Existing plant procedures provide sufficient guidance for detecting this condition and taking appropriate actions to mitigate an effect on continued safe operation. Thus, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays.

Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 1, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 21, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 27th day of July, 2000.

For the Nuclear Regulatory Commission.

Helen N. Pastis,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19574 Filed 8–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–344 and 72–17]

In the Matter of Portland General Electric Company (Trojan Nuclear Plant and ISFSI); Order Approving Application Regarding Proposed Purchase of Portland General Electric Company by Sierra Pacific Resources

I

Portland General Electric Company (PGE or the licensee) owns a 67.5 percent interest in the Trojan Nuclear Plant (TNP) located on the west bank of the Columbia River in Columbia County, Oregon, and in connection with that interest holds Facility Operating License No. NPF–1 issued by the U.S.

Nuclear Regulatory Commission (NRC) pursuant to part 50 of Title 10 of the Code of Federal Regulations (10 CFR part 50) on November 21, 1975. Under this license, PGE has the authority to possess and maintain but not operate TNP. PGE also owns a 100 percent interest in the Trojan Independent Spent Fuel Storage Installation (ISFSI) and holds Materials License No. SNM–2509 for the Trojan ISFSI. PGE is currently a wholly owned subsidiary of Enron Corporation (Enron). PacifiCorp and the Eugene Water and Electric Board own the remaining 2.5 percent and 30 percent interests, respectively, in TNP, but are not involved in the transaction described below affecting PGE, which is the subject of this Order.

II

By application dated January 13, 2000, as supplemented by a submittal dated January 20, 2000 (collectively herein the application), PGE requested approval of an indirect transfer of the license for the TNP, to the extent held by PGE, and an indirect transfer of the license for the Trojan ISFSI. The requested transfer relates to a proposed purchase of all the issued and outstanding common stock of PGE from PGE's current parent, Enron, by Sierra Pacific Resources (SPR). PGE is an Oregon corporation engaged principally in the generation, transmission, distribution, and sale of electric energy in Oregon.

On November 5, 1999, Enron and SPR entered into a Stock Purchase Agreement providing for the purchase by SPR from Enron of all of the issued and outstanding common stock of PGE, subject to certain conditions, including the approval of the NRC. SPR, a Nevada corporation, is the parent holding company for Nevada Power Company and Sierra Pacific Power Company, providing electric service to approximately 843,000 customers throughout Nevada and northeastern California. The purchase will not affect PGE's status as a regulated public electric utility in the State of Oregon. No direct transfer of the TNP or ISFSI licenses will occur. Also, no changes to activities under the licenses or to the licenses themselves are being proposed in the application.

Approval of the indirect transfer was requested pursuant to 10 CFR 50.80 and 10 CFR 72.50. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on May 12, 2000 (65 FR 30642). No hearing requests were filed.

Under 10 CFR 50.80 and 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that SPR's proposed acquisition of PGE through the stock purchase by SPR will not affect the qualifications of PGE as a holder of Facility Operating License No. NPF–1 and as the holder of Materials License No. SNM–2509, and that the indirect transfer of the licenses, to the extent effected by the proposed acquisition, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated July 27, 2000.

III

Accordingly, pursuant to sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234, 10 CFR 50.80, and 10 CFR 72.50, *It is hereby ordered that* the application regarding the indirect license transfers referenced above is approved, subject to the following conditions:

(1) PGE shall provide the Director of the Office of Nuclear Reactor Regulation and the Director of the Office of Nuclear Material Safety and Safeguards a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from PGE to its parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of PGE's consolidated net utility plant, as recorded on its books of account.

(2) Should the proposed stock purchase not be completed by June 30, 2001, this Order shall become null and void, provided, however, upon application and for good cause shown, such date may be extended.

IV

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated January 13, 2000, the supplement thereto dated January 20, 2000, and the safety evaluation dated July 27, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 27th day of July 2000.

For the Nuclear Regulatory Commission.

William F. Kane,

Director, Office of Nuclear Material Safety and Safeguards.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–19575 Filed 8–1–00; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: The purposes of this document are to publish notice of a change in title to grouping of records 170.000 Operations Data Collection System to read "170.000 Resource Management/Productivity Records" and to publish notice of a new Privacy Act system of records, USPS 170.020, Resource Management/Productivity Records—Resource Management Database. The new system contains information about the usage of leave including, but not limited to, continuation of pay, sick, annual, leave without pay, leave used as a result of the Family Medical Leave Act (FMLA), sick leave for dependent care, military leave, etc., by an employee. Additionally, employee work hours by operation are contained in this system. The system also contains information supporting the use of certain leave information concerning absence-related corrective actions and appeal information related to those actions. This information will be used by management to ensure accurate leave data collection, to monitor leave usage, to reduce administrative redundancy, and to monitor the health and wellness of employees.

DATES: Any interested party may submit written comments on the proposed new system of records. This proposal will become effective without further notice on September 11, 2000, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Finance Administration/FOIA, United States Postal Service, 475 L'Enfant Plaza SW, Room 8141, Washington, DC 20260–5202. Copies of all written comments will be available at the above address for public inspection and photocopying between 8

a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter, (202) 268–4872.

SUPPLEMENTARY INFORMATION: To more effectively manage leave, the Postal Service will collect and maintain leave type and attendance information in a fashion that will make this information readily accessible to first-line supervisors and managers when needed to make informed decisions that affect their employees. This information will be used by management to ensure accurate leave data collection, to monitor leave usage, to reduce administrative redundancy, and to monitor the health and wellness of employees.

Maintenance of these records is not expected to have a significant effect on individual privacy rights. The information will be kept in a secured environment, with automated data processing (ADP), physical, and administrative security, and technical software applied to information on computer media. Computers and hard copy records are maintained in a secured environment.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report on the following proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS 170.020

SYSTEM NAME:

Resource Management/Productivity Records—Resource Management Database, USPS 170.020.

SYSTEM LOCATION:

Human Resources and Operations, Headquarters; and other postal facilities as determined by management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal employees.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Records contain, but are not limited to, the employee's name, home address, telephone, pay location, work hours, overtime status, lunch time, leave balance and usage-sick and annual leave, continuation of pay, sick leave for dependent care, family medical leave and supporting documentation—leave without pay, limited medical information, and information concerning corrective action and grievance outcomes as they relate to leave usage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1001, 1003, 1005, and 5 U.S.C. 8339.

PURPOSE(S):

Use to establish effective leave administration, analyze employee absences of all types, identify potential attendance problems, and identify employees eligible for attendance-related awards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

General routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in locked file cabinets and computer files on magnetic tape or disk in automated office equipment.

RETRIEVABILITY:

By the employee's name or social security number.

SAFEGUARDS:

Access to information in computer files is limited to personnel having an authorized computer password with hierarchical security clearance privileges. Hard copy records are maintained within locked file cabinets under the general scrutiny of designated postal personnel who have jurisdiction over the information. Supporting Family Medical Leave documentation containing restricted medical information will be maintained separately in a locked file cabinet by the FMLA coordinator, and supporting injury compensation documentation will be maintained separately in a locked file cabinet by the Injury Compensation Control Office.

RETENTION AND DISPOSAL:

(a) Hard copy records, including leave slips and leave analysis records, are maintained for 2 years from date of cutoff.

(b) Automated information including absence-related corrective action and disciplinary information is maintained as provided for in the National Agreement.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Vice President, Operations, U.S. Postal Service, 475 L'Enfant Plz. SW, Washington DC 20260–2700.

Senior Vice President, Human Resources, U.S. Postal Service, 475 L'Enfant Plz. SW, Washington DC 20260–4200.

NOTIFICATION PROCEDURE:

Individuals wanting to know whether information about them is maintained in this system of records must address inquiries to the department or facility head where employed at the time of reporting. Inquiries should contain full name and social security number.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is provided primarily by the record subject; however, some data may be obtained from personnel, leave, and timekeeping and other postal data systems of records.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–19577 Filed 8–1–00; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collection.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques for other forms of information technology.

Title and purpose of information collection:

Application for Survivor Insurance Annuities: OMB 3220–0030

Under Section 2(d) of the Railroad Retirement Act (RRA), monthly survivor

annuities are payable to surviving widow(er)s, parents, unmarried children, and in certain cases, divorced wives (husbands), mothers (fathers), remarried widow(er)s, and grandchildren of deceased railroad employees. The collection obtains the information required by the RRB to determine entitlement to and amount of the annuity applied for.

The RRB currently utilizes Form(s), AA–17, Application for Widow(ers) Annuity, AA–17b Applications for Determination of Widow(er) Disability, AA–18, Application for Mother's/Father's and Child's Annuity, AA--19, Application for Child's Annuity, AA–19a, Application for Determination of Child Disability, and AA–20, Application for Parent's Annuity to obtain the necessary information. One response is requested of each respondent. Completion is required to obtain benefits. The RRB is proposing no changes to any of the forms currently in the information collection.

The RRB is proposing the addition of an electronic equivalent of Forms AA–17, AA–18, AA–19, and AA–20 to the collection. The information, which will be collected electronically by RRB field office staff, will mirror that obtained on manual forms AA–17, AA–18, AA–19, and AA–20. Upon completion of the electronic AA–17, AA–18, AA–19, and AA–20 application process, the applicant will receive Form AA–17cert, Application Summary and Certification, which will summarize all of the information provided by/or verified by the applicant. Implementation of the AA–17cert will largely eliminate the need for the manual versions of the AA–17, AA–18, AA–19, and AA–20. However, the RRB will still use the manual form in instances where the RRB representative is unable to contact the applicant in person or by telephone. For example, the applicant lives in another country. The RRB has no plans to collect Form AA–17b and AA–19a information electronically at the present time. One response will be requested of each respondent. Completion will be required to obtain benefits.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form Nos.	Annual responses	Time (min)	Burden (hrs)
AA–17 (manual, without assistance)	150	45	113
AA–17b (with assistance)	380	40	253
AA–17b (without assistance)	20	50	17
AA–17cert	3,265	20	1,088
AA–18 (manual, without assistance)	12	45	9
AA–19 (manual, without assistance)	9	45	7
AA–19a (with assistance)	285	45	214
AA–19a (without assistance)	15	65	16
AA–20 (manual, without assistance)	1	45	1

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–19513 Filed 8–1–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rule 17f–6; SEC File No. 270–392; OMB Control No. 3235–0447]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission" is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–6 under the Investment Company Act of 1940 [17 CFR 270.17f–6] permits registered investment companies ("funds") to maintain assets (*i.e.*, margin) with futures commission merchants ("FCMs") in connection with commodity transactions effected on both domestic and foreign exchanges.[1] Prior to the rule's adoption, funds generally were required to maintain these assets in special accounts with a custodian bank.

Rule 17f–6 permits funds to maintain their assets with FCMs that are registered under the Commodity Exchange Act ("CEA") and that are not affiliated with the fund. The rule requires that a written contract containing the following provisions govern the manner in which the FCM maintains a fund's assets:

- The FCM must comply with the segregation requirements of section 4d(2) of the CEA [7 U.S.C. 6d(2)] and the rules under that statute [17 CFR Chapter I] or, if applicable, the secured amount requirements of rule 30.7 under the CEA [17 CFR 30.7];
- If the FCM places the fund's margin with another entity for clearing purposes, the FCM must obtain an acknowledgment from the clearing organization that the fund's assets are held on behalf of the FCM's customers in accordance with provisions under the CEA; and
- Upon request the FCM must furnish records about the fund's assets to the Commission or its staff.

The rule requires a written contract that contains certain provisions to ensure important safeguards and other benefits relating to the custody of fund assets by FCMs. For example, the requirement that FCMs comply with the segregation or secured amount requirements of the CEA and the rules under that statute is designed to protect fund assets held by FCMs. The contract requirement that an FCM obtain an acknowledgment from an entity that clears fund transactions that the fund's assets are held on behalf of the FCM's

[1] Custody of Investment Company Assets With Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Act Release No. 22389 (Dec. 11, 1996) [61 FR 66207 (Dec. 17, 1996)].

customers according to CEA provisions seeks to accommodate the legitimate needs of the participants in the commodity settlement process, consistent with the protection of fund assets. Finally, FCMs are required to furnish to the Commission or its staff on request information concerning the fund's assets in order to facilitate Commission inspections of funds.

The Commission estimates that approximately 3,031 funds could deposit margin with FCMs under rule 17f–6 in connection with their investments in futures contracts and commodity options. The Commission further estimates that each fund uses and deposits margin with 3 different FCMs in connection with its commodity transactions. Approximately 211 FCMs are eligible to hold fund and margin under the rule.[2]

The only collection of information requirements of rule 17f–6 are the rule's contract requirements. The Commission estimates that 3,031 funds will spend an average of 1 hour complying with the contract requirements of the rule (*e.g.*, signing contracts with additional FCMs), for a total of 3,031 burden hours. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information or respondents, including through the use of automated collection techniques or other forms of information technology. The Commission will consider comments and suggestions submitted in writing within 60 days after this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

[2] Commodity Futures Trading Commission, ANNUAL REPORT (1999).

Dated: July 24, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19447 Filed 8–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Request For Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 206(4)–2; SEC File No. 270–217; OMB Control No. 3245–0241

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 206(4)–2, "Custody or Possession of Funds or Securities of Clients," governs the custody or possession of funds or securities by Commission-registered investment advisers. Rule 206(4)–2 makes it a fraudulent, deceptive or manipulative act, practice or course of business for any investment adviser who has custody or possession of funds or securities of its clients to do any act or take any action with respect to any such funds or securities unless (1) the securities are properly segregated and safely kept; (2) the funds are held in one or more specially designated client accounts with the adviser named as trustee; (3) the adviser promptly notifies the client as to the place and manner of safekeeping; (4) the adviser sends a detailed written statement to each client at least once every three months; and (5) at least once each year, on an unannounced basis, an independent public accountant verifies by actual examination the clients' funds and securities and files a certificate with the Commission describing the examination. The rule does not apply to an investment adviser that is also registered as a broker-dealer under the Securities Exchange Act of 1934, provided the adviser is in compliance with Rule 15c3–1 under the Exchange Act, or, if a member of an exchange, is in compliance with exchange requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of the customer.

The information required by Rule 206(4)–2. is used by the Commission in connection with its investment adviser inspection program to ensure that advisers are in compliance with Rule 206(4)–2. The information required by paragraphs (3) and (4) of the rule is also used by clients. Without the information collected under the rule, the Commission would be less efficient and effective in its inspection program and clients would not have information valuable for monitoring the adviser's handling of their accounts.

The respondents to this information collection are Commission-registered investment advisers that have custody of clients' funds or securities and are not also registered as broker-dealers. The Commissioner estimates that 173 advisers are subject to Rule 206(4)–2. The number of responses under Rule 206(4)–2 varies considerably depending on the number of clients for which an adviser has custody or possession of funds or securities. We estimate that an adviser subject to this rule is required to provide an average of 250 responses annually at an average of .5 hours per response. The total time burden for each respondent is estimated to be 125 hours. The annual aggregate burden for all respondents to the requirements of Rule 206(4)–2 is estimated to be 21,625 hours.

The estimated average burden hours are made solely for the purposes of Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange

Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 27, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19498 Filed 8–1–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24583; 812–11916]

Pioneer America Income Trust el al.; Notice of Application

July 27, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order to permit certain registered investment companies to deposit their uninvested cash balances and their cash collateral in one or more joint accounts to be used to enter short-term investments.

Applicants: The Pioneer Family of Funds, consisting of: Pioneer America Income Trust, Pioneer Balanced Fund, Pioneer Bond Fund, Pioneer Emerging Markets Fund, Pioneer Equity-Income Fund, Pioneer Europe Fund, Pioneer Fund, Pioneer Growth Shares, Pioneer High Yield Fund, Pioneer Independence Fund, Pioneer Indo-Asia Fund, Pioneer Interest Shares, Pioneer International Growth Fund, Pioneer Limited Maturity Bond Fund, Pioneer Micor-Cap Fund, Pioneer Mid-Cap Fund, Pioneer Mid-Cap Value Fund (formerly Pioneer Capital Growth Fund), Pioneer Money Market Trust, a series fund consisting of Pioneer Cash Reserves Fund, Pioneer Real Estate Shares, Pioneer Science & Technology Fund, Pioneer Small Company Fund, Pioneer Strategic Income Fund, Pioneer Tax-Free Income Fund, Pioneer Tax-Managed Fund, Pioneer II, Pioneer World Equity Fund, Pioneer Variable Contracts Trust, a series fund consisting of the following series: Pioneer America Income VCT Portfolio, Pioneer Balanced VCT Portfolio, Pioneer Emerging Markets VCT Portfolio, Pioneer Equity-Income VCT Portfolio, Pioneer Europe VCT Portfolio, Pioneer Fund VCT Portfolio (formerly Growth & Income Portfolio), Pioneer Growth Shares VCT Portfolio, Pioneer High Yield VCT Portfolio, Pioneer International Growth VCT Portfolio, Pioneer Mid-Cap Value VCT Portfolio (formerly Capital Growth Portfolio), Pioneer Money Market VCT Portfolio, Pioneer Real Estate Growth VCT Portfolio, Pioneer Science & Technology VCT Portfolio, Pioneer Strategic Income VCT Portfolio, and Pioneer Swiss Franc Bond VCT Portfolio (individually, a "Fund" and, collectively, the "Funds") and Pioneer Investment Management, Inc. (the "Investment Manager").

Filing Dates: The application was filed on December 27, 1999 and amended on July 21, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 21, 2000, should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Robert P. Nault, Esq., The Pioneer Group, Inc., 60 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Branch Chief, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Each Fund, other than Pioneer Interest Shares, is an open-end management investment company registered under the Act. Pioneer Interest Shares is a closed-end management investment company registered under the Act. Each Fund currently offers one series of shares, except for the Pioneer Variable Contracts Trust which currently offers fifteen series of shares. The assets of the Funds are held by Brown Brothers, Harriman & Co. (the "Custodian"), which is not an affiliated person of any of the Funds or of the Investment Manager.

2. The Investment Manager is registered under the Investment Advisers Act of 1940 and serves as investment adviser for each of the Funds. The Investment Manager is a wholly-owned subsidiary of The Pioneer Group, Inc. ("PGI").

3. Applicants request that any relief granted pursuant to the application also apply to all future series of the Funds and other registered management investment companies for which the Investment Manager or any entity controlling, controlled by, or under common control with the Investment Manager acts as investment adviser.[1]

4. Several of the Funds are authorized to enter into securities lending transactions. In connection with such transactions, the Funds may receive collateral in the form of either cash ("Cash Collateral") or certain securities. When Cash Collateral is received, it is invested in a manner consistent with (i) each Fund's investment objectives and restrictions and (ii) Commission and staff guidelines concerning the investment of Cash Collateral.

5. On a daily basis, the Funds also may have uninvested cash balances representing proceeds from sales of portfolio securities, the cost of securities purchased but not yet delivered, cash available to meet the Fund's redemptions or other liquidity requirements and cash awaiting investment ("Uninvested Cash," and together with Cash Collateral, "Cash Balances"). The Cash Balance of each Fund is invested by the Investment Manager in short-term liquid investments authorized by the Fund's investment policies. Currently, the Investment Manager must make these investments separately on behalf of each Fund. Applicants assert that these separate purchases result in certain inefficiencies, a reduction in the returns that the Funds could otherwise achieve on such investments, and higher costs.

6. Applicants propose that the Funds deposit some or all of their Cash Balances into one or more joint accounts ("Joint Accounts"). The daily balances in the Joint Accounts would be invested in (i) repurchase agreements "collateralized fully" (as defined in Rule 2a–7 under the Act); (ii) interest-bearing or discounted commercial paper, including United States dollar-

[1] Each Fund that currently intends to rely on the requested order is named as an applicant. Any registered management investment company that relies on the requested relief in the future will do so only in compliance with the terms and conditions of the application.

denominated commercial paper of foreign issuers; (iii) government securities, as defined in section 2(a)(16) of the Act; and (iv) any other short-term taxable or tax-exempt money market instruments that constitute "Eligible Securities," as defined in rule 2a–7 under the Act (collectively, "Short-Term Investments").

7. Any repurchase agreements entered into through the Joint Accounts will comply with the terms of Investment Company Act Release No. 13005 (Feb. 2, 1983) or any subsequent interpretive position of the Commission or its staff. The participating Funds will not enter into "hold-in-custody" repurchase agreements in which the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement except in instances when cash is received very late in the business day or would otherwise be unavailable for investment.

8. Each Fund's decision to invest through a Joint Account would be based on the same factors as its decision to make any other short-term liquid investments consistent with its investment objectives, policies, and restrictions. The Joint Accounts will only be used to aggregate what otherwise would be one or more daily transactions by some or all participating Funds to manage their respective daily Cash Balances.

9. The Investment Manger will be responsible for investing the Cash Balances in the Joint Accounts, establishing accounting and control procedures, and operating the Joint Accounts in accordance with procedures that seek to ensure fair treatment of the participating Funds. The Investment Manager will not charge any additional or separate fees for administering or advising the Joint Accounts and will not participate monetarily in the Joint Accounts.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from participating in any joint enterprise or arrangement in which that investment company is a participant, unless the Commission has issued an order authorizing the arrangement. In determining whether to grant such an order, the Commission may consider whether the participation of the registered investment company in the proposed joint arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants in the arrangement.

2. Under section 2(a)(3)(C) of the Act, each fund may be deemed to be an "affiliated person" of each other Fund if the Investment Manager were deemed to control each Fund. Applicants state that each Fund participating in a Joint Account and the Investment Manager, by managing that Joint Account, may be deemed to be "joint participants" in a transaction within the meaning of section 17(d) of the Act. Applicants further state that each Joint Account may be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1.

3. Applicants assert that no Fund would be in a less favorable position than any other Fund as a result of its participation in one or more Joint Accounts. Applicants also assert that the proposed operation of the Joint Accounts will not result in any conflicts of interest among any of the Funds and the Investment Manager. Each Fund's liability on any Short-Term Investment invested in through the Joint Accounts will be limited to its interest in such Short-Term Investment.

4. Applicants state that operation of the Joint Accounts could result in certain benefits to the Funds. The Funds may earn a higher rate of return on Short-Term Investments through the Joint Accounts relative to the returns they could earn individually. Under most market conditions, applicants assert it is generally possible to negotiate a rate of return on larger Short-Term Investments that is higher than that available on smaller Short-Term Investments. Applicants also contend that the aggregation of Cash Balances in a Joint Account may make more investment opportunities available to the Funds and may reduce the possibility of the Funds' Cash Balances remaining uninvested. In addition, the Joint Accounts may result in certain administrative efficiencies and reduce the potential for error by reducing the number of trade tickets and cash wires that the sellers of Short-Term Investments, the Custodian, and the Investment Manager must process.

5. Applicants submit that the proposed Joint Accounts meet the criteria of rule 17d–1 for issuance of an order. Applicants state that although the Investment Manager may realize some benefit through administrative convenience and reduced clerical costs, the Funds would be the primary beneficiaries of the Joint Accounts.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. One or more Joint Accounts will be established on behalf of the Funds as separate accounts into which a Fund may deposit daily all or a portion of its Cash Balances. The Joint Accounts will be subject to the Funds' custody agreements and will not be distinguishable from any other accounts maintained by the Funds at the Custodian except that monies from the Funds will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have separate existences and will not be separate legal entities. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions, which would otherwise require daily management by the Investment Manager of Cash Balances.

2. Assets in the Joint Accounts will be invested in Short-Term Investments, as directed by the Investment manager (or, in the case of Cash Collateral, the Custodian, in its role as securities lending agent in instruments pre-approved by the Investment Manager). Short-Term Investments that are repurchase agreements will have a remaining maturity of 60 days or less and other Short-Term Investments will have a remaining maturity of 90 days or less, each as calculated in accordance with rule 2a–7 under the Act. Cash Collateral in a Joint Account will be invested in Short-Term Investments which have a remaining maturity of 397 calendar days or less calculated in accordance with rule 2a–7 under the Act. No Fund will be permitted to invest in a Joint Account unless the Short-Term Investments in that Joint Account will comply with the investment policies and restrictions of that Fund.

3. All assets held by the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable Commission or staff releases, rules, letters, or orders.

4. Each Fund valuing its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Account in which such Fund has an interest (determined on a dollar-weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in the Joint Account on that day.

5. To prevent any Fund from using any part of a balance of a Joint Account credited to another Fund, no Fund will be allowed to create a negative balance

in any Joint Account for any reason, although each Fund will be permitted to draw down its entire balance at any time, provided the Investment Manager determines such draw-down would have no significant adverse impact on any other Fund in that Joint Account. Each Fund's decision to invest in a Joint Account would be solely at its option, and no Fund will be obligated to invest in a Joint Account or to maintain any minimum balance in a Joint Account. In addition, each Fund will retain the sole rights of ownership to any of its assets invested in a Joint Account, including interest payable on such assets invested in the Joint Account.

6. The Investment Manager will administer, manage, and invest the cash in the Joint Accounts in accordance with, and as part of, its general duties under existing or future investment management agreements with the Funds and will not collect any additional or separate fee for advising any Joint Account.

7. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. The Boards will adopt procedures for each of the Funds pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of this application will be met. Each Board will make and approve such changes as it deems necessary to ensure such procedures are followed. In addition, the Board of each Fund will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the adopted procedures and will only permit a Fund to continue to participate therein if it determines that there is a reasonable liklehood that the Fund and its shareholders will benefit from the Fund's continued participation.

9. Each Fund will participate in the Joint Accounts on the same basis as any other Fund in conformity with its respective fundamental investment objectives, policies, and restrictions.

10. Any Short-Term Investments made through the Joint Accounts will satisfy the investment criteria of all Funds in that Short-Term Investment.

11. Each Fund's investment in the Joint Accounts will be documented daily on its books and on the books of the Custodian. The Investment Manager and the Custodian of each Fund will maintain records documenting, for any given day, each Fund's aggregate investment in a Joint Account and each Fund's pro rata share of each investment made through such Joint Account. The records maintained for each Fund will be maintained in conformity with section 31 of the Act and the rules and regulations promulgated thereunder.

12. Every Fund participating in a Joint Account will not necessarily have its cash invested in every Short-Term Investment made through such Joint Account. However, to the extent that a Fund's cash is applied to a particular Short-Term Investment, the Fund will participate in and own its proportionate share of such Short-Term Investment, and any income earned or accrued thereon, based upon the percentage of such investment purchased with monies contributed by the Fund.

13. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity except if: (i) The Investment Manager believes the investment no longer presents minimal credit risks; (ii) the investment no longer satisfies the investment criteria of all Funds participating in the investment because of a credit downgrading or otherwise; or (iii) in the case of a repurchase agreement, the counterparty defaults. The Investment Manager may sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all Funds prior to the maturity of the investment provided the cost of such transaction will be allocated solely to the selling Funds and the transaction will not adversely affect the other Funds participating in that Joint Account. In no case would an early termination by less than all Funds be permitted if such early termination would reduce the principal amount or yield received by other Funds in the Joint Account or otherwise adversely affect the other Funds. Each Fund in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

14. Short-Term Investments held through a Joint Account with remaining maturities of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and, for any Fund that is an open-end management investment company registered under the Act, subject to the restriction that the Fund may not invest more than 15%, or in the case of a money market fund, more than 10% (or such other percentage as set forth by the Commission from time to time) of its net assets in illiquid securities, and any similar restrictions set forth in the Fund's investment restrictions and policies, if the Investment Manager cannot sell the instrument, or the Fund's fractional interest in such instrument, pursuant to the preceding condition.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19499 Filed 8–1–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43065; File No. SR–Amex–00–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Amendment of Article V, Section 1 of the Exchange Constitution and Exchange Rule 345

July 21, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2000, the American Stock Exchange LLC ("Amex" "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 345 and Article V, Section 1 of the Exchange Constitution: (i) To give the Exchange's Enforcement Department the right to appeal a decision of a Disciplinary Panel, and (ii) to give the Amex Adjudicatory Council and Amex Board of Governors authority to increase the penalty imposed by a Disciplinary Panel.

The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Constitution Article V, Section 1(c) and Rule 345(f)

Under Article V, Section 1(c) of the Exchange Constitution and Rule 345, any member, member organization, approved person, or employee of a member or member organization found guilty of charges by an Exchange Disciplinary Panel may appeal the determination and/or penalty imposed by the Panel to the Amex Adjudicatory Council ("AAC").[3] The Exchange's Enforcement Department, however, may not appeal a Disciplinary Panel's determination pursuant to these Constitutional and rule provisions. The Exchange believes that its staff should also have a direct right of appeal in those situations where it believes that the Disciplinary Panel has imposed inadequate sanctions or made a determination inconsistent with evidence presented.

In reviewing a disciplinary decision, the AAC currently may affirm the determination and penalty imposed, modify or reverse the determination, decrease or eliminate the penalty imposed, impose any lesser penalty permitted, or remand the matter to the Disciplinary Panel for further consideration. However, the AAC may not increase or impose a greater penalty on appeal. The Exchange proposes that the AAC be given the authority to increase the penalty imposed by the Disciplinary Panel if it deems it appropriate. This authority would give the reviewing body the full range of alternatives that it needs to deal effectively with appeals. Additionally, this authority is necessary to give effect to the Enforcement Department's proposed right of appeal.

b. Constitution Article V, Section 1(d) and Rule 345(g)

Pursuant to Exchange Constitution Article V, Section 1(d) and Rule 345(g), as the next level of review, any four members of the Board of Governors may call a proposed decision of the AAC in a contested disciplinary matter for review by the entire Board. In reviewing a decision by the AAC, the Board may affirm, modify or reverse the decision of the AAC, or remand the matter for further consideration. The Exchange proposes to expand the scope of the Board's authority to review proposed decisions of the AAC so that the Board may also sustain, increase or eliminate any penalty imposed, or impose a lesser penalty.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general and furthers the objectives of Sections 6(b)(1),[6] 6(b)(6),[7] and 6(b)(7)[8] in particular in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; it will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange; and it will provide a fair procedure for the disciplining of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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 with respect to the proposed rule change.

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 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 20549–0609. 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 Amex. All submissions should refer to the file number SR–Amex–00–22 and should be submitted by August 23, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19503 Filed 8–1–00; 8:45 am]

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[3] Additionally, any member of the AAC has the authority to request a review of an Exchange Disciplinary Panel decision *sua sponte*.

[4] Pursuant to New York Stock Exchange ("NYSE") Rule 476(f), NYSE enforcement personnel have the authority to appeal adverse determinations by disciplinary panels and the review boards have the authority to increase penalties imposed by disciplinary panels. Further, National Association of Securities Dealers, Inc. ("NASD") Rule 9311 provides for similar authority.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(1).

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78f(b)(7).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43074; File No. SR–CHX–00–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Create a New Registration Fee and Annual Fee for Off-Floor Proprietary Securities Traders for CHX Member Firms for Which the CHX Acts as Designated Examining Authority

July 26, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (the "Schedule") to reflect a new registration fee and annual fee for certain associated persons of member firms for which the CHX acts as the designated examining authority. The text of the proposed rule change is available upon request at the CHX or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the Schedule to establish a $500 per person registration fee and a $500 per person annual fee for certain associated persons of member firms for which the CHX acts as the designated examining authority ("DEA"). Specifically, these fees would apply to those persons who are acting as off-floor proprietary securities traders for CHX member firms for which the CHX acts as the DEA.

These fees reflect the increased costs of administration and oversight involved in preparing and processing necessary Series 7[4] registration sponsor forms for these off-floor traders; inputting and maintaining traders' employment, examination and disciplinary histories; tracking adherence to applicable Series 7 continuing education requirements; and conducting on-site examinations of firms that employ these off-floor traders. The new registration fee is designed to apply to all registration sponsor forms received on or after August 1, 2000. The new annual fee will be charged as of January 1, 2001.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder,[7] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 20549–0609. 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 Exchange. All submissions should refer to file number SR–CHX–00–23, and should be submitted by August 23, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19502 Filed 8–1–00; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] U.S.C. 78s(b)(3)(A)(ii).

[4] CHX Rules require persons acting as off-floor proprietary securities traders for CHX member firms for which the CHX acts as DEA to successfully complete the Uniform Registered Representative Exam, Series 7, and to meet certain continuing education requirements. *See* Article VI, Rule 3, Interpretation .02; Article VI, Rule 9. The Series 7 examination is designed to ensure that registered representatives, such as CHX off-floor proprietary securities traders, understand the legal requirements applicable to their activities. *See* July 20, 2000 letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant director, Division of Market Regulation, SEC.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)((3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43066; File No. SR–MSRB–00–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Municipal Fund Securities

July 21, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2000, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("Commission"

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

or "SEC") the proposed rule change described in Items I, II, and III below, which Items have been prepared by the Board. The Board submitted an amendments to the proposed rule change on July 17, 2000.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed with the Commission a proposed rule change consisting of (i) proposed new Rule D–12, defining municipal fund security; (ii) amendments to Rule A–13, on underwriting and transaction assessments for brokers, dealers and municipal securities dealers, Rule G–3, on classification of principals and representatives, numerical requirements, testing and continuing education requirements, Rule G–8, on books and records to be made by brokers, dealers and municipal securities dealers, Rule G–14, on reports of sales or purchases, Rule G–15, on confirmation, clearance and settlement of transactions with customers, Rule G–26, on customer account transfers, Rule G–32, on disclosures in connection with new issues, and Rule G–34, on CUSIP numbers and new issue requirements; and (iii) a Board interpretation on sales or municipal fund securities in the primary market. The text of the proposed rule change is set forth below. Additions were italicized; deletions are bracketed.

Rule D–12."Municipal Fund Security"

The term "municipal fund security" shall mean a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940.

Rule A–13. Underwriting and Transaction Assessments for Brokers, Dealers and Municipal Securities Dealers

(a) Underwriting Assessments—Scope. Each broker, dealer and municipal securities dealer shall pay to the Board an underwriting fee as set forth in section (b) for all municipal securities purchased from an issuer by or through such broker, dealer or municipal securities dealer, whether acting as principal or agent, as part of a primary offering, provided that *section (b) of* this rule shall not apply to a primary offering of securities of all such securities in the primary offering:

(i)–(ii) No change.

(iii) at the option of the holder thereof, may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent; [or]

(iv) have authorized denominations of $100,000 or more and are sold to more than thirty-five persons each of whom the broker, dealer or municipal securities dealer reasonably believes: (A) Has the knowledge and experience necessary to evaluate the merits and risks of the investment; and (B) is not purchasing for more than one account, with a view toward distributing the securities*; or*

(v) constitute municipal fund securities.

If a syndicate or similar account has been formed for the purchase of the securities, the underwriting fee shall be paid by the managing underwriter on behalf of each participants in the syndicate or similar account.

(b)-(f) No change.

Rule G–3. Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements

No broker, dealer or municipal securities dealer or person who is a municipal securities representative, municipal securities principal, municipal securities sales principal or financial and operations principal (as hereafter defined) shall be qualified for purposes of rule G–2 unless such broker, dealer or municipal securities dealer or person meets the requirements of this rule.

(a) Municipal Securities Representative.

(i) No change.

(ii) Qualification Requirements.

(A)–(B) No change.

(C) *The requirements of subparagraph (a)(ii)(A) of this rule shall not apply to any person who is duly qualified as limited representative—investment company and variable contracts products by reason of having taken and passed the Limited Representative—Investment Company and Variable Contracts Products Examination, but only if such person's activities with respect to municipal securities described in paragraph (a)(i) of this rule are limited solely to municipal fund securities.*

(D) Any person who ceases to be associated with a broker, dealer or municipal securities dealer (whether as a municipal securities representative or otherwise) for two or more years at any time after having qualified as a municipal securities representative in accordance with subparagraph[s] (a)(ii)(A), *(B) or (C)* [or (B)] shall again meet the requirements of subparagraph[s] (a)(ii)(A), *(B) or (C)* [or (B)] prior to being qualified as a municipal securities representative.

(iii) Apprenticeship.

(A) Any person who first become associated with a broker, dealer or municipal securities dealer in a representative capacity (whether as a municipal securities representative, [or] general securities representative *or limited representative—investment company and variable contracts products*) without having previously qualified as a municipal security representative, [or] general securities representative *or limited representative—investment company and variable contracts products* shall be permitted to function in a representative capacity without qualifying pursuant to subparagraph[s] (a)(ii)(A), *(B) or (C)* [or (B)] for a period of at least 90 days following the date such person becomes associated with a broker, dealer or municipal securities dealer, provided, however, that such person shall not transact business with any member of the public with respect to, or be compensated for transactions in, municipal securities during such 90 day period, regardless of such person's having qualified in accordance with the examination requirements of this rule. A person subject to the requirements of this paragraph (a)(iii) shall in no event continue to perform any of the functions of a municipal securities representative after 180 days following the commencement of such person's association with such broker, dealer or municipal securities dealer, unless such person qualifies as a municipal securities representative pursuant to subparagraph[s] (a)(ii)(A) *(B) or (C)* [or (B)].

(B) Prior experience, of at least 90 days, as a general securities representative, *limited representative—investment company and variable contracts products* [mutual fund salesperson] or *limited representative—*government securities [representative], will meet the requirements of this paragraph (a)(iii).

(b)-(h) No change.

[3] The Board submitted a new Form 19b–4, which supplements, the original filing. ("Amendment No. 1"). Specifically, Amendment No. 1 amends Rule G–8(g)(i) to clarify that the Commission does not approve a firm's arrangement with a transfer agent regarding books and records. In addition, Amendment No. 1 makes certain technical corrections to the proposed rule change.

Rule G–8. Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer.

(i) Records of Original Entry. "Blotters" or other records of original entry containing an itemized daily record of all purchases and sales of municipal securities, all receipts and deliveries of municipal securities (including certificate numbers and, if the securities are in registered form, an indication to such effect), all receipts and disbursement of cash with respect to transactions in municipal securities, all other debits and credits pertaining to transactions in municipal securities, and in the case of brokers, dealers and municipal securities dealers other than bank dealers, all other cash receipts and disbursements if not contained in the records required by any other provision of this rule. The records of original entry shall show the name or other designation of the account for which each such transaction was effected (whether effected for the account of such broker, dealer or municipal securities dealer, the account of a customer, or otherwise), the description of the securities, the aggregate par value of the securities, the dollar price or yield and aggregate purchase or sale price of the securities, accrued interest, the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered. With respect to accrued interest and information relating to "when issued" transactions which may not be available at the time a transaction is effected, entries setting forth such information shall be made promptly as such information becomes available. *Dollar price, yield and accrued interest relating to any transaction shall be required to be shown only to the extent required to be included in the confirmation delivered by the broker, dealer or municipal securities dealer in connection with such transaction under rule G–12 or rule G–15.*

(ii)–(viii) No change.

(ix) Copies of Confirmations, *Periodic Statements* and Certain Other Notices to Customers. A copy of all confirmations of purchase or sale of municipal securities, *of all periodic written statements disclosing purchases, sales or redemptions of municipal fund securities pursuant to rule G–15(a)(viii)* and, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, of all other notices sent to customers concerning debits and credits to customer accounts or, in the case of a bank dealer, notices of debits and credits for municipal securities, cash and other items with respect to transactions in municipal securities.

(x) No change.

(xi) Customer Account Information. A record for each customer, other than an institutional account, setting forth the following information to the extent applicable to such customer:

(A)–(G) No change.

(H) signature of municipal securities representative, [and] general securities representative *or limited representative—investment company and variable contracts products* introducing the account and signature of a municipal securities principal, municipal securities sales principal or general securities principal indicating acceptance of the account;

(I)–(K) No change.

For purposes of this subparagraph, the terms "general securities representative," [and] "general securities principal" *and "limited representative—investment company and variable contracts products"* shall mean such persons as so defined by the rules of a national securities exchange or registered securities association. For purposes of this subparagraph, the term "institutional account" shall mean the account of (i) a bank, savings and loan association, insurance company, or registered investment company; (ii) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (iii) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million. Anything on this subparagraph to the contrary notwithstanding, every broker, dealer and municipal securities dealer shall maintain a record of the information required by items (A), (C), (F), (H), (I) and (K) of this subparagraph with respect to each customer which is an institutional account.

(xii)–(xix) No change.

(b)–(f) No change.

(g) Transactions in Municipal Fund Securities.

(i) Books and Records Maintained by Transfer Agents. Books and records required to be maintained by a broker, dealer or municipal securities dealer under this rule solely with respect to transactions in municipal fund securities may be maintained by a transfer agent registered under Section 17A(c)(2) of the Act used by such broker, dealer or municipal securities dealer in connection with such transactions; provided that, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the arrangements with such transfer agent have been approved by the Commission or, in the case of a bank dealer, such arrangements have been approved by the appropriate regulatory agency for such bank dealer, and further provided that such broker, dealer or municipal securities dealer shall remain responsible for the accurate maintenance and preservation of such books and records.

(ii) Price Substituted for Par Value of Municipal Fund Securities. For purposes of this rule, each reference to the term "par value," when applied to a municipal fund security, shall be substituted with (A) in the case of a purchase of a municipal fund security by a customer, the purchase price paid by the customer, exclusive of any commission, and (B) in the case of a sale or tender for redemption of a municipal fund security by a customer, the sale price or redemption amount paid to the customer, exclusive of any commission or other charge imposed upon redemption or sale.

Rule G–14. Reports of Sales or Purchases

(a) No change.

(b) Transactions Reporting Requirements.

(i) Each broker, dealer or municipal securities dealer shall report to the Board or its designee information about its transactions in municipal securities *to the extent required by, and* using the formats and within the timeframes specified in, Rule G–14 Transaction Reporting Procedures. Transaction information collected by the Board under this rule will be used to make public reports of market activity and prices and to assess transaction fees. The transaction information will be made available by the Board to the Commission, securities associations registered under Section 15A of the Act and other appropriate regulatory agencies defined in Section 3(a)(34)(A) of the Act to assist in the inspection for compliance with and the enforcement of Board rules.

(ii)–(iii) No change.

Rule G–14 Transaction Reporting Procedures

(a) No change.

(b) Customer Transactions.

(i)–(ii) No change.

(iii) *The following transactions shall not be required to be reported under this section (b):*

(A) [A] *a* transaction in a *municipal* security that is ineligible for assignment of a CUSIP number by the Board or its designeee; *and* [shall not be required to be reported under this section (b).]

(B) a transaction in a municipal fund security.

(iv) No change.

Rule G–15. Confirmation, Clearance and Settlement of Transactions With Customers

(a) Customer Confirmations.

(i) At or before the completion of a transaction in municipal securities with or for the account of a customer, each broker, dealer or municipal securities dealer shall give or send to the customer a written confirmation that complies with the requirements of this paragraph (i):

(A) Transaction information. The confirmation shall include information regarding the terms of the transaction as set forth in this subparagraph (A):

(1)–(2) No change.

(3) Par value. The par value of the securities shall be shown, with special requirements for the following securities:

(a) No change.

(b) Municipal fund securities. For municipal fund securities, in place of par value, the confirmation shall show (i) in the case of a purchase of a municipal fund security by a customer, the total purchase price paid by the customer, exclusive of any commission, and (ii) in the case of a sale or tender for redemption of a municipal fund security by a customer, the total sale price or redemption amount paid to the customer, exclusive of any commission or other charge imposed upon redemption or sale.

(4) No change.

(5) Yield and dollar price. Yields and dollar prices shall be computed and shown in the following manner, subject to the exceptions stated in subparagraph (A)(5)(d) of this paragraph:

(a)–(c) No change.

(d) Notwithstanding the requirements noted in subparagraphs (A)(5)(a) through (c) of this paragraph[,] above:

(i)–(v) No change.

(vi) Municipal fund securities. For municipal fund securities, neither yield nor dollar price shall be shown.

(6) Final Monies. The following information relating to the calculation and display of final monies shall be shown:

(a) No change.

(b) amount of accured interest, with special requirements for the following securities:

(i)–(ii) No change.

(iii) Municipal fund securities. For municipal fund securities, no figure for accrued interest shall be shown;

(c) if the securities *pay interest on a current basis but* are traded without interest, a notation of "flat;"

(d) extended principal amount, with special requirements for the following securities:

(i) No change.

(ii) Municipal fund securities. For municipal fund securities, no extended principal amount shall be shown;

(e)–(h) No change.

(7) Delivery of securities. The following information regarding the delivery of securities shall be shown:

(a) Securities other than bonds *or municipal fund securites.* For securities other than bonds *or municipal fund securities,* denominations to be delivered;

(b) No change.

(c) *Municipal fund securities.* For municipal fund securites, the purchase price, exclusive of commission, of each share or unit and the number of shares or units to be delivered;

(d) Delivery instructions. Instructions, if available, regarding receipt or delivery of securities[,] and form of payment, if other than as usual and customary between the parties.

(8) No change.

(B) Securities identification information. The confirmation shall include a securities identification which includes, at a minimum:

(1) the name of the issuer, with special requirements for the following securities:

(a) For stripped coupon securities, the trade name and series designation assigned to the stripped coupon municipal security by the *broker, dealer or municipal securities* dealer sponsoring the program *must be shown:*

(b) Municipal fund securities. For municipal fund securities, the name used by the issuer to identify such securities and, to the extent necessary to differentiate the securities from other municipal fund securities of the issuer, any separate program series, portfolio or fund designation for such securities must be shown;

(2) No change.

(3) Maturity date, *if any,* with special requirements for the following securities:

(a) No change.

(b) Municipal fund securities. For municipal fund securities, no maturity date shall be shown;

(4) Interest rate, *if any,* with special requirements for the following securities:

(a)–(e) No change.

(f) Municipal fund securities. For municipal fund securities, no interest rate shall be shown:

(5) No change.

(C) Securities descriptive information. The confirmation shall include description information about the securities which includes, at a minimum:

(1)–(4) No change.

(5) *Municipal fund securities. For municipal fund securities, the information described in clauses (1) through (4) of this subparagraph (C) is not required to be shown; provided, however, that if the municipal fund securities are puttable or otherwise redeemable by the customer, the confirmation shall include a designation to that effect.*

(D) Disclosure statements:

(1)–(2) No change.

(3) The confirmation for securities for which a deferred commission or other charge is imposed upon redemption or as a condition for payment of principal or interest thereon shall include a statement that the customer may be required to make a payment of such deferred commission or other charge upon redemption of such securities or as a condition for payment of principal or interest thereon, as appropriate, and that information concerning such deferred commission or other charge will be furnished upon written request.

(E) Confirmation format. All requirements must be clearly and specifically indicated on the front of the confirmation, except that the following statements may be on the reverse side of the confirmation:

(1) The disclosure statements required in subparagraph (D)(1), *(D)(2) or (D)(3)* [and (2)] of this paragraph, provided that their specific applicability is noted on the front of the confirmation.

(2)–(3) No change.

(ii)–(iii) No change.

(iv) Confirmation to customers who tender put option bonds *or municipal fund securities.* A broker, dealer, or municipal securities dealer that has an interest in put option bonds (including acting as remarketing agent) and accepts for tender put *option* bonds from a customer, *or that has an interest in municipal fund securities (including acting as agent for the issuer thereof) and accepts for redemption municipal fund securities tendered by a customer,* is engaging in a transaction in such municipal securities and shall send a confirmation under paragraph (i) of this section.

(v) No change.

(vi) Definitions. For purposes of this rule, the following terms shall have the following meanings:

(A)–(F) No change.

(G) The term "periodic municipal fund security plan" shall mean any written authorization or arrangement for a broker, dealer or municipal securities dealer, acting as agent, to purchase, sell or redeem for a customer or group of customers one or more specific municipal fund securities, in specific amounts (calculated in security units or dollars), at specific time intervals and setting forth the commissions or charges to be paid by the customer in connection therewith (or the manner of calculating them).

(H) The term "non-periodic municipal fund security program" shall mean any written authorization or arrangement for a broker, dealer or municipal securities dealer, acting as agent, to purchase, sell or redeem for a customer or group of customers one or more specific municipal fund securities, setting forth the commissions or charges to be paid by the customer in connection therewith (or the manner of calculating them) and either (1) providing for the purchase, sale or redemption of such municipal fund securities at the direction of the customer or customers or (2) providing for the purchase, sale or redemption of such municipal fund securities at the direction of the customer or customers as well as authorizing purchase, sale or redemption of such municipal fund securities in specific amounts (calculated in security units or dollars) at specific time intervals.

(vii) Price substituted for par value of municipal fund securities. For purposes of this rule, each reference to the term "par value," when applied to a municipal fund security, shall be substituted with (i) in the case of a purchase of a municipal fund security by a customer, the purchase price paid by the customer, exclusive of any commission, and (ii) in the case of a sale or tender for redemption of a municipal fund security by a customer, the sale price or redemption amount paid to the customer, exclusive of any commission or other charge imposed upon redemption or sale.

(viii) Alternative periodic reporting for certain transactions in municipal fund securities. Notwithstanding any other provision of this section (a), a broker, dealer or municipal securities dealer may effect transactions in municipal fund securities with customers without giving or sending to such customer the written confirmation required by paragraph (i) of this section (a) at or before completion of each such transaction if:

(A) such transactions are effected pursuant to a periodic municipal fund security plan or a non-periodic municipal fund security program; and

(B) such broker, dealer or municipal securities dealer gives or sends to such customer within five business days after the end of each quarterly period, in the case of a customer participating in a periodic municipal fund security plan, or each monthly period, in the case of a customer participating in a non-periodic municipal fund security program, a written statement disclosing, for each purchase, sale or redemption effected for or with, and each payment of investment earnings credited to or reinvested for, the account of such customer during the reporting period, the information required to be disclosed to customers pursuant to subparagraphs (A) through (D) if paragraph (i) of this section (a), with the information regarding each transaction clearly segregated; provided that it is permissible:

(1) for the name and address of the broker, dealer or municipal securities dealer and the customer to appear once at the beginning of the periodic statement; and

(2) for information required to be included pursuant to subparagraph (A)(1)(d), (A)(2)(a) (C)(5) or (D)(3) of paragraph (i) of this section (a) to:

(a) appear once in the periodic statement if such information is identical for all transactions disclosed in such statement; or

(b) be omitted from the periodic statement, but only if such information previously has been delivered to the customer in writing and the periodic statement includes a statement indicating that such information has been provided to the customer and identifying the document in which such information appears; and

(C) in the case of a periodic municipal fund security plan that consists of an arrangement involving a group of two or more customers and contemplating periodic purchases of municipal fund securities by each customer through a person designated by the group, such broker, dealer or municipal securities dealer:

(1) gives or sends to the designated person, at or before the completion of the transaction for the purchase of such municipal fund securities, a written notification of the receipt of the total amount paid by the group;

(2) sends to anyone in the group who was a customer in the prior quarter and on whose behalf payment has not been received in the current quarter a quarterly written statement reflecting that a payment was not received on such customer's behalf; and

(3) advises each customer in the group if a payment is not received from the designated person on behalf of the group within 10 days of a date certain specified in the arrangement for delivery of that payment by the designated person and either (a) thereafter sends to each customer the written confirmation described in paragraph (i) of this section (a) for the next three succeeding payments, or (b) includes in the quarterly statement referred to in subparagraph (B) of this paragraph (viii) each date certain specified in the arrangement for delivery of a payment by the designated person and each date on which a payment received from the designated person is applied to the purchase of municipal fund securities; and

(D) such customer is provided with prior notification in writing disclosing the intention to send the written information referred to in subparagraph (B) of this paragraph (vii) on a periodic basis in lieu of an immediate confirmation for each transaction; and

(E) such customer has consented in writing to receipt of the written information referred to in subparagraph (B) of this paragraph (viii) on a periodic basis in lieu of an immediate confirmation for each transaction; provided, however, that such customer consent shall not be required if:

(1) the customer is not a natural person;

(2) the customer is a natural person who participates in a periodic municipal fund security plan described in subparagraph (C) of this paragraph (viii); or

(3) the customer is a natural person who participates in a periodic municipal fund security plan (other than a plan described in subparagraph (C) of this paragraph (viii) or a non-periodic municipal fund security program and the issuer has consented in writing to the use by the broker, dealer or municipal securities dealer of the periodic written information referred to in subparagraph (B) of this paragraph (viii) in lieu of an immediate confirmation for each transaction with each customer participating in such plan or program.

(b)–(e) No change.

Rule G–26. Customer Account Transfers

(a) Definitions. For purposes of this rule, the following terms have the following meanings:

(i)–(ii) No change.

(iii) The term "nontransferable asset" means an asset that is incapable of being transferred from the carrying party to the receiving party because (*A*) it is an

issue in default for which the carrying party does not possess the proper denominations to effect delivery and no transfer agent is available to re-register the securities, *or (B) it is a municipal fund security which the issuer requires to be held in an account carried by one or more specified brokers, dealers or municipal securities dealers that does not include the receiving party.*

(b) No change.

(c) Transfer Instructions.

(i) No change.

(ii) If an account includes any nontransferable assets, the carrying party must request, in writing and prior to or at the time of validation of the transfer instruction, further instructions from the customer with respect to the disposition of such assets. Such request shall provide the customer with the following alternative methods of disposition of nontransferable assets, if applicable.

(A) No change.

(B) retention by the carrying party for the customer's benefit; *or*

(C) in the case of a nontransferable asset described in section (a)(iii)(B), transfer to another broker, dealer or municipal securities dealer, if any, which the issuer has specified as being permitted to carry such asset.

(d)–(i) No change.

Rule G–32. Disclosures in Connection With New Issues

(a) *Customer* Disclosure Requirements. No broker, dealer or municipal securities dealer shall sell, whether as principal or agent, any new issue municipal securities to a customer unless such broker, dealer or municipal securities dealer delivers to the customer no later than the settlement of the transaction:

(i) a copy of the official statement in final form prepared by or on behalf of the issuer or, if an official statement in final form is not being prepared by or on behalf of the issuer, a written notice to that effect together with a copy of an official statement in preliminary form, if any; provided, however, that:

(A) if a customer who participates in a periodic municipal fund security plan or a non-periodic municipal fund security program has previously received a copy of the official statement in final form in connection with the purchase of municipal fund securities under such plan or program, a broker, dealer or municipal securities dealer may sell additional shares or units of the municipal fund securities under such plan or program to the customer if such broker, dealer or municipal securities dealer sends to the customer a copy of a new, supplemented, amended or "stickered" official statement in final form, by first class mail or other equally prompt means, promptly upon receipt thereof; provided that, if the broker, dealer or municipal securities dealer sends a supplement, amendment or sticker without including the remaining portions of the official statement in final form, such broker, dealer or municipal securities dealer includes a written statement describing which documents constitute the complete official statement in final form and stating that the complete official statement in final form is available upon request; or

(B) if an official statement in final form is being prepared for new issue municipal securities issued in a primary offering that qualifies for the exemption set forth in paragraph (iii) of section (d)(1) of Securities Exchange Act Rule 15c2–12, a broker, dealer or municipal securities dealer.

(A)–(B) Renumbered as (1)–(2).

(ii) in connection with a negotiated sale of new issue municipal securities, the following information concerning the underwriting arrangements:

(A) the underwriting spread, *in any*;

(B) the amount of any fee received by the broker, dealer or municipal securities dealer as agent for the issuer in the distribution of the securities; *provided, however, that if a broker, dealer or municipal securities dealer selling municipal fund securities provides periodic statements to the customer pursuant to rule G–15(a)(viii) in lieu of individual transaction confirmations, this paragraph (ii)(B) shall be deemed to be satisfied if the broker, dealer or municipal securities dealer provides this information to the customer at least annually and provides information regarding any change in such fee on or prior to the sending of the next succeeding periodic statement to the customer; and*

(C) except with respect to an issue of municipal fund securities, the initial offering price for each maturity in the issue that is offered or to be offered in while or in part by the underwriters, including maturities that are not reoffered.

(b) Inter-Dealer Disclosure Requirements. Every broker, dealer or municipal securities dealer shall send, upon request, the documents and information referred to in [this] section (a) to any broker, dealer or municipal securities dealer to which it sells new issue municipal securities no later than the business day following the request or, if an official statement in final form is being prepared but has not been received from the issuer or its agent, no later than the business day following such receipt. Such items shall be sent by first class mail or other equally prompt means, unless the purchasing broker, dealer or municipal securities dealer arranges some other method of delivery and pays or agrees to pay for such delivery.

(b)–(c) Relettered as (c)–(d).

Rule G–34. CUSIP Numbers and New Issue Requirements

(a)–(b) No change.

(c) [CUSIP Number Eligibility] *Exemptions.* The provisions of this rule shall not apply to an issue of municipal securities (or for the purpose of section (b) any part of an outstanding maturity of an issue) which (*i*) does not meet the eligibility criteria for CUSIP number assignment *or (ii) consists entirely of municipal fund securities.*

* * * * *

Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market

The Municipal Securities Rulemaking Board ("Board") has learned that sales of certain interests in trust funds held by state or local governmental entities may be effected by or through brokers, dealers or municipal securities dealers ("dealers"). In particular, the Board has reviewed two types of state or local governmental programs in which dealers may effect transactions in such interests: pooled investment funds under trusts established by state or local governmental entities ("local government pools")[4] and higher education savings plan trusts established by states ("higher education trusts").[5] In response to a request of the Board, staff of the Division of Market

[4] *The Board understands that local government pools are established by state or local governmental entities as trusts that serve as vehicles for the pooled investment of public moneys of participating governmental entities. Participants purchase interests in the trust and trust assets are invested in a manner consistent with the trust's stated investment objectives. Investors generally do not have a right to control investment of trust assets. See generally National Association of State Treasures ("NAST"), Special Report: Local Government Investment Pools (July 1995) ("NAST Report") Standard & Poor's Fund Services, Local Government Investment Pools (May 1999) ("S&P Report").*

[5] *The Board understands that higher education trusts generally are established by states under section 529(b) of the Internal Revenue Code as "qualified state tuition programs" through which individuals make investments for the purpose of accumulating savings for qualifying higher education costs of beneficiaries. Individuals purchase interests in the trust and trust assets are invested in a manner consistent with the trust's stated investment objectives. Investors do not have a right to control investment of trust assets. See generally College Savings Plans Network, Special Report on State and College Savings Plans (1998) ("CSPN Report").*

Regulation of the Securities and Exchange Commission ("SEC") has stated that "at least some interests in local government pools and higher education trusts may be, depending on the facts and circumstances, 'municipal securities' for purposes of the [Securities] Exchange Act of 1934]."[6] *Any such interests that may, in fact, constitute municipal securities are referred to herein as "municipal fund securities." To the extent that dealers effect transactions in municipal fund securities, such transactions are subject to the jurisdiction of the Board pursuant to Section 15B of the Securities Exchange Act of 1934 ("Exchange act").*

With respect to the applicability to municipal fund securities of Exchange Act Rule 15c2–12, relating to municipal securities disclosure, staff of the staff of the SEC's Division of Market Regulation has stated:

[W]e note that Rule 15c2–12(f)(7) under the Exchange act defines a "primary offering" as including an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities. Based upon an analysis of programs that have been brought to our attention, it appears that interests in local government pools or higher education trusts generally are offered only by direct purchase from the issuer. Accordingly, we would view those interests as having been sold in a "primary offering" as that term is defined in Rule 15c2–12. If a dealer is acting as an "underwriter" (as defined in Rule 15c2–12(f)(8)) in connection with that primary offering, the dealer may be subject to the requirements of Rule 15c2–12.[7]

Rule 15c2–12(f)(8) defines an underwriter as "any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking."[8]

Consistent with SEC staff's view regarding the sale in primary offerings of municipal fund securities, dealers acting as underwriters in primary offerings of municipal fund securities generally would be subject to the requirements of rule G–36, on delivery of official statements, advance refunding documents and Forms G–36(OS) and G–36(ARD) to Board or its designee. Thus, unless such primary offering falls within one of the stated exemptions in Rule 15c2–12, the Board expects that the dealer would receive a final official statement from the issuer or its agent under its contractual agreement entered into pursuant to Rule 15c2–12(b)(3).[9] *Such final official statement should be received from the issuer in sufficient time for the dealer to send it, together with Form G–36(OS), to the Board within one business day of receipt but no later than 10 business days after any final agreement to purchase, offer, or sell the municipal fund securities, as required under rule G–36(b)(i).*[10] *"Final official statement," as used in rule G–36(b)(i), has the same meaning as in Rule 15c2–12(f)(3), which states, in relevant part:*

The term official statement means a document or set of documents prepared by an issuer of municipal securities or its representatives that is complete as of the date delivered to the Participating Underwriter(s) and that sets forth information concerning the terms of the proposed issue of securities; information, including financial information or operating data, concerning such issuers of municipal securities and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the Offering; and a description of the undertakings to be provided pursuant to paragraph (b)(5)(i), paragraph (d)(2)(ii), and paragraph (d)(2)(iii) of this section, if applicable, and of any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of this section failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section.[11]

The Board understands that issuers of municipal fund securities typically issue and deliver the securities continuously as customers make purchases, rather than issuing and delivering a single issue on a specified date. As used in Board rules, the term "underwriting period" with respect to an offering involving a single dealer (i.e., not involving an underwriting syndicate) is defined as the period (A) commencing with the first submission to the dealer of an order for the purchase of the securities or the purchase of the securities from the issuer, whichever first occurs, and (B) ending at such time as the following two conditions both are met: (1) The issuer delivers the securities to the dealer, and (2) the dealer no longer retains an unsold balance of the securities purchased from the issuer or 21 calendar days elapse after the date of the first submission of an order for the securities, whichever first occurs.[12] *Since an offering consisting of securities issued and delivered on a continuous basis would not, by its very nature, ever meet the first condition for the termination of the underwriting period, such offering would continuously remain in its underwriting period.*[13] *Further, since rule G–36(d) requires a dealer that has previously provided an official statement to the Board to send any amendments to the official statement made by the issuer during the underwriting period, such dealer would remain obligated to send to the Board any amendments made to the official statement during such continuous underwriting period. However, in view of the increased possibility that an issuer may change the dealer that participates in the sale of its securities during such a continuous underwriting period, the Board has determine that rule G–36(d) would require that the dealer that is at the time of an amendment then serving as underwriter for securities that are still in the underwriting period send the amendment to the Board, regardless of*

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[6] *Letter dated February 26, 1999 from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Diane G. Klinke, General Counsel of the Board, in response to letter dated June 2, 1998 from Diane G. Klinke to Catherine McGuire, published as Municipal Securities Rulemaking Board, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 032299033 (Feb. 26, 1999) ("SEC Letter").*

[7] *Id.*

[8] *The definition of underwriter excludes any person whose interest is limited to a commission, concession, or allowance from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission, concession, or allowance.*

[9] *Section (b)(3) of Rule 15c2–12 requires that a dealer serving as a Participating Underwriter in connection with a primary offering subject to the Rule contract with an issuer of municipal securities or its designated agent to receive copies of a final official statement at the time and in the quantities set forth in the Rule.*

[10] *If a primary offering of municipal fund securities is exempt from Rule 15c2–12 (other than as a result of being a limited offering as described in section (d)(1)(i) of the Rule) and an official statement in final form has been prepared by the issuer, then the dealer would be expected to send the official statement in final form, together with Form G–36(OS), to the Board under Rule G–36(c)(i).*

[11] *Dealers seeking guidance as to whether a particular document or set of documents constitutes a final official statement for purposes of Rule G–36(b)(i) may wish to consult with SEC staff to determine whether such document or set of documents constitutes a final official statement for purposes of Rule 15c2–12.*

[12] *See rule G–32(c)(ii)(B). If approved by the SEC, the proposed rule change will redesignate this section as Rule G–32(d)(ii)(B).*

[13] *Similarly, an offering involving an underwriting syndicate and consisting of securities issued and delivered on a continuous basis also would remain in its underwriting period under the definition thereof set forth in Rule G–11(a)(ix).*

whether that dealer or another dealer sent the original official statement to the Board.

In addition, municipal fund securities sold in a primary offering would constitute new issue municipal securities for purposes of rule G–32, on disclosures in connection with new issues, so long as the securities remain in their underwriting period. Rule G–32 generally requires that a dealer selling a new issue municipal security to a customer must deliver the official statement in final form to the customer by settlement of such transaction. Thus, a dealer effecting transactions in municipal fund securities that are sold during a continuous underwriting period would be required to deliver to the customer the official statement by settlement of each such transaction. However, in the case of a customer purchasing such securities who is a repeat purchaser, no new delivery of the official statement would be required so long as the customer has previously received it in connection with a prior purchase and the official statement has not been changed from the one previously delivered to that customer.[14]

Certain other implications arise under Board rules as a result of the status, in the view of SEC staff, of sales of municipal fund securities as primary offerings. For example, dealers are reminded that the definition of "municipal securities business" under rule G–37, on political contributions and prohibitions on municipal securities business, and rule G–38, on consultants, includes the purchase of a primary offering from the issuer on other than a competitive bid basis or the offer or sale of a primary offering on behalf of any issuer. Thus, a dealer's transactions in municipal fund securities may affect such dealer's obligations under rules G–37 and G–38. In addition, rule G–23, on activities of financial advisors, applies to a dealer's financial advisory or consultant services to an issuer with respect to a new issue of municipal securities.

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 Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Dealers that effect transactions in municipal securities are subject to the Board's jurisdiction pursuant to Section 15B of the Act.[15] In particular, Section 15B(c)(1)[16] prohibits dealers from effecting transactions in, or inducing or attempting to induce the purchase or sale of, a municipal security in contravention of any Board rule. Thus, since the enactment of Section 15B and the creation of the Board in the Securities Acts Amendments of 1975 ("Securities Acts Amendments"),[17] a transaction effected by a dealer in a municipal security must be effected in conformity with Board rules.

The Board has learned that sales of certain interests in trust funds held by state or local governmental entities may be effected by or through dealers. In particular, the Board has reviewed two types of state or local governmental programs in which dealers may effect transactions in such interests: local government pools and higher education trusts.[18] In response to a request of the Board, staff of the SEC's Division of Market Regulation has stated that "at least some interests in local government pools and higher education trusts may be, depending on the facts and circumstances, 'municipal securities' for purposes of the Act."[19] Any such interests that may, in fact, constitute municipal securities are referred to herein as "municipal fund securities." To the extent that dealers effect transactions in municipal fund securities, such transactions would be subject to the jurisdiction of the Board pursuant to Section 15B of the Act.[20]

Board rules do not apply to any interest in a local government pool or a higher education trust that is not a municipal security. In addition, Board rules apply only to activities of dealers that effect municipal securities transactions. Thus, Board rules do not apply to an issuer of, or a non-dealer entity providing advice to issuers on, municipal securities, including municipal fund securities. However, to the extent that interests in a local government pool or a higher education trust are municipal securities and dealers are effecting transactions in them, Board rules automatically govern such dealer transactions, without the necessity of further Board rulemaking.[21] On several previous occasions, the Board has alerted the industry to the applicability of Board rules to (and has adopted rule changes to accommodate) transactions in new forms of municipal securities or pre-existing forms of securities that many in the industry had not previously recognized as municipal securities.[22]

A municipal fund security is defined in proposed Rule D–12 as a municipal security issued by an issuer that, but for Section 2(b) of the Investment Company Act of 1940 ("Investment Company Act"),[23] would constitute an investment

[14] *This is equally true for other forms of municipal securities for which a customer has already received an official statement in connection with an earlier purchase and who proceeds to make a second purchase of the same securities during the underwriting period. Furthermore, in the case of a repeat purchaser of municipal securities for which an official statement in final form is being prepared, no new delivery of the written notice to that effect or of any official statement in preliminary form would be required so long as the customer has received it in connection with a prior purchase. However, if an official statement in final form is subsequently prepared, the customer's next purchase would trigger the delivery requirement with respect of such official statement. Also, if an official statement which has previously been delivered is subsequently amended during the underwriting period, the customer's next purchase would trigger the delivery requirement with respect to such amendment.*

[15] 15 U.S.C. 78*o*–4.

[16] 15 U.S.C. 78*o*–4(c)(1).

[17] Pub. L. 94–29, 89 Stat. 97 (1975).

[18] *See supra* notes 4 and 5.

[19] SEC Letter, *see supra* note 5.

[20] 15 U.S.C. 78*o*–4.

[21] Dealers also should consider the current applicability of Rule 15c2–12 under the Act. *See supra* note 7 and accompanying text. Questions regarding Rule 15c2–12 should be directed to SEC staff. In addition, dealers should distinguish sales of municipal fund securities from sales of securities to, and purchases of securities from, the trust fund underlying such municipal fund securities. The Board believes that the municipal securities industry has been well aware of the applicability of Board rules to dealer transactions that involve the sale or purchase of municipal securities to or from higher education trusts or local government pools.

[22] *See* "Transactions in Municipal Collateralized Mortgage Obligations: Rule G–15," *MSRB Reports*, Vol. 12, No. 1 (April 1992) at 21; "Stripped Coupon Municipal Securities," *MSRB Reports*, Vol. 9, No. 1 (March 1989) at 3; "Taxable Securities," *MSRB Reports*, Vol. 6, No. 5 (Oct. 1986) at 5; "Tender Option Programs: SEC Response to Board Letter," *MSRB Reports*, Vol. 5, No. 2 (Feb. 1985) at 3; "Tax-Exempt Notes: Notice Concerning Application of Board Rules to Such Notes and of Filing of Rule Change," *MSRB Reports*, Vol. 2, No. 7 (Oct./Nov. 1982) at 17; "Application of Board's Rules to Municipal Commercial Paper," *MSRB Reports*, Vol. 2, No. 1 (Jan. 1982) at 9 ("CP Notice"); "Application of Board's Rules to Participation Interests in Municipal Tax-Exempt Financing Arrangements," *MSRB Reports*, Vol. 2, No. 1 (Jan. 1982) at 13; "Notice Concerning Application of Board's Rules to MAC Warrants," [1977–1987 Transfer Binder] *MSRB Manual* (CCH) ¶ 10,171 (Jan. 22, 1981) ("MAC Warrant Notice").

[23] 15 U.S.C. 80a–2(b). Section 2(b) provides that the Investment Company Act shall not apply to a state, or any political subdivision of a state, or any agency, authority, or instrumentality thereof

company under the Investment Company Act. Thus, Board rules on municipal fund securities would apply to interests in state or local governmental trusts, such as local government pools and higher education trusts, only if the following three conditions are met:

1. A dealer is engaging in transactions in such interests;

2. Such interests, in fact, constitute municipal securities; and

3. Such interests are issued by an issuer that, but for the exemption under Section 2(b) of the Investment Company Act, would be considered an investment company within the meaning of that Act.

The Board understands the municipal fund securities may not have features typically associated with more traditional municipal securities. Instead, their features are similar to those of investment company securities.[24] Although Board rules generally have been drafted to accommodate the characteristics of debt securities, the Board believes that most current rules can appropriately be applied to municipal fund securities. Nonetheless, the Board feels that certain rules should be amended to recognize the unique characteristics of municipal fund securities. The proposed rule change does not seek to extend the reach of Board rules, because the rules already apply to municipal fund securities, but seeks to tailor certain Board rules to accommodate the nature of municipal fund securities.

Description of Proposed Rule Change

The proposed rule change defines a municipal fund security to include any interest in a local government pool or a higher education trust as they have been described to the Board, to the extent such interests are municipal securities. As a general matter, the proposed rule change has been drafted with the view that municipal fund securities should be treated differently from other municipal securities only under circumstances where current rules would not apply properly. In addition, the Board has not attempted to draft any proposed rule changes intended to address secondary market transactions in municipal fund securities because the Board understands that no such market now exists. The Board would undertake appropriate action should a secondary market develop in municipal fund securities.

Proposed Rule D–12—Definition of Municipal Fund Security. Proposed Rule D–12 defines municipal fund security as a municipal security that would qualify as a security of an investment company under the Investment Company Act if it had not been issued by a state or local governmental entity.[25] Before a security can be considered a municipal fund security, it must first be considered to be a municipal security. If an investment is deemed a municipal fund security, then dealer transactions are subject to all Board rules because of its status as a municipal security. Municipal securities, however, would receive special treatment in those instances where provisions are proposed to be added to relate specifically to municipal fund securities.[26]

Rule A–13—Assessments. Proposed Rule A–13 exempts the sale of municipal fund securities from the underwriting assessment imposed under section (b) thereof because the fee structure for dealers involved in the distribution of municipal fund securities is more like an administrative fee than an underwriting discount or commission given that these dealers do not undertake underwriting risks. As a result, fees generally are fixed and are low relative to traditional underwriting fees and the level of fees generated by the Board from underwriting assessments would be disproportionate to the resulting regulatory costs.

Rule G–3—Professional Qualifications. Proposed Rule G–3 permits an associated person qualified as an investment company limited representative to effect transactions in municipal fund securities (but not in other municipal securities).[27] However, a dealer must continue to have one or two municipal securities principals as required under existing section (b) of Rule G–3, even if the dealer's only municipal securities transactions are sales of municipal fund securities.

Rule G–8—Recordkeeping. Proposed Rule G–8 ensures consistency with proposed Rules G–3 and G–15. Thus, amended Rule G–8 would recognize that municipal fund securities do not have par values, dollar prices, yields and accrued interest and that investment company limited representatives may be permitted to effect transactions in municipal fund securities. In addition, proposed Rule G–8 requires dealers to retain copies of all periodic statements delivered to customers in lieu of individual confirmations with respect to transactions in municipal fund securities under proposed Rule G–15. Furthermore, proposed Rule G–8 would permit a dealer effecting transactions in municipal fund securities to meet its books and records requirements by having a transfer agent maintain books and records for such municipal fund securities so long as the books and records of the transfer agent meet the requirements of proposed Rule G–8 as proposed to be amended and the dealer remains responsible for the accurate maintenance and preservation of the books and records.

Rule G–14—Transaction Reporting. Proposed Rule G–14(b)(i) clarifies that certain types of municipal securities transactions may be excluded from transaction reporting as provided in the Rule G–14 Transaction Reporting Procedures. The Board is proposing to amend the Transaction Reporting Procedures to expressly exempt any transaction in municipal fund securities from the customer transaction reporting system. A number of factors unique to municipal fund securities have contributed to the Board's determination to exempt such securities from proposed Rule G–14 at this time. In particular, municipal fund securities do not trade in the secondary market. Thus, for example, unlike the bulk of data currently received by the Board through the system, any data obtained regarding transactions in municipal fund securities would be limited to one-time sales to customers upon initial issuance and one-time purchases (or redemptions) from customers upon cashing out. Municipal fund securities are sold by dealers on an agency basis generally without payment of commissions by customers; therefore, dealers effecting transactions in municipal fund securities would have little opportunity to alter the pricing on such securities from that set the issuer.

[24] Municipal fund securities generally provide investment return and are valued based on the investment performance of an underlying pool of assets having an aggregate value that may increase or decrease from day to day, rather than providing interest payments at a stated rate or discount, as is the case for more traditional municipal securities. In addition, unlike traditional municipal securities, these interests do not have stated par values or maturity dates and cannot be priced based on yield or dollar price. *See generally* NAST Report; S&P Report; and CSPN Report, *supra* notes 3 and 4.

[25] This should be distinguished from shares in a mutual fund registered under the Investment Company Act with assets invested in municipal securities, which shares would not constitute municipal fund securities.

[26] The definition of municipal fund security is not strictly limited to interests in local government pools or higher education trusts that are municipal securities but would apply as well to any other municipal security issued under a program that would, but for the identity of the issuer as a state or local governmental entity, constitute an investment company under the Investment Company Act.

[27] Thus, an associated person who sells both municipal fund securities and other types of municipal securities must continue to qualify as either a municipal securities representative or a general securities representative.

Furthermore, certain critical data elements that the transaction reporting system currently collects (*e.g.*, dollar price, yield, etc.) would not apply to transactions in municipal fund securities. Nonetheless, should the Board in the future receive information that practices have developed in the municipal fund security market that merit reporting of transaction information, the Board would consider whether to revisit the exemption from Rule G–14.

Rule G–15—Customer Confirmations. Various amendments are being proposed to Rule G–15 relating to the concepts of par value, yield, dollar price, maturity date and interest, none of which apply to a municipal fund security. Thus, as proposed, a dealer is required to use the purchase of sale price of the securities, as appropriate, on a confirmation of a municipal fund securities transaction, rather than par value and would be able to omit yield, dollar price, accrued interest, extended principal, maturity date and interest rate. Dealers selling municipal fund securities are required to include the purchase price of each share or unit (rather than denomination) as well as the number of shares or units to be delivered. Confirmations of municipal fund securities transactions are required to include a disclosure that a deferred commission or other charge may be imposed upon redemption, if applicable.[28] The proposal also makes clear that dealers must confirm redemptions of municipal fund securities. A confirmation of a municipal fund security transaction need not show the information required under paragraph (a)(i)(C) other than whether the security is puttable. In addition, the confirmation must include the name used by the issuer to identify the security and, to the extent necessary to differentiate the security from other municipal fund securities of the issuer, any separate program series, portfolio or fund designation.

In addition, the amendment would permit dealers to use periodic statements, rather than transaction-by-transaction confirmations, if customers are purchasing such securities pursuant to certain periodic plans or non-periodic programs, in a manner similar to the periodic reporting provision under Rule 10b–10 under the Act.[29]

[28] Disclosure of deferred commissions or other charges covers, for example, any deferred sales load or, in the case of interests in certain higher education trusts, any penalty imposed on a redemption that is not for a qualifying higher education expense.

[29] 17 CFR 240.10b–10.

Rule G–26—Customer Account Transfers. The definition of "nontransferable asset" and the transfer instructions for nontransferable assets in proposed Rule G–26 are proposed to be amended to reflect the fact that the issuer of municipal fund securities may limit the dealers that are authorized to carry accounts for customers in such securities.

Rule G–32—Disclosures in Connection with New Issues. Proposed Rule G–32 permits a dealer to sell, pursuant to a periodic plan or a non-periodic program as defined in Rule G–15, as proposed to be amended, a municipal fund security to a customer who has previously received the official statement for the security so long as its sends to the customers a copy of any new, supplemented, amended or stickered official statement promptly upon receipt from the issuer (*i.e.*, actual delivery by settlement is not required). The dealer is permitted to satisfy this delivery requirement by delivering the amendment alone (including a notice that the complete official statement is available upon request) so long as the customer already had the official statement that is being amended and the dealer ensures that the amendment makes clear what constitutes the complete official statement. The proposed rule change also excepts municipal fund securities for which periodic statements in lieu of transaction confirmations are provided from the requirement that information on the underwriting fees paid to the dealer by the issuer be provided to customers by settlement so long as such information is disclosed at least annually and information on any fee changes paid by the issuer to the dealer is sent to customers simultaneously with or prior to the sending of the next periodic statement.

Rule G–34—CUSIP Numbers and Depository Eligibility. The proposal would exempt municipal fund securities from the requirements of Rule G–34 because no secondary market is expected to develop.[30]

Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market. Interpretive guidance is provided in connection with the application of Rules G–23, G–32, G–36, G–37 and G–38 to dealer transactions in municipal fund securities.

[30] Dealers may still elect to acquire CUSIP numbers for municipal fund securities and to make such securities depository eligible, subject to meeting all of the eligibility requirements of the CUSIP Service Bureau and of any securities depository, respectively.

2. Statutory Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)[31] of the Act, which requires the Board's rules to be 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. The Board believes that the proposed rule change is consistent with the Act because it amends existing Board rules to better accommodate the unique characteristics of municipal fund securities, thereby removing impediments to a free and open market in these securities and promoting the protection of investors and the public interest

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it applies equally to all dealers effecting transactions in municipal fund securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On March 17, 1999, the Board published a notice ("March Notice") requesting comments on draft rule changes relating to transactions effected by or through dealers in municipal fund securities.[32] The Board received twelve comment letters on the March Notice.[33]

[31] 15 U.S.C. 78*o*–4(b)(2)(c).

[32] "Municipal Fund Securities," *MSRB Reports*, Vol. 19, No. 2 (April 1999) at 9

[33] Letters from Laura Bramson, Senior Counsel, Teachers Personal Investors Services, Inc. ("TPIS"), to the Board, dated May 13, 1999 ("First TPIS Letter") and June 30, 1999 ("Second TPIS Letter"); letter from Barbara L. Hasson, President, Board of Trustees, Pennsylvania Local Government Investment Trust ("PLGIT"), to Ernesto A. Lanza, Associate General Counsel, Board, dated May 13, 1999 ("PLGIT Letter"); letter from Marty Margolis, Managing Director, Public Financial Management ("PFM"), to Ernesto A. Lanza, dated May 14, 1999 ("PFM Letter"); letter from Sarah M. Starkweather, Vice President and Associate General Counsel, The Bond Market Association ("TBMA"), to Ernesto A. Lanza, dated June 1, 1999 ("TBMA Letter"); letter from J. Todd Cook, Vice President and Senior Counsel, Merrill Lynch, Pierce, Fenner & Smith

Continued

After reviewing these comments, the Board re-circulated the draft rule changes, with certain modifications and additions, for further comment from industry participants in a notice published on August 27, 1999 ("August Notice").[34] The Board received seven comment letters on the August Notice.[35] After reviewing these additional comments, the Board approved the revised draft rule changes, with certain additional modifications and additions, for filing with the SEC. The comments received, and the Board's response, are summarized below.

A. Authority of Board To Adopt Rules Governing Dealer Transactions in Municipal Fund Securities

1. Comments Received

Some commentators question the Board's authority to regulate municipal fund securities, particularly local government pool interests.[36] Fidelity, Fubright, MBIA–MISC and Schulte state that such interests are not municipal securities under the Act. They argue that the term "municipal securities" as used in the Act is limited to debt obligations of municipal issuers and that interests in local government pools represent equity interests in trust assets, not debt obligations.[37] Duane and Eckert question whether Congress intended that the Board regulate local government pools when it created the Board.

2. Board Response

A security must first be a municipal security in order to be a municipal fund security. The proposed rule change would not, and existing Board rules do not, apply to local government pool or higher education trust interests that are not municipal securities. Thus, the Board does not overstep its authority by regulating dealer transactions in municipal fund securities because, by definition, regulation is limited to interests that are municipal securities.

A firm wishing to determine if Board rules apply to services it provides to an issuer of local government pool or higher education trust interests may seek advice of counsel as to whether (1) such services constitute broker-dealer activities, or (2) such interests are municipal securities. In addition, the firm may seek no-action relief from SEC staff. If a non-dealer firm's activities do not constitute broker-dealer activities, the firm need not be a registered broker or dealer subject to Board rules, even if the interests re municipal securities.[38] If the interests are not municipal securities, the dealer need not comply with Board rules; however, the dealer's activities may be subject to provisions of the Act, the rules and regulations thereunder, and National Association of Securities Dealers ("NASD") rules, unless the interests otherwise qualify for an exemption (*e.g.*, as exempted securities other than municipal securities) under the Act.

Of course, the Board's rulemaking proposals meaningful only if municipal fund securities, in fact, exist. As noted above, the Board asked SEC staff whether local government pool and higher education trust interests are municipal securities. SEC staff replied that "at least some interests in local government pools and higher education trusts may be, depending on the facts and circumstances, 'municipal securities' for purposes of the Act."[39] Although the Board is not empowered to determine whether a security is a municipal security within the meaning of Section 3(a)(29) of the Act, the Board believes that, based on the SEC's response as well as a close review of existing no-action letters and legislative history of the Securities Acts Amendments, the Act, and the Securities Act of 1933 ("Securities Act"), as discussed below, at least some interests in local government pools and higher education trusts are municipal securities.

For example, in agreeing not to recommend enforcement action in several no-action letters, SEC staff relied on opinions of counsel that interests in state or local governmental trusts were municipal securities under the Act.[40] In

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Incorporated ("Merrill"), to the Board, dated June 2, 1999 ("First Merrill Letter"); letter from Leonard M. Leiman, Partner, Fulbright & Jaworski LLP ("Fulbright"), as counsel to Fidelity Investment ("Fidelity"), to the Board, dated June 4, 1999 ("Fulbright Letter"); letter from Thomas R. Schmuhl, Duane, Morris & Heckscher LLP ("Duane"), as counsel to the Pennsylvania School District Liquid Asset Fund, to Ernesto A. Lanza, dated June 8, 1999 ("Duane Letter"); letter from Kenneth S. Gerstein, Schulte Roth & Zabel LLP ("Schulte"), as counsel to Cadre Financial Services, Inc., to the Board, dated June 18, 1999 ("Schulter Letter"); letter from Leonard I. Chubinsky, Assistant General Counsel, MBIA Municipal Investors Service Corporation ('MBIA–MISC"), to Ernesto A. Lanza, dated July 1, 1999 ("MBIA–MISC Letter"); letter from Thomas J. Wallace, Executive Director, Florida Prepaid College Board ("Florida"), to Ernesto A. Lanza, dated July 13, 1999 ("Florida Letter"); and letter from Betsy Dotson, Director, Federal Liaison Center, Government Finance Officers Association ("GFOA"), to Ernesto A. Lanza, dated July 16, 1999 ("First GFOA Letter").

[34] "Municipal Fund Securities—Revised Draft Rule Changes," *MSRB Reports*, Vol. 19, No. 3 (Sept. 1999) at 3.

[35] Letter from David Unkovic, Saul, Ewing, Remick & Saul LLP ("Saul"), as counsel to PLIT, to Ernesto A. Lanza, dated October 27, 1999 ("Saul Letter"); letter from Joseph J. Connolly, Eckert Seamans Cherin & Mellott, LLC ("Eckert"), as counsel to PFM, to the Board, dated October 29, 1999 ("Eckert Letter"); letter from Betsy Dotson, Director, Federal Liaison Center, GFOA, to Ernesto A. Lanza, dated November 1, 1999 ("Second GFOA Letter"); letters from Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Investments ("Fidelity"), to the Board, dated November 1, 1999 ("First Fidelity Letter") and to each Board member, dated January 20, 2000 ("Second Fidelity Letter"); letter from J. Todd Cook, Vice President and Senior Counsel, Merrill, to the Board, dated November 5, 1999 ("Second Merrill Letter"); and letter from Marshall Bennett, Chairman, CSPN (NAST) and Mississippi State Treasurer, to Ernesto A. Lanza, dated January 11, 2000 ("NAST Letter").

[36] *See* Duane, Fulbright, MBIA–MISC, Schulte, Eckert, First Fidelity and Second Fidelity Letters. Fulbright states that, although the Board has no authority to regulate either local government pool or higher education trust interests, it believes that interested parties would not resist "appropriate regulation" of higher education trust interests. It states that regulation of transactions in such interests is "arguably both more important and less controversial" than regulation of local government pool interests, noting that higher education trust interests "clearly affect public investors and the public interest." Fidelity also believes that interests in higher education trusts are not municipal securities but states that such interests "are distributed to the public investors and therefore may raise unique public policy issues."

[37] These commentators observe that municipal securities are defined in Section 3(a)(29) of the Act as "securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof," in contrast to the language used in Section 3(a)(2) of the Securities Act of 1933 regarding any "security issue or guaranteed . . . by any State of the United States, or by any political subdivision of a State or Territory." They quote a Senate report statement on the Securities Acts Amendments that "'municipal securities' refers to debt obligations of state and local government issuers." Senate Comm. on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, S.Rep. No. 75, 94th Cong., 1st Sess. 38 (1975) ("1975 Senate Report"); *but cf.* Securities Acts Amendments of 1975, H.R. Conf. Rep. No. 229, 94th Cong., 1st Sess. 101 (1975) ("1975 Conference Report") (amendments "provide a comprehensive pattern for the registration and regulation of securities firms and banks which underwrite and trade *securities issued by* States and municipalities") (emphasis added). They note references in SEC no-action letters to obligations under the Internal Revenue Code to support their position that municipal securities are limited to debt obligations. *See* Itel Corp., SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 100581018 (Oct. 1, 1981) ("Itel No-Action Letter"); Bedford-Watt Enterprises, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 062678091 (June 9, 1978) ("Bedford-Watt No-Action Letter"). In addition, CERS cites an SEC no-action letter to suggest that an equity security may not be a municipal security. *See* City Employees' Retirement System of the City of Los Angeles, SEC No-Action Letter, [1977–1978 Dec.] Fed. Sec. L. Rep. (CCH) ¶ 81,194 (May 12, 1977) ("CERS No-Action Letter").

[38] Thus, non-dealer firms may act as investment advisers to local government pool or higher education trust programs and not become subject to Board rules.

[39] *See* SEC Letter, *supra* note 5.

[40] *See, e.g.*, Virginia Higher Education Tuition Trust Fund, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 111599009 (Nov. 16, 1999) ("Virginia No-Action Letter"); Missouri Higher Education Savings Program, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 110199007 (Oct. 25, 1999) ("Missouri No-Action Letter"); Golden State Scholarshare Trust, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 092099002 (Sept. 15, 1999) ("California No-Action Letter") Maine

one instance, SEC staff agreed not to recommend enforcement action if a dealer, in offering and selling interests in a higher education trust, were to comply with Board rules as they have been proposed to be amended in the March Notice, in lieu of complying with such rules as currently in effect.[41] In another no-action letter, SEC staff agree not to recommend enforcement action against dealers who (1) sold interests in a higher education trust through persons qualified to sell investment company products but who did not meet the Board's professional qualification requirements[42] and (2) complied with Rule 15c2–12(b)(5)[43] through a continuing disclosure undertaking from a dealer affiliate, rather than from the issuer. In reaching this position, SEC staff noted that the higher education trust interests were "atypical municipal securities."[44]

In other instances, SEC staff agreed not to recommend enforcement action if state entities and their employees sold higher education trust interests without registering as brokers.[45] The applicants opined in these cases that the interests were municipal securities under the Act, thereby exempting the issuers from registering as brokers by virtue of the exemption for issuers of municipal securities set forth in Section 3(d)[46] of the Act.[47] SEC staff also agreed not to recommend enforcement action if interests in a state trust were not registered under the Act, in reliance on an opinion that the exemption under Section 3(a)(12) of the Act[48] for exempted securities was available.[49]

SEC staff also has taken the position that non-debt securities may be municipal securities under the Act.[50] In one instance, SEC staff was unable to conclude that receipt/certificates evidencing developers' payments to a city of fees for the issuance of building permits were not municipal securities under the Act.[51] SEC staff also has advised the Board that warrants sold by a municipal corporation entitling the holders to purchase other municipal securities of that corporation are themselves municipal securities under the Act.[52] Finally, in those cases in which SEC staff concluded that an "obligation" within the meaning of the Internal Revenue Code would also constitute an "obligation" for purposes of Section 3(a)(29) of the Act, SEC staff did not conclude that the failure of a security to be an obligation for purposes of the Internal Revenue Code would mean that such security was not a municipal security for purposes of the Act.[53] In these cases, SEC staff was not presented with the issue of whether a non-debt security could be a municipal security. As noted above, on the last two occasions when SEC staff was confronted with this issue, it concluded that a non-debt security may be a municipal security for purposes of the Act.[54]

A review of legislative history also suggests that the commentator's position that the term "municipal securities" in the Act excludes non-debt securities is not justified. The Senate report on the Securities Acts Amendments notes that the legislation created a definition of municipal securities in new Section 3(a)(29) of the Securities Act[55] that, for all relevant purposes, used the same language as in the original version of the definition of exempted municipal securities in Section 3(a)(12) of the Act.[56] It also states that no substantive changes in meaning would be effected by creating Section 3(a)(29).[57] Thus, the import of the term "municipal securities" must be viewed, in the first instance, through the eyes of the original drafters of the Act in 1934

College Savings Program Fund, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 080999001 (Aug. 2, 1999) ("Maine No-Action Letter"); Teachers Personal Investors Services, Inc., SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 092898006 (Sept. 10, 1998) ("New York No-Action Letter"); New Hampshire Higher Education Savings Plan Trust, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 070698010 (June 30, 1998) ("New Hampshire No-Action Letter"); Public Employees Retirement Board of the State of Oregon, SEC No-Action Letter, Wash. Serv. Bur (CCH) File No. 041398009 (March 3, 1998) ("Oregon State No-Action Letter"); North Carolina State Education Assistance Authority, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 032497016 (March 24, 1997) ("North Carolina No-Action Letter"); Missouri Family Trust Fund, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 101392001 (Sept. 22, 1992) ("Missouri Family Trust No-Action Letter"); School District No. 1—Mutnomah County, Oregon, SEC No-Action Letter (Mar. 26, 1976) ("Oregon School District No-Action Letter").

[41] Maine No-Action Letter. SEC staff's position was conditioned on the dealer complying with all existing Board rules, other than those proposed to be amended in the March Notice, and complying with all Board rules upon completion of the current Board rulemaking process. Counsel had opined that the interests were direct obligations of an instrumentality of a state and therefore were municipal securities within the meaning of Section 3(a)(29) of the Act. *See id.* and accompanying letter of inquiry.

[42] New York No-Action Letter. SEC staff stated that this no-action position expires six months after Rule G–3 is amended to establish qualification requirements for persons selling such interests.

[43] 17 CFR 240.15c2–12(b)(5).

[44] *Id.* Counsel had opined that the interests were direct obligations of an instrumentality of a state and, therefore, were municipal securities under the Act. *See id.* and accompanying letter of inquiry. *See also* New York State college Choice Tuition Savings Trust, SEC No-Action Letter, Wash. Serv. Bur. (CCH) file No. 091498008 (Sept. 10, 1998) and accompanying letter of inquiry.

[45] *See, e.g.*, Virginia No-Action Letter; Missouri No-Action Letter; California No-Action Letter; Maine No-Action Letter; New Hampshire No-Action Letter; North Carolina No-Action Letter.

[46] 15 U.S.C 78c(d).

[47] *See* Virginia No-Action Letter, and accompanying letter of inquiry; Missouri No-Action Letter, and accompanying letter of inquiry; California No-Action Letter, and accompanying letter of inquiry; Maine No-Action Letter, and accompanying letter of inquiry; New Hampshire No-Action Letter, and accompanying letter of inquiry; North Carolina No-Action Letter, and accompanying letter of inquiry. *See also* Missouri Family Trust No-Action Letter, and accompanying letter of inquiry; Oregon School District No-Action Letter, and accompanying letter of inquiry;

[48] 15 U.S.C. 78c(a)(12).

[49] *See* Oregon State No-Action Letter. Counsel opined that the interests would be exempt from the registration requirements of the Act as securities issued by a state instrumentality. *See also* Pennsylvania Local Government Investment Trust, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 022283009 (Feb. 21, 1983) ("Pennsylvania No-Action Letter") and accompanying letter of inquiry, in which counsel opined that interests in a local government pool were municipal securities under the Act that qualified for the exemption from the registration requirements of Section 12(g) of the Act. SEC staff did not expressly rely on this opinion in arriving at its no-action position.

[50] *See, e.g.*, City of El Paso de Robles, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 111285020 (June 18, 1985) ("El Paso de Robles No-Action Letter"); MAC Warrant Notice. The SEC's position with respect to these two types of non-debt securities stands in contrast to SEC staff's earlier position regarding call options in the CERS No-Action Letter.

[51] *See* El Paso de Robles No-Action Letter.

[52] *See* MAC Warrant Notice. The MAC Warrant Notice was cited with approval by SEC staff in a letter to the Office of the Comptroller of the Currency. *See* letter dated August 12, 1981 from Thomas G. Lovett, Attorney, SEC, to Owen Carney, Director, Investment Securities Division, Office of the Comptroller of the Currency ("CP Letter"), *reprinted in* CP Notice.

[53] *See* Itel No-Action Letter (stating that the term "obligation" in the Act's definition of municipal security would generally include obligations under the Internal Revenue Code); Bedford-Watt No-Action Letter (stating that the Internal Revenue Code "provides a useful analogy"). In the Bedford-Watt No-Action Letter, SEC staff recognized that "obligation" under Section 3(a)(29) of the Act could include non-financial obligations to take actions needed for payment of the security. *See also* Pennsylvania No-Action Letter and accompanying letter of inquiry. In arriving at its opinion that local government pool interests described in the Pennsylvania No-Action Letter were municipal securities, counsel suggested, in reference to the definition of municipal securities in the Act, "that the word 'obligations' need not be read as 'debt' in this context. The Trust is under obligation to redeem all Shares of Beneficial Interest presented for redemption." In addition, the Chairman of the College Savings Plans Network noted in Congressional testimony that "state-sponsored college tuition programs are secured by the moral or political *obligation* of the states" Marshall Bennett, Testimony Before the House Committee on Ways and Means, Hearing on Reducing the Tax Burden: II. Providing Tax Relief to Strengthen the Family and Sustain a Strong Economy, 106th Cong., 1st Sess. (June 23, 1999), *available at*, <http://www.house.gov/ways_means/fullcomm/106cong/6–23–99/6–23benn.htm> (visited April 5, 2000) (emphasis added).

[54] *See* El Paso de Robles No-Action Letter; MAC Warrant Notice.

[55] 15 U.S.C. 77c(a)(29).

[56] *See* 1975 Senate Report, at 90, 92.

[57] *Id.* at 92.

rather than the drafters of the Securities Acts Amendments in 1975.

The purpose of including municipal securities in the definition of exempted securities in the Act was to provide an exemption for municipal securities from most provisions of the Act and the Securities Act. Although commentators suggest that Board regulation of dealer transactions in non-debt securities of municipal issuers is inconsistent with the intent of drafters of the Securities Acts Amendments, the appropriate inquiry is whether the drafters of the original Act would have intended that *only* debt securities of municipal issuers be exempted from most provisions of the Act. That is, would the drafters of the original Act have intended that non-debt securities of state or local governmental entities—had such securities existed at the time—be subject to the entire range of regulation of the Act applicable to other equity securities, including in some instances a requirement for registration of such securities with the SEC? A review of Congressional debates, committee reports and hearing testimony relating to enactment of the Securities Act and the Act reveals that, in spite of differences in statutory language, both Acts were expected to exempt the same universe of municipal securities.

For example, the 1993 House report on the Securities Act speaks of exempted state and local government securities almost exclusively in terms of "obligations" and "bonds," not "securities." [58] The report explains the exemption set forth in Section 3(a) of the Securities Act as follows:

> Paragraph (2) exempts United States, Territorial and State obligations, or obligations of any political subdivision of these government units. The term "political subdivision" carries with it the exemption of such securities as county, town, or municipal obligations, as well as school district, drainage district, and levee district, and other similar bonds. The line drawn by the expression "political subdivision" corresponds generally with the line drawn by the courts as to what obligations of States, their units and instrumentalities created by them, are exempted from Federal taxation. By such delineation, any constitutional difficulties that might arise with reference to the inclusion of State and municipal obligations are avoided.[59]

Furthermore, during Congressional debate and hearings held in 1993 on the Securities Act, members of Congress used the terms "securities," "obligations" and "bonds" interchangeable.[60] Thus, although the statutory language in the Securities Act uses only the term "securities" and not the term "obligations" when describing municipal securities, there is no suggestion that Congress had anything in mind when enacting the Securities Act other than the tax-exempt bonds and other debt obligations of state and local governments that are customarily associated with municipal securities. Nonetheless, the commentators all have agreed that local government pool and higher education trust interests are exempt from the Securities from the Securities Act and none has suggested that this exemption is limited to tax-exempt debt obligations.

The initial draft of the Act introduced in Congress the following year exempted federal government securities but not municipal securities. Members of Congress expressed concern regarding the appropriateness of federal regulation of state and local governmental matters,[61] the burden that provisions of the Act would place on state and local issuers [62] and the relative detriment in the market to municipal securities if they were not exempted but federal government securities were exempted.[63] Some discussion focused on whether a distinction should be drawn between defaulted and non-defaulted municipal securities. [64] Ultimately, the language that was added to the Act to exempt municipal securities made no such distinction but instead was drafted in non-exclusive terms that paralleled the language used in the Act to describe federal government securities. This language also employed the same type of terminology that the drafters of the Securities Act had used in the legislative history to explain the statutory language on municipal securities in that Act.[65] Legislative history does not reflect any intent or understanding that the municipal securities contemplated in the Act were any different than those that were already exempted under the Securities Act.[66] It would be inconsistent with legislative intent to limit the exemption under the Act solely to debt securities of state and local governments without similarly limiting the reach of the exemption provided in the Securities Act.

Finally, in using the same term—"municipal securities"—that sets out the exemption from most provisions of the Act to also delineate the Board's rulemaking authority under Section 15B of the Act,[67] Congress elected in the Securities Acts Amendments to grant the Board jurisdiction over dealer transactions in the identical universe of securities as were otherwise exempted from the Act as municipal securities.[68]

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[58] *See, e.g.*, House Comm. on Interstate and Foreign Commerce, Federal Supervision of Traffic in Investment Securities in Interstate Commerce, H.R.Rep. No.85, 73d Cong., 1st Sess. 6, 14 (1933) ("1993 House Report").

[59] *Id.* at 14. This view was confirmed the following year during House committee hearings on the Act by the Commissioner of the Federal Trade Commission, which was charged with enforcing the Securities Act. *See* Stock Exchange Regulation: Hearing on H.R. 7852 and H.R. 8720 Before the House Comm. on Interstate and Foreign Commerce, 73d Cong., 2d Sess. 899 (1934) ("1934 House Hearings") (statement of James M. Landis, Commissioner, Federal Trade Commission). Commissioner Landis stated: "We had that same problem up in the Securities Act, where the exemption that is given to what might be called municipal bonds, and bonds of States and their instrumentalities, and is drawn according to a line that parallels the line that is drawn which makes tax-exempt municipal bonds, State instrumentalities, and so. In other words, every instrumentality of a State which, like a municipality, or a political subdivision of a State, was exempted from taxation, would be exempted from registration upon an issue of securities. That is the line drawn in the Securities Act. If exempt from taxation they are also exempted from the necessity of registration under that Act."

[60] *See, e.g.*, Securities Act: Hearings on S. 875 Before the Senate Comm. on Banking and Currency on S. 875 Cong., 1st. Sess. 65 (1993) ("1933 Senate Hearings") (statement of Sen. Reynolds); *id.* at 228, 232 (statement of Sen. Kean); *id.* at 232 (statement of Sen. Costigan); *id* at 303 (statement of Sen. Norbeck); 77 Cong. Rec. 2925 (1933) (statement of Rep. Studley).

[61] *See* 1934 House Hearings, at 822 (statement of Rep. Pettingill); *id.* at 898–9 (statements of James M. Landis, Commissioner, Federal Trade Commission; Rep. Pettingill). This concern also served as a primary basis for the exemption of municipal securities under the Securities Act. *See* 1933 House Report, at 14, and text accompanying note 59 above.

[62] *See* 1934 House Hearings, at 721, 911–3 (statement of Rep. Holmes); Stock Exchange Practices: Practices: Hearings on S. Res. 84 and S. Res. 56 and S. Res. 97 Before the Senate Comm. on Banking and Currency, 73d Cong., 1st Sesses 7441–52 (1934) ("1934 Senate Hearings") (statements of Archibald B. Roosevelt, Roosevelt & Weifold, Inc.; George B. Gibbons, George B. Gibbons & Co.; Sen. Gore; Sen. Goldsborough).

[63] *See* 1934 House Hearings, at 720 (statement of Rep. Holmes).

[64] *See* 1934 Senate Hearings, at 7413 (statements of H.H. Cotton, Investment Bank of Los Angeles; Ferdinand Pecora, Counsel to the Committee; Sen. Fletcher); *id.* at 7477 (statement of Tom K. Smith, Assistant to the Secretary of the Treasury; Sen. Adams; Sen. Walcott); 1934 House Hearings, at 7201 (statements for Tom K. Smith, Assistant to the Secretary of the Treasury; Rep. Holmes); *id.* at 819–23 (statements of George B. Gibbons, George B. Gibbons & Co.; Rep. Merritt; Rep. Rayburn; Rep. Pettengill).

[65] *See supra* note 59 and accompanying text.

[66] The phrase "security issued or guaranteed by" used in Section 3(a)(2) of the Securities Act introduces bank securities (including bank equity securities) as well as government and municipal securities. In contrast, the phrase "securities which are direct obligations of or obligations guaranteed as to principal or interest by" used in Section 3(a)(12) of the Act introduced only municipal and government securities. Thus, even thoughth the drafters of both the Securities Act and the Act thought of municipal and government securities solely as debt securities, the term "obligation" (to the extent such term is limited to debt securities) could only be used in the Act.

[67] 15 U.S.C. 78*o*–4.

[68] The conference report on the Securities Acts Amendments states: "The Senate bill extended the

Thus, even if Congress did not have interests in local government pools or higher education trusts in mind when enacting the Securities Acts Amendments, it did have a specific intent that the Board would have authority over dealer transactions in any security that would constitute an exempted security by virtue of being a municipal security. In creating the Board, the Senate report on the Securities Act Amendments stated that it would not "be desirable to restrict the Board's authority by a specific enumeration of subject matters. The ingenuity of the financial community and the impossibility of anticipating all future circumstances are obvious reasons for allowing the Board a measure of flexibility in laying down the rules for the municipal securities industry." [69] The fact that certain types of instruments (such as non-debt securities of state or local governments) were essentially non-existent at the time of enactment of the Securities Acts Amendments did not, in the minds of the drafters, mean that regulations relating to newly created instruments would not be within the Board's power.[70]

B. Appropriateness of Regulating Dealer Transactions in Municipal Fund Securities

1. Comments Received

A number of commentators state that, even if the Board has authority to adopt the proposed rule change, the Board should refrain from doing so.[71] Fulbright, MBIA–MISC and Schulte argue that no need has been demonstrated for regulation to protect investors or the public interest in connection with local government pool interests.[72] They state that investors are local governments and not the typical public investor in municipal securities.[73] Fulbright and Schulte argue that no abuses or other threats to public investors or the public interest have been identified by the Board that would warrant federal regulatory action. They state that offerings of interests in local government pools do not pose risks that are similar to those identified in the legislative history of the Securities Acts Amendments.[74] MBIA–MISC argues that safeguards already exist to provide investor protections comparable to those in the proposed rule change.[75] With respect to interests in higher education trusts, NAST states that the Board "should not attempt to regulate qualified state tuition program transactions, because there is no demonstrated need for regulation to protect state and local government investors or the public interest." [76]

Duane, Eckert, Florida, Fulbright, GFOA and Schulte state that Board rulemaking would adversely affect state and local governments. In particular, they believe that underwriting assessments would be passed on, directly or indirectly, to issuers and issuers would face additional administrative burdens as a result of the application of Board rules. They note that any increased costs to issuers likely would be passed on to investors in the form of lower returns on their investments.[77]

Duane, Fidelity and Fulbright also state that interests in local government pools involve transactions between the state or local government-sponsored pools and participating local governmental entities of that same state.[78] Fulbright believes that Board rulemaking would be inconsistent with the Tenth Amendment because transactions in local government pool interest do not constitute interstate commerce. Furthermore, noting that the Act does not require registration of a broker or dealer whose business is exclusively intrastate, Fulbright suggests that the Board "follow Congress's restraint in approaching intrastate transactions in securities." Finally, Fulbright states that regulation of transactions in these interests would "improperly intrude on state sovereignty" by indirectly regulating states by mandating actions by their agents.

2. Board Response

As the Board has previously observed, the current rulemaking proposal would not subject dealer transactions in municipal fund securities to Board rules but instead would make certain Board rules, to which such transactions are already subject, better accommodate the

basic coverage of the Securities Exchange Act of 1934 to provide a comprehensive pattern for the registration and regulation of securities firms and banks which underwrite and trade securities issued by States and municipalities. Municipal securities dealers were required to register with the Commission and comply with rules concerning just and equitable principles of trade and other matters prescribed by a new self-regulatory organization, the Municipal Securities Rulemaking Board, established by the bill and delegated responsibility for formulating rules relating to the activities of all municipal securities dealers. The exemption for issuers of municipal securities from the basic regulatory requirements of the Federal securities laws was continued." 1975 Conference Report, at 101.

[69] 1975 Senate Report, at 47. *See also* CP Letter, at note 7.

[70] In testimony at a 1975 Senate committee hearing on the Securities Acts Amendments, a representative of the Municipal Finance Officers Association stated that the municipal securities market "is completely a debt market." Securities Act Amendments of 1975: Hearings on S. 249 Before the Senate Comm. on Banking, Housing and Urban Affairs, 94th Cong., 1st Sess. 479 (1975) (statement of Michael S. Zarin, Member, Comm. on Governmental Debt Administration, Municipal Finance Officers Association). Having been so informed, the Senate's description in the 1975 Senate Report of municipal securities as "debt obligations of state and local government issuers," as noted by some commentators on the March Notice, in fact merely reflected an understanding of the nature of the municipal securities market at such time, *not* an understanding that the Act's definition of municipal securities was to be limited only to the debt segment of a broader municipal market that might also include equity securities. *See* 1975 Senate Report at 38.

[71] *See* Duane, Florida, Fulbright, First GFOA, MBIA–MISC, Schulte, Eckert, Second Fidelity, and NAST Letters.

[72] GFOA makes a similar argument in the First GFOA Letter. GFOA also states in the First GFOA Letter that regulation of local government pools should be left to the states.

[73] Both Fidelity and Fulbright concede that interests in higher education trusts raise unique policy issues affecting public investors and the public interest. *See supra* note 36.

[74] For example, Fulbright and Schulte list Congressional concern about unconscionable markups, churning of accounts, misrepresentations, disregard of suitability standards, high-pressure sales techniques, fraudulent trading practices resulting in substantial losses to public investors, and threats to the integrity of the local government capital-raising system. They argue that there is no opportunity for unconscionable markups and little incentive for churning of accounts or use of high-pressure sales techniques for these interests because they are purchased and redeemed at the current net asset value and purchasers do not pay commissions. They also argue that suitability concerns are not raised because local government pools are operated like money market funds and invest solely in the types of investments that their participants are permitted by state law to purchase.

[75] MBIA–MISC states that protections exist under the Investment Advisers Act of 1940, state regulations, voluntary adherence to the Investment Company Act and related federal regulations applicable to investment company securities, and Governmental Accounting Standards Board Statement No. 31 relating to accounting and financial reporting for certain investments and for external investment pools.

[76] NAST further states that the Board "has not identified any abuses or other threats to public investors or the public interest that are sought to be avoided by applying existing rules to transactions in qualified state tuition programs. Rather, the Board appears to * * * intend to apply its rules to all transactions in state and local government securities, regardless of whether such regulation is needed."

[77] As discussed below, the Board has decided to exempt sales of municipal fund securities by or through dealers from the underwriting assessment imposed under Rule A–13. *See infra* note 105 and accompanying text.

[78] Fidelity argues in the Second Fidelity Letter: "State and local governments use LGIPs to manage their internal cash positions. They are organized under state statute for the performance of a governmental function and are available exclusively to state and local governments within the sponsoring state or locality. No legitimate federal purpose is served by interposing the MSRB in these arrangements."

nature of these securities. Making Board rules fit the characteristics of municipal fund securities is an appropriate Board undertaking. Also, Board rules do not govern the actions of issuers; instead, they impose standards on dealers effecting transactions in the securities of such issuers.[79] In establishing the Board, Congress determined that dealer regulation was the appropriate manner of providing investor protection in the municipal securities market while maintaining the existing exemption for issuers.[80]

The definition of customer under Rule D–9 includes issuers, except in connection with sales of an issuer's new issue municipal securities, and therefore board rules contemplate that governmental entities acting as investors are entitled to the protections afforded by such rules to all customers.[81] The Board understands that local government pools exist in nearly every state and that, in many states, more than one pool may be available to a local government.[82] One market observer states that these pools "can differ in their level of risk taking, internal oversight, shareholder services, and external reporting." [83] Although a number of pools have been rated, the vast majority remain unrated. Most local government pools appear to be designed to maintain, as nearly as possible, a constant net asset value (similar to regulated money market mutual funds), but some operate as variable net asset value pools that do not seek to maintain a constant share value. Furthermore, a number of local government pools have experienced financial difficulties.[84] These factors suggest that investor protection issues may be raised in connection with the sale by dealers of interests in local government pools.[85] The Board believes that investor protection issues also may arise with respect to sales by dealers of interests in higher education trusts.[86] For example, the Board believes that dealers have suitability obligations if they recommend a transaction in a local government pool or higher education trust interest to a local government or an individual, respectively, if such interest constitutes a municipal security.[87]

Local government pools are described by certain commentators as being operated "consistent with" the federal securities laws applicable to investment companies and managed and administered in a manner "similar" to money market mutual funds, "where practicable" [88] These comments imply that may programs in fact deviate to some degree from their voluntary compliance with existing federal regulations that would be applicable to these programs if they were not operated by state or local governmental entities. However, the Board notes that its rulemaking would not impose requirements on issuers and in fact has been drafted with the understanding that dealers may be effecting transactions in securities that are similar, but not identical, to investment company securities. In that respect, the Board believes that is rulemaking is more suitable for dealers effecting transactions in investment company securities because some SEC and NASD rules impose obligations on dealers based on the assumption that issuers, as registered investment companies, must comply with federal investment company laws are regulations. Thus, a dealer might have difficulty complying with the letter of existing regulations relating to securities of registered investment companies where the issuer of a local government pool or higher education trust interest has chosen not to voluntarily comply with the provisions that would be obligatory if it were a registered investment company. As is the case with all exiting Board rules, the proposed rule change recognizes that issuers, as largely unregulated entities, may act in widely divergent manners. Thus, obligations placed on dealers are sufficiently

[79] After reviewing the August Notice, GFOA states in the Second GFOA Letter that "the revised draft is persuasive in explaining the limitations of the rule changes under consideration [and] * * * indicates a narrow regulatory design which should not affect those local government investment pools (LGIPs) that do not utilize brokers or dealers in their transactions (non-dealer entities) or which are not municipal securities."

[80] *See supra* note 68.

[81] As originally proposed, Rule D–9 would have excluded from the definition of customer "the issuer of securities which are the subject of the transaction in question." *See* "Notice of Filing of Fair Practice Rules," [1977–1987 Transfer Binder] *MSRB Manual* (CCH) ¶ 10,030 (Sept. 20, 1977). In amending the original proposed rule language to limit this exclusion solely to "the issuer in connection with the sale of a new issue of its securities," the Board stated that it believed "that the protections afforded customers by its rules should be extended to issuers when they act in secondary market transactions." *See* "Notice of Filing of Amendments to Fair Practice Rules," [1977–1987 Transfer Binder] *MSRB Manual* (CCH) ¶ 10,058 (Feb. 28, 1978). Give that the Board has always felt that the issuers should be considered customers even in secondary market transactions involving their own securities, state and local governmental entities certainly should be considered customers in transactions involving securities of other such entities. Furthermore, in Congressional testimony on the bankruptcy filing of Orange County, California and its local government pool, SEC Chairman Arthur Levitt discussed customer protection rules of self-regulatory organizations as they may apply to state or local governmental entities acting as customers. *See* Derivative Financial Instruments Relating to Banks and Financial Institutions: Hearings Before the Senate Comm. on Banking, Housing and Urban Affairs, 104th Cong., 1st Sess. (1995) ("SEC Testimony").

[82] S&P Report, at 3, 6–11. The Board takes no position as to which of these local government pools may issue interests that would constitute municipal fund securities.

[83] *Id.* at 3.

[84] PFM identifies several state-run and country-run pools (including the Orange County, California pool) as having had recent financial difficulties. *See* PFM Letter. *See also* NAST Report, at 2, 5, 38; S&P Report, at 5.

[85] NAST has stated that it: "recognizes that potential pool participants have numerous alternative investment vehicles from which to choose. The goal of the * * * [NAST Guidelines for Local Government Investment Pools] is to insure that local government investment officials, when choosing among their available investment options, are fully aware of significant investment and administrative policies, practices and restrictions of the pool and are thereby able to make informed investment decisions on behalf of the local governments * * * NAST further recommends that the broker/dealer community govern itself to follow the same standards of conduct NAST has recommended for treasurers" NAST Report, at 8. As the self-regulatory organization established by Congress to adopt rules for dealer transactions in municipal securities, the Board has created a body of rules that, together with this proposed rule change, constitute the self-governance and standards of conduct that NAST has recommended be established.

[86] The Board understands that investment strategies, pay-out restrictions, and fees and redemption charges or penalties of the existing higher education trust vary. At least some higher education trusts permit sales of interests to persons living in other states and permit redemption proceeds to be used to pay higher education expenses in any state. In other cases, redemption proceeds may be limited for use within a specific state. *See generally* CSPN Report. Thus, a single customer may have a choice of investments in various higher education trusts having widely differing strategies and terms. Furthermore, recent press reports regarding higher education trust programs have suggested that investor protection issues may exist in this section. *See, e.g.*, "Saving for College—Strategies for Putting Your Plan on Course," *Consumer Reports* (Feb. 2000) at 56; Julie Vore, "College Savings Plan: A Guide to How They Work," *AAII Journal*, Vol. 22, No. 2 (Feb. 2000) at 11; Thomas Easton and Michael Maiello, "The College Saving Fund Scandal," *Forbes* (Mar. 6, 2000) at 172; Mike McNamee, "Piling Up Those bucks for College," *Business Week* (Mar. 13, 2000) at 155. The Board takes no position on which of these higher education trusts may issue interests that would constitute municipal fund securities.

[87] NAST Report, at 8 (stating the "[t]he investment alternatives offered by broker/dealers to public finance officials should be suitable for the public entity's objectives."). The fact that a local government pool's assets are invested in investments that are legally available as direct investments by local governments does not resolve suitability issues. *See supra* note 74. As with transactions in any other municipal security, Rule G–19 would require a dealer recommending a transaction in a municipal fund security to have reasonable grounds for believing that the recommendation is suitable, based upon information available from the issuer or otherwise and the facts disclosed by or otherwise known about the customer. These suitability requirements do not differ in substance from those of the NASD, to which dealers effecting transactions in such interests might otherwise be subject if these interests are not municipal securities. *See also* SEC Testimony.

[88] *See* MBIA–MISC, PFM and PLGIT Letters.

flexible to permit dealers to act in a lawful manner in view of this wide divergence of circumstances while maintaining an adequate level of customer protection.

The Board believes that state regulation, federal rules applicable to investment advisors and Governmental Accounting Standards statements, although providing important protections in the areas governed by such rules and standards, do not serve as a substitute for regulation tailored specifically toward dealer activities in municipal fund securities. Furthermore, the Board believes that voluntary adherence to the substance of existing rules applicable to investment company securities and/or other equity securities provides inadequate protection to investors since dealers are free to deviate from these rules in any manner and at any time they choose without any apparent legal consequence. The existence of these collateral safeguards do not justify the Board refraining from making its rules more rational with respect to such securities.

With respect to NAST's comments, the Board notes that its rules generally apply to all transactions effected by dealers in municipal securities, regardless of whether there has been a demonstration that each type of municipal security has been the subject of some kind of specific abuse or other specific threat to public investors. Board rules generally focus on dealers' fair dealing duties to customers, including in particular the obligation of dealers to disclose to customers all material information regarding a municipal security transaction. The Board believes that some of the very arguments made by NAST in support of its position that Board regulation of dealer transactions in higher education trust interests is inappropriate in fact lend greater support to the position that the Board is acting in accordance with its statutory mandate to protect investors and the public interest by adopting the proposed rule change. For example, NAST states:

> substantial disincentives exist to discourage contributors from using the programs for any purpose other than the prepayment of tuition. Under the federal Internal Revenue Code, if the beneficiary does not use the contributions for qualified higher education purposes, except in cases of scholarship, death, or disability, the contributor is entitled to a limited refund and [in] most states the refund amount is reduced by a penalty and other charges. Generally, no earnings attributable to the account will be refunded. Moreover, tuition payments normally do not exceed the actual cost of a beneficiary's tuition. In addition, there is very limited opportunity to transfer program benefits.[89]

The Board believes that its existing rules, as amended by the proposed rule change, would provide great benefit to potential purchasers of interests in higher education trusts by ensuring that the unique characteristics of such interests are disclosed by the selling dealers to their customers. In addition, as described above, NAST has previously noted that there are significant investor protection issues with respect to the investment by local governments in local government pools.[90]

With regard to the argument that interests in local government pools are strictly intrastate in nature and therefore are not the appropriate subject of federal regulation, Board rules currently do not apply to any entity that, by virtue of the fact that its business is exclusively intrastate, is not registered as a broker or dealer under Section 15 of the Act.[91] Beyond this, the federal securities laws provide that, once an entity engages in some interstate activities that require it to register under the Act, the broker-dealer rules applicable to such entity apply to both its interstate and intrastate transactions. The Board believes that Congress has made clear its policy determination that intrastate transactions of registered broker-dealers should be subject to broker-dealer regulation.[92]

C. Applicability of Existing Board Rules to Transactions in Municipal Fund Securities Effected Prior to Effectiveness of Proposed Rule Change

1. Comments Received

Fulbright and Schulte argue that. to the extent that the Board may have authority to regulate dealer transactions in these interests, existing Board rules relating to municipal securities do not currently apply to transactions in local government pool interests.[93] They state that existing Board rules were never intended to apply to securities other than debt obligations, as evidenced by the Board's statement in the March Notice that its rules "generally have been drafted to accommodate the characteristics of debt obligations and not investment interests such as municipal fund securities." As a result, they believe that any interpretation by the Board that existing rules apply to municipal fund securities can only be effected through the rulemaking process.

2. Board Response

The Board believes that Section 15B(c)(1) of the Act[94] automatically subjects any dealer transactions in municipal fund securities to Board rules. This is true regardless of whether dealers effecting such transactions are aware that municipal fund securities are, in fact, municipal securities. It is incumbent upon dealers to be aware of the nature of the securities in which they deal and it is not a defense against the applicability of Board rules that the dealer did not know that the securities were municipal securities. Thus, the Board's statement that any interest in a local government pool or a higher education trust that is a municipal security currently is subject to Board rules was a statement of fact rather than an interpretation.[95]

The Board recognizes, however, that, prior to publication of the March Notice, it may not have been readily apparent to the vast majority of dealers, as well as to most regulatory agencies, that interests that constitute municipal fund securities were municipal securities. Although the Board does not have authority to direct enforcement of its rules it is statutorily charged with determining the best means of protecting investors and the public interest in regard to dealer transaction in municipal securities. As such, the Board believes that, under the unique circumstances relating to municipal fund securities, enforcement of its rules with regard to transactions in such securities that occurred prior to the industry having been put on notice of their applicability would serve no substantial investor protection purpose, absent extraordinary circumstances or a showing of investor harm resulting from a material departure from standards of fairness generally applicable under the federal securities laws.

D. Structure of Proposed Rule Change

1. Comments Received

Certain commentators express concern that the Board's rulemaking proposal contemplates amendments to existing rules rather than creation of a

[89] *See* NAST Letter.

[90] *See supra* notes 84–85. *See also supra* notes 81–85 and accompanying text.

[91] 15 U.S.C. 78*o*.

[92] *See, e.g.*, Sections 15 (b)(3) and 15B(a)(3) of the Act. 15 U.S.C. 78*o*(b)(3); 15 U.S.C. 78*o*–4(a)(3).

[93] *See* Fulbright and Schulte Letters.

[94] 15 U.S.C. 78*o*–4(c)(1).

[95] Actual interpretations relating to how certain rules would be applied to transactions in municipal fund securities, such as the Board's Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market included in the proposed rule change, would be filed with the SEC to the extent required under Section 19(b) of the Act and Rule 19b–4 under the Act.

separate body of regulations.[96] TBMA states that the "attempt to fit a totally new product or way of doing business into existing regulation that was created to address fundamentally different products and a different market structure is fraught with danger." [97] TBMA also states that transactions in municipal fund securities should be regulated in a manner as similar as possible to the existing regulatory scheme for investment company securities.

2. Board Response

The Board reviewed its existing rules and compared them, where relevant, to rules that govern dealer transactions in securities of registered investment companies. In many resects, Board rules are functionally identical to these rules. In other cases, existing SEC or NASD rules provide a more appropriate method of regulating municipal fund securities and the Board sought to modify its rules in a manner that was consistent with those rules. In yet other cases, the regulation of registered investment companies has been effected by regulating issuers, an approach which the Board cannot, and does not seek to, duplicate. Finally, certain NASD and SEC rule provisions arise out of specific Congressional authorization in the Investment Company Act applicable to securities of registered investment companies but not applicable to unregistered municipal fund securities.

Under the circumstances, the Board believes that its approach is appropriate. The Board sought industry comment on the proposed rule change on two separate occasions and, in those circumstances where commentators noted specific shortcomings, the Board considered the merits of the comments and made revisions where appropriate. As noted previously, the Board believes that its rules, as amended by the proposed rule change, are in many respects particularly well suited to dealers effecting transactions in municipal fund securities because they recognize that issuers, being unregulated entities, may act in widely divergent manners. Thus, Board rules provide a greater degree of flexibility than existing rules governing dealer transactions in registered investment company securities.[98]

E. Specific Rule Provisions

1. Proposed Rule D–12, on Definition of "Municipal Fund Security"

Proposed Rule D–12 defines municipal fund security as a municipal security that would be an investment company security under the Investment Company Act but for the fact that the issuer is a state or local governmental entity or instrumentality. For a security to constitute a municipal fund security, the security must first constitute a municipal security. As discussed in detail above, existing Board rules do not, and the proposed rule change would not, apply to any local government pool or higher education trust interest that is not a municipal security.

Fulbright and MBIA–MISC suggest that the Board explicitly exclude local government pool investment from the definition of "municipal fund security." [99] In addition, Eckert urges "that the Board adopt a definition of 'Broker' which excludes federally registered investment advisors that do not engage in the sale or distribution of securities except in connection with services as investment advisor and administrator to the issuers of Municipal Fund Securities." [100] Eckert expresses concern that investment advisory firms that otherwise do not undertake broker or dealer activities will have difficulty in assessing standards applicable to dealers.

The Board has not revised the proposed definition. The Board believes that there is no basis for excluding interests in local government pools from the definition of municipal fund securities, as discussed above. With respect to registered investment advisors, the Board has noted that its rules do not apply to activities of non-dealers. A firm wishing to determine if Board rules apply to services it provides to an issuer of municipal fund securities may seek advice of counsel as to whether such services constitute broker-dealer activities and may seek comfort on counsel's opinion from SEC staff through the SEC's no-action procedure. If a non-dealer firm's activities do not constitute broker-dealer activities, the firm need not be a registered broker or dealer subject to Board rules. Thus, non-dealer firms may act as investment advisers to local government pool or higher education trust programs and not become subject to Board rules. However, once a firm does in fact undertake broker-dealer activities with respect to municipal securities, the Board believes that such firm must be cognizant of and comply with all Board rules, regardless of how infrequently such dealer may transact business in municipal securities or how narrow a range of municipal securities activities in which such dealer is involved.

2. Rule A–13, on Underwriting Assessments

The draft amendment to Rule A–13 included in the March Notice imposed an underwriting assessment on sales of municipal fund securities. Most commentators express concern regarding the assessment of underwriting fees on sales of municipal fund securities.[101] Fulbright, GFOA, Merrill, PLGIT and TPIS suggest that these sales should be exempted from the underwriting assessment. TBMA states that the fee structure for dealers involved in the distribution of municipal fund securities is more like an administrative fee than an underwriting discount or commission because these dealers do not undertake underwriting risks. As a result, fees generally are fixed and are low relative to traditional underwriting fees. Because of these small margins, Duane, Florida, GFOA, PFM, PLGIT, Schulte and TPIS state that underwriting assessments would be passed on to issuers and therefore would represent a financial burden on the issuers' programs.[102]

Merrill and TPIS state that given the volume of investments and redemptions in many local government pools,[103] the level of fees generated by the Board from underwriting assessments would be disproportionate to the resulting regulatory costs. Merrill stats that, if assessments are imposed, they should be at a significantly lower level than the assessments charged in connection with

[96] *See* PRM, Schulte and TBMA Letters.

[97] *See* TBMA Letter. Similarly, PFM comments that "if the MSRB is intent on regulating activities relating to these funds, it should do so by developing a separate set of rules rather than by attempting to shoe horn the funds into the rules designed for underwritten fixed income securities." Schulte believes that "regulating the marketing of interests in * * * [local government pool investments] under existing MSRB rules, even if those rules are revised as the MSRB has proposed, would be like trying to put a square peg in a round hole."

[98] *See supra* note 88 and accompanying text.

[99] *See* Fulbright and MBIA–MISC Letters.

[100] *See* Eckert Letter.

[101] *See* Duane, Florida, Fulbright, First GFOA, Merrill, PLGIT, PFM, Schulte and Second TPIS Letters.

[102] Merrill and TBMA, on the other hand, suggest that the Board exempt municipal fund securities from the prohibition in Rule A–13(e) from passing through underwriting assessments to issuers.

[103] PFM and PLGIT note that many local government pools have annual share turn-over rates of approximately 3 to 4 times their assets, due to the fact that many participants are investing short-term funds that move in and out of the pools frequently during the course of the year. Schulte believes that this multiplier may reach as high as 10 times assets. PFM estimates that total issuances of interests in local government pools may be on the same order of magnitude as issuances of traditional municipal securities.

more traditional municipal securities offerings.[104]

Based on these comments, the Board revised the draft amendment to Rule A–13 to exempt sales of municipal fund securities from the underwriting assessment.[105] The continuous nature of offerings in municipal fund securities, the predetermined and automatic nature of most customer investments and the heightened potential that underwriting assessments could create significant financial burdens on issuers to their customers' detriment justify exempting municipal fund securities from the underwriting assessment. The Board also wishes to make clear that it does not intend to seek payment of any previously accrued underwriting assessments that may technically be due and owing on prior sales of municipal fund securities.

3. Rule G–3, on Professional Qualifications

The proposed amendment to Rule G–3 permits an associated person qualified as an investment company limited representative to effect transactions in municipal fund securities (but no other municipal securities).[106] A dealer must continue to have municipal securities principals as required under Rule G–3(b), even if the dealer's only municipal securities transactions are sales of municipal fund securities.

Schulte states that the amendment should be modified to exempt dealers in local government pool investments from the requirement that they have at least one municipal securities principal, provided that such dealers meet the requirements regarding principals established by the NASD.[107] Similarly, Fidelity states that investment company principals should be permitted to supervise sales representatives that sell municipal fund securities and to approve advertisements.[108]

The Board believes that requiring a dealer effecting transactions in municipal fund securities to have at least one municipal securities principal is appropriate because dealers must have at least one associated person who is familiar with Board rules. Consistent with this view, the Board believes that supervision of municipal securities activities is appropriately vested in individuals who have such familiarity with Board rules. The Board has not revised this proposed amendment.[109]

4. Rule G–8, on Recordkeeping

As published in the March Notice, the draft amendment to Rule G–8 would recognize that municipal fund securities do not have par values, dollar prices, yields and accrued interest and that some investment company limited representatives would be permitted to effect transactions in municipal fund securities.

Fidelity suggest that Rule G–8 be amended to permit a dealer to rely on a transfer agent for municipal fund securities to meet applicable books and records requirements under the rule, noting that a transfer agency system is typically used for mutual fund-type products.[110] Fidelity points to the existing provision in the rule that permits a non-clearing or introducing dealer to rely on records maintained by a clearing dealer.

The Board believes that it would be appropriate to permit a dealer effecting transactions in municipal fund securities to meet its books and records requirements by having its books and records maintained by a transfer agent so long as those books and records meet the requirements of Rule G–8 and the dealer remains responsible for the accurate maintenance and preservation of the books and records.[111] Therefore, the Board has proposed to revise Rule G–8(g) as suggested.

Fidelity also suggests that the definition of "institutional account" in Rule G–8(a)(xi) be amended to include states and their political subdivisions and instrumentalities, noting that the additional information required under this provision for non-institutional accounts is "simply inapposite" with respect to such entities.[112] The Board notes, however, that this definition is also used in Rule G–19, on suitability of recommendations and transactions, in connection with the requirement that dealers make reasonable efforts to obtain certain information about non-institutional accounts (but not institutional accounts as defined in Rule G–8(a)(xi)) prior to recommending a municipal security transaction.[113] This information is then required to be used by the dealer when making a suitability determination under Rule G–19 in connection with a recommended transaction.

The definition of institutional account under Rule G–8 is identical to the definition used under NASD rules and the Board believes that it should not diverge from this common definition without substantial cause. Further, because the definition of institutional account includes any entity with total assets of at least $50 million, a substantial proportion of state or local government customers would qualify as institutional accounts under the current

[104] In the alternative, Merrill, PFM, Schulte and TPIS suggest that underwriting assessments should be based on net issuances of municipal fund securities, taking into account all securities retired. TPIS also suggests that a flat annual or monthly fee set at a modest level might be more appropriate.

[105] The Board published this revised version of the draft amendment to Rule A–13 in the August Notice. Commentators supported the Board's decision to exempt sales of municipal fund securities from the underwriting assessment. *See* Second GFOA and Saul Letters. Another commentator states, however, that "there is no assurance that the assessment will not be imposed at a future time." *See* Eckert Letter. The Board believes that no further revisions to Rule A–13 are warranted.

[106] Thus, an associated person who sells both municipal fund securities and other types of municipal securities would be required to qualify as a municipal securities representative or general securities representative.

[107] *See* Schulte Letter.

[108] *See* First Fidelity Letter. Rule G–21, on advertising, requires that each advertisement be approved by a municipal securities principal or general securities principal. Rule G–27, on supervision, requires either a municipal securities principal or municipal securities sales principal to supervise municipal securities sales activities. Fidelity incorrectly states that the draft amendment to Rule G–3 would require those who supervise sales representatives for local government pool investments to be qualified as a municipal securities sales principal. In fact, under Board rules, municipal securities principals may also supervise municipal sale activities.

[109] If at some future time the Investment Company and Variable Contracts Products Principal Examination (Series 26) were to include questions on relevant Board rules, including but not limited to those rules relating to municipal fund securities, the Board could reconsider the requirement that such supervisory activities be undertaken by a municipal securities principal.

[110] *See* First Fidelity Letter.

[111] This provision would parallel an existing provision in Rule G–8(c) permitting maintenance for a non-clearing dealer of records by clearing agencies that are not themselves dealers.

[112] An institutional account is defined as (i) a bank, savings and loan association, insurance company, or registered investment company; (ii) a registered investment adviser; or (iii) any entity with total assets of at least $50 million. The additional information that dealers are required to record under Rule G–8(a)(xi) for non-institutional accounts as compared to institutional accounts includes (i) the customer's age, (ii) the customer's occupation and employer and (iii) any beneficial owner of the account if other that the customer.

[113] The information that dealers are obligated to make reasonable efforts to obtain prior to recommending a municipal security transaction to a non-institutional account (but not to an institutional account) includes information concerning (i) the customer's financial status, (ii) the customer's tax status, (iii) the customer's investment objectives, and (iv) such other information used or considered to be reasonable and necessary by the dealer in making recommendations to the customer. The collection of this information can have an impact on the nature of a dealer's suitability obligation because suitability determinations are required to be based on information disclosed by or otherwise known about the customer. Depending upon the specific facts and circumstances, Rule G–19 may require that dealers make a greater effort to obtain information on which to base a suitability determination from a non-institutional account than from an institutional account.

definition.[114] Finally, excluding state and local governments from the definition of institutional account could serve to weaken the Board's suitability requirement with respect to recommended transactions with smaller state and local governments (*i.e.*, those with assets of less than $50 million), which are the governmental entities arguably most likely in need of investor protection.[115] Therefore, the Board did not amend the rule as suggested.

Furthermore, in conjunction with revisions to the proposed amendment to Rule G–15, relating to periodic statements in lieu of individual transaction confirmations, as described below, the Board revised the amendments to Rule G–8 to require that dealers retain as part of their books and records copies of all periodic statements delivered to customers in lieu of individual confirmations.

5. Rule G–15, on Customer Confirmations

The draft amendments to Rule G–15, as published in the March Notice, change the concepts of par value, yield, dollar price, maturity date and interest, none of which would appropriately apply to a municipal fund security. Thus, on a confirmation of a municipal fund securities transaction, a dealer would use the purchase or sale price of the securities (as appropriate) rather than par value and would omit yield, dollar price, accrued interest, extended principal, maturity date and interest rate. Dealers selling municipal fund securities would be required to include the denomination or purchase price of each share or unit as well as the number of shares or units to be delivered. Confirmations of municipal fund securities transactions would require a disclosure to the effect that a deferred commission or other charge may be imposed upon redemption, if applicable.[116] The amendment also would make clear that dealers must confirm redemptions of municipal fund securities. Finally, the amendment would permit dealers to use quarterly statements, rather than transaction-by-transaction confirmations, if customers are purchasing the securities in an agreed amount on a periodic basis ("periodic plan"), in a manner similar to the periodic reporting provision of Rule 10b–10[117] under the Act.

The Board received a number of technical comments on various provisions in the draft amendments to Rule G–15 published in the March Notice. In response, the Board published revised draft amendments to Rule G–15 in the August Notice. The revised amendments generated additional comments and, in certain cases, resulted in the Board making further revisions. The comments received and the Board's responses are set forth below:

a. Periodic Statements—Rule G–15(a)(vi)(G) and (a)(viii). Several commentators state that the draft amendments, as published in the March Notice, would require individual confirmations for each transaction in local government pool interests.[118] Schulte suggests that dealers effecting transactions in local government pool investments be permitted to use monthly statements. Merrill states that transactions in higher education trust interests that are not effected pursuant to a periodic plan should nonetheless qualify for periodic statements in lieu of individual transaction confirmations.[119]

As a result, the Board revised the draft amendment to Rule G–15 to provide that information regarding transactions in municipal fund securities effected in connection with a program that does not provide for periodic purchases or redemptions of municipal fund securities (a "non-periodic program") may be disclosed to customers on a monthly statement in lieu of transaction confirmations.[120] With respect to natural persons who participate in a non-periodic program, this monthly reporting would require the written consent of such individual or of the issuer. If the issuer directs that monthly statements be used in lieu of transaction confirmations, the revised amendment to Rule G–15(a)(viii) would permit dealers effecting transactions in such municipal fund securities to use monthly statements without obtaining the consent of any customers. In addition, the amendment has been revised to eliminate the requirement that customers participating in a group periodic plan consent to the use of periodic statements in lieu of transaction confirmations.[121]

In commenting on the revised amendments published in the August Notice, Merrill suggested that the revision inadvertently imposes a more onerous condition on dealers using periodic statements for customers participating in periodic plans that are not part of a group plan, as compared to customers participating in a non-periodic program, because the issuer would not be permitted under the language of the draft amendment to provide consent on behalf of customers as in the case of non-periodic programs.[122] As a result, the Board has further revised the amendment to Rule G–15(a)(viii)(E) to allow issuers to provide consent for the use of periodic statements in these circumstances.[123]

b. Rule G–15(a)(i)(A)(7). One commentator states that municipal fund securities will not be issued in certificated form and therefore the

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[114] Because those state or local government customers do not qualify as an institutional account, the dealer would merely indicate in its records that such information (such as customer's age, occupation, etc.) is inapplicable, as with any other customer that does not qualify as an institutional account and is not a natural person.

[115] Because state and local governments with assets of less than $50 million are not considered institutional accounts under NASD rules, the suggested amendment would have the effect of making the Board's suitability requirements with respect to recommendations of municipal securities transactions to such entities weaker than NASD's suitability requirements with respect to recommendations of transactions in other types of securities to these same entities.

[116] Disclosure of deferred commissions or other charges would cover, for example, any deferred sales load or, in the case of interests in certain higher education trusts, any penalty imposed on a redemption that is not for a qualifying higher education expense.

[117] 17 CFR 240.10b–10.

[118] *See* PLGIT, PFM and Schulte Letters. PFM and PLGIT state that individual confirmations for the frequent purchases and redemptions of local government pool interests would impose high administrative and cost burdens. PLGIT notes that its program processes over 500,000 check redemptions each year, with some program participants using checks for such purposes as paying payroll.

[119] *See* First Merrill and Second Merrill Letters. Merrill states that this would be "analogous to and consistent with" the provisions of Rule 10b–10 permitting periodic statements in lieu of confirmations for non-periodic transactions in tax-qualified individual retirement and individual pension plans.

[120] In addition, the Board made a minor language change to paragraph (a)(vi)(G) of Rule G–15 to clarify that quarterly statements in lieu of individual confirmations for periodic plans also would be available for arrangements involving a group of two or more customers.

[121] TPIS states that requiring customer consent to receive quarterly statements would impose administrative burdens on dealers that are not justified by any investor protection interest. It notes practical difficulties with sending confirmations to some members of a group plan and quarterly statements to others, stating that if the dealer fails to receive consent from any customer, it might be forced to send individual confirmations to all customers. TPIS states that, in adopting the investment company plan exception to the confirmation requirements in Rule 10b–10, the SEC recognized that securities sold through such plans do not require the same level of reporting as other securities transactions because their regularized nature raised fewer concerns about whether a particular transaction was executed consistent with the expectations of the customer. *See* First TPIS Letter.

[122] *See* Second Merrill Letter.

[123] The Board believes that this further revision addresses any remaining concerns regarding the availability of periodic statements in lieu of confirmations alluded to by Fidelity in the First Fidelity Letter. The Board understands that these revisions to the confirmation provisions have adequately addressed PLGIT's concerns regarding the need for individual confirmations for each redemption. *See* Saul Letter.

delivery provisions under subparagraph (a)(i)(A)(7) would not be relevant.[124] In order to avoid the potential for ambiguity, this subparagraph has been revised to eliminate reference to denomination and to refers solely to the share purchase price.[125]

c. Rule G–15(a)(i)(C) and (A)(i)(B)(1). TPIS notes that the Board did not provide guidance regarding certain descriptive information regarding purchased securities required to be included in the confirmation under paragraph (a)(i)(C) and states that this paragraph should not be applicable to municipal fund securities. In the alternative, it suggests that confirmations should not be required to state that municipal fund securities are unrated.[126] The Board has revised the amendment to (i) provide that a confirmation of a municipal fund security transactions need not show the information required under paragraph (a)(i)(C) other than whether the security is puttable and (ii) include a requirement in subparagraph (a)(i)(B)(1) that the confirmation include the name used by the issuer to identify the security and, to the extent necessary to differentiate the security from other municipal fund securities of the issuer, any separate program series, portfolio or fund designation. A statement to the effect that the security is unrated would not be required.

d. Rule G–15(a)(viii)(B). Merrill argues that certain information required to be disclosed on a periodic statement with respect to municipal fund security transactions would be unnecessarily repetitive and might best be disclosed in a separate disclosure document that is applicable to all transactions in these securities.[127] This information includes disclosure of deferred commissions or other charges, whether the security is redeemable, the capacity of the dealer, and the time of execution. The Board believes that dealers using a periodic statement where the information is identical for all transactions shown on the statement should be permitted to provide the information only once on the statement rather than repeatedly for each transaction. In addition, the Board believes that if the information is included in disclosure materials previously delivered to the customer and the periodic statement clearly indicates that the information is included in the disclosure material, the information may be omitted from the periodic statement. Of course, a dealer would not be able to rely on this provision if the disclosure materials have not in fact been delivered to the customer or if the information included in the disclosure materials is not accurate with respect to any transaction disclosed on the periodic statement (*e.g.*, if the information has subsequently been changed). As a result, the Board revised Rule G–15(a)(viii)(B) to this effect.

6. Rule G–21, on Advertising

The Board did not propose amending Rule G–21 in the March Notice. Schulte states that this rule should be revised to eliminate references to price and yield for purposes of municipal fund securities.[128] Section (d)(i) provides that an advertisement for new issue municipal securities may show the initial reoffering price or yield, even if they have changed, so long as the date of sale is shown. In addition, it provides that if the price of yield shown in the advertisement is other than the initial price or yield, the price or yield shown must have been accurate at the time the advertisement was submitted for publication. The Board believes that these provisions do not unnecessarily restrict the manner in which municipal fund securities may be advertised nor do they mandate that an advertisement for a municipal fund security specify a price or yield.[129] Therefore, no change has been proposed on Rule G–21.

7. Rule G–32, on New Issue Disclosures

No amendments to Rule G–32 were proposed in the March Notice. However, the Board stated that municipal fund securities sold in a primary offering would constitute new issue municipal securities for purposes of Rule G–32 so long as the securities are in the underwriting period. Because the Board understands that issuers of municipal fund securities are continuously issuing and delivering the securities as customers make purchases, the Board believes that municipal fund securities would remain in their underwriting period so long as such issuance and delivery continues.[130] Thus, a dealer effecting a transaction in a municipal fund security would be required to deliver to the customer the official statement, if one exists, by settlement of the transaction. However, in the case of any customer making repeat purchases of a municipal security (including but not limited to a municipal fund security), no new delivery of the official statement would be required so long as the customer has previously received it in connection with a prior purchase and the official statement has not been changed from the one previously delivered to that customer.[131]

TBMA expresses concern regarding the timing requirement of Rule G–32 in the limited circumstances where a revision has just been made to the official statement and a customer that participates in a periodic plan makes an automatic purchase of additional shares of municipal fund securities.[132] In spite of the best efforts of the dealer and the issuer, it may be impossible for the revised official statement to be delivered to the customer by settlement. TBMA suggests that, under these circumstances, the timing requirement under Rule G–32 should be based on the

[124] *See* First TPIS Letter.

[125] Subparagraph (a)(i)(A)(7) would require that the confirmation for a municipal fund security transaction indicate the purchase price (exclusive of commission) of each share or unit and the number of shares or units to be delivered, regardless of whether a physical or book-entry delivery of the securities will occur.

[126] TPIS states that such securities are ineligible for ratings and such notation might be misleading. *See* First TPIS Letter. However, the Board notes that a relatively small number of local government pools have in fact been rated. *See* NAST Report, at 36. *See generally* S&P Report.

[127] *See* Second Merrill Letter. Fidelity believes that information regarding redemptions need not be disclosed at all. *See* First Fidelity Letter.

[128] *See* Schulte Letter.

[129] The Board understands that, in the context of local government pools, the terms "yield" may be used to refer to historical returns that may be used as a basis for comparing investment performance. *See* NAST Report, at 8. References in Rule G–21 to yield, consistent with its use in other Board rules, refer to a future rate of return on securities and do not refer to historical yields. The Board notes that any use of historical yields would be subject to section (c) of Rule G–21, which provides that no dealer shall publish or cause to be published any advertisement concerning municipal securities that the dealer knows or has reason to know is materially false or misleading. Thus, a dealer advertisement of municipal fund securities that refer to yield typically would require a description of the nature and significance of the yield shown in the advertisement in order to assure that the advertisement is not false or misleading.

[130] Rule G–32 defines underwriting period for securities purchased by a dealer (not in a syndicate) as the period commencing with the first submission to the dealer of an order for the purchase of the securities or the purchase of the securities from the issuer, whichever first occurs, and ending at such time as the following two conditions both are met: (1) the issuer delivers the securities to the dealer, and (2) the dealer no longer retains an unsold balance of the securities purchased from the issuer or 21 calendar days elapse after the date of the first submission of an order for the securities, whichever first occurs. However, because the issuer continuously delivers municipal fund securities, the first condition for the termination of the underwriting period remains unmet.

[131] In addition, in the case of a repeat purchaser of municipal fund securities for which no official statement in final form is being prepared, no new delivery of the written notice to that effect or of any official statement in preliminary form would be required so long as the customer has previously received it in connection with a prior purchase. However, if an official statement in final form is subsequently prepared, the customer's next purchase would trigger the delivery requirement with respect to such official statement.

[132] *See* TBMA Letter.

sending rather than the delivery of the official statement.

As a result, the Board published in the August Notice a draft amendment to Rule G–32 that provided that, in the situation where the official statement is being amended or otherwise changed, a dealer may sell, pursuant to a periodic plan, a municipal fund security to a customer who has previously received the official statement so long as it sends to the customer a copy of any new, supplemented, amended or stickered official statement by first class mail promptly upon receipt from the issuer (*i.e.*, actual delivery by settlement would not be required). This draft amendment was designed to address the limited circumstances where an amendment to the official statement for a municipal fund security has just been produced but, because of standing arrangements with a customer under a periodic plan, a transaction in such security will automatically be effected and the securities delivered before the dealer is able to deliver the amended official statement to the customer, as would otherwise be required under the rule.

Fidelity suggests that this draft amendment to Rule G–32 be made to apply equally to periodic plans and non-periodic programs.[133] The Board believes that, although the problem that was intended to be addressed by the draft amendment would most likely arise under a periodic plan, such problems also may arise from time to time with respect to non-periodic programs. In addition, Merrill states that, in the case of an amendment to an official statement, dealers should be permitted to satisfy the delivery requirement under Rule G–32 with respect to the amended official statement by delivering the amendment alone (including a notice that the complete official statement is available upon request).[134] The Board understands that this is a typical practice in connection with amendments to mutual fund prospectuses. Although the Board believes that Rule G–32 currently would permit delivery of the amendment alone so long as the customer already has the official statement that is being amended and the dealer ensures that the amendment makes clear what constitutes the complete official statement as amended, the Board has determined that clarifying language consistent with Merrill's comment should be added to Rule G–32. as a result, the Board has made further revisions to Rule G–32 to effect both of these suggested changes.

Finally, Eckert implies that requiring dealers selling municipal fund securities to comply with the official statement delivery requirements of Rules G–32 and G–36 may not conform Section 15B(d)(2)[135] of the Act.[136] Except for the technical changes to Rule G–32 included in the proposed rule change, the provisions of Rules G–32 and G–36 apply to dealers effecting transactions in municipal fund securities in a manner identical to dealer transactions in other forms of municipal securities. The Board believes that its authority to require the delivery of official statements by dealers in the manner provided in these rules has long since been settled.

8. Rule G–33, on Calculations

The Board did not propose amendment Rule G–33 in the March Notice. Schulte states that this rule should be revised to eliminate references to par value, yield dollar price, maturity date and interest for purposes of municipal fund securities.[137] By its terms, Rule G–33 applies only to municipal securities that bear interest or are sold at a discount. Because municipal fund securities do not bear interest and are not sold at a discount, Rule G–33 would by its nature not apply. Therefore, no change has been made to Rule G–33.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Board. All submissions should refer to the File No. SR–MSRB–00–06 and should be submitted by August 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[138]

Margaret H. McFarland,

Deputy Secretary.

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[133] *See* First Fidelity Letter.

[134] *See* Second Merrill Letter.

[135] 15 U.S.C. 78*o*–4(d)(2).

[136] *See* Eckert Letter. Section 15B(d)(2) of the Act provides that the Board is not authorized to require any issuer, directly or indirectly, to furnish to the Board or a customer any document or information with respect to such issuer; provided that the Board may require dealers to furnish to the Board or customers such documents or information which is generally available from a source other than the issuer.

[137] *See* Schulte Letter.

[138] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43075; File No. SR–NYSE–00–20]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Listing Fees for Closed-End Funds

July 26, 2000.

I. Introduction

On May 3, 2000 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change. The proposed rule change was published for comment in the **Federal Register** on June 23, 2000.[3] The Commission did not receive any comment letters with respect to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–42948 (June 15, 2000), 65 FR 39216.

proposal. This order approves the Exchange's proposal.

II. Description of the Proposal

1. Purpose

The proposed rule change amends the listed company fee schedule, set forth in Paragraph 902.02 of the Listed Company Manual ("Manual"), as it applies to original listing fees. The Exchange seeks to adopt a minimum original listing fee for each new closed-end fund depending upon the number of shares offered. As proposed, closed-end funds would be subject to a minimum original listing fee based upon the number of shares outstanding as follows: up to 10 million shares—$100,000; up to 24 million shares—$125,000; and over 24 million shares—$150,000. This minimum would include the Exchange's one-time special charge of $36,800.

The Exchange recently received approval for a minimum fee that specifically excluded closed-end funds in anticipation of this filing because such funds, unlike corporations, do not issue additional shares of securities.[4] Thus, the Exchange felt it would be inappropriate to apply the same fee schedule applied to corporations to closed-end funds.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[5] and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Commission believes that the Exchange's proposal to establish the minimum original listing fee schedule for closed-end funds described above is not unreasonable to the Exchange's issuers. Also, the Commission believes that because the fees are proportional to the number of shares outstanding, these fees are equitably allocated among the issuers. Thus, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–00–20) is approved.

By the Commission, for the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19501 Filed 8–1–00; 8:45 am]

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[4] *See* Securities Exchange Act Release No. 42606 (March 31, 2000), 65 FR 18415 (April 7, 2000) (SR–NYSE–00–10).

[5] 15 U.S.C. 78f.

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43070; File No. SR–Phlx–00–69]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Modifying the Concentration Requirements for the Gold/Silver Index

July 25, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19–b thereunder,[2] notice is hereby given that on July 18, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt Rule 1009A(b)(6)(i) as a maintenance standard that establishes a concentration requirement for the Gold/Silver Index ("Index"). The rule is stated below. Additions to the rule are in italics.

* * * * *

Rule 1009A. Designation of the Index

(a) No change

(b) No change.

(1)–(5) No change.

(6) No single component security represents more than 25% of the weight of the index, and the five highest weighted components do not in aggregate account for more than 50% (60% for an index consisting of fewer than 25 component securities) of the weight of the index;

(i) With respect to the Gold/Silver Index, no single component shall account for more than 35% of the weight of the Index and the three highest weighted components shall not account for more than 65% of the weight of the Index. If the Index fails to meet this requirement, the Exchange shall reduce position limits to 8,000 contracts on the Monday following expiration of the farthest-out, then trading, non-LEAP series.

(c) No change.

In the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards set forth herein, the Exchange shall not open for trading any additional series of options of that class unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under section 19(b)(2) of the Exchange Act.

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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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend the concentration requirements of the maintenance standards for the Gold/Silver Index to provide the same concentration requirements as are adopted for the Computer Box Maker Index.[3] The Gold/Silver Index is a capitalization weighted index composed of the stocks of widely held U.S. companies that mine gold and silver. Options on the Index have an American style expiration and the settlement value is based on the closing values of the component stocks on the day

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 39895 (April 21, 1998), 63 FR 23327 (April 28, 1998).

exercised, or on the last trading day prior to expiration (P.M. settled).

The Gold/Silver Index was the first narrow-based index option approved for trading on the Exchange.[4] In 1996, the Exchange revised the composition of the Gold/Silver Index and adopted procedures to address replacements, additions, and deletions of component stocks.[5] In addition, the Exchange received approval to apply to the Index all the maintenance criteria of Phlx Rule 1009A(c), which applies to options on indexes listed pursuant to the "Generic Index Approval Order,"[6] except the requirement that an index option be designated as A.M.-settled.[7] Thus, the Gold/Silver Index is currently required to comply with the concentration requirements set forth in Phlx Rule 1009A(b)(6). This requirement states that no one component may account for more than 25% of the weight of the Index and the five highest weighted components should not account for more than 60% of the Index. The concentration requirement must be satisfied on January 1 and July 1 each year.

The Exchange now proposes to adopt concentration requirements similar to that approved for the Exchange's Computer Box Maker Index.[8] Specifically, the Exchange proposes to adopt new Rule 1009A(b)(6)(i), which provides that no one component shall account for more than 35% of the weight of the Index and the three highest weighted components shall not account for more than 65% of the weight of the Index. If the Index fails to satisfy this criteria, the Exchange proposes to reduce the position limits to 8,000 contracts.[9] In implementing this decrease, all series of Index options would be scheduled for a position limit decrease effective the Monday following expiration of the farthest-out, then trading, non-LEAP option series. If prior to the scheduled position limit decrease, the Index complied with the proposed 35%/65% concentration requirements, the position limit would not be reduced. All other maintenance requirements contained in Rule 1009A(c) would continue to apply to this Index.[10] Thus, if the Index fails to meet other maintenance criteria, the Exchange will not open for trading any additional series of options unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination.

In addition, the Exchange is adding two components to the Index in an effort to reduce the weightings of the already existing components consistent with the proposed rule change.[11] The Exchange will add Goldfields, Lpd. (ticker "GOLD") and Phelps Dodge Corp. (ticker "DP") to the Index.

The Exchange believes that this is the most effective method of continuing to list an active product,[12] while ensuring that the Index contains components that are highly capitalized, actively traded, and reported securities, and thus, are appropriate for index option trading. The Exchange further believes that the concentration requirements approved respecting the Computer Box Maker Index are appropriate for this Index because they would deter investors from using the Gold/Silver Index options as a method of increasing their position in the highest weighted stocks in the Index, while preserving the Index in similar form as an investment tool.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[13] in general, and with Section 6(b)(5),[14] in particular, in that it is designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change would allow investors to continue to trade options on the Gold/Silver Index, without interruption, as a hedging vehicle respecting mining stocks; is consistent with other indexes that impose concentration standards aimed at preventing the use of the index as a surrogate to trade options on individual stocks contained in the Index; and at the same time provides standards to prevent the manipulation of components of the Index.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule imposes no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments on the proposal.

III. 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 20549–0609. 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 Phlx. All Submissions should refer to File No. SR–Phlx–00–69 and should be submitted by August 23, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds, for the reasons set forth below, that the Phlx's proposal is consistent with the requirements of the Act and the rules and regulations thereunder.[15] Specifically, the Commission finds that the proposal is

[4] *See* Securities Exchange Act Release No. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983).

[5] *See* Securities Exchange Act Release No. 37334 (June 19, 1996), 61 FR 33162 (June 26, 1996).

[6] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062–01 (June 10, 1994) (order approving File Nos. SR–Amex–92–35; SR–CBOE–93–59; SR–NYSE–94–17; SR–PSE–94–07; and SR–Phlx–94–10).

[7] *See supra* note 5.

[8] *See supra* note 3.

[9] The position limits for the Gold/Silver Index are set under Phlx Rule 1001A(b)(i). The Phlx represents that the Gold/Silver Index would currently fall under the 18,000 position limit criteria. However, if the Index fails to satisfy the concentration requirements of the maintenance criteria the position limit will be set at 8,000. Telephone conversation between Marla Chidsey, Attorney, Division of Market Regulation ("Division"), Commission, and Nandita Yagnik, Attorney, Phlx (July 25, 2000).

[10] *See supra* note 5.

[11] *See* Letter to Elizabeth King, Associate Director, Division, Commission, and Nancy Sanow, Assistant Director, Division, Commission, from Edith Hallahan, Deputy General Counsel, Phlx, dated July 17, 2000 ("July 17, 2000 Letter"); and telephone conversation between Heather Traeger, Attorney, Division, Commission, Marla Chidsey, Attorney, Divsion, Commission, and Nandita Yagnik, Attorney, Phlx (July 24, 2000).

[12] The Gold/Silver Index option had open interest of 31,090 contracts on July 7, 2000.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

consistent with Section 6(b)(5) of the Act [16] because it is designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Commission notes that the Gold/Silver Index is currently traded under Phlx Rule 1009A, which requires that no single component security represents more than 25% of the weight of the Index, and the five highest weighted components do not in the aggregate account for more than 50% of the weight of the Index. Based on the Phlx's representations, the Index is one of the Phlx's most actively-traded index options with an average daily trading volume of 1,559 contracts from January to June 2000.[17] The Phlx proposes to change the concentration requirement to make it similar to that of the Exchange's Box Maker Index. Under the Box Maker Index, no single component security may represent more than 35% of he weight of the Index, and the three highest weighted components cannot in the aggregate account for more than 65% of the weight of the index.[18] The Commission finds that changing the Gold/Silver Index to adopt the requirements that no single component security represents more than 35% of the weight of the Index, and that the three highest weighted components do not in the aggregate account for more than 65% of the weight of the index, comports with the standards in the Box Maker Index, which were previously approved by the Commission.[19] Thus, the Commission finds that the proposed amendment to Phlx Rule 1009(a)(6) relating to the Gold/Silver Index is consistent with the Act.

The Commission also finds that by adopting the proposed rule change to provide that no one component shall account for more than 35% of the weight of the Index and the three highest weighted components shall not account for more than 65% of the weight of the Index is an effective way to continue listing the Index, while still protecting against material changes in the composition and design of the Index that might adversely affect the Exchange's obligations to protect investors and to maintain fair and orderly markets in options based on the Index.

The Commission finds that the trading of options on the Index may facilitate transactions in securities, help remove impediments to a free and open securities markets, and promote the interest of investors by providing investors with a means of hedging exposure to market risks associated with the securities issued by the companies in the Gold/Silver index. The proposed rule change will allow investors uninterrupted use of the Index as an additional trading and hedging mechanism.

The Commission also finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission finds that in the interest of the public and for the protection of investors the proposed rule change should be given accelerated approval to allow for the uninterrupted trading of the Index and to continue listing additional series in the options following the July expiration.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Phlx–00–69) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19501 Filed 8–1–00; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78f(b)(5).

[17] *See* July 17, 2000, *supra* note 11.

[18] *See supra* note 3.

[19] *See supra* note 3.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3269, Amdt. #2]

State of North Dakota

In accordance with notices from the Federal Emergency Management Agency, dated July 21 and 24, 2000, the above-numbered Declaration is hereby amended to include the following counties in the State of North Dakota as a disaster area due to damages caused by severe storms, flooding, and ground saturation: Barnes, Burleigh, Burke, Cavalier, Dickey, Emmons, LaMoure, Logan, Morton, Montrail, Oliver, Pembina, Richland, Renville, Rolette, Sargent, Steele, Stutsman, Towner, and Ward. This Declaration is further amended to establish the incident period for this disaster as beginning on April 5, 2000 and continuing through July 21, 2000.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Divide, Dunn, Grant, McIntosh, McKenzie, Sioux, Stark, and Williams Counties in North Dakota; Brown, Campbell, Corson, Marshall, McPherson, and Roberts Counties in South Dakota; and Traverse County, Minnesota. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The economic injury number for the State of South Dakota is 9H8800.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 26, 2000 and for economic injury the deadline is March 27, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 25, 2000.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–19460 Filed 8–1–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3379]

Bureau of Educational and Cultural Affairs Request for Proposals; Office of Citizen Exchanges; Community Connections Program: U.S. Hosting

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for the Community Connections Program: U.S. Hosting. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to organize and implement Community Connections, a community-based, professional exchange program for business entrepreneurs and other professionals from Russia, Ukraine, Moldova, Armenia, Belarus, Georgia, Azerbaijan and Kazakhstan. The objective of Community Connections is to enhance the participants' skills in business and entrepreneurship, law, local governance, management, infrastructure development, curriculum development, and other professional-level fields. The Bureau is interested in proposals that provide both professional experience and exposure to American life and culture through internships hosted by U.S. businesses and other local institutions, and home stays with local community members. An overall objective of Community Connections is to establish long-term lasting

relationships among U.S. and international colleagues and communities. This program is not academic in nature. Rather, it is designed to provide practical, hands-on training in American business, legal, and public/private sector settings that can be transferred upon an individual's return home. The Bureau welcomes innovative proposals that combine elements of professional enrichment, job shadowing and internships appropriate to the language ability and interests of the participants.

Note: The proposal submitted should not include any program activities related to the NIS recruitment and selection of Community Connections participants.

Specific Bureau program objectives are outlined in the attached Project Objectives, Goals, and Implementation (POGI) document.

Program Information

Participating organizations will be expected to host both English speaking business internship participants and professional development participants with little or no English-language skills.

Pending availability of funds, the Bureau estimates that approximately 1,800 professionals will participate in the FY 2001-funded Community Connections program. All participants will be recruited from the selected regions by experienced U.S. organizations with offices in participating NIS countries. The Bureau expects that approximately 800 participants will be from Russia, 500 from Ukraine, and the remainder from Moldova, Armenia, Belarus, Azerbaijan, Georgia, and Kazakhstan. Business internships generally are four to six weeks in length, and programs for other professionals generally run from three to four weeks in length. It is expected that programs will take place beginning in the fall of 2001 through the fall of 2002. Please take care to allow sufficient time between programs to prepare for the following group. Organizations that have not hosted Community Connections participants before are invited to submit a proposal to host 20 participants in total during the first year in the program. In an effort to minimize administrative expenses, all organizations must host participants in groups of ten participants each. Participants will be assigned to U.S. host communities by the Office of Citizen Exchanges, based on the following factors: existing ties between the regions of origin of the participants, the locations of the U.S. grantee organizations, the professional interests of the participants, preferences of the U.S. host community, any existing relationship with a community in the NIS, and the areas of strength of U.S. grantee organizations. Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Organizations must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. For your reference, past programs have averaged a total of $6,500 for each participant hosted. Please use this figure as a guide when preparing a budget for Community Connections business and professional programs. Contingent upon the availability of funds from one fiscal year to the next, the Bureau intends to establish long-term continuing relationships with U.S. organizations that have demonstrated particular expertise in the planning and administration of long standing programs of importance to United States foreign policy, such as Community Connections. Accordingly, the Bureau reserves the right to extend grants programs found to be effective, by annual amendment for up to three additional fiscal years (not to exceed five years total), to provide continued support for this program. At the Bureau's discretion, organizations may be requested to continue activities for specific audiences or to expand their scope of the programming (*e.g.*, an organization may be requested to host participants from the same or another discipline—local government, business, or legal profession—from the same or from another country included in the program) to meet the changing needs of the Community Connection program. Specific budget guidelines are outlined in the attached Project Objectives, Goals, and Implementation (POGI) document.

Announcement Title and Number

All correspondence with the Bureau concerning this RFP should reference the above title and number ECA/PE/C–01–13.

FOR FURTHER INFORMATION, CONTACT: The Office of Citizen Exchanges, Community Connections Program ECA/PE/C/EUR, Room 220, U.S. Department of State, 301 4th Street, SW., Washington, D.C. 20547, 202–401–6884, 202–260–0440, vrector@pd.state.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Senior Program Officer Brent Beemer on all other inquiries and correspondence. Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, December 1, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline. Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–01–13, Program Management, ECA/EX/PM, Room 336 301 4th Street, SW,. Washington, D.C. 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to

provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the Program Office. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program planning and ability to achieve objectives: Detailed agenda and relevant work plan should demonstrate careful and thorough preparation to carry out substantive programs that have a high likelihood of achieving program objectives. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible.

2. Institutional capability: Organization should demonstrate sufficient skills and experience in hosting visitors from other countries and ability to utilize local business, legal and governmental resources and voluntary support. Thematic expertise in project subject matter must be demonstrated.

3. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should also maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

4. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

5. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * * to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through The FREEDOM Support Act legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: July 26, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs.

[FR Doc. 00–19571 Filed 8–1–00; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–00–018]

Galveston Causeway Railroad Bridge

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: The U. S. Coast Guard announces a forthcoming public hearing for the presentation of views concerning the alteration of the Galveston Causeway Railroad Bridge near Galveston, Texas.

DATES: The hearing will be held at 9:00 a.m., August 30, 2000.

ADDRESSES: (a) The hearing will be held in Room 175, of the Jadwin Building, 2000 Fort Point Road, Galveston Texas 77553.

(b) Written comments may be submitted to and will be available for examination from 8 a.m. to 4 p.m., Monday through Friday, except holidays, to Commander, Coast Guard District Eight, Bridge Branch, 1222 Spruce Street, St. Louis, Missouri 63103–2832.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Wiebusch, Bridge Administrator, Bridge Branch, 1222 Spruce Street, St. Louis, Missouri 63103–2832, (314) 539–3900 ext. 378.

SUPPLEMENTARY INFORMATION: Complaints have been received alleging that the bridge is unreasonably obstructive to navigation. Information available to the Coast Guard indicates there were 99 marine collisions with the bridge between 1990 and 1999. These collisions have caused moderate to heavy damage to the bridge. Based on this information, the bridge appears to be an unreasonable obstruction to free navigation. This may require increasing the horizontal clearance on the bridge to meet the needs of navigation. All interested parties shall have full opportunity to be heard and to present evidence as to whether any alteration of this bridge is needed, and if so, what alterations are needed, giving due consideration to the necessities of free and unobstructed water navigation. The necessities of rail traffic will also be considered.

Any person who wishes, may appear and be heard at this public hearing.

Persons planning to appear and be heard are requested to notify Commander, Coast Guard Eighth District, Bridge Branch, 1222 Spruce Street, St. Louis, Missouri 63103–2832, Telephone: 314–539–3900 ext. 378, any time prior to the hearing indicating the amount of time required. Depending upon the number of scheduled statements, it may be necessary to limit the amount of time allocated to each person. Any limitations of time allocated will be announced at the beginning of the hearing. Written statements and exhibits may be submitted in place of or in addition to oral statements and will be made a part of the hearing record. Such written statements and exhibits may be delivered at the hearing or mailed in advance to the Bridge Administrator, Bridge Branch. Transcripts of the hearing will be made available for purchase upon request.

Authority: 33 U.S.C. 513; 49 CFR 1.46(c)(3).

Dated: July 26, 2000.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 00–19484 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), 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 Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of a currently approved collection. The ICR describes the nature of each of the information collection and the expected burden. The **Federal Register** Notice with a 60–day comment period soliciting comments on the following collections of information was published on May 9, 2000, (FR 65, pages 26871–26872).

DATES: Comments must be submitted on or before September 1, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA).

Title: Passenger Facility Charge (PFC) Application.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0557.

Forms(s) FAA Form 5500–1.

Affected Public: 450 respondents.

Abstract: 49 U.S.C. 40117 authorizes airports to impose passenger facility charges (PFC). The final rule (14 CFR part 158) implementing this Act was effective June 28, 1991. Changes have been made to this form to reflect those changes made to the statute by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Pub. L. 1060181, April 5, 2000). This program requires public agencies and certain members of the aviation industry to prepare and submit applications and reports to the Dot/FAA. This program provides additional funding for airport development which is needed now and in the future.

Estimated Annual Burden Hours: 26,592 burden hours annually.

Issued in Washington, DC, on July 25, 2000.

Patricia W. Carter,

Acting Manager, Standards and Information Division, APF–100.

[FR Doc. 00–19532 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Chandler Municipal Airport, Chandler, AZ

AGENCY: Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the city of Chandler, Arizona, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 Code of Federal Regulations, Part 150 (FAR Part 150). These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 24, 1999 the FAA determined that the noise exposure maps submitted by the city of Chandler, Arizona, under Part 150 were in compliance with applicable requirements. On July 10, 2000 the Associate Administrator for Airports approved the Chandler Municipal Airport Noise Compatibility Program. All sixteen program measures were approved. Three measures were approved as voluntary measures and thirteen measures were approved outright.

EFFECTIVE DATE: The effective date of the FAA's approval of the Chandler Municipal Airport noise compatibility program is July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Brian Armstrong, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007. Telephone: (310) 725–3614. Street address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for the Chandler Municipal Airport, effective July 10, 2000.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a Noise Exposure Map, may submit to the FAA, a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with FAR Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in FAR Part 150 of the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing

the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and a FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division office in Hawthorne, California.

The City of Chandler, Arizona, submitted the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from July 1997 through January 2000 to the FAA on February 19, 1999 and May 28, 1999. The Chandler Municipal Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 24, 1999. Notice of this determination was published in the **Federal Register** on July 8 , 1999.

The Chandler Municipal Airport study contains a proposed Noise Compatibility Program comprised of actions designed for implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in Section 104(b) of the Act. The FAA began its review of the program on January 13, 2000 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained sixteen proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The Associate Administrator for Airports approved the overall program effective July 10, 2000.

All sixteen of the program elements were approved. The following three measures were approved as voluntary measures: Request aircraft departing on Runway 22L to fly to runway end before turning left; request aircraft departing on Runway 22R to fly to runway end before turning right; and, promote use of AOPA Noise Awareness Steps by light single and twin engine aircraft. The following thirteen measures were approved outright: Relocate heliport to east side of airport; establish Airport Influence Area; use combined 2003 and 2020 noise contours as basis for noise compatibility planning; set 55 DNL as the threshold for promoting airport-compatible development; establish noise compatibility guidelines for the review of development projects within the 55 DNL contour; amend Airport Impact Overlay Zoning Ordinance; enact Airport Impact Overlay Zoning Ordinance (Maricopa County, Town of Gilbert); amend subdivision regulations to require recording of fair disclosure covenants and granting of avigational easement in Airport Impact Overlay District; amend building code to add sound insulation standards supporting Airport Impact Overlay zoning requirements; maintain system of receiving, analyzing, and responding to noise complaints; review Noise Compatibility Plan implementation; Update Noise Exposure Maps and Noise Compatibility Program; and, publish pilot guide.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on July 10, 2000. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal are available for review at the FAA office listed above and at the administrative offices of the city of Chandler, Arizona.

Issued in Hawthorne, California on July 17, 2000.

Herman C. Bliss,

Manager, Airports Division, AWP–600 Western-Pacific Region.

[FR Doc. 00–19529 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders In Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on June 30, 2000. This publication ensures that the agency is in compliance with statuory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 400 7th Street, SW., Suite PL 200–A, Washington, DC 20490; telephone (202) 366–4118.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2), In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number. The indexes are published on a quarterly basis (*i.e.*, January, April, July, and October.)

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of the civil penalty decisions for the previous year. 58 FR 4055; 1/19/93.

The previous quarterly publications of these indexes have appeared in the **Federal Register** as follows:

Dates of quarter	Federal Register publication
11/1/89–9/30/90	55 FR 45984; 10/31/90.
10/1/90–12/31/90 ..	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
10/1/91–12/31/91 ..	57 FR 2299; 1/21/92.
1/1/92–3/31/92	57 FR 12359; 4/9/92.
4/1/92–6/30/92	57 FR 32825; 7/23/92.
7/1/92–9/30/92	57 FR 48255; 10/22/92.
10/1/92–12/31/92 ..	58 FR 5044; 1/19/93.
1/1/93–3/31/93	58 FR 21199; 4/19/93.
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10/1/99–12/31/99 ..	65 FR 1654; 1/11/00.
1/1/00–3/31/00	65 FR 35973; 6/6/00.

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. Also, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callaghan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld).

A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases are provided at the end of this notice. Information regarding the accessibility of materials filed in recently initiated civil penalty cases in FAA civil penalty cases at the DOT Docket and over the Internet also appears at the end of this notice.

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Civil Penalty Actions—Orders Issued By the Administrator

Digests

(Current as of June 30, 2000)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from April 1, 1999, to June 30, 1999. The FAA will publish non-cumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of USA Jet Airlines, Inc.

Order No. 2008–8 (5/9/2000)

Appeal Dismissed. USA Jet Airlines withdrew its appeal; therefore, its appeal is dismissed.

In the Matter of Tundra Copters, Inc.

Order No. 2000–9 (5/11/2000)

Appeal Dismissed. Tundra Copters failed to perfect its appeal by filing an appeal brief. Therefore, its appeal is dismissed.

In the Matter of Johnny Johnson

Order No. 2000–10 (5/11/200)

Appeal Dismissed. Mr. Johnson failed to perfect his appeal by filing an appeal brief; therefore, his appeal is dismissed.

In the Matter of Europex Inc.

Order No. 2000–11 (5/11/2000)

Appeal Dismissed. Europex has provided no explanation for its late filing of its notice of appeal; therefore, its appeal is dismissed.

In the Matter of Evergreen Helicopters of Alaska, Inc.

Order No. 2000–12 (6/8/2000)

Dismissal affirmed. Under a contract with the United Nations, Evergreen transported passengers on a U.S.-registered aircraft as part of a peacekeeping mission, using Angolan pilots on 19 flights that took place entirely inside Angola. The pilots held only Angolan airline transport pilot certificates; they did not hold U.S. airline transport pilot certificates. The Administrator rejected Complainant's argument that Evergreen violated 14 CFR 135.234(a) by using pilots who lacked U.S airline transport pilot certificates. Regardless of what the drafters intended, the regulation on its face does not require that a pilot-in-command hold a U.S.-issued certificate. Moreover, 14 CFR 61.3 expressly permits the use of a certificate by the country in which the aircraft is operated. This plain meaning interpretation of the regulations is consistent with a prior written interpretation issued by the agency.

In the Matter of Empire Airlines, Inc.

Order No. 2000–13 (6/8/2000)

Failure to Use Approved Data when making a Major Repair. Conair Aerospace repaired the left engine mount of one of Empire Airlines' Fairchild F–27F aircraft using sleeve repair data set forth in Advisory Circular (AC) 43.13–1A. Neither the Fairchild F–27 overhaul nor structural repair manual provide for sleeve repairs. Instead, the Fairchild overhaul and structural repair manuals provide for repair of non-negligible engine mount corrosion by a patch repair, insertion or replacement, and prohibit patch repairs if the damage is in the middle third of the tube. In this case, the corrosion extended into the middle third of the tube.

Under Section 121.379, a certificate holder may approve an aircraft for return to service after maintenance performed by another person but major repairs or major alterations must be done in accordance with technical data approved by the Administrator. It was undisputed that the left engine mount repair constituted a major repair, that Empire was obligated to use approved data, and that the Fairchild F–27 series overhaul and structural repair manuals contained approved data for a major repair of that aircraft. The sleeve repair was not included in either of these manuals as approved for the repair of the Fairchild F–27F's engine mount.

AC–43.13–1A is not normally considered to be approved data for a major repair, but it may be used as a basis for approval. There was no evidence that Empire or Conair had sought the approval of a DER for a sleeve repair of the left engine mount.

A sleeve repair was approved for an engine mount of another model aircraft, the Fairchild FH–227. The fact that a sleeve repair may be approved data for the repair of one model aircraft (*i.e.*, the Fairchild FH–227) does not mean necessarily that a sleeve repair is approved for the same type of damage to another similar aircraft (*i.e.*, the Fairchild F–27F). There may be subtle differences that would make a sleeve repair appropriate for the FH–227 and not for the F–27F. Aviation safety demands that maintenance personnel not assume that approved data for the repair of one specific aircraft can be used as approved data for a major repair on a different aircraft.

Empire argued that it was not precluded from using a sleeve repair because the manuals did not specifically prohibit the use of sleeve repairs. The Administrator held that it is unreasonable to expect the manufacturer to have listed all of the repairs that would not be appropriate for any given damage, and hence, the manufacturer's silence cannot be regarded as tacit approval of a repair.

The Administrator rejected Empire's argument that it was entitled to rely on the services performed by Conair. Empire's director of quality assurance and its customer coordinator were at the Conair facility when the repair was accomplished, and its customer coordinator observed the damage and the repair. The airworthiness release was signed by a Conair employee acting on Empire's behalf.

An air carrier cannot delegate away its primary responsibility for the airworthiness of its aircraft. While there may be certain limited circumstances in which an air carrier might not be held responsible for maintenance and inspections performed by a contractor or vendor, no such reasons exist in this case.

The Administrator denied Empire's appeal and affirmed the initial decision assessing a $5,000 civil penalty.

In the Matter of Warbelow's Air Ventures, Inc.

Order No. 2000–14 (6/8/2000)

Reconsideration Denied. In a timely petition to reconsider FAA Order No. 2000–3, which assessed a $6,500 civil penalty, Warbelow's renews two previous arguments. First, Warbelow's again challenges the credibility of its former Director of Maintenance, who testified that he failed to ensure that the screws on several fuel pumps were torques to the proper pressure. Second, Warbelow's again argues that the pumps must have been torques to the proper pressure because they did not leak in service. Neither argument is new; both were decided by the law judge and the Administrator. The Rules of Practice provide that the Administrator may summarily dismiss repetitious petitions to reconsider.

The only new argument in Warbelow's petition is its challenge to the factual accuracy of the following statement in FAA Order 2000–3: "Warbelow's demoted and fired [the Director of Maintenance] after he admitted to the FAA inspectors that he had been using an improper method to modify the fuel pumps." Warbelow's is correct that it actually fired the Director of Maintenance before he indicated at the hearing that he failed to use a torque wrench to ensure the proper pressure on the fuel pump screws. This factual error, however does not affected the outcome of this case. A law judge's credibility determinations are entitled to deference on appeal. The law judge was well aware of the Director of Maintenance's possible motives to misrepresent how he reassembled the fuel pumps, and yet the law judge specifically stated in his initial decision that he believed his testimony. Warbelow's has failed to provide sufficient grounds to overturn the law judge's credibility determinations, which were based on his personal observations of the witnesses.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications:

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–221–9428.

2. *CD–ROM.* The Administrator's orders and decisions are available on CD–ROM through Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available through the following on-line services:

- Westlaw (the Database ID is FTRAN–FAA)
- LEXIS [Transportation (TRANS) Library, FAA file.]
- Compuserve
- FedWorld

Docket

The FAA Hearing Docket is located at FAA Headquarters, 800 Independence Avenue, SW, Room 926A, Washington, DC, 20591, (tel. No. 202–267–3641). The clerk of the FAA Hearing Docket is Ms. Stephanie McClain. All documents that are required to be filed in civil penalty proceedings must be filed with the FAA Hearing Docket Clerk at the FAA Hearing Docket. (See 14 CFR 13.210.) Materials contained in the docket of any case not containing sensitive security information (protected by 14 CFR Part 191) may be viewed at the FAA Hearing Docket.

In addition, materials filed in the FAA Hearing Docket in non-security cases in which the complaints were filed on or after December 1, 1997, are available for inspection at the Department of Transportation Docket, located at 400 7th Street, SW, Suite PL–401, Washington, DC 20590, (tel. no. 202–366–9329). While the originals are retained in the FAA Hearing Docket, the DOT Docket scan copies of documents in non-security cases in which the complaint was filed after December 1, 1997, into their computer database. Individuals who have access to the Internet can view the materials in these dockets using the following Internet address: http://dms.dot.gov.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 926A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Regional Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; (405) 954–3296.

Office of the Regional Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Regional Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Regional Counsel for the Eastern Region (AEA–7), 1 Aviation Plaza, 159–30 Rockaway Blvd., Springfield Gardens, NY 11434; (718) 553–3285.

Office of the Regional Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (847) 294–7085.

Office of the Regional Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803; (781) 238–7040.

Office of the Regional Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055; (425) 227–2007.

Office of the Regional Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Regional Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137; (817) 222–5064.

Office of the Regional Counsel for the Technical Center (ACT–7), William J. Hughes Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7088.

Office of the Regional Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (310) 725–7100.

Issued in Washington, DC on July 25th, 2000.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 00–19536 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–27]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 28, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No. 28454.
Petitioner: Civil Air Patrol.
Section of the FAR Affected: 14 CFR subpart F of part 91.
Description of Relief Sought/Disposition: To permit CAP to operate small aircraft under subpart F of part 91 and receive limited reimbursement for certain flights within the scope of and incidental to the CAP's corporate purposes and U.S. Air Force Auxiliary status.

Grant, 07/18/00, Exemption No. 6485B

Docket No.: 26582.
Petitioner: Air Transport Association, of America.
Section of the FAR Affected: 14 CFR 61.3(a) and (c), 63.3(a), and 121.383(a)(2).
Description of Relief Sought/Disposition: To permit an air carrier to issue written confirmation of an FAA-issued crewmember certificate to a flight crewmember employed by that air carrier based on information in the air carrier's approved record system.

Grant, 07/18/00, Exemption No. 5487D

Docket No.: 29304.
Petitioner: Rotorcraft Leasing Company, L.L.C.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit RLC to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 07/13/00, Exemption No. 6810A

Docket No.: 27785.
Petitioner: Chevron U.S.A. Production Company.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Chevron to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 07/18/00, Exemption No. 5948C

Docket No.: 29691.
Petitioner: Helping Hands Society of Hazleton Area/Carbon & Schuylkill County.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit HHSHA to conduct local sightseeing flights at Hazleton Municipal Airport for a two-day aviation festival in July 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/17/00, Exemption No. 7276

Docket No.: 30092.
Petitioner: Mr. Robert J. Ross.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit Mr. Ross to conduct one local sightseeing flight at Santa Monica Airport, California, for compensation or hire benefiting the Ocean Park Community Center, on a date in 2000 to be agreed upon by Mr. Ross and the passengers, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/11/00, Exemption No. 7271

Docket No.: 30093.
Petitioner: Mr. Robert J. Ross.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit Mr. Ross to conduct one local sightseeing flight at Santa Monica Airport, California, for compensation or hire benefiting the Lyon's Club Wilderness Camp for Deaf Children, on a date in 2000 to be agreed upon by Mr. Ross and the passengers, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/11/00, Exemption No. 7272

[FR Doc. 00–19522 Filed 8–1–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–28]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No.____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 28, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 28158.
Petitioner: Twin Otter International, Ltd.
Section of the FAR Affected: 14 CFR 121.345(c)(2) and 135.143(c)(2).
Description of Relief Sought/Disposition: To permit TOIL to operate certain aircraft under part 121 and part 135 without a TSO–C112 (Mode S) transponder installed on each aircraft.

Grant, 02/15/00, Exemption No. 6111B

Docket No.: 28597.
Petitioner: U.S. Helicopters, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit U.S. Helicopters to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on each aircraft.

Grant, 02/15/00, Exemption No. 6452B

Docket No.: 28496.
Petitioner: Bohlke International Airways.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit BIA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on each aircraft.

Grant, 02/15/00, Exemption No. 6454B

Docket No.: 27136.
Petitioner: Kenai Air Alaska, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit KAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 06/19/00, Exemption No. 5699C

Docket No.: 30025.
Petitioner: Ashland County Airport and Johnston Aviation.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/Disposition: To permit ACA and JA to conduct local sightseeing flights at Ashland County Airport, Ashland, Ohio, for a one-day event in July 2000, and a one-day event in October 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 06/15/00, Exemption No. 7245

Docket No.: 30039.
Petitioner: Big Foot Pilots Association.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit BFPA to conduct local sightseeing flights at Big Foot Airport, Walworth, Wisconsin, for a two-day fly-in-drive-in breakfast in June 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 06/15/00, Exemption No. 7244

Docket No.: 30064.
Petitioner: CP Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit CPA to conduct local sightseeing flights in the vicinity of Santa Paula, California for a one-day fundraising event on behalf of the Santa Paula Chamber of Commerce and the Aviation Museum of Santa Paula in July 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 06/15/00, Exemption No. 7242

Docket No.: 30061.
Petitioner: Grand Forks Flight Support.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121
Description of Relief Sought/Disposition: To permit GFFS to conduct local sightseeing flights at Grand Forks International Airport, Grand Forks, North Dakota, for its four-day charitable airlift event in June 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 06/09/00, Exemption No. 7237

Docket No.: 30050.
Petitioner: Experimental Aircraft Association Chapter 16.
Section of the FAR Affected:: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit EAA Chapter 16 to conduct local sightseeing flights at Flora Municipal Airport, Illinois, for the one-day Arora of Flora fly-in event in June 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 06/09/00, Exemption No. 7238

Docket No.: 30073.
Petitioner: Plainwell Pilot's Association.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.33, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit PPA to conduct local sightseeing flights at Plainwell Airport, Michigan, for its one-day charitable airlift in July 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirement of part 135.

Grant, 06/15/00, Exemption No. 7243

Docket No.: 26743.
Petitioner: The Goodyear Tire & Rubber Company.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit Goodyear to establish and maintain a number of fixed locations for the distribution of its repair station inspection procedures manual at each facility rather than providing a copy of the manual to each of its supervisory and inspection employees.

Grant, 06/06/00, Exemption No. 5543D

Docket No.: 29991.
Petitioner: ELDEC Corporation.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit ELDEC to make its Inspection Procedures Manual (IPM) available electronically to its supervisory, inspection, and other personnel, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel.

Grant, 06/06/00, Exemption No. 7239

Docket No.: 28320.
Petitioner: Bombardier Aerospace, Learjet, Inc.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit Learjet to assign a copy of its repair station Inspection Procedures Manual (IPM) to key individuals within departments and make the IPM available to all other repair station personnel rather than giving a copy of the manual to each of its supervisory and inspection personnel.

Grant, 06/06/00, Exemption No. 7240

Docket No.: 28492.
Petitioner: VARIG S.A.
Section of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/Disposition: To permit VARIG to use the calibration standards of the Instituto Nacional de Metrologia, Normalização e Qualidade Industrial, Brazil's national standards organization, in lieu of the calibration standards of the U.S. National Institute of Standards and Technology, formerly the National Bureau of Standards, to test its inspection and test equipment at its São Paulo facility.

Grant, 07/02/00, Exemption No. 6831A

Docket No.: 26710.
Petitioner: Skydive DeLand, Inc.
Section of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/Disposition: To permit Skydive to allow nonstudent parachutists who are foreign nationals to participate in parachute jumping events sponsored by Skydive without complying with the parachute equipment and packing requirements.

Grant, 06/27/00, Exemption No. 5542D

[FR Doc. 00–19523 Filed 8–1–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–29]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room, 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa

Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 28, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 29911.
Petitioner: Adeletom Aviation, LLC.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit AAL to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/12/00, Exemption No. 7201

Docket No.: 29956.
Petitioner: Better Living Aviation.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit BLA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/12/00, Exemption No. 7206

Docket No.: 27170.
Petitioner: Minuteman Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit MAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/12/00, Exemption No. 7205

Docket No.: 30001.
Petitioner: Avcenter, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Avcenter to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/12/00, Exemption No. 7204

Docket No.: 29982.
Petitioner: G & L Service.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit G&L to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/12/00, Exemption No. 7203

Docket No.: 29936.
Petitioner: Mentone Flying Club, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit MFC to conduct local sightseeing flights at Fulton County Airport, Indiana for the one-day Round Barn Festival in June 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/12/00, Exemption No. 7202.

Docket No.: 29963.
Petitioner: Decatur Aero Club.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit DAC to conduct local sightseeing flights in the vicinity of Decatur, Illinois for their one-day pancake breakfast in June 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/15/00, Exemption No. 7211

Docket No: 30015.
Petitioner: Gulf and Ohio Airways.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Dispositions: To permit GOA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/15/00, Exemption No. 7208

Docket No.: 29968.
Petitioner: Vintage Aircraft Group, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit VAC to conduct local sightseeing flights at Pine Hill airport, New York for its one-day events in June 2000, and September 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/15/00, Exemption No. 7207

Docket No.: 27609.
Petitioner: M. Shannon & Associates.
Section of the FAR Affected: 14 CFR 91.9(a) and 91.531(A)(1) and (2).
Description of Relief Sought/Disposition: To permit Shannon and certain operators of Cessna Model 500, 550, and S550 Citation airplanes to operate those airplanes without a pilot designated as second in command.

Grant, 005/12/00, Exemption No. 6480C

[FR Doc. 00–19524 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–30]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 28, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 28172.
Petitioner: Helicopter Services, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit HSI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 6/22/00, Exemption No. 6109B

Docket No.: 26006.
Petitioner: Raytheon Aircraft Company.
Section of the FAR Affected: 14 CFR 47.69(b).
Description of Relief Sought/Disposition: To permit Raytheon to use their Dealer's Aircraft Registration Certificate outside the United States for demonstrating, testing, selling, and marketing any and all aircraft manufactured by it.

Grant, 06/01/00, Exemption No. 7241

Docket No.: 29978.
Petitioner: Mr. Kent Walker Ewing.
Section of the FAR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/Disposition: To permit certain flight instruction in Beechcraft Bonanza, Baron, and Travel Air airplanes equipped with a functioning throwover wheel in place of functioning dual controls.

Grant, 06/14/00, Exemption No. 7245

Docket No.: 29961.
Petitioner: Horizon Air Industries, Inc. dba Horizon Air (Horizon).
Section of the FAR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/Disposition: To permit Horizon to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying PIC who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing.

Grant, 06/14/00, Exemption No. 7253

Docket No.: 2992.
Petitioner: Alaska Air Taxi.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit AAT to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 06/22/00, Exemption No. 7247

Docket No. 30084.
Petitioner: Crescent City Airport Day Committee.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit CCADC to conduct local sightseeing flights at Crescent City Airport, California, for its one-day Airport Day Scholarship Fundraising airlift in July 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements.

Grant, 06/22/00, Exemption No. 7248

Docket No.: 30066.
Petitioner: Aero Charter, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit ACI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 06/22/00, Exemption No. 7250

Docket No.: 29988.
Petitioner: EK Aviation.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353 and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit EKA to conduct local sightseeing flights at the Sidney, Ohio, airport airfair on June 24, 2000, and at the Urbana, Ohio, airport airfair on July 4, 2000, for compensation or hire, without complying with the drug and alcohol testing requirements.

Grant, 06/21/00, Exemption No. 7246

Docket No.: 23980.
Petitioner: United States Hang Gliding Association, Inc.
Section of the FAR Affected: 14 CFR 91.309 and 103.1(b).
Description of Relief Sought/Disposition: To permit USHGA members to tow unpowered ultralight vehicles (hang gliders) using powered ultralight vehicles.

Grant, 06/14/00, Exemption No. 4144H

Docket No.: 29987.
Petitioner: Helicorp, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Helicorp to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 06/22/00, Exemption No. 7251

Docket No.: 30098.
Petitioner: Pacific Helicopter Tours, Inc.
Section of the FAR Affected: 14 CFR 135.152(a).
Description of Relief Sought/Disposition: To permit PHT to operate its two Bell 212 helicopters under part 135 without each of those helicopters being equipped with an approved digital flight data recorder.

Grant, 06/29/00, Exemption No. 7257

Docket No.: 29854.
Petitioner: LifePort, Inc.
Section of the FAR Affected: 14 CFR 25.562 and 25.785(b).
Description of Relief Sought/Disposition: To permit supplemental type certification of a medical stretcher installation on Gulfstream G-V airplanes.

Grant, 05/02/00, Exemption No. 7189

Docket No.: CE157.
Petitioner: The Red Baron Stearman Squadron.
Section of the FAR Affected: 14 CFR 23.851 and Civil Air Regulation (CAR) 4a.532(j).
Description of Relief Sought/Disposition: To permit the removal of fire extinguishers from six Boeing Stearman airplanes, which do not comply with the requirements of the CAR and part 23.

Denial, 04/13/00, Exemption No. 7167

Docket No.: CE155.
Petitioner: Raytheon Aircraft Company.
Section of the FAR Affected: 14 CFR 23.181(b).
Description of Relief Sought/Disposition: To permit Raytheon Model 390 to be certified to a requirement equivalent to 14 CFR 25.181(b).

Grant, 04/24/00, Exemption No. 7190

Docket No.: 30074.
Petitioner: Lebanon Chapter of the Oregon Pilots Association.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit LCOPA to conduct local sightseeing flights at Lebanon State Airport, Oregon, for a one-day charitable airlift event in July, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 06/22/00, Exemption No. 7249

[FR Doc. 00–19525 Filed 8–1–00; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–31]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 28, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 29869.
Petitioner: Dr. Hubert B. Bradburn.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J of part 121.
Description of Relief Sought/Disposition: To permit Dr. Hubert B. Bradburn to conduct two local sightseeing flights at an airport in the vicinity of Hamden, CT, to raise funds for your church, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/16/0, Exemption No. 7210

Docket No.: 30018.
Petitioner: Mr. William Scholberg.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J of part 121.
Description of Relief Sought/Disposition: To permit Mr. William Scholberg to conduct four local sightseeing flights, donated to the Saints Martha and Mary Episcopal Church's silent auction at an airport in the vicinity of Apple Valley, MN, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/17/00, Exemption No. 7213

Docket No.: 29939.
Petitioner: Galion Aviation Day Planning Committee.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J of part 121.
Description of Relief Sought/Disposition: To permit Mr. Lyons and the GADPC to conduct local sightseeing flights at Galion Municipal Airport for the Galion Aviation Day on May 21, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/17/00, Exemption No. 7217

Docket No.: 30012.
Petitioner: Washington Pilots Association, Okanogan County Chapter.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.351, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit WPAOCC to conduct local sightseeing flights at Chelan Municipal Airport for its one-day charitable airlift in May 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/17/00, Exemption No. 7216

Docket No.: 30035.
Petitioner: Northern Indiana Aviation Museum.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit NIAM to conduct local sightseeing flights at Goshen Airport, Goshen, Indiana, for its one-day C–45 Grand Roll Out Fly-In in May 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/17/00, Exemption No. 7214

Docket No.: 29994.
Petitioner: Eastern Pennsylvania Chapter of the International Organization of Women Pilots.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit Eastern PA Chapter 99s to conduct local sightseeing flights at Mercer County Airport, Trenton, New Jersey, for its tow-day Pennies-A-Pound event in May 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/17/00, Exemption No. 7215

Docket No.: 29966.
Petitioner: Dr. William R. McElwee.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit Rev. Dr. William R. McElwee to conduct local sightseeing flights on one day at South Jersey Regional Airport for the Rotary Club of Haddonfield, New Jersey, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/18/00, Exemption No. 7218

Docket No.: 29188.
Petitioner: Civil Air Patrol.
Section of the FAR Affected: 14 CFR 61.113(e).
Description of Relief Sought/Disposition: To permit CAP to reimburse CAP members who are private pilots for fuel, oil, supplemental oxygen, fluids, lubricants, preheating, deicing, airport expenses, servicing, and maintenance expenses and certain per diem expenses incurred while serving on official U.S. Air Force-assigned CAP missions.

Grant, 05/18/00, Exemption No. 67771

[FR Doc. 00–19526 Filed 8–1–00; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–32]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 28, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 30019.
Petitioner: Woodlake Flying Tigers, EAA Chapter 1292.
Section of the FAR Affected: 14 CFR 135.21, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit WFT to conduct local sightseeing flights at Woodlake Airport for its one-day event in May 2000, for compensation or hire,

without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/01/00, Exemption No. 7187

Docket No.: 30020.
Petitioner: Sulphur Springs Sport Aviation Association, EAA Chapter 1094.
Section of the FAR Affected: 14 CFR 135.215, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit SSSAA to conduct local sightseeing flights in the vicinity of Sulphur Springs, Texas, for its one-day Annual Airport Day in May 2000, and its one-day Annual Fly-In in September 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/01/00, Exemption No. 7188

Docket No.: 29609.
Petitioner: The Bush Pilot, Inc.
Section of the FAR Affected: 14 CFR 43.3(a) and (g) and paragraph (c) of appendix A to part 43.
Description of Relief Sought/Disposition: To permit The Bush Pilot to perform the preventive maintenance functions listed in paragraph (c) of appendix A to part 43 on an aircraft operated under 14 CFR part 135 without holding a mechanic certificate.

Denial, 05/02/00, Exemption No. 7192

Docket No.: 29532.
Petitioner: Cub Drivers.
Section of the FAR Affected: 14 CFR 43.3(a) and (g).
Description of Relief Sought/Disposition: To permit pilots employed by Cub Drivers to perform the preventive maintenance functions listed in paragraph (c) of appendix A to part 43 on an aircraft operated under 14 CFR part 135.

Denial, 05/02/00, Exemption No. 7194

Docket No.: 29603.
Petitioner: Mr. James A. Atkins.
Section of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/Disposition: To permit Mr. James A. Atkins and pilots employed by him to perform certain preventive maintenance functions listed in paragraph (c) of appendix A to part 43 on aircraft operated under 14 CFR part 135 without holding a mechanic certificate.

Denial, 05/02/00, Exemption No. 7197

Docket No.: 29989.
Petitioner: Experimental Aircraft Association Chapter 1047 and the Tar River Composite of the Civil Air Patrol.
Section of the FAR Affected: 14 CFR 135.1(a)(5).
Description of Relief Sought/Disposition: To permit EAA Chapter 1047 and the Tar River CAP to conduct local sightseeing flights at the Rocky Mount/Wilson Airport in Rocky Mount, NC, for their annual open house on May 6, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/05/00, Exemption No. 7198

Docket No.: 29722.
Petitioner: Flight Express.
Section of the FAR Affected: 14 CFR 135.243(c)(2).
Description of Relief Sought/Disposition: To permit each of its pilots to act as pilot in command under instrument flight rules with a minimum of 800 hours of total flight time, including 330 hours of cross-country flight time, 70 hours of night flight time, and 50 hours of actual or simulated instrument flight time of which 30 hours were in actual flight in lieu of flight-time requirements.

Denial, 05/05/00, Exemption No. 7199

Docket No.: 29137.
Petitioner: Weary Warriors Squadron.
Section of the FAR Affected: 14 CFR 91.315, 119.21(g), and 119.21(a).
Description of Relief Sought/Disposition: To permit WWS to operate its North American B–25 (B–25) aircraft, which is certificated in the limited category, for the purpose of carrying passengers for compensation or hire.

Grant, 05/10/00, Exemption No. 6786A

Docket No.: 29714.
Petitioner: State of Alaska Department of Transportation and Public Facilities.
Section of the FAR Affected: 14 CFR 107.14.
Description of Relief Sought/Disposition: To permit ADOT&PF to comply with the security of the air operations area requirements of § 107.13 rather than the access controls system requirements of § 107.14 at 15 remote airports operated by the ADOT&PF.

Grant, 05/15/00, Exemption No. 7209

Docket No.: 30041.
Petitioner: Samaritan's Purse.
Section of the FAR Affected: 14 CFR SFAR No. 79.
Description of Relief Sought/Disposition: To permit one flight to Pyongyang, the capital city of the Democratic People's Republic of Korea DPRK, on or about May 15, 2000.

Grant, 05/11/00, Exemption No. 7200

[FR Doc. 00–19527 Filed 8–1–00; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–33]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Purusant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 28, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 29190.
Petitioner: Mr. Craig Roy Bailey.
Section of the FAR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/Disposition: To permit Mr. Craig Roy Bailey to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in lieu of functioning dual controls.

Grant, 05/19/00, Exemption No. 6763A

Docket No.: 30053.
Petitioner: Sabre Society of North Carolina.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/Disposition: To permit SSNA to conduct local sightseeing flights at Hickory Regional Airport, Hickory, NC, for a two-day charitable event in May 2000, for compensation or hire without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/19/00, Exemption No. 7219

Docket No.: 29944.
Petitioner: Palmyra Flying Club, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit PFC to conduct local sightseeing flights at Palmyra Airport, Palmyra, Wisconsin, for its one-day fly-in breakfast in June 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/19/00, Exemption No. 7220

Docket No.: 28546.
Petitioner: The Ranch Parachute Club, Ltd.
Section of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/Disposition: To permit nonstudent parachutists who are foreign nationals to participate in parachute-jumping events sponsored by The Ranch at its facilities without complying with the parachute equipment and packing requirements of 14 CFR.

Grant, 05/19/00, Exemption No. 6494B

Docket No.: 29672.
Petitioner: Corpac Canada, Ltd.
Section of the FAR Affected: 14 CFR 129.18(b).
Description of Relief Sought/Disposition: To permit Corporate Express to conduct nonscheduled, charter operations in the United States without an approved Traffic Alert and Collision Avoidance System (TCAS) installed in each of its British Aerospace Jetstream 31 airplanes.

Denial, 05/19/00, Exemption No. 7227

Docket No.: 29170.
Petitioner: Mr. Roland R. Cowser.
Section of the FAR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/Disposition: To permit Mr. Roland R. Cowser to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in lieu of functioning dual controls

Grant, 5/19/00, Exemption No. 6761A

Docket No.: 27821.
Petitioner: City of Cedar Rapids Police Department Air Support Division.
Section of the FAR Affected: 14 CFR 91.209(a) and (b).
Description of Relief Sought/Disposition: To permit CRPD to conduct air operations in support of law enforcement and drug interdiction without illuminating the lighted position and anticollision aircraft lights required by § 91.209.

Grant, 5/19/00, Exemption No. 6780A

Docket No.: 29979.
Petitioner: Chicago Express Airlines, Inc.
Section of the FAR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/Disposition: To permit CEA to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying PIC who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing.

Grant, 5/19/00, Exemption No. 7288

Docket No.: 30002.
Petitioner: Ross Aviation, Inc.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit Ross make its repair station Inspection Procedures Manual (IPM) available electronically to its supervisory, inspection, and other personnel, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel.

Grant, 5/19/00, Exemption No. 7229

Docket No.: 30008.
Petitioner: Grant Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Grant Aviation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 5/22/00, Exemption No. 7221

Docket No.: 30026.
Petitioner: Blue Ash Airport Days 2000.
Section of the FAR Affected: 14 CFR 135.251, 135.244, 135.251, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit BAAD to conduct local sightseeing flights at Blue Ash Airport, Cincinnati, Ohio, for Blue Ash Airport Days 2000 on June 10 and 11, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 5/22/00, Exemption No. 7222

Docket No.: 30046.
Petitioner: Mr. Dennis N. Odem and Mr. John S. Odem.
Section of the FAR Affected: 14 CFR 135.251, 135.244, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit Mr. Dennis N. Odem and Mr. John S. Odem to conduct local sightseeing flights in the vicinity of Florence, Alabama, for the four-day Alabama Jubilee Hot Air Balloon festival in May 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 5/23/00, Exemption No. 7224

[FR Doc. 00–19528 Filed 8–1–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Special Committee 135; Environmental Conditions and Test Procedures for Airborne Equipment

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–135 meeting to be held August 17–18, 2000, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: January 17, (1) Welcome and Introductory Remarks; (a) Review Summary of Previous Meeting; (3) Review/Approval Section 8, RTCA Paper No. 163–00/SC135–593, Vibration; (4) Review/Approval Section 20, RTCA Paper No. 164–00/SC135–594, Radio Frequency Susceptibility (Radiated and Conducted); (5) Review/Approval Section 16; Tentative; (6) Review Schedule for Release of DO–160D/ED–14D, Change 1 to Environmental Conditions and Test Procedures for Airborne Equipment; (7) Consider a Schedule for Next Complete Update—DO–160E/ED–14E; (8) Other Business (9) Date and Location for Next Meeting; (9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statement or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 27, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–19530 Filed 8–1–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Special Committee 159; Global Positioning System (GPS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given of a request from the Department of Transportation (DOT) for RTCA to develop appropriate material

for DOT consideration in preparing its comments on an FCC Notice of Proposed Rule-Making (NPRM), "In the Matter of Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems."

In response to this request, RTCA's Program Management Committee has tasked Special Committee 159, Global Positioning System (GPS), to develop a response. Special Committee 159's recommended submission to DOT will be posted on the RTCA web site (*www.rtca.org*) on the Program Management Committee page by August 31, 2000. The Program Management Committee will review and approve this submission which will be forwarded to DOT on September 12, 2000.

Persons wishing to obtain information, or have questions/comments, should contact RTCA, Inc., Attn: Mr. Jerry Bryant, at (202) 833–9339 (phone), (202) 833–9424 (facsimile), or *jbryant@rtca.org* (e-mail).

Issued in Washington, DC on July 26, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–19531 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government/Industry Free Flight Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Government/Industry Free Flight Steering Committee meeting to be held August 16, 2000, starting at 1:00 p.m. The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, in the Bessie Coleman Conference Center, Room 2AB (second floor).

The agenda will include: (1) Welcome and Opening Remarks; (2) Review Summary of the Previous Meeting; (3) Report and Recommendations from the Free Flight Select Committee: (a) Consolidated Government/Industry Operational Concept; (b) Surveillance Operational Concept; (c) Surveillance Roadmap; (d) Safe Flight 21; (4) FAA Report: (e) Free Flight Phase 2; (5) Presentation: (f) Deutsche Flugsicherung (DFS) GmbH, the German Air Navigation Service; (6) Satellite Navigation Users Group; (7) Other Business; (6) Date and Location of Next Meeting; (7) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA, Inc., at (202) 833–9339 (phone), (202) 833–9434 (facsimile).

Issued in Washington, DC on July 25, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–19533 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 192; National Airspace Review Planning and Analysis

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 192 meeting to be held August 21, 2000, starting at 9 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Welcome and Introductory Remarks; (2) Review/Approve Previous Plenary Minutes; (3) Review resolution of comments matrix for User Priorities for the National Airspace Redesign Document; (4) Review edited User Priorities for the National Airspace Redesign document with the High Altitude Airspace Concept integrated and Approve Document; (5) Review Edited User Recommendations on FAA Order 7400.2, Procedures for Handling Airspace Matters document including Detailed Discussion on Class B and C Airspace Design Specifications and Approve Document; (6) Review Edited Recommendation on Special Use Airspace in National Airspace Redesign Document with the Document Comment Form comments integrated and Approve Document; (7) Date and Location on Next Meeting; (8) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; (202) 833–9339 (phone), (202) 833–9343 (fax), or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 25, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–19534 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government Industry Certification Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for RTCA Government/Industry Certification Steering Committee meeting to be held August 11, 2000, from 10 a.m. to 1 p.m. The meeting will be held at Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC, 20591, in Conference Room 5ABC (5th Floor).

The agenda will include: (1) Welcome and Introductory Remarks: (a) Review Steering Committee Charter; (2) Certification Select Committee: (b) Objectives; (c) Membership and Attendance; (d) Six Months Task Update; (3) Work Plans: (e) Link to TF4 Recommendations; (f) Road Map; (g) Products—Select Committee, CAST, SOIT, Etc.; (h) End State for TF4 Recommendations; (I) Metrics; (4) Other Business; (5) Date and Location of Next Meeting; (6) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 25, 2000.

Janice L. Peters.

Designated Official.

[FR Doc. 00–19535 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, 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 Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on March 20, 2000 (64 FR 15034–15035).

DATES: Comments must be submitted on or before September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph Scott at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–22), 202–366–8525, 400 Seventh Street, SW., Room 5307, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Tire Identification and Record keeping.

OMB Number: 2127–0050.

Type of Request: Extension of a currently approved collection.

Abstract: Each tire manufacturer must collect and maintain records of the names and address of the first purchasers of new tires. All tire dealers and distributors must record the names and addresses of retail purchasers of new tires and identification number(s) of the tires sold. A specific form is provided to tire dealers and distributors by tire manufacturers for recording this information. The completed forms returned to the tire manufacturers where they are to remain for three years after the date received by the manufacturer. Additionally, motor vehicle manufacturers are required to record the names and addresses of the first purchasers of new motor vehicles, together with the identification numbers of the tires on the new vehicles.

Affected Public: Businesses and other-for-profit institutions (tire manufacturers, dealers, and distributors).

Estimated Total Annual Burden: 245,000.

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 NHTSA 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 Departments 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 July 28, 2000.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–19516 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, 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 Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on March 20, 2000 (64 FR 15034–15035).

DATES: Comments must be submitted on or before September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph Scott at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–22), 202–366–8525. 400 Seventh Street, SW, Room 5307, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: National Highway Traffic Safety Administration.

Title: Tires and Rims Labeling.

OMB Number: 2127–0503.

Type of Request: Extension of a currently approved collection.

Abstract: Each tire manufacturer and rim manufacturer must label their tire or rim with applicable safety information. These labeling requirements ensure that tires are mounted on the appropriate rims; and that the rims and tires are mounted on the vehicles for which they are intended. The tires and rims are labeled in accordance with the agency's Federal Motor Vehicle Safety Standards and regulations.

Affected Public: Businesses and other-for-profit institutions (tire and rim manufacturers).

Estimated Total Annual Burden: 128,979.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, D.C. 20503, Attention NHTSA 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 Departments 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, D.C., on July 20, 2000.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–19517 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4957; Notice 19]

Pipeline Safety: Revision of Natural Gas Transmission and Gathering Pipeline Incident and Annual Report Forms

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments on revision of Information Collection OMB 2137–0522.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Research and Special Programs Administration (RSPA) is publishing its intention to revise forms RSPA F 7100.2—Incident Report For Gas Transmission and Gathering Systems and RSPA F 7100.2–1—Annual Report For Gas Transmission and Gathering Systems. The purpose of this notice is to allow the public 60 days from the date of this notice to comment on the proposed changes in the forms and the information collection burden.

DATES: Comments on this notice must be received on or before October 2, 2000.

FOR FURTHER INFORMATION CONTACT: Roger Little by telephone at 202–366–4569, by fax at 202–366–4566, by mail at U.S. Department of Transportation, RSPA, 400 Seventh Street, SW, Room 7128, Washington, DC, 20590, or by e-mail to roger.little@rspa.dot.gov.

ADDRESSES: Copies of this proposed information collection and the revised forms, RSPA F 7100.2—Incident Report for Gas Transmission and Gathering Systems and RSPA F 7100.2–1—Annual Report for Gas Transmission and Gathering Systems, can be reviewed in this docket at http://dms.dot.gov.

Address all comments concerning this notice to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. You may submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. The Dockets facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except federal holidays. Comments should identify the docket number of this notice, RSPA–98–4957. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard.

Electronic Access and Filing Addresses

You may also submit or review comments electronically by accessing the Docket Management System's home page at http://dms.dot.gov. Click on "Help & Information" for instructions on how to file a document electronically. All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone desiring confirmation of mailed comments must include a self-addressed stamped postcard.

SUPPLEMENTARY INFORMATION:

Background

The information collected pertaining to reportable natural gas transmission incidents provide an important tool for identifying safety trends in the gas pipeline industry. The National Transportation Safety Board (NTSB), the Department of Transportation's Office of Inspector General, and the General Accounting Office have urged RSPA to revise the information collected on the natural gas transmission pipeline incident report form and annual report form. NTSB Safety Recommendation P–96–1 urges RSPA to:

> develop within 1 year and implement within 2 years a comprehensive plan for the collection and use of gas and hazardous liquid pipeline accident data that details the type and extent of data to be collected, to provide the Research and Special Programs Administration with the capability to perform methodologically sound accident trend analyses and evaluations of pipeline operator performance using normalized accident data.

RSPA worked with representatives of the Interstate Natural Gas Association of America (INGAA) and the American Gas Association (AGA) to revise the natural gas transmission incident and annual report forms to make the information collected more useful to industry, government, and the public.

Abstract: To ensure adequate public protection from exposure to potential natural gas transmission pipeline failures, RSPA collects information on reportable transmission pipeline incidents. Additional information is also obtained concerning the characteristics of an operator's pipeline system. This information is needed for normalizing the incident information in order to provide for adequate safety trending. The requirements for reporting incidents are found in 49 CFR Part 191. The regulations require submission of the natural gas transmission annual report form by March 15 of each year for the preceding year's operations. Reports on transmission incidents must be submitted to RSPA in writing within 30 days of occurrence.

The reports to be revised are two of the four gas pipeline reporting forms authorized by Information Collection OMB 2137–0522, "Incident and Annual Reports for Gas Operators." The proposed revisions are part of an ongoing process to revise all incident and annual reports.

Title: Incident Report for Gas Transmission and Gathering Systems (RSPA F 7100.1–1) and Annual Report For Gas Transmission and Gathering Systems (RSPA F 7100.2–1).

OMB Number: 2137–0522.

Estimate of Burden: The average burden hours per response is approximately 6 hours for the revised transmission incident report and 3 hours for the revised transmission annual report.

Respondents: Gas transmission pipeline operators.

Estimated Number of Respondents: 900 gas transmission pipeline operators.

Estimated Number of Responses per Respondent per Year: Incident Reports: 0.1; Annual Reports: 1.0.

Estimated Total Annual Burden on Respondents: The burden for each gas transmission pipeline operator is an average of 6 hours per incident report form and 3 hours per annual report form. For all 900 gas transmission pipeline operators the burden estimate is 540 hours (6 hours x 900 operators x 0.1 incidents) for incidents and 2,700 hours (3 hours x 900 operators) for annual reports, for a total burden of 3,240 hours per annum.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, D.C. on July 27, 2000.

Stacey L. Gerard,

Acting Assaciate Administratar far Pipeline Safety.

[FR Doc. 00–19481 Filed 8–1–00; 8:45 am]

BILLING CODE 4910–60–P

Corrections

Federal Register
Vol. 65, No. 149
Wednesday, August 2, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 389]

RIN 0584-AB88

Food Stamp Program: Recipient Claim Establishment and Collection Standards

Correction

In rule document 00–16775 beginning on page 41752 in the issue of Thursday, July 6, 2000, make the following corrections:

1. On page 41752, in the first column, under **DATES**, in the last line, "August 1, 2000" should read "August 1, 2001".

§272.1 [Corrected]

2. On page 41774, in the third column, in §272.1(g)(160), in the last line "August 1, 000" should read "August 1, 2001".

§273.18 [Corrected]

3. On page 41776, in the first column, in §273.18(e)(3)(iv), the text should read as set forth:

(iv) The initial demand letter or notice of adverse action must include language stating:
(A) The amount of the claim.
(B) The intent to collect from all adults in the household when the overpayment occurred.
(C) The type (IPV, IHE, AE or similar language) and reason for the claim.
(D) The time period associated with the claim.
(E) How the claim was calculated.
(F) The phone number to call for more information about the claim.
(G) That, if the claim is not paid, it will be sent to other collection agencies, who will use various collection methods to collect the claim.
(H) The opportunity to inspect and copy records related to the claim.
(I) Unless the amount of the claim was established at a hearing, the opportunity for a fair hearing on the decision related to the claim. The household will have 90 days to request a fair hearing.
(J) That, if not paid, the claim will be referred to the Federal government for federal collection action.
(K) That the household can make a written agreement to repay the amount of the claim prior to it being referred for Federal collection action.
(L) That, if the claim becomes delinquent, the household may be subject to additional processing charges.
(M) That the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim.
(N) A due date or time frame to either repay or make arrangements to repay the claim, unless the State agency is to impose allotment reduction.
(O) If allotment reduction is to be imposed, the percentage to be used and the effective date.

4. On page 41778, in §273.18(g)(2)(ii), under the the table heading "**(A) For . collecting from active (or reactivated) EBT benefits . . .**", under the first entry heading "You . . .", in the last line "section;." should read "section;".

[FR Doc. C0–16775 Filed 8–1–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
August 2, 2000

Part II

Department of Education

34 CFR Part 668 et al.
Student Assistance General Provisions, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Federal Pell Grant Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 682, 685, and 690

RIN 1845–AA17

Student Assistance General Provisions, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Federal Pell Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions, Federal Family Education Loan (FFEL) Program, William D. Ford Federal Direct Loan (Direct Loan) Program, and Federal Pell Grant Program regulations. In these proposed regulations, the requirements for the loan default reduction and prevention measures would be moved to a new subpart and revised for clarity and consistency. The Secretary also proposes to make various substantive changes to these requirements.

DATES: We must receive your comments on or before September 18, 2000.

ADDRESSES: Address all comments about these proposed regulations to Kenneth Smith, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: CDRNPRM@ed.gov

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Kenneth Smith. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Negotiated Rulemaking

Section 492 of the Higher Education Act of 1965, as amended (HEA), requires that, before publishing any proposed regulations for programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we held listening sessions in Washington, D.C., Atlanta, Chicago, and San Francisco. Four half-day sessions were held on September 13 and 14, 1999, in Washington, D.C. In addition, we held three regional sessions in Atlanta on September 17, in Chicago on September 24, and in San Francisco on September 27, 1999. The Office of Student Financial Assistance's Customer Service Task Force also conducted listening sessions to obtain public involvement in the development of our regulations.

We then published a notice in the **Federal Register** (64 FR 73458, December 30, 1999) to announce our intention to establish two negotiated rulemaking committees to draft proposed regulations affecting Title IV of the HEA. The notice requested nominations for participants from anyone who believed that his or her organization or group should participate in this negotiated rulemaking process. The notice announced that we would select participants for the process from the nominees of those organizations or groups. The notice also announced a tentative list of issues that each committee would negotiate.

Once the two committees were established, they met to develop proposed regulations over the course of several months, beginning in February. The proposed regulations contained in this NPRM reflect the final consensus of Negotiating Committee I (committee), which was made up of the following members:

American Association of Collegiate Registrars and Admissions Officers
American Association of Cosmetology Schools
American Association of State Colleges and Universities (in coalition with American Association of Community Colleges)
American Council on Education
Career College Association
Coalition of Higher Education Assistance Organizations
Consumer Bankers Association
Education Finance Council
Education Loan Management Resources
Legal Services
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Association of Student Loan Administrators
National Council of Higher Education Loan Programs
National Direct Student Loan Coalition
Sallie Mae, Inc.
Student Loan Servicing Alliance
The College Fund/United Negro College Fund

United States Department of Education
United States Student Association
US Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document, except for proposed § 668.183(c)(1)(iii), which provides that certain loans being repaid under the Direct Loan Program's income contingent repayment plan are considered to be in default when calculating a proprietary, non-degree-granting institution's cohort default rate.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Revising Cohort Default Rate Regulations for Clarity and Consistency (Subpart M of Part 668)

Statute: The statutory provisions governing the calculation and appeals of cohort default rates and related sanctions in the FFEL and Direct Loan programs are provided in section 435 of the HEA.

Current Regulations: Most of the current regulations for cohort default rates in the FFEL and Direct Loan programs are in § 668.17.

Proposed Regulations: We have moved the requirements in current § 668.17 to a new subpart M of part 668 and revised their text. We have tried to make the regulations easier to read. To do this, the proposed regulations use short paragraphs and sentences, they use personal pronouns ("you" and "we"), and they are organized differently than the current regulations.

The following general changes would also be made by these proposed regulations:

- *Submission deadlines.* Currently, the deadlines for challenges, requests for adjustments, and appeals vary, depending upon the particular action involved and the type of submission made. In the current regulations, some deadlines are measured in working days and others are measured in calendar days.

We are proposing to make the deadlines for submitting challenges, requests for adjustments, and appeals as consistent as possible. Revisions to achieve this goal are made throughout the proposed regulations and summarized in the proposed Appendix A to subpart M of part 668.

All deadlines in these proposed regulations are in calendar days. In general, an institution is allowed 15 calendar days to request records or pay a fee and is allowed 30 calendar days to submit its completed request for adjustment or appeal. The only exceptions to this general approach are in the draft cohort default rate process (during which an institution is allowed 45 calendar days to submit its challenge) and in relation to an economically disadvantaged appeal (during which an institution is allowed 30 calendar days to send us its management's written assertion and 60 calendar days to send us its completed appeal). Under the proposed regulations, a data manager is allowed 20 calendar days to respond to a request for records or for information.

- *Electronic processing.* These proposed regulations do not include explicit requirements for the electronic submission and processing of challenges, requests for adjustments, or appeals. Rather, wherever possible in revising these regulations, we have removed language that could be read as restricting our ability to implement efficient processes for issuing and adjudicating cohort default rates.

Reasons: We are proposing to rewrite these regulations so that the requirements for cohort default rates are more clear and consistent. In addition to restructuring and revising the regulatory text, these proposed regulations provide complete information about administrative requirements and make submission deadlines more consistent. Explicit requirements are not provided for electronic processing requirements because they could limit flexibility and make it difficult for us to adapt to changes in technology.

Calculation of Cohort Default Rates for Proprietary, Non-degree-granting Institutions (§ 668.183(c)(1)(iii))

Current Regulations: Under current §§ 668.17(e)(1)(ii) and 668.17(f)(1)(ii), one of the reasons for considering a Direct Loan to be in default, for the purposes of calculating a proprietary, non-degree-granting institution's cohort default rate, is that the loan has been repaid under the income contingent repayment plan for 360 days, with scheduled payments less than 15 dollars per month and less than the amount of interest accruing on the loan, before the end of the fiscal year (FY) following the cohort's fiscal year.

Proposed Regulations: We are not proposing to change the current regulatory requirements. They are included in proposed § 668.183(c)(1)(iii).

Reasons: The inclusion of the current regulatory requirement in these proposed regulations was the subject of extensive discussion among the negotiators. Some non-Federal negotiators felt very strongly that this provision should be changed or dropped. We pointed out, however, that proposed § 668.183(c)(1)(iii) did not make any substantive change in our current regulations and had been presented to the committee only as part of the overall restructuring of the regulations. Because these non-Federal negotiators continued to disagree strongly with proposed § 668.183(c)(1)(iii), the committee agreed to exclude that provision in the call for consensus on the draft regulations.

Several non-Federal negotiators objected to this provision because they felt that it unfairly targets non-degree-granting proprietary institutions. They asked that the special treatment of Direct Loans being repaid under the income contingent repayment plan be removed or be applied to all institutions, not to non-degree-granting proprietary institutions only. These negotiators argued that this provision could provide an incentive for institutions to counsel students to defer repayment, rather than encourage them to repay under the income contingent repayment plan, even if the student might benefit from repayment under this plan. These negotiators also argued that an institution has little control over whether a borrower will choose to repay under the income contingent repayment plan, and the institution should not be held responsible for that choice.

We appreciate the negotiators' concerns but continue to believe that, without this provision, an institution could have a low cohort default rate even though a large proportion of its former students are making only minimal or no payments on their loans. We believe that situation is a potential area for abuse in the Direct Loan Program, and it is imperative to protect students and taxpayers from that potential abuse.

We also continue to believe that this provision should apply to non-degree-granting proprietary institutions only. Our experience and data show that student borrowers at non-degree-granting proprietary institutions are at a higher risk of default than other student borrowers. Non-degree-granting proprietary institutions provide students with education or training needed to secure employment, and a

borrower's repayment under income contingent repayment directly reflects the value of the education or training provided by that institution in the marketplace.

Determining Cohort Default Rates for Institutions That Have Undergone a Change in Status (§ 668.184)

Statute: Under section 435(m)(3) of the HEA, the Secretary must prescribe regulations that will prevent an institution from evading the consequences of cohort default rates by branching, consolidating, changing ownership or control, or by similar devices.

Current Regulations: Current § 668.17(g)(2) provides general requirements for the application of cohort default rates or combined cohort default rates to an institution that has undergone a change in status.

Proposed Regulations: Proposed § 668.184 provides detailed requirements for determining an institution's cohort default rate following three types of institutional restructuring: an institution's acquisition of or merger into a separate institution, an institution's acquisition of a branch or location that was formerly part of a separate institution, or a spin-off of an institution's branch or location to become a separate, new institution.

The requirements proposed for each of the three types of changes in status are summarized in the following paragraphs:

• *Acquisition or merger of institutions.* If an institution acquires another institution or a new institution is created by the merger of two or more institutions, the method for determining its cohort default rate depends on the date of the acquisition or merger and the date of publication of the cohort default rate:

1. *Cohort default rates published before the acquisition or merger.* For cohort default rates that were published before the date of the change in status, the institution's cohort default rate is the rate that was calculated for the predecessor institution with the greatest total number of borrowers entering repayment in the two most recent cohorts that were used to calculate those cohort default rates.

2. *Cohort default rates published after the acquisition or merger.* After the date of the acquisition or merger, the data for the institutions involved in the acquisition or merger would be combined, and the institution's cohort default rate would be calculated based on that combined data (in this preamble, this is referred to as a "merged rate").

Example #1. On January 1, 2000, Institution A merges with Institution B to form Institution C. Data and cohort default rates for Institutions A, B, and C, for FY 1996 through FY 2001, are provided in the following table. (In the following table, the "Borrowers in Cohort" rows identify the total number of borrowers in each institution's cohort for FY 1996 through FY 2001, and the "Borrowers in Default" rows identify the total number of borrowers in each cohort who are considered to be in default for purposes of calculating a cohort default rate.)

Institution			FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001
A		Borrowers in Cohort	59	68	63	70	52	45
		Borrowers in Default	8	6	9	9	6	7
		Cohort Default Rate	13.6%	8.8%	14.3%	12.9%	11.5%	15.6%
B		Borrowers in Cohort	35	42	40	39	40	31
		Borrowers in Default	2	1	3	2	2	1
		Cohort Default Rate	5.7%	2.4%	7.5%	5.1%	5.0%	3.2%
C	Actual	Borrowers in Cohort	N/A	N/A	N/A	N/A	6	21
		Borrowers in Default	N/A	N/A	N/A	N/A	1	2
	Application Method		**1. Before**		**2. After**			
	Applied	Borrowers in Cohorts	59	68	63+40+0 = 103	70+39+0 = 109	52+40+6 = 98	45+31+21 = 97
		Borrowers in Default	8	6	9+3+0 = 12	9+2+0 = 11	6+2+1 = 9	7+1+2 = 10
		Cohort Default Rate	13.6%	8.8%	11.7%	10.1%	9.2%	10.3%

Since Institution C was created by a merger of Institutions A and B, its data for borrowers in cohorts and in default are separated into "actual" data and "applied" data. Institution C's "actual" data includes only the borrowers who received loans to attend Institution C. Its "applied" data and cohort default rates reflect the data for all institutions and the calculations used to determine Institution C's cohort default rate under proposed § 668.184(b).

Institution C was created on January 1, 2000. Since cohort default rates for a fiscal year are generally published before the end of the second subsequent fiscal year (FY 1996's cohort default rates are published before the end of FY 1998, FY 1997's cohort default rates are published before the end of FY 1999, etc.), Institution C was created after the

FY 1997 cohort default rates were published (around September 1999) and before the FY 1998 cohort default rates were published (around September 2000).

As a result, under the proposed regulations, Institution C's cohort default rates would be calculated in the following manner:

1. *Cohort default rates published before the merger.* For cohort default rates that were published before the merger (cohort default rates for FY 1997 and before), Institution C's cohort default rates will be the rates of its predecessor with the greatest total number of borrowers entering repayment in the two most recent cohorts that were used to calculate those cohort default rates (for FY 1996 and FY 1997). The total number of Institution A's borrowers for those 2 fiscal years is 127 (59 + 68 = 127), and the total number of Institution B's borrowers for those 2 fiscal years is 77 (35 + 42 = 77). Since the total for Institution A (127) is greater than the total for Institution B (77), Institution A's cohort default rates for FY 1997 and before apply to Institution C.

2. *Cohort default rates published after the merger.* All of Institution C's cohort default rates that are published after the date of the merger (cohort default rates for FY 1998 and after) are calculated as merged rates. To calculate Institution C's merged rates for FY 1998 and each following fiscal year, totals are calculated for the number of borrowers and defaulted borrowers for Institutions A, B, and C in each fiscal year. For example, for FY 1998, totals are calculated for Institutions A, B, and C's "Borrowers in Cohort" (63 + 40 + 0 = 103) and for their "Borrowers in Default" (9 + 3 + 0 = 12). Since the total number of borrowers in Institution C's merged cohort is greater than 30 (103), Institution C's merged rate for FY 1998 is 11.7 percent (12 divided by 103 is 0.117). All of Institution C's subsequent cohort default rates are also calculated as merged rates.

• *Acquisition of branches or locations.* If an institution acquires a branch or a location from another institution, the method for determining its cohort default rate depends on the date of the acquisition and the date of publication of the cohort default rate:

1. *Cohort default rates published before the acquisition.* For cohort default rates that were published before the date of the acquisition, the institution's cohort default rate is unchanged. However, the institution's cohort default rate would apply to both the institution and to the newly acquired branch or location.

2. *Three cohort default rates published immediately after the acquisition.* For the three cohort default rates published after the date of the acquisition, the institution's cohort default rate is calculated as a merged rate. The calculations of the merged rates are based on the data for all of the borrowers at the institutions involved in the change in status, including all of their branches and locations. The cohort default rates for the institution from which the location or branch was acquired are not calculated as merged rates.

3. *Cohort default rates published after the third merged rate.* After the institution's third merged rate, its cohort default rate is no longer calculated as a merged rate. Its subsequent cohort default rates no longer include the data for the other institution involved in the change in status.

Example #2. On July 10, 2002, Institution B acquires a location from Institution A. Data and cohort default rates for Institutions A and B, for FY 1998 through FY 2003, are provided in the following table. (In the following table, the "Borrowers in Cohort" rows identify the total number of borrowers in each institution's cohort for FY 1998 through FY 2003, and the "Borrowers in Default" rows identify the total number of borrowers in each cohort who are considered to be in default for purposes of calculating a cohort default rate.)

Institution			FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
A		Borrowers in Cohort	140	183	200	154	159	213
		Borrowers in Default	13	4	12	20	16	9
		Cohort Default Rate	9.3%	2.2%	6.0%	13.0%	10.1%	4.2%
B	Actual	Borrowers in Cohort	103	140	122	98	135	140
		Borrowers in Default	2	4	12	31	22	19
	Application Method		**1. Before**		**2. Three FY's**			**3. After**
	Applied	Borrowers in Cohorts	Institution B's cohort default rates for FY 1999 and earlier remain unchanged.		200+122 = 322	154+98 = 252	159+135 = 294	Merged rate no longer calculated.
		Borrowers in Default			12+12 = 24	20+31 = 51	16+22 = 38	
		Cohort Default Rate	1.9%	2.9%	7.5%	20.2%	12.9%	13.6%

Since Institution B acquired a location from Institution A, Institution B's data for "borrowers in cohorts" and "borrowers in default" are separated into "actual" data and "applied" data. Institution B's "actual" data includes only the borrowers who received loans to attend Institution B. Its "applied" data and cohort default rates reflect the data for both institutions and the calculations used to determine Institution B's cohort default rate under proposed § 668.184(c).

Institution B acquired the location from Institution A on July 10, 2002. Since cohort default rates for a fiscal year are generally published before the

end of the second subsequent fiscal year (FY 1996's cohort default rates are published before the end of FY 1998, FY 1997's cohort default rates are published before the end of FY 1999, *etc.*), Institution B acquired the location after the FY 1999 cohort default rates were published (around September 2001) and before the FY 2000 cohort default rates were published (around September 2002).

As a result, under the proposed regulations, Institution B's cohort default rates would be calculated in the following manner:

1. *Cohort default rates published before the acquisition.* For cohort default rates that were published before the acquisition (cohort default rates for FY 1999 and before), Institution B's cohort default rates are unchanged.

2. *Three cohort default rates published immediately after the acquisition.* For the three cohort default rates published after the acquisition (FY 2000, FY 2001, and FY 2002), Institution B's cohort default rates are calculated as merged rates. To calculate Institution B's merged rates for FY 2000, FY 2001, and FY 2002, totals are calculated for the number of borrowers and defaulted borrowers for Institutions A and B in each fiscal year. For example, for FY 2001, totals are calculated for Institutions A and B's "Borrowers in Cohort" (154 + 98 = 252) and for their "Borrowers in Default" (20 + 31 = 51). Since the total number of borrowers in Institution B's merged cohort is greater than 30, Institution B's merged rate for FY 2001 is 20.2 percent (51 divided by 252 is 0.202).

3. *Cohort default rates published after the third merged rate.* After Institution B's third merged rate (for FY 2002), its cohort default rate is no longer calculated as a merged rate. Institution B's cohort default rates for FY 2003 and later no longer include data from Institution A.

• *Branches or locations becoming institutions.* If a branch or location of an institution becomes a separate, new institution, the method for determining its cohort default rate depends on the date of the change in status and the date of publication of the cohort default rate:

1. *Cohort default rates published before the change in status.* For cohort default rates that were published before the date of its change in status, the institution's cohort default rate is the same as the cohort default rate for its former parent institution.

2. *Three cohort default rates published immediately after the change in status.* For the three cohort default rates published after the date of the change in status, the institution's cohort default rate is calculated as a merged rate. The calculations of the merged rates are based on the data for all of the borrowers at the institution and at its former parent institution, including all of their branches and locations. The cohort default rates for the former parent institution are not calculated as merged rates.

3. *Cohort default rates published after the third merged rate.* After the institution's third merged rate, its cohort default rate is no longer calculated as a merged rate. Its subsequent cohort default rates no longer include the data for the former parent institution.

Example #3. On October 5, 2000, a location of Institution A becomes a separate, new Institution B. Data and cohort default rates for Institutions A and B, for FY 1997 through FY 2002, are provided in the following table. (In the following table, the "Borrowers in Cohort" rows identify the total number of borrowers in each institution's cohort for FY 1997 through FY 2002, and the "Borrowers in Default" rows identify the total number of borrowers in each cohort who are considered to be in default for purposes of calculating a cohort default rate.)

Institution			FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
A		Borrowers in Cohort	35	33	41	32	31	35
		Borrowers in Default	9	10	3	3	6	4
		Cohort Default Rate	25.7%	30.3%	7.3%	9.4%	19.4%	11.4%
B	Actual	Borrowers in Cohort	N/A	N/A	N/A	3	7	31
		Borrowers in Default	N/A	N/A	N/A	2	1	2
	Application Method		1. Before		2. Three FY's			3. After
	Applied	Borrowers in Cohorts	35	33	41+0 = 41	32+3 = 35	31+7 = 38	Merged rate no longer calculated.
		Borrowers in Default	9	10	3+0 = 3	3+2 = 5	6+1 = 7	
		Cohort Default Rate	25.7%	30.3%	7.3%	14.3%	18.4%	6.5%

Since Institution B has undergone a change in status, its data for "borrowers in cohorts" and "borrowers in default" are separated into "actual" data and "applied" data. Institution B's "actual" data includes only the borrowers who received loans to attend Institution B. Its "applied" data and cohort default rates reflect the data for both institutions and the calculations used to determine Institution B's cohort default rate under proposed § 668.184(d).

Institution B became a new institution on October 5, 2000. Since cohort default rates for a fiscal year are generally published before the end of the second subsequent fiscal year (FY 1996's cohort default rates are published before the end of FY 1998, FY 1997's cohort default rates are published before the end of FY 1999, etc.), Institution B

became a new institution after the FY 1998 cohort default rates were published (around September 2000) and before the FY 1999 cohort default rates were published (around September 2001).

As a result, under the proposed regulations, Institution B's cohort default rates would be calculated in the following manner:

1. *Cohort default rates published before the change in status.* For cohort default rates that were published before Institution B became a new institution (cohort default rates for FY 1998 and before), Institution B's cohort default rates are the same as Institution A's.

2. *Three cohort default rates published immediately after the change in status.* For the three cohort default rates published after the change in status (FY 1999, FY 2000, and FY 2001), Institution B's cohort default rates are calculated as merged rates. To calculate Institution B's merged rates for FY 1999, FY 2000, and FY 2001, totals are calculated for the number of borrowers and defaulted borrowers for Institutions A and B in each fiscal year. For example, for FY 2000, totals are calculated for Institutions A and B's "Borrowers in Cohort" (32+3=35) and for their "Borrowers in Default" (3+2=5). Since the total number of borrowers in Institution B's merged cohort is greater than 30 (35), Institution B's merged rate for FY 2000 is 14.3 percent (5 divided by 35 is 0.143).

3. *Cohort default rates published after the third merged rate.* After Institution B's third merged rate (for FY 2001), its cohort default rate is no longer calculated as a merged rate. Institution B's cohort default rates for FY 2002 and later no longer include data from Institution A.

Example #4. Institution A, as described in the previous example (Example #3), has an FY 1996 cohort default rate of 32.0 percent. When applying prior cohort default rates under § 668.184, Institution A's FY 1996 cohort default rate is applied to Institution B. Thus, Institution B's cohort default rates for FY 1996 through FY 2002 are—

FY 1996: 32.0%
FY 1997: 25.7%
FY 1998: 30.3%
FY 1999: 7.3%
FY 2000: 14.3%
FY 2001: 18.4%
FY 2002: 6.5%

Institution B has 3 consecutive cohort default rates of 25 percent or greater (for FY 1996, FY 1997, and FY 1998), but as we explain below, it is not necessarily subject to a loss of participation based on those cohort default rates.

In example #3, Institution B became a separate, new institution on October 5, 2000. This was after the FY 1998 cohort default rates are published (around September 2000) and before the FY 1999 cohort default rates are published (around September 2001). Therefore all of the consecutive cohort default rates of 25 percent or greater were published before Institution B became a separate. new institution, and Institution A was notified of the loss of participation based on those cohort default rates before Institution B became a separate, new institution.

Proposed § 668.184 addresses only the determination of an institution's cohort default rates after a change in status. Any application of an institution's prior loss of eligibility to another institution under this subpart is subject to the criteria in proposed § 668.188. In the preceding example, unless Institutions A and B meet the criteria described in § 668.188, there would be no action against Institution B based on its FY 1996, FY 1997, and FY 1998 cohort default rates. However, if Institution B's cohort default rate for FY 1999 had been 25 percent or greater (instead of 7.3 percent), Institution B would be subject to an action based on 3 consecutive cohort default rates of 25 percent or greater, under proposed § 668.187.

Reasons: Proposed § 668.184 more clearly describes the manner in which an institution's cohort default rate is determined after a change in status and would reduce the possibility of an institution's evasion of the consequences of high cohort default rates.

A separate proposed § 668.188 also addresses the possibility of an institution's evasion of the consequences of high cohort default rates. That proposed section would apply a loss of eligibility that was previously imposed against one institution to another institution following a change in status. Changes proposed for § 668.188 are discussed later in this preamble, under "Preventing Evasion of the Consequences of Cohort Default Rates (§ 668.188)."

Participation Rate Index Challenges and Appeals (§§ 668.185(c) and 668.195)

Statute: Under section 435(a)(6) of the HEA, an institution may challenge an anticipated loss of eligibility based on excessive cohort default rates, during the draft cohort default rate process, if its participation rate index is 0.0375 or less for any of the 3 most recent fiscal years for which it has received a cohort default rate. An institution's participation rate index for a fiscal year is derived by multiplying its cohort default rate for that fiscal year by the percentage of its students who received an FFEL or Direct Loan Program loan to attend it during a specified 12-month period.

Current Regulations: Current § 668.17(j)(4) simply tracks the statutory language. Under current § 668.17(c)(1)(ii)(A), an institution may also appeal on the basis of its participation rate index during the official cohort default rate process.

Proposed Regulations: The proposed regulations would make three changes to the current regulatory requirements:

- *Eligibility.* The proposed regulations would allow any institution subject to a loss of participation based on its cohort default rate (including institutions with cohort default rates greater than 40 percent) to submit a participation rate index challenge or appeal. Currently, only an institution subject to a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater may appeal on this basis.
- *Ceiling.* The proposed regulations would use a participation rate index ceiling of 0.06015, rather than 0.0375, for institutions that are subject to a loss of participation based on 1 cohort default rate over 40 percent.
- *Average rates.* The proposed regulations would allow an institution with fewer than 30 borrowers in its cohort for a fiscal year to choose to calculate its participation rate index for that fiscal year using either the data for that fiscal year alone or the data for the 3 fiscal years considered in calculating an average rate for the institution, under proposed § 668.183(d)(2).

Reasons:

- *Eligibility.* In the interests of consistency, we are proposing to allow an institution to submit a participation rate index challenge or appeal to avoid the consequences of a cohort default rate over 40 percent. Additional reasons for this change are discussed later in this preamble, under "Use of Subpart G of Part 668 when an Institution's Cohort Default Rate Is Greater than 40 Percent (§ 668.187(a)(1))."
- *Ceiling.* The proposed regulations include a higher participation rate index ceiling for institutions that are challenging or appealing a loss of eligibility based on 1 cohort default rate over 40 percent because, without this higher ceiling, those institution would be held to a more restrictive standard than other institutions.

An institution's participation rate index for a fiscal year is derived by multiplying its cohort default rate for that fiscal year by the percentage of its students who received an FFEL or Direct Loan Program loan to attend it

during a specified 12-month period. The statutory participation rate index ceiling of 0.0375, which applies to an institution that is challenging or appealing a loss of eligibility based on 3 consecutive cohort default rates of 25 percent or greater, is based on a maximum loan program participation rate of 15 percent. That is, an institution having the lowest default rate for which it could lose participation (25 percent) could meet the 0.0375 ceiling, and avoid the consequences of its three cohort default rates of 25 percent or greater, if 15 percent, at most, of its students received loans (0.25×0.15=0.0375).

If a participation rate index of 0.0375 was used for an institution that is subject to a loss of eligibility based on 1 cohort default rate over 40 percent, that institution would be subject to a participation rate index ceiling that reflected a loan program participation of, at most, about 9.35 percent of that institution's students (0.401×0.0935=0.0374935).

Under the proposed regulations, an institution that is subject to a loss of eligibility based on 1 cohort default rate greater than 40 percent would be able to submit a participation rate index challenge or appeal if its participation rate index for that cohort's fiscal year was equal to 0.06015 or less. That is, an institution having the lowest default rate for which it could lose participation (40.1 percent) could meet the 0.06015 ceiling if 15 percent, at most, of its students received loans (0.401×0.15=0.06015).

We especially request comments on whether it is appropriate to use this higher participation rate index for an institution that is subject to a loss of participation based on 1 cohort default rate greater than 40 percent, or whether it would be more appropriate to use the current participation rate index of 0.0375.

• *Average rates.* The draft cohort default rates that we provide to institutions are calculated using data for 1 fiscal year only. However, if an institution's cohort for a fiscal year includes fewer than 30 borrowers, its official cohort default rate will be calculated as an average rate, based on 3 years of data. Without the changes proposed for participation rate index challenges (which may be based on draft cohort default rates) and appeals (which are based on official cohort default rates), the proposed regulations might cause different participation rate indexes to be calculated for an institution during a challenge and an appeal.

Use of Subpart G of Part 668 when an Institution's Cohort Default Rate Is Greater than 40 Percent (§ 668.187(a)(1))

Current Regulations: Under current § 668.17(a)(2), we may initiate a proceeding under subpart G of part 668 to limit, suspend, or terminate an institution's participation in the Title IV, HEA programs if the institution's cohort default rate is greater than 40 percent for any fiscal year.

Proposed Regulations: Proposed § 668.187(a)(1) would impose a loss of participation in the FFEL and Direct Loan programs against an institution having a cohort default rate greater than 40 percent. No proceedings under subpart G of part 668 would be needed to impose this loss of participation. The loss would continue for the remainder of the fiscal year in which the institution is notified and for the next 2 fiscal years.

Reasons: The proposed regulations would make the consequences of excessive cohort default rates more consistent. Under the proposed regulations, an institution with a cohort default rate greater than 40 percent and an institution with 3 consecutive cohort default rates of 25 percent or greater would both lose eligibility for the FFEL and Direct Loan programs for the same amount of time. Under the proposed regulations, both types of institutions would also be subject to the same liability for loans made during the adjustment and appeals process, would be required to meet the same criteria to regain participation in the FFEL or Direct Loan programs, and would be permitted to maintain participation in Federal campus-based programs.

Currently, an institution with a cohort default rate greater than 40 percent may be subject to a loss of participation in all Title IV, HEA programs for an indefinite period of time. An institution with 3 consecutive cohort default rates of 25 percent or greater can continue to participate in the Federal campus-based programs during the period that it is ineligible to participate in the FFEL, Direct Loan, and Federal Pell Grant programs, and it is then in a better position to re-establish its eligibility for the loan and Federal Pell Grant programs when its period of ineligibility ends.

During negotiated rulemaking, non-Federal negotiators voiced concerns about making the loss of participation "automatic" for an institution with a cohort default rate greater than 40 percent, rather than discretionary with the Secretary. This concern is addressed in these proposed regulations by providing essentially the same challenges, adjustments, and appeals for a loss of participation based on 1 cohort default rate greater than 40 percent as are available to an institution that is subject to a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater. Currently, an institution with a cohort default rate greater than 40 percent has fewer options for appeal than an institution with 3 consecutive cohort default rates of 25 percent or greater.

During the negotiations, the Department agreed to treat institutions with 1 cohort default rate greater than 40 percent differently in one aspect of the appeals process, compared to institutions with 3 cohort default rates of 25 percent or greater. Generally, a loss of eligibility based on 3 consecutive cohort default rates of 25 percent or greater includes loss of participation in the FFEL, Direct Loan, and Federal Pell Grant programs. The Department agreed to propose that a loss of eligibility based on 1 cohort default rate greater than 40 percent would include loss of participation in the FFEL and Direct Loan programs only. It would not affect an institution's ability to participate in the Federal Pell Grant Program.

Some non-Federal negotiators contended that institutions with 1 cohort default rate greater than 40 percent should not be subject to a loss of participation in the Federal Pell Grant Program because they might not have an extended history of excessive rates. We agreed with the non-Federal negotiators. If the institution continues to have excessive cohort default rates, it will have 3 consecutive cohort default rates of 25 percent or greater and will be subject to a loss of participation in the Federal Pell Grant Program, along with an extended loss of participation in the FFEL and Direct Loan programs.

Use of Subpart G of Part 668 to End an Institution's Participation in the FFEL Program (§ 668.187(a)(2))

Current Regulations: Under § 668.17(a)(3), we may initiate a proceeding under subpart G of part 668 to limit, suspend, or terminate an institution's participation in the FFEL Program, if that institution's 3 most recent cohort default rates are 25 percent or greater and 1 or more Direct Loans were used to calculate any of those cohort default rates. However, under § 668.17(b)(2) the same institution, with the same three cohort default rates, would be subject to a loss of eligibility in the Direct Loan Program, without a proceeding under subpart G of part 668.

Proposed Regulations: We are proposing to end an institution's eligibility in the FFEL Program, under proposed § 668.187(a)(2), without initiating a proceeding under subpart G

of part 668, regardless of the inclusion of Direct Loans in the institution's cohort default rates.

Reasons: We believe that it is appropriate to try to provide consistent treatment for all institutions in this area. In every other requirement in § 668.17, an institution that is subject to § 668.17(a)(3) is treated the same as other institutions. Its ability to challenge, request an adjustment, or appeal the consequences of its cohort default rates is the same as any other institution subject to a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater.

Preventing Evasion of the Consequences of Cohort Default Rates (§ 668.188)

Statute: Under section 435(m)(3) of the HEA, the Secretary is directed to prescribe regulations that will prevent an institution from evading the consequences of cohort default rates by branching, consolidating, changing ownership or control, or by similar devices.

Current Regulations: The current regulations, in § 668.17(g)(2), provide general requirements for the application of cohort default rates or combined cohort default rates to an institution that has undergone a change in status. These requirements are intended, in part, to prevent an institution from evading the consequences of its cohort default rates.

Proposed Regulations: Under proposed § 668.188, a loss of participation to which an institution was subject, as the result of 1 cohort default rate greater than 40 percent or 3 consecutive cohort default rates of 25 percent or greater, would be applied to another institution if all 4 of the following criteria are met:

1. *Loss of eligibility.* Before any change in institutional structure or identity occurs, 1 of the 2 institutions is subject to a loss of participation as the result of 1 cohort default rate greater than 40 percent or 3 consecutive cohort default rates of 25 percent or greater.

2. *Change in structure or identity.* Both institutions are parties to a transaction that results in a change of ownership, a change in control, a merger, a consolidation, an acquisition, a change of name, a change of address, any change that results in a location becoming a freestanding institution, a purchase or sale, a transfer of assets, an assignment, a change of identification number, a contract for services, an addition or closure of one or more locations or branches or educational programs, or any other change in whole or in part in institutional structure or identity.

3. *Offer program at substantially the same address.* After the change in structure or identity, the currently eligible institution offers an educational program at substantially the same address as the ineligible institution.

In general, an institution would be considered to be offering an educational program at "substantially the same address" as an ineligible institution if its site is the same as the ineligible institution's or its site is physically located close enough to the ineligible institution's site to demonstrate that the educational programs that it provides are intended to serve the same population.

As examples, an institution may be considered to be offering an educational program at "substantially the same address" as an ineligible institution if its site is located across the street from the ineligible institution's site, on the same block as the ineligible institution's site, or in the same business complex as the ineligible institution's site. However, an institution may be located further away from an ineligible institution's site and still be considered to be offering an educational program at "substantially the same address" if its educational program is intended to serve the same population.

4. *Commonality of ownership or management.* There is a commonality of ownership or management between the two institutions. The term "commonality of ownership or management" is defined in proposed § 668.188(b). In general, a commonality of ownership or management exists if the same person (an individual, corporation, or partnership) or members of that person's family, directly or indirectly, were or are managers at both institutions or were or are able to affect substantially both institutions' actions.

If all four of these criteria are met, an institution is subject to the same loss of participation to which the ineligible institution is subject. The scope and the duration of the institution's loss of participation under § 668.188 is the same as the scope and duration of the previously ineligible institution's loss of participation. That is, the institution loses its participation in the same programs as the previously ineligible institution and cannot reapply to participate in those programs until the date on which the previously ineligible institution can or would have been able to reapply. An institution would only be able to challenge, request an adjustment, or appeal a loss of participation that is applied to it under proposed § 668.188 under the same requirements that apply to the previously ineligible institution.

The proposed regulations include an exception to the criteria concerning commonality of management. During a teach-out, the institution conducting the teach-out would be allowed 60 days to find replacements for the previous management and to notify us that any commonality of management has ended. If we determine, based on that notice, that the commonality of management has not ended, the institution would be allowed an additional 30 days to make the management changes that we request. As long as the institution conducting the teach-out complies with these requirements, we would not consider a commonality of management to exist, and the institution would not be subject to the previously ineligible institution's loss of eligibility. However, this teach-out exception applies only with respect to the commonality of management criteria. It does not apply to an institution conducting a teach-out if there is a commonality of ownership.

In proposed § 668.188(d), we encourage institutions to contact us if they anticipate a change in status described in § 668.188. By contacting us, an institution can learn the consequences, if any, of a change in status before it occurs and can consider those consequences before implementing the change. If an institution contacts us and gives us the information we request, we will notify it of our initial determination of the anticipated change's effect on the institution's eligibility.

In the following paragraphs, we provide four examples of the manner in which an institution's loss of participation would be applied to another institution under proposed § 668.188:

Example #1. We notify Institution A on September 25, 2001, that its cohort default rate for FY 1999 is 45 percent. After exhausting its administrative appeals, Institution A becomes ineligible to participate in the FFEL and Direct Loan programs on December 10, 2001. On January 5, 2002, Institution A's owner sells it to Institution B, a corporation in which she holds a 25 percent ownership interest and that has a separate identification number for Federal student aid purposes. On the same day, Institution A's managers, students, staff, and equipment move across the street to a new building, and Institution B begins to provide educational programs in the new building.

To determine whether Institution A's loss of eligibility will be applied to Institution B under the proposed regulations, each of the following four questions must be answered:

1. *Was the predecessor institution subject to a loss of eligibility before the change?* Yes. Institution A was notified

of its loss of participation on September 25, 2001, and the change in structure occurred more than 3 months later, on January 5, 2002.

2. *Was there a change in structure or identity?* Yes. As the result of a sale, Institution B took over Institution A's operations.

3. *Is the remaining institution providing an educational program at substantially the same address as the predecessor institution?* Yes. Though the owner moved the site for the educational programs across the street, Institutions A and B provided an educational program at substantially the same address. They are located close to one another and are intended to serve the same population.

4. *Is there a commonality of ownership or management between both institutions?* Yes. In this example, both a commonality of ownership and a commonality of management exist, and either of those, alone, would suffice to meet the criterion. Because the same individual was able to substantially affect the actions of Institutions A and B, there is a commonality of ownership between those institutions. Since there is no change in management, there is also a commonality of management between the two institutions.

Since Institutions A and B meet all four of the criteria, the loss of eligibility to which Institution A was subject is applied to Institution B. Institution B is ineligible to participate in the FFEL and Direct Loan programs for the same period that would have been applied to Institution A, until October 1, 2003.

Example #2. Institution A is notified on September 25, 2000, that its third consecutive cohort default rate is 25 percent or greater. After exhausting its administrative appeals, Institution A loses its ability to participate in the FFEL, Direct Loan, and Federal Pell Grant programs on January 15, 2001. Institution A closes 2 months later, and on March 20, 2001, Institution B begins providing a teach-out for Institution A's students, at the same site. Institutions A and B are not owned or controlled by the same person, either directly or indirectly, and do not have the same student aid identification number. Institution B replaces all of Institution A's managers and, within 60 days after the change, notifies us that it believes that any commonality of management has ended. We determine that the commonality of management has ended. While conducting the teach-out, Institution B enrolls new students and continues to provide educational programs at that site.

To determine whether Institution A's loss of eligibility will be applied to Institution B, each of the following four questions must first be answered:

1. *Was the predecessor institution subject to a loss of eligibility before the change?* Yes. Institution A was notified of its loss of participation on September 25, 2000, and the change in identity occurred on March 20, 2001, when Institution B began providing the teach-out for Institution A's students.

2. *Was there a change in structure or identity?* Yes. As a result of Institution A's closure, Institution B took over what had previously been Institution A's operations.

3. *Is the remaining institution providing an educational program at substantially the same address as the predecessor institution?* Yes. Institutions A and B provided the educational programs at the same site.

4. *Is there a commonality of ownership or management between both institutions?* No. There is no indication that the same person, or members of that person's family, had the ability to affect the actions of both Institutions A and B. Though some of Institution A's managers continued to work at Institution B, they were replaced within 60 days, we were notified, and we determined that no commonality of management exists.

Because there is no commonality of ownership or management, the loss of eligibility to which Institution A was subject is not applied to Institution B under § 668.188.

Example #3. Institution A provides educational programs for automobile repair. It is notified on September 27, 2000, that its third consecutive cohort default rate is 25 percent or greater. After exhausting its administrative appeals, Institution A becomes ineligible to participate in the FFEL, Direct Loan, and Federal Pell Grant programs on January 6, 2001. Two weeks later, on January 20, 2001, the corporation that owns Institution A transfers the ownership of Institution A to a subsidiary company that owns and operates Institution B. The subsidiary company sells all of the equipment, replaces Institution A's managers and instructors, and begins providing Institution B's educational programs for airplane pilots at the former Institution A's site.

To determine whether Institution A's loss of eligibility will be applied to Institution B, each of the following four questions must first be answered:

1. *Was the predecessor institution subject to a loss of eligibility before the change?* Yes. Institution A was notified of its loss of participation on September 27, 2000. The ownership of Institution A was transferred almost 4 months later, on January 20, 2001.

2. *Was there a change in structure or identity?* Yes. As a result of a transfer of assets, Institution A became part of Institution B.

3. *Is the remaining institution providing an educational program at substantially the same address as the predecessor institution?* Yes. Institutions A and B provided the educational programs at the same site. The fact that the institutions provided different types of instruction at that site (automobile repair and airplane piloting) is not a factor in making this determination.

4. *Is there a commonality of ownership or management between both institutions?* Yes. Because the same corporation owned both Institution A and the subsidiary company to which its ownership was transferred, it had the ability to affect substantially the actions of both Institutions A and B.

Since Institutions A and B meet all four of the criteria, the loss of eligibility to which Institution A was subject is applied to Institution B: Institution B is ineligible to participate in the FFEL, Direct Loan, and Federal Pell Grant programs for the same period as Institution A.

Example #4. Institution A provides instruction at three locations. Its cohort default rate for FY 1997 is 29 percent and for FY 1998 its cohort default rate is 32 percent. On April 30, 2001, after we notify it that its draft cohort default rate for FY 1999 is 35 percent, Institution A closes one of its locations. On June 2, 2001, Institution B buys the building in which Institution A provided educational programs at that closed location. Institutions A and B are not owned or controlled by the same person, either directly or indirectly, and Institution B does not employ any of the same managers previously employed at Institution A. On September 28, 2001, we notify Institution A that its official cohort default rate for FY 1999 is 34 percent. After exhausting its administrative appeals, Institution A becomes ineligible to participate in the FFEL, Direct Loan, and Federal Pell Grant programs on December 12, 2001.

To determine whether Institution A's loss of eligibility will be applied to Institution B, each of the following four questions must first be answered:

1. *Was the predecessor institution subject to a loss of eligibility before the change?* No. Institution B purchased the building from Institution A on June 2, 2001. Institution A was not notified of its loss of participation until almost 4 months later, on September 28, 2001.

2. *Was there a change in structure or identity?* Yes. Institution B purchased the building from Institution A. There was a transfer of assets.

3. *Is the remaining institution providing an educational program at substantially the same address as the predecessor institution?* Yes. Institutions A and B provided the educational programs at the same site.

4. *Is there a commonality of ownership or management between both*

institutions? No. None of Institution A's managers were employed by Institution B, and there is no indication that the same person, or members of that person's family, had the ability to affect the actions of both Institutions A and B.

Since Institutions A and B do not meet all four of the criteria (only two of the criteria are met), the loss of eligibility to which Institution A was subject is not applied to Institution B.

Reasons: The proposed regulations would revise the requirements to more clearly reflect the intent of the HEA and to reduce the possibility of evasion.

The proposal to allow additional time for an institution conducting a teach-out to end a commonality of management is included in these proposed regulations to provide for an emergency situation in which an institution agrees to provide a teach-out for another institution's students but is unable to immediately replace all of the individuals who held a managerial role at that institution.

Proposed § 668.188 deals exclusively with the attribution of previously imposed sanctions. A separate proposed § 668.184 also addresses the possibility of an institution's evasion of the consequences of high cohort default rates. That proposed section would provide requirements for determining how cohort default rates are calculated and attributed after a change in status. Changes proposed for § 668.184 were discussed earlier in this preamble, under "Determining Cohort Default Rates for Institutions that Have Undergone a Change in Status (§ 668.184)."

Erroneous Data Appeals (§ 668.192)

Statute: Section 435(a)(2) of the HEA allows an institution to appeal a loss of participation based on excessive cohort default rates if the institution demonstrates to the satisfaction of the Secretary that the calculation of its cohort default rate is not accurate and that a recalculation based on accurate data would reduce its cohort default rate below the applicable percentage.

Current Regulations: Current § 668.17(c)(1)(i) provides requirements for an erroneous data appeal that are consistent with statutory requirements. Under the current regulations, an institution may only submit an erroneous data appeal if it is subject to a loss of participation due to excessive cohort default rates.

Proposed Regulations: In addition to continuing to provide for an erroneous data appeal by an institution that is subject to a loss of participation due to excessive cohort default rates, the proposed regulations would permit an institution that is provisionally certified under § 668.16(m) to submit an erroneous data appeal.

Reasons: During the negotiated rulemaking process, some non-Federal negotiators proposed that all institutions be allowed to submit erroneous data appeals. Alternatively, they proposed that any institution that is provisionally certified under § 668.16(m) should be allowed to appeal on that basis. They argued that, without this change, an institution might not be able to appeal the accuracy of the data on which its cohort default rate is based. They also suggested that these institutions may have proof that data are incorrect but may be unable to get the data changed. In response to these comments, the Department explained that it is extremely costly to process erroneous data appeals, and that the Department does not have the resources to evaluate erroneous data appeals from all institutions. In recognition of these competing but valid concerns, the Department and the non-Federal negotiators agreed to propose to allow institutions that are provisionally certified under § 668.16(m) to submit erroneous data appeals. The proposed regulations would continue to allow institutions that are subject to loss of eligibility based on excessive cohort default rates to submit erroneous data appeals.

Loan Servicing Appeals (§ 668.193)

Statute: Under section 435(a)(3) of the HEA, an institution may appeal the calculation of its cohort default rate on the basis of improper loan servicing or collection if the institution is subject to loss of eligibility due to excessive rates or if its most recent cohort default rate is 20 percent or greater.

Current Regulations: Current § 668.17(h) provides the requirements for a loan servicing appeal.

Proposed Regulations: We are proposing to remove the 20 percent threshold and allow all institutions to appeal their most recent cohort default rate on the basis of improper loan servicing or collection.

Reasons: The proposed regulations would allow more institutions to submit loan servicing appeals and would make the requirements for loan servicing appeals more consistent with the requirements for certain other appeals.

Eligibility for Economically Disadvantaged Appeals (668.194(b)(1)(ii))

Statute: Under section 435(a)(4)(i)(II) of the HEA, one criterion that may be used to determine an institution's eligibility for an economically disadvantaged appeal is the percentage of the institution's students that have an adjusted gross income less than the poverty level. If the student is a dependent student, the student's parents' adjusted gross income is added to the student's adjusted gross income when determining whether the student's income is less than the poverty level.

Current Regulations: Current § 668.17(c)(1)(ii)(B)(*2*)(*ii*) tracks the language of the statute.

Proposed Regulations: The proposed regulations address independent as well as dependent students. In addition to the current criteria for an economically disadvantaged appeal, if an independent student is married, the student's spouse's adjusted gross income is added to the student's adjusted gross income when determining whether the student's income is less than the poverty level.

Reasons: When we published the current regulations, we inadvertently omitted the proposed requirement, which was included in previous regulations. We are proposing to restore the requirement in these proposed regulations because, without it, the calculation of an institution's low income rate during an economically disadvantaged appeal would not provide an accurate measure of its students' income levels.

Submitting Economically Disadvantaged Appeals (§ 668.194(f)(1))

Current Regulations: Current § 668.17(c)(7)(i)(A) requires an institution to notify us, within 30 days of receiving our notice that it is subject to a loss of eligibility, of its intent to submit an economically disadvantaged appeal. The institution submits all other materials within 60 days after receiving our notice.

Proposed Regulations: Under the proposed regulations, if an institution intends to submit an economically disadvantaged appeal, it must send us its management's written assertion within 30 days after receiving our notice of its loss of eligibility. The institution submits the independent auditor's report within 60 days after receiving our notice.

Reasons: During the negotiations, the Department proposed to require institutions to submit all the material for this type of appeal within 30 days after receiving our notice that they are subject to a loss of eligibility. Non-Federal negotiators voiced concerns that a time deadline of 30 days would not be adequate to allow an institution to find an independent auditor and for the independent auditor to provide an opinion. To address these concerns, the Federal and non-Federal negotiators

agreed on the deadlines in the proposed regulations.

Average Rates Appeals (§ 668.196)

Current Regulations: Under current § 668.17(c)(1)(ii)(C), an institution that is subject to a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater may submit an average rates appeal if at least 2 of those cohort default rates were calculated as average rates and if those cohort default rates would have been less than 25 percent if calculated for the fiscal year alone.

Proposed Regulations: In addition to the current regulations' criteria for an average rates appeal, the proposed regulations would allow an institution that is subject to loss of participation based on 1 cohort default rate greater than 40 percent to submit an average rates appeal if that cohort default rate was calculated as an average rate, under proposed § 668.183(d)(2). This proposal would allow an institution to appeal a loss of eligibility based on 1 fiscal year's cohort default rate greater than 40 percent if the institution's cohort for that fiscal year included fewer than 30 borrowers.

Reasons: As discussed previously in this preamble, under "Use of Subpart G of Part 668 when an Institution's Cohort Default Rate Is Greater than 40 Percent (§ 668.187(a)(1))," the proposed regulations would make requirements for cohort default rates more consistent. This change meets that goal.

Thirty-or-Fewer Borrowers Appeals (§ 668.197)

Current Regulations: Under § 668.17(c)(1)(ii)(D), an institution may appeal a loss of participation based on 3 consecutive cohort default rates of 25 percent or greater if the total number of its borrowers in the 3 most recent cohorts used to calculate those cohorts default rates is 30 or fewer.

Proposed Regulations: The proposed regulations would allow any institution subject to a loss of participation based on its cohort default rate (including institutions with cohort default rates greater than 40 percent) to submit a thirty-or-fewer borrowers appeal.

Reasons: The proposed regulations would make requirements for thirty-or-fewer borrowers appeals more consistent. Additional reasons for these proposed regulations are discussed previously in this preamble, under "Use of Subpart G of Part 668 when an Institution's Cohort Default Rate Is Greater than 40 Percent (§ 668.187(a)(1))."

Special Institutions (§ 668.198)

Statute: Under section 435(a)(5) of the HEA, certain minority institutions ("special institutions") that are subject to a loss of eligibility due to excessive cohort default rates may be excepted from that loss of eligibility if they submit default management plans that provide reasonable assurance that they will, by July 1, 2002, have cohort default rates that are less than 25 percent. To be excepted, the institution must also engage an independent third party to provide technical assistance and must submit evidence to the Secretary, on an annual basis, of cohort default rate improvement and of the default management plan's successful implementation.

Current Regulations: If a special institution is in compliance with the current § 668.17(k), it is exempt from a loss of eligibility based on 3 cohort default rates of 25 percent or greater. A special institution must send us information that demonstrates that it qualifies for the exception described in that paragraph by July 1, 1999, and it must send us the information we need to determine whether it continues to qualify for that exemption by July 1, 2000 and 2001.

Proposed Regulations: Under the proposed regulations, a special institution that is in compliance with § 668.198 would be exempt from a loss of eligibility based on 3 cohort default rates of 25 percent or greater or 1 cohort default rate greater than 40 percent. It would send us information to demonstrate that it qualifies for the exemption described in that paragraph by July 1 of the first 1-year period that begins after it receives our notice that it has lost eligibility, and it would send us the information we need to determine whether it continues to qualify for that exemption by July 1 of each subsequent 1-year period.

Reasons: We are proposing to exempt certain special institutions from the consequences of 1 cohort default rate greater than 40 percent to provide a consistent application of the statutory exception. Also, since the language of the current requirement does not provide for cases in which an institution becomes eligible for this exception after July 1, 1999, we are proposing to revise and clarify that language.

Appendix D to Part 668, "Default Reduction Measures"

Current Regulations: Appendix D to part 668, "Default Reduction Measures," describes measures that institutions may take to reduce their cohort default rates. The appendix is currently used only as an example of an acceptable default management plan, in § 668.14(b)(15)(iii), and to help institutions improve the initial and exit counseling they provide to FFEL and Direct Loan program borrowers.

Proposed Regulations: We are proposing to remove the current Appendix D to part 668.

Reasons: The information that Appendix D to part 668 contains is outdated and is no longer used for the primary purposes for which it was developed. The information can be updated more efficiently outside the regulatory process.

Additional Concerns of Non-Federal Negotiators

During the negotiated rulemaking process, non-Federal negotiators expressed concerns about a number of administrative processes that are not reflected in these proposed regulations, and asked us to explain these processes in this preamble. Our explanations are provided in the following paragraphs:

- *Loan record detail reports for merged rates (§ 668.186).* Proposed § 668.186 describes how an institution receives its loan record detail report during the official cohort default rate process. In general, the loan record detail report contains the data used to calculate an institution's cohort default rate. However, if an institution's cohort default rate is calculated under proposed § 668.184, by combining its data with another institution's data (in this preamble, this is referred to as a "merged rate"), the institution will also need to receive the loan record detail report for the other institution during the official cohort default rate process.

During negotiations, non-Federal negotiators asked us to explain in this preamble how an institution for which a merged rate is calculated would request additional loan record detail reports. An institution may do this in two ways. If an institution's cohort default rate is calculated as a merged rate because it acquired or merged with another institution (under § 668.184(b)), it may use that previous institution's identification number to request that institution's data from the National Student Loan Data System (NSLDS). If the institution's cohort default rate is calculated as a merged rate because it has purchased a branch or location of another institution (under § 668.184(c)) or because it was once a branch or location of another institution and is now a separate, new institution (under § 668.184(d)), then the institution should contact us, and we will provide the relevant data to the institution.

• *Deadline for publishing cohort default rates (§ 668.187(b)).* The HEA directs the Secretary to issue cohort default rates by September 30 of each year. During the negotiated rulemaking process, non-Federal negotiators expressed a concern about the possible consequences for institutions if we issued cohort default rates after the statutory deadline and asked us to repeat the guidance on this issue that we included in a previous Notice of Proposed Rulemaking, published in the **Federal Register** on July 30, 1999 (64 FR 41752).

Under proposed § 668.187(b), an institution's loss of participation in the FFEL, Direct Loan, and Federal Pell Grant programs, based on excessive cohort default rates, continues for the fiscal year in which we notify the institution that it is subject to the loss of eligibility and for the 2 succeeding fiscal years. Some non-Federal negotiators were concerned that institutions might be subject to an additional year of ineligibility if we issued cohort default rates after September 30.

We expect to meet the goal of issuing cohort default rates by September 30 of each year. If, however, cohort default rates are not issued until after that date, an institution's loss of eligibility would continue only for the remainder of the fiscal year in which the cohort default rates are issued and for the following fiscal year. For example, if we issue cohort default rates for FY 1998 on October 2, 2000, then a loss of eligibility that is based on an FY 1998 cohort default rate would continue only for the remainder of FY 2001 (the fiscal year in which the cohort default rates were issued) and to the end of FY 2002.

• *Recalculating cohort default rates (§ 668.189(a)(1)).* Under the proposed regulations, an institution's cohort default rate may be recalculated based on an uncorrected data adjustment, a new data adjustment, an erroneous data appeal, or a loan servicing appeal. During the official cohort default rate process, an institution may submit more than one type of adjustment or appeal, but all of its submissions are considered together before we make our final decision. For example, though an uncorrected data adjustment is not submitted under the same time deadlines as a new data adjustment, an erroneous data appeal, and a loan servicing appeal, we consider its results together with the results of any other adjustments and appeals when we determine an institution's cohort default rate.

During negotiations, non-Federal negotiators asked us to explain in this preamble the effect of the recalculation of an institution's cohort default rate upon its eligibility for an average rates appeal (under § 668.196) and a thirty-or-fewer borrowers appeal (under § 668.197). If an institution's cohort default rate is recalculated under proposed § 668.189(a)(1) and, as a result of that recalculation, the institution meets the criteria for an average rates appeal or for a thirty-or-fewer borrowers appeal, the institution does not lose eligibility under § 668.187.

• *Servicing of loans in income contingent repayment (§ 668.193).* As noted previously in this preamble, under current §§ 668.17(e)(1)(ii) and 668.17(f)(1)(ii), one of the reasons for considering a Direct Loan to be in default, for the purposes of calculating a proprietary, non-degree-granting institution's cohort default rate, is that the loan has been repaid under the income contingent repayment plan for 360 days, with scheduled payments less than 15 dollars per month and less than the amount of interest accruing on the loan, before the end of the fiscal year following the cohort's fiscal year. Under proposed §§ 668.193(d)(1) and 668.193(f)(3), this type of default is excluded from consideration during a loan servicing appeal. Since these loans are being repaid by borrowers, they are not considered to be in default for purposes other than calculating cohort default rates. As a result, they cannot be evaluated meaningfully under the loan servicing or collection criteria in proposed § 668.193(b).

However, non-Federal negotiators were concerned about an institution's ability to dispute the servicing of a loan being repaid under the Direct Loan Program's income contingent repayment plan. Federal negotiators agreed to permit an institution to work with our Direct Loan Servicing Center to determine whether a loan's status is accurate, if the institution believes that a borrower has been incorrectly assigned to the income contingent repayment plan. Institutions will be able to do this as part of an incorrect data challenge (§ 668.185(b)), uncorrected data adjustment (§ 668.190), new data adjustment (§ 668.191), or erroneous data appeal (§ 668.192), as appropriate for the loan.

In general, if a loan is considered to be in default for cohort default rate purposes as the result of a borrower's repayment under the income contingent repayment plan, the institution may, to the extent permitted by the Privacy Act of 1974 (5 U.S.C. 552a), request the loan's payment information from the Direct Loan Servicing Center and may use that payment information in pursuing a challenge or requesting an adjustment if it believes that the borrower was assigned to income contingent repayment incorrectly. Before receiving its draft cohort default rate, an institution may learn about a borrower's repayment under income contingent repayment by reviewing its repayment information report in NSLDS. A more detailed description of the procedures for disputing the servicing of a loan being repaid under income contingent repayment will be provided in the FY 1999 Draft Cohort Default Rate Guide.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

These proposed regulations clarify and streamline provisions discussing institutional cohort default rates and their effect on eligibility to participate in the Title IV, HEA programs. The proposed regulations also make a number of procedural changes to the process by which institutions may challenge or appeal their cohort default rates. In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

• Are the requirements in the proposed regulations clearly stated?

• Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, *§ 668.188 Preventing evasion of the consequences of cohort default rates.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education and guaranty agencies that participate in Title IV, HEA programs. The U.S. Small Business Administration (SBA) Size Standards define these institutions as "small entities" if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000.

A relatively small number of the 6,000 institutions of higher education participating in the Title IV, HEA programs meet the SBA definition of "small entities." Guaranty agencies are State and private nonprofit entities that act as agents of the Federal Government and, as such, are not considered small entities under the Regulatory Flexibility Act.

These proposed regulations clarify and streamline provisions discussing institutional cohort default rates and their effect on eligibility to participate in the Title IV, HEA programs. The proposed regulations also make a number of procedural changes to the process by which institutions may challenge or appeal their cohort default rates. These proposed regulations would not have a significant economic impact on small entities.

Paperwork Reduction Act of 1995

Proposed §§ 668.181 through 668.198 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Student Assistance General Provisions—Subpart M—Cohort default rates.

The proposed regulations would make a number of changes affecting the information collections that institutions are required to submit during the cohort default rate process: an institution would be able to request an initial determination of the consequences of a change in status (§ 668.188); an institution conducting a teach-out after a change in status may need to notify us that a commonality of management has ended (§ 668.188); and more institutions would be eligible to submit erroneous data appeals (§ 668.192), loan servicing appeals (§ 668.193), participation rate index appeals (§ 668.195), average rates appeals (§ 668.196), and thirty-or-fewer borrower appeals (§ 668.197).

Our current estimate for the maximum annual recordkeeping and reporting burden hours for the cohort default rate requirements is 25,477 hours. We do not estimate that this number of burden hours will be increased as a result of these proposed regulations. We do not believe that the additional burden that may be imposed on institutions as a result of these proposed regulations will be substantial enough to merit an increase in our current estimate of the maximum number of burden hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant Program and the State Student Incentive Grant Program are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

The Federal Family Education Loan, Federal Supplemental Loans for Students, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Income Contingent Loan, and William D. Ford Federal Direct Loan programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ifap.ed.gov/csb_html/fedlreg.htm

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal**

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Leveraging Educational Assistance Partnership; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

Dated: July 24, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 668, 682, 685, and 690 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. In § 668.14, paragraph (b)(15)(iii) is removed.

3. Section 668.16 is amended—

A. In paragraph (m)(1), by removing "an FFEL Program cohort default rate, a Direct Loan cohort rate, or where applicable, a weighted average cohort rate" and adding, in its place, "a cohort default rate".

B. In paragraphs (m)(1)(i) and (m)(2)(ii), by removing "§ 668.17" and adding, in its place, "subpart M of this part".

4. Section 668.17 is removed and reserved.

5. In § 668.26, paragraph (a)(6) is amended by removing "§ 668.17(c)" and adding, in its place, "subpart M of this part".

6. In § 668.46, paragraph (c)(7) is amended by removing "Appendix E to this part", and adding, in its place, "the Appendix A to this subpart".

7. Section 668.85 is amended—

A. By revising paragraph (b)(1)(ii).

B. In paragraph (b)(3), by removing the third sentence.

§ 668.85 Suspension proceedings.

* * * * *

(b) * * *

(1) * * *

(ii) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent;

* * * * *

8. Section 668.86 is amended—

A. By revising paragraph (b)(1)(ii).

B. In paragraph (b)(3), by removing the third sentence.

§ 668.86 Limitation or termination proceedings.

* * * * *

(b) * * *

(1) * * *

(ii) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent;

* * * * *

9. In § 668.90, paragraphs (a)(1)(iii)(D) and (a)(3)(iv) are removed; and paragraphs (a)(3)(v), (a)(3)(vi), and (a)(3)(vii) are redesignated as paragraphs (a)(3)(iv), (a)(3)(v), and (a)(3)(vi), respectively.

10. In § 668.171, paragraph (b)(1) is amended by removing "appendices F and G" and adding, in its place, "appendices A and B to this subpart".

11. Section 668.172 is amended—

A. In the heading for paragraph (a), by removing "Appendices F and G", and adding, in its place, "Appendices A and B".

B. In paragraph (a), by removing "appendices F and G to this part" and adding, in its place, "appendices A and B to this subpart".

C. In paragraph (b), by removing "appendix F" and adding, in its place, "appendix A"; and by removing "appendix G" and adding, in its place, "appendix B".

12. A new subpart M is added to Part 668 to read as follows:

Subpart M—Cohort Default Rates

Sec.

§ 668.181 Purpose of this subpart.

Your cohort default rate is a measure we use to determine your eligibility to participate in various Title IV programs. We may also use it for determining your eligibility for exemptions, such as those for certain disbursement requirements under the FFEL or Direct Loan Programs. This subpart describes how cohort default rates are calculated, some of the consequences of cohort default rates, and how you may request changes to your cohort default rates or appeal their consequences. Under this subpart, you submit a "challenge" after you receive your draft cohort default rate, and you request an "adjustment" or "appeal" after your official cohort default rate is published.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.182 Definitions of terms used in this subpart.

We use the following definitions in this subpart:

(a) *Cohort.* Your cohort is a group of borrowers used to determine your cohort default rate. The method for identifying the borrowers in a cohort is provided in § 668.183(b).

(b) *Data manager.* (1) For FFELP loans held by a guaranty agency or lender, the guaranty agency is the data manager.

(2) For FFELP loans that we hold, we are the data manager.

(3) For Direct Loan Program loans, the Direct Loan Servicer, as defined in 34 CFR 685.102, is the data manager.

(c) *Days.* In this subpart, "days" means calendar days.

(d) *Default.* A borrower is considered to be in default for cohort default rate purposes under the rules in § 668.183(c).

(e) *Draft cohort default rate.* Your draft cohort default rate is a rate we issue, for your review, before we issue your official cohort default rate. A draft cohort default rate is used only for the purposes described in § 668.185.

(f) *Entering repayment.* (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, loans are considered to enter repayment on the dates described in 34 CFR 682.200 (under the definition of "repayment period") and in 34 CFR 685.207.

(2) A Federal SLS loan is considered to enter repayment—

(i) At the same time the borrower's Federal Stafford loan enters repayment, if the borrower received a Federal Stafford loan for the same period of enrollment, as defined in 34 CFR 682.200; or

(ii) In all other cases, on the day after the student ceases to be enrolled at your institution on at least a half-time basis in an educational program leading to a degree, certificate, or other recognized educational credential.

(3) For the purposes of this subpart, a loan is considered to enter repayment on the date that a borrower repays it in full, if that repayment—

(i) Is made before the loan enters repayment under paragraphs (f)(1) or (f)(2) of this section; and

(ii) Is not made to consolidate the loan under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program (as defined in 34 CFR 685.102).

(g) *Fiscal year.* A fiscal year begins on October 1 and ends on the following September 30. A fiscal year is identified by the calendar year in which it ends.

(h) *Loan record detail report.* The loan record detail report is a report that we produce. It contains the data used to calculate your draft or official cohort default rate.

(i) *Official cohort default rate.* Your official cohort default rate is the cohort default rate that we publish for you under § 668.186. Cohort default rates calculated under this subpart are not related in any way to cohort default rates that are calculated for the Federal Perkins Loan Program.

(j) *We.* We are the Department, the Secretary, or the Secretary's designee.

(k) *You.* You are an institution.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.183 Calculating and applying cohort default rates.

(a) *General.* This section describes the four steps that we follow to calculate and apply your cohort default rate for a fiscal year:

(1) First, under paragraph (b) of this section, we identify the borrowers in your cohort for the fiscal year. If the total number of borrowers in that cohort is fewer than 30, we also identify the borrowers in your cohorts for the 2 most recent prior fiscal years.

(2) Second, under paragraph (c) of this section, we identify the borrowers in the cohort (or cohorts) who are considered to be in default. If more than one cohort will be used to calculate your cohort default rate, we identify defaulted borrowers separately for each cohort.

(3) Third, under paragraph (d) of this section, we calculate your cohort default rate.

(4) Fourth, we apply your cohort default rate to all of your locations—

(i) As you exist on the date you receive the notice of your official cohort default rate; and

(ii) From the date on which you receive the notice of your official cohort default rate until you receive our notice that the cohort default rate no longer applies.

(b) *Identify the borrowers in a cohort.* (1) Except as provided in paragraph (b)(2) of this section, your cohort for a fiscal year consists of all of your current and former students who, during that fiscal year, entered repayment on any Federal Stafford loan, Federal SLS loan, Direct Subsidized loan, or Direct Unsubsidized loan that they received to attend your institution.

(2) If a student receives a Federal Stafford loan, Federal SLS loan, Direct Subsidized loan, or Direct Unsubsidized loan to attend your institution but consolidates that loan before it enters repayment, under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program (as defined in 34 CFR 685.102), the borrower is included in your cohort for the fiscal year in which the consolidation loan enters repayment.

(3) A borrower may be included in more than one of your cohorts and may be included in the cohorts of more than one institution in the same fiscal year.

(c) *Identify the borrowers in a cohort who are in default.* (1) Except as provided in paragraph (c)(2) of this section, for the purposes of this subpart a borrower in a cohort for a fiscal year is considered to be in default if—

(i) Before the end of the following fiscal year, the borrower defaults on any FFELP loan that was used to include the borrower in the cohort or on any Federal Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort (however, a borrower is not considered to be in default unless a claim for insurance has been paid on the loan by a guaranty agency or by us);

(ii) Before the end of the following fiscal year, the borrower fails to make an installment payment, when due, on any Direct Loan Program loan that was used to include the borrower in the cohort or on any Federal Direct Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort, and the borrower's failure persists for 360 days (or for 270 days, if the borrower's first day of delinquency was before October 7, 1998);

(iii) You are a proprietary, non-degree-granting institution, and before the end of the following fiscal year, the borrower has been in repayment for 360 days, under the Direct Loan Program's income contingent repayment plan, on a loan used to include the borrower in your cohort (or that repaid a loan that was used to include the borrower in your cohort), with scheduled payments that are less than 15 dollars per month and are less than the amount of interest accruing on the loan; or

(iv) Before the end of the following fiscal year, you or your owner, agent, contractor, employee, or any other affiliated entity or individual make a payment to prevent a borrower's default on a loan that is used to include the borrower in that cohort.

(2) A borrower is not considered to be in default based on a loan that is, before the end of the fiscal year immediately following the fiscal year in which it entered repayment—

(i) Rehabilitated under 34 CFR 682.405 or 34 CFR 685.211(e); or

(ii) No longer reinsured by us.

(d) *Calculate the cohort default rate.* Except as provided in § 668.184, if there are—

(1) Thirty or more borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is derived by dividing—

(i) The number of borrowers in the cohort who are in default, as determined under paragraph (c) of this section; by

(ii) The number of borrowers in the cohort, as determined under paragraph (b) of this section.

(2) Fewer than 30 borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is derived by dividing—

(i) The total number of borrowers in that cohort and in the two most recent prior cohorts who are in default, as determined for each cohort under paragraph (c) of this section; by

(ii) The total number of borrowers in that cohort and the two most recent prior cohorts, as determined for each cohort under paragraph (b) of this section.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.184 Determining cohort default rates for institutions that have undergone a change in status.

(a) *General.* (1) If you undergo a change in status identified in this section, your cohort default rate is determined under this section.

(2) In determining cohort default rates under this section, the date of a merger, acquisition, or other change in status is the date the change occurs.

(3) If another institution's cohort default rate is applicable to you under this section, you may challenge, request an adjustment, or submit an appeal for the cohort default rate under the same requirements that would be applicable to the other institution under §§ 668.185 and 668.189.

(b) *Acquisition or merger of institutions.* If your institution acquires, or was created by the merger of, one or more institutions that participated independently in the Title IV, HEA programs immediately before the acquisition or merger—

(1) For the cohort default rates published before the date of the acquisition or merger, your cohort default rates are the same as those of your predecessor that had the highest total number of borrowers entering repayment in the two most recent cohorts used to calculate those cohort default rates; and

(2) Beginning with the first cohort default rate published after the date of the acquisition or merger, your cohort default rates are determined by including the applicable borrowers from each institution involved in the acquisition or merger in the calculation under § 668.183.

(c) *Acquisition of branches or locations.* If you acquire a branch or a location from another institution participating in the Title IV, HEA programs—

(1) The cohort default rates published for you before the date of the change apply to you and to the newly acquired branch or location;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and the other institution (including all of its locations) in the calculation under § 668.183;

(3) After the period described in paragraph (c)(2) of this section, your cohort default rates do not include borrowers from the other institution in the calculation under § 668.183; and

(4) At all times, the cohort default rate for the institution from which you acquired the branch or location is not affected by this change in status.

(d) *Branches or locations becoming institutions.* If you are a branch or location of an institution that is participating in the Title IV, HEA programs, and you become a separate, new institution for the purposes of participating in those programs—

(1) The cohort default rates published before the date of the change for your former parent institution are also applicable to you;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and your former parent institution (including all of its locations) in the calculation under § 668.183; and

(3) After the period described in paragraph (d)(2) of this section, your cohort default rates do not include borrowers from your former parent institution in the calculation under § 668.183.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.185 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.

(a) *General.* (1) We notify you of your draft cohort default rate before your official cohort default rate is calculated. Our notice includes the loan record detail report for the draft cohort default rate.

(2) Regardless of the number of borrowers included in your cohort, your draft cohort default rate is always calculated using data for that fiscal year alone, using the method described in § 668.183(d)(1).

(3) Your draft cohort default rate and the loan record detail report are not considered public information and may not be otherwise voluntarily released by a data manager.

(4) Any challenge you submit under this section and any response provided by a data manager must be in a format acceptable to us. This acceptable format is described in the "Cohort Default Rate Guide" that we provide to you. If your challenge does not comply with the requirements in the "Cohort Default Rate Guide," we may deny your challenge.

(b) *Incorrect data challenges.* (1) You may challenge the accuracy of the data included on the loan record detail report by sending a challenge to the relevant data manager, or data managers, within 45 days after you receive the data. Your challenge must include—

(i) A description of the information in the loan record detail report that you believe is incorrect; and

(ii) Documentation that supports your contention that the data are incorrect.

(2) Within 30 days after receiving your challenge, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation that supports the data manager's position.

(3) If your data manager concludes that draft data in the loan record detail report are incorrect, and we agree, we use the corrected data to calculate your cohort default rate.

(4) If you fail to challenge the accuracy of data under this section, you cannot contest the accuracy of those data in an uncorrected data adjustment, under § 668.190, or in an erroneous data appeal, under § 668.192.

(c) *Participation rate index challenges.* (1)(i) You may challenge an anticipated loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than 0.06015.

(ii) You may challenge an anticipated loss of eligibility under § 668.187(a)(2), based on 3 cohort default rates of 25 percent or greater, if your participation rate index is equal to or less than 0.0375 for any of those 3 cohorts' fiscal years.

(2) For a participation rate index challenge, your participation rate index is calculated as described in § 668.195(b), except that—

(i) The draft cohort default rate is considered to be your most recent cohort default rate; and

(ii) If the cohort used to calculate your draft cohort default rate included fewer than 30 borrowers, you may calculate your participation rate index for that fiscal year using either your most recent draft cohort default rate or the average rate that would be calculated for that fiscal year, using the method described in § 668.183(d)(2).

(3) You must send your participation rate index challenge, including all

supporting documentation, to us within 45 days after you receive your draft cohort default rate.

(4) We notify you of our determination on your participation rate index challenge before your official cohort default rate is published.

(5) If we determine that you qualify for continued eligibility based on your participation rate index challenge, you will not lose eligibility under § 668.187 when your next official cohort default rate is published. A successful challenge that is based on your draft cohort default rate does not excuse you from any other loss of eligibility. However, if your successful challenge of a loss of eligibility under paragraph (c)(1)(ii) of this section is based on a prior, official cohort default rate, and not on your draft cohort default rate, we also excuse you from any subsequent loss of eligibility, under § 668.187(a)(2), that would be based on that official cohort default rate.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.186 Notice of your official cohort default rate.

(a) We notify you of your cohort default rate after we calculate it. After we send our notice to you, we publish a list of cohort default rates for all institutions.

(b) If your cohort default rate is 10 percent or more, we include a copy of the loan record detail report with the notice.

(c) If your cohort default rate is less than 10 percent—

(1) You may request a copy of the loan record detail reports that list loans included in your cohort default rate calculation; and

(2) If you are requesting an adjustment or appealing under this subpart, your request for a copy of the loan record detail report or reports must be sent to us within 15 days after you receive the notice of your cohort default rate.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.187 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.

(a) *End of participation.* (1) Except as provided in paragraph (f) of this section, you lose your eligibility to participate in the FFEL and Direct Loan programs 30 days after you receive our notice that your most recent cohort default rate is greater than 40 percent.

(2) Except as provided in paragraphs (e) and (f) of this section, you lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs 30 days after you receive our notice that your 3 most recent cohort default rates are each 25 percent or greater.

(b) *Length of period of ineligibility.* Your loss of eligibility under this section continues—

(1) For the remainder of the fiscal year in which we notify you that you are subject to a loss of eligibility; and

(2) For the next 2 fiscal years.

(c) *Using a cohort default rate more than once.* The use of a cohort default rate as a basis for a loss of eligibility under this section does not preclude its use as a basis for—

(1) Any concurrent or subsequent loss of eligibility under this section; or

(2) Any other action by us.

(d) *Special institutions.* If you are a special institution that satisfies the requirements for continued eligibility under § 668.198, you are not subject to any loss of eligibility under this section or to provisional certification under § 668.16(m).

(e) *Continuing participation in Pell.* If you are subject to a loss of eligibility under paragraph (a)(2) of this section, based on 3 cohort default rates of 25 percent or greater, you may continue to participate in the Federal Pell Grant Program if we determine that you—

(1) Were ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and your eligibility was not reinstated;

(2) Requested in writing, before October 7, 1998, to withdraw your participation in the FFEL and Direct Loan programs, and you were not later reinstated; or

(3) Have not certified an FFELP loan or originated a Direct Loan Program loan on or after July 7, 1998.

(f) *Requests for adjustments and appeals.* (1) A loss of eligibility under this section does not take effect while your request for adjustment or appeal, as listed in § 668.189(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility continued under paragraph (f)(1) of this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify you for continued eligibility under § 668.189. Loss of eligibility takes effect on the date that you receive notice of our determination on your last pending request for adjustment or appeal.

(3) You do not lose eligibility under this section if we determine that your request for adjustment or appeal meets all requirements of this subpart and qualifies you for continued eligibility under § 668.189.

(4) To avoid liabilities you might otherwise incur under paragraph (g) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.

(g) *Liabilities during the adjustment or appeal process.* If you continued to participate in the FFEL or Direct Loan Program under paragraph (f)(1) of this section, and we determine that none of your requests for adjustments or appeals qualify you for continued eligibility—

(1) For any FFEL or Direct Loan Program loan that you certified and delivered or originated and disbursed more than 30 days after you received the notice of your cohort default rate, we estimate the amount of interest, special allowance, reinsurance, and any related or similar payments we make or are obligated to make on those loans;

(2) We exclude from this estimate any amount attributable to funds that you delivered or disbursed more than 45 days after you submitted your completed appeal to us;

(3) We notify you of the estimated amount; and

(4) Within 45 days after you receive our notice of the estimated amount, you must pay us that amount, unless—

(i) You file an appeal under the procedures established in subpart H of this part (for the purposes of subpart H of this part, our notice of the estimate is considered to be a final program review determination); or

(ii) We permit a longer repayment period.

(h) *Regaining eligibility.* If you lose your eligibility to participate in a program under this section, you may not participate in that program until—

(1) The period described in paragraph (b) of this section has ended;

(2) You pay any amount owed to us under this section or are meeting that obligation under an agreement acceptable to us;

(3) You submit a new application for participation in the program;

(4) We determine that you meet all of the participation requirements in effect at the time of your application; and

(5) You and we enter into a new program participation agreement.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.188 Preventing evasion of the consequences of cohort default rates.

(a) *General.* Unless you are a special institution complying with § 668.198, you are subject to a loss of eligibility that has already been imposed against another institution under § 668.187 if—

(1) You and the ineligible institution are both parties to a transaction that

results in a change of ownership, a change in control, a merger, a consolidation, an acquisition, a change of name, a change of address, any change that results in a location becoming a freestanding institution, a purchase or sale, a transfer of assets, an assignment, a change of identification number, a contract for services, an addition or closure of one or more locations or branches or educational programs, or any other change in whole or in part in institutional structure or identity;

(2) Following the change described in paragraph (a)(1) of this section, you offer an educational program at substantially the same address at which the ineligible institution had offered an educational program before the change; and

(3) There is a commonality of ownership or management between you and the ineligible institution, as the ineligible institution existed before the change.

(b) *Commonality of ownership or management.* For the purposes of this section, a commonality of ownership or management exists if, at each institution, the same person (as defined in 34 CFR 600.31) or members of that person's family, directly or indirectly—

(1) Holds or held a managerial role; or

(2) Has or had the ability to affect substantially the institution's actions, within the meaning of 34 CFR 600.21.

(c) *Teach-outs.* Notwithstanding paragraph (b)(1) of this section, a commonality of management does not exist if you are conducting a teach-out and—

(1)(i) Within 60 days after the change described in this section, you send us the names of the managers for each facility undergoing the teach-out as it existed before the change and for each facility as it exists after you believe that the commonality of management has ended; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended; or

(2)(i) Within 30 days after you receive our notice that we have denied your submission under paragraph (c)(1)(i) of this section, you make the management changes we request and send us a list of the names of the managers for each facility undergoing the teach-out as it exists after you make those changes; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended.

(d) *Initial determination.* We encourage you to contact us before undergoing a change described in this section. If you contact us and provide the information we request, we will provide an initial determination of the anticipated change's effect on your eligibility.

(e) *Notice of accountability.* (1) We notify you in writing if, in response to your notice or application filed under 34 CFR 600.20 or 600.21, we determine that you are subject to a loss of eligibility, under paragraph (a) of this section, that has been imposed against another institution.

(2) Our notice also advises you of the scope and duration of your loss of eligibility. The loss of eligibility applies to all of your locations from the date you receive our notice until the expiration of the period of ineligibility applicable to the other institution.

(3) If you are subject to a loss of eligibility under this section that has already been imposed against another institution, you may only request an adjustment or submit an appeal for the loss of eligibility under the same requirements that would be applicable to the other institution under § 668.189.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.189 General requirements for adjusting official cohort default rates and for appealing their consequences.

(a) *Remaining eligible.* You do not lose eligibility under § 668.187 if—

(1) We recalculate your cohort default rate, and it is below the percentage threshold for the loss of eligibility as the result of—

(i) An uncorrected data adjustment submitted under this section and § 668.190;

(ii) A new data adjustment submitted under this section and § 668.191;

(iii) An erroneous data appeal submitted under this section and § 668.192; or

(iv) A loan servicing appeal submitted under this section and § 668.193; or

(2) You meet the requirements for—

(i) An economically disadvantaged appeal submitted under this section and § 668.194;

(ii) A participation rate index appeal submitted under this section and § 668.195;

(iii) An average rates appeal submitted under this section and § 668.196; or

(iv) A thirty-or-fewer borrowers appeal submitted under this section and § 668.197.

(b) *Limitations on your ability to dispute your cohort default rate.* (1) You may not dispute the calculation of a cohort default rate except as described in this subpart.

(2) You may not request an adjustment or appeal a cohort default rate, under § 668.190, § 668.191, § 668.192, or § 668.193, more than once.

(3) You may not request an adjustment or appeal a cohort default rate, under § 668.190, § 668.191, § 668.192, or § 668.193, if you previously lost your eligibility to participate in a Title IV, HEA program, under § 668.187, based entirely or partially on that cohort default rate.

(c) *Content and format of requests for adjustments and appeals.* We may deny your request for adjustment or appeal if it does not meet the following requirements:

(1) All appeals, notices, requests, independent auditor's opinions, management's written assertions, and other correspondence that you are required to send under this subpart must be complete, timely, accurate, and in a format acceptable to us. This acceptable format is described in the "Cohort Default Rate Guide" that we provide to you.

(2) Your completed request for adjustment or appeal must include—

(i) All of the information necessary to substantiate your request for adjustment or appeal; and

(ii) A certification by your chief executive officer, under penalty of perjury, that all the information you provide is true and correct.

(d) *Our copies of your correspondence.* Whenever you are required by this subpart to correspond with a party other than us, you must send us a copy of your correspondence within the same time deadlines. However, you are not required to send us copies of documents that you received from us originally.

(e) *Requirements for data managers' responses.* (1) Except as otherwise provided in this subpart, if this subpart requires a data manager to correspond with any party other than us, the data manager must send us a copy of the correspondence within the same time deadlines.

(2) Any correspondence sent to us by a data manager under this subpart should be in a format acceptable to us.

(f) *Our decision on your request for adjustment or appeal.* (1) We determine whether your request for an adjustment or appeal is in compliance with this subpart.

(2) In making our decision for an adjustment, under § 668.190 or § 668.191, or an appeal, under § 668.192 or § 668.193—

(i) We presume that the information provided to you by a data manager is correct unless you provide substantial evidence that shows the information is not correct; and

(ii) If we determine that a data manager did not provide the necessary clarifying information or legible records in meeting the requirements of this subpart, we presume that the evidence that you provide to us is correct unless it is contradicted or otherwise proven to be incorrect by information we maintain.

(3) Our decision is based on the materials you submit under this subpart. We do not provide an oral hearing.

(4) We notify you of our decision—

(i) If you request an adjustment or appeal because you are subject to a loss of eligibility under § 668.187, within 45 days after we receive your completed request for an adjustment or appeal; or

(ii) In all other cases, except for appeals submitted under § 668.192(a) to avoid provisional certification, before we notify you of your next official cohort default rate.

(5) You may not seek judicial review of our determination of a cohort default rate until we issue our decision on all pending requests for adjustments or appeals for that cohort default rate.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.190 Uncorrected data adjustments.

(a) *Eligibility.* You may request an uncorrected data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if in response to your challenge under § 668.185(b), a data manager agreed correctly to change the data, but the changes are not reflected in your official cohort default rate.

(b) *Deadlines for requesting an uncorrected data adjustment.* (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

(2) You must send us a request for an uncorrected data adjustment, including all supporting documentation, within 30 days after you receive your loan record detail report from us.

(c) *Determination.* We recalculate your cohort default rate, based on the corrected data, if we determine that—

(1) In response to your challenge under § 668.185(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) of this section are not reflected in your official cohort default rate; and

(3) We agree that the data are incorrect.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.191 New data adjustments.

(a) *Eligibility.* You may request a new data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if—

(1) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed; and

(2) You identify errors in the data described in paragraph (a)(1) of this section that are confirmed by the data manager.

(b) *Deadlines for requesting a new data adjustment.* (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

(2) You must send the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(3) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(4) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request under paragraph (b)(3) of this section.

(5) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(6) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(7) You must send us your completed request for a new data adjustment, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request or requests; or

(ii) If you are also filing an erroneous data appeal or a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(7)(i) of this section or in § 668.192(b)(6)(i) or § 668.193(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.192 Erroneous data appeals.

(a) *Eligibility.* Except as provided in § 668.189(b), you may appeal the calculation of a cohort default rate upon which a loss of eligibility, under § 668.187, or provisional certification, under § 668.16(m), is based if—

(1) You dispute the accuracy of data that you previously challenged on the basis of incorrect data, under § 668.185(b); or

(2) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed.

(b) *Deadlines for submitting an appeal.* (1) You must send a request for verification of data errors to the relevant data manager, or data managers, and to us within 15 days after you receive the notice of your loss of eligibility or provisional certification. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error.

(2) Within 20 days after receiving your request for verification of data errors, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for verification of that loan's data errors. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error. We respond to your request under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or

clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send your completed appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request; or

(ii) If you are also requesting a new data adjustment or filing a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.191(b)(7)(i) or § 668.193(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.193 Loan servicing appeals.

(a) *Eligibility.* Except as provided in § 668.189(b), you may appeal, on the basis of improper loan servicing or collection, the calculation of—

(1) Your most recent cohort default rate; or

(2) Any cohort default rate upon which a loss of eligibility under § 668.187 is based.

(b) *Improper loan servicing.* For the purposes of this section, a default is considered to have been due to improper loan servicing or collection only if the borrower did not make a payment on the loan and you prove that the FFEL Program lender or the Direct Loan Servicer, as defined in 34 CFR 685.102, failed to perform one or more of the following activities, if that activity applies to the loan:

(1) Send at least one letter (other than the final demand letter) urging the borrower to make payments on the loan;

(2) Attempt at least one phone call to the borrower;

(3) Send a final demand letter to the borrower;

(4) For a Direct Loan Program loan only, document that skip tracing was performed if the Direct Loan Servicer determined that it did not have the borrower's current address; and

(5) For an FFELP loan only—

(i) Submit a request for preclaims or default aversion assistance to the guaranty agency; and

(ii) Submit a certification or other documentation that skip tracing was performed to the guaranty agency.

(c) *Deadlines for submitting an appeal.* (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

(2) You must send a request for loan servicing records to the relevant data manager, or data managers, and to us within 15 days after you receive your loan record detail report from us. If the data manager is a guaranty agency, your request must include a copy of the list of students that we provided to you.

(3) Within 20 days after receiving your request for loan servicing records, the data manager must—

(i) Send you and us a list of the borrowers in your representative sample, as described in paragraph (d) of this section (the list must be in social security number order, and it must include the number of defaulted loans included in the cohort for each listed borrower);

(ii) Send you and us a description of how your representative sample was chosen; and

(iii) Either send you copies of the loan servicing records for the borrowers in your representative sample and send us a copy of its cover letter indicating that the records were sent, or send you and us a notice of the amount of its fee for providing copies of the loan servicing records.

(4) The data manager may charge you a reasonable fee for providing copies of loan servicing records, but it may not charge more than $10 per borrower file. If a data manager charges a fee, it is not required to send the documents to you until it receives your payment of the fee.

(5) If the data manager charges a fee for providing copies of loan servicing records, you must send payment in full to the data manager within 15 days after you receive the notice of the fee.

(6) If the data manager charges a fee for providing copies of loan servicing records, and—

(i) You pay the fee in full and on time, the data manager must send you, within 20 days after it receives your payment, a copy of all loan servicing records for each loan in your representative sample (the copies are provided to you in hard copy format unless the data manager and you agree that another format may be used), and it must send us a copy of its cover letter indicating that the records were sent; or

(ii) You do not pay the fee in full and on time, the data manager must notify you and us of your failure to pay the fee and that you have waived your right to challenge the calculation of your cohort default rate based on the data manager's records. We accept that determination unless you prove that it is incorrect.

(7) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for the loan servicing records for that loan. We respond to your request under paragraph (c)(3) of this section.

(8) Within 15 days after receiving incomplete or illegible records, you must send a request for replacement records to the data manager and us.

(9) Within 20 days after receiving your request for replacement records, the data manager must either—

(i) Replace the missing or illegible records; or

(ii) Notify you and us that no additional or improved copies are available.

(10) You must send your appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request for loan servicing records; or

(ii) If you are also requesting a new data adjustment or filing an erroneous data appeal, by the latest of the filing dates required in paragraph (c)(10)(i) of this section or in § 668.191(b)(7)(i) or § 668.192(b)(6)(i).

(d) *Representative sample of records.* (1) To select a representative sample of records, the data manager first identifies all of the borrowers for whom it is responsible and who had loans that were considered to be in default in the calculation of the cohort default rate you are appealing. However, for the purposes of this paragraph, the data manager does not identify a borrower as defaulted due to repayment under the Direct Loan Program's income contingent repayment plan, under § 668.183(c)(1)(iii).

(2) From the group of borrowers identified under paragraph (d)(1) of this section, the data manager identifies a sample that is large enough to derive an estimate, acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval, for use in determining the number of borrowers who should be excluded from the calculation of the cohort default rate due to improper loan servicing or collection.

(e) *Loan servicing records.* Loan servicing records are the collection and payment history records—

(1) Provided to the guaranty agency by the lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan; or

(2) Maintained by our Direct Loan Servicer that are used in determining your cohort default rate.

(f) *Determination.* (1) We determine the number of loans, included in your representative sample of loan servicing records, that defaulted due to improper loan servicing or collection, as described in paragraph (b) of this section.

(2) Based on our determination, we use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of your cohort default rate.

(3) Our recalculation of your cohort default rate does not affect the number of borrowers who are considered to be in default due to payments made under the Direct Loan Program's income contingent repayment plan, under the criteria in § 668.183(c)(1)(iii).

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.194 Economically disadvantaged appeals.

(a) *Eligibility.* As described in this section, you may appeal a notice of a loss of eligibility under § 668.187 if an independent auditor's opinion certifies that your low income rate is two-thirds or more and—

(1) You offer an associate, baccalaureate, graduate, or professional degree, and your completion rate is 70 percent or more; or

(2) You do not offer an associate, baccalaureate, graduate, or professional degree, and your placement rate is 44 percent or more.

(b) *Low income rate.* (1) Your low income rate is the percentage of your students, as described in paragraph (b)(2) of this section, who—

(i) For an award year that overlaps the 12-month period selected under paragraph (b)(2) of this section, have an expected family contribution, as defined in 34 CFR 690.2, that is equal to or less than the largest expected family contribution that would allow a student to receive one-half of the maximum Federal Pell Grant award, regardless of the student's enrollment status or cost of attendance; or

(ii) For a calendar year that overlaps the 12-month period selected under paragraph (b)(2) of this section, have an adjusted gross income that, when added to the adjusted gross income of the student's parents (if the student is a dependent student) or spouse (if the student is a married independent student), is less than the amount listed in the Department of Health and Human Services poverty guidelines for the size of the student's family unit.

(2) The students who are used to determine your low income rate include only students who were enrolled on at least a half-time basis in an eligible program at your institution during any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year.

(c) *Completion rate.* (1) Your completion rate is the percentage of your students, as described in paragraph (c)(2) of this section, who—

(i) Completed the educational programs in which they were enrolled;

(ii) Transferred from your institution to a higher level educational program;

(iii) Remained enrolled and are making satisfactory progress toward completion of their educational programs at the end of the same 12-month period used to calculate the low income rate; or

(iv) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) The students who are used to determine your completion rate include only regular students who were—

(i) Initially enrolled on a full-time basis in an eligible program; and

(ii) Originally scheduled to complete their programs during the same 12-month period used to calculate the low income rate.

(d) *Placement rate.* (1) Except as provided in paragraph (d)(2) of this section. your placement rate is the percentage of your students, as described in paragraphs (d)(3) and (d)(4) of this section, who—

(i) Are employed, in an occupation for which you provided training, on the date following 1 year after their last date of attendance at your institution;

(ii) Were employed for at least 13 weeks, in an occupation for which you provided training, between the date they enrolled at your institution and the first date that is more than a year after their last date of attendance at your institution; or

(iii) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) For the purposes of this section, a former student is not considered to have been employed based on any employment by your institution.

(3) The students who are used to determine your placement rate include only former students who—

(i) Were initially enrolled in an eligible program on at least a half-time basis;

(ii) Were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period used to calculate the low income rate; and

(iii) Remained in the program beyond the point at which a student would have received a 100 percent tuition refund from you.

(4) A student is not included in the calculation of your placement rate if that student, on the date that is 1 year after the student's originally scheduled completion date, remains enrolled in the same program and is making satisfactory progress.

(e) *Scheduled to complete.* In calculating a completion or placement rate under this section, the date on which a student is originally scheduled to complete a program is based on—

(1) For a student who is initially enrolled full-time, the amount of time specified in your enrollment contract, catalog, or other materials for completion of the program by a full-time student; or

(2) For a student who is initially enrolled less than full-time, the amount of time that it would take the student to complete the program if the student remained at that level of enrollment throughout the program.

(f) *Deadline for submitting an appeal.* (1) Within 30 days after you receive the notice of your loss of eligibility, you must send us your management's written assertion, as described in the Cohort Default Rate Guide.

(2) Within 60 days after you receive the notice of your loss of eligibility, you must send us the independent auditor's opinion described in paragraph (g) of this section.

(g) *Independent auditor's opinion.* (1) The independent auditor's opinion must state whether your management's written assertion, as you provided it to the auditor and to us, meets the requirements for an economically disadvantaged appeal and is fairly stated in all material respects.

(2) The engagement that forms the basis of the independent auditor's opinion must be an examination-level compliance attestation engagement performed in accordance with—

(i) The American Institute of Certified Public Accountant's (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended; and

(ii) Government Auditing Standards issued by the Comptroller General of the United States.

(h) *Determination.* You do not lose eligibility under § 668.187 if—

(1) Your independent auditor's opinion agrees that you meet the requirements for an economically disadvantaged appeal; and

(2) We determine that the independent auditor's opinion and your management's written assertion—

(i) Meet the requirements for an economically disadvantaged appeal; and

(ii) Are not contradicted or otherwise proven to be incorrect by information we maintain, to an extent that would render the independent auditor's opinion unacceptable.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.195 Participation rate index appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than 0.06015.

(2) You may appeal a notice of a loss of eligibility under § 668.187(a)(2), based on 3 cohort default rates of 25 percent or greater, if your participation rate index is equal to or less than 0.0375 for any of those 3 cohorts' fiscal years.

(b) *Calculating your participation rate index.* (1) Except as provided in paragraph (b)(2) of this section, your participation rate index for a fiscal year is determined by multiplying your cohort default rate for that fiscal year by the percentage that is derived by dividing—

(i) The number of students who received an FFELP or a Direct Loan Program loan to attend your institution during a period of enrollment, as defined in 34 CFR 682.200 or 685.102, that overlaps any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year, by

(ii) The number of regular students who were enrolled at your institution on at least a half-time basis during any part of the same 12-month period.

(2) If your cohort default rate for a fiscal year is calculated as an average rate under § 668.183(d)(2), you may calculate your participation rate index for that fiscal year using either that average rate or the cohort default rate that would be calculated for the fiscal year alone using the method described in § 668.183(d)(1).

(c) *Deadline for submitting an appeal.* You must send us your appeal under this section, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(d) *Determination.* (1) You do not lose eligibility under § 668.187 if we determine that you meet the requirements for a participation rate index appeal.

(2) If we determine that your participation rate index for a fiscal year is equal to or less than 0.0375, under paragraph (d)(1) of this section, we also excuse you from any subsequent loss of eligibility under § 668.187(a)(2) that would be based on the official cohort default rate for that fiscal year.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.196 Average rates appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if that cohort default rate is calculated as an average rate under § 668.183(d)(2).

(2) You may appeal a notice of a loss of eligibility under § 668.187(a)(2), based on 3 cohort default rates of 25 percent or greater, if at least 2 of those cohort default rates—

(i) Are calculated as average rates under § 668.183(d)(2); and

(ii) Would be less than 25 percent if calculated for the fiscal year alone using the method described in § 668.183(d)(1).

(b) *Deadline for submitting an appeal.* (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for an average rates appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your average rates appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* You do not lose eligibility under § 668.187 if we determine that you meet the requirements for an average rates appeal.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.197 Thirty-or-fewer borrowers appeals.

(a) *Eligibility.* You may appeal a notice of a loss of eligibility under § 668.187 if 30 or fewer borrowers, in total, are included in the 3 most recent cohorts of borrowers used to calculate your cohort default rates.

(b) *Deadline for submitting an appeal.* (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for a thirty-or-fewer borrowers appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your thirty-or-fewer borrowers appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* You do not lose eligibility under § 668.187 if we determine that you meet the requirements for a thirty-or-fewer borrowers appeal.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.198 Relief from the consequences of cohort default rates for special institutions.

(a) *Eligibility.* You are only eligible for relief from the consequences of cohort default rates under this section if you are a—

(1) Historically black college or university as defined in section 322(2) of the HEA;

(2) Tribally controlled community college as defined in section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978; or

(3) Navajo community college under the Navajo Community College Act.

(b) *Applicability of requirements.* We may determine that the loss of eligibility provisions in § 668.187 and the prohibition against full certification in § 668.16(m) do not apply to you for each 1-year period beginning on July 1 of 1999, 2000, or 2001, if you meet the requirements in paragraph (a) of this section and you send us—

(1) By July 1 of the first 1-year period that begins after you receive our notice of a loss of eligibility under § 668.187—

(i) A default management plan; and

(ii) A certification that you have engaged an independent third party, as described in this section; and

(2) By July 1 of each subsequent 1-year period—

(i) Evidence that you have implemented your default management plan during the preceding 1-year period;

(ii) Evidence that you have made substantial improvement in the preceding 1-year period in your cohort default rate; and

(iii) A certification that you continue to engage an independent third party, as described in this section.

(c) *Default management plan.* (1) Your default management plan must provide reasonable assurance that you will, no later than July 1, 2002, have a cohort default rate that is less than 25 percent. Measures that you must take to provide this assurance include but are not limited to—

(i) Establishing a default management team by engaging your chief executive officer and relevant senior executive officials and enlisting the support of representatives from offices other than the financial aid office;

(ii) Identifying and allocating the personnel, administrative, and financial

resources appropriate to implement the default management plan;

(iii) Defining the roles and responsibilities of the independent third party;

(iv) Defining evaluation methods and establishing a data collection system for measuring and verifying relevant default management statistics, including a statistical analysis of the borrowers who default on their loans;

(v) Establishing annual targets for reductions in your cohort default rate; and

(vi) Establishing a process to ensure the accuracy of your cohort default rate.

(2) We will determine whether your default management plan is acceptable, after considering your history, resources, dollars in default, and targets for default reduction in making this determination.

(3) If we determine that your proposed default management plan is unacceptable, you must consult with us to develop a revised plan and submit the revised plan to us within 30 days after you receive our notice that your proposed plan is unacceptable.

(4) If we determine, based on the evidence you submit under paragraph (b)(2) of this section, that your default management plan is no longer acceptable, you must develop a revised plan in consultation with us and submit the revised plan to us within 60 days after you receive our notice that your plan is no longer acceptable.

(5) A sample default management plan is provided in appendix B to this subpart. The sample is included to illustrate components of an acceptable default management plan. Since institutions' family income profiles, student borrowing patterns, histories, resources, dollars in default, and targets for default reduction are different, you must consider your own, individual circumstances in developing and submitting your plan.

(d) *Independent third party.* (1) An independent third party may be any individual or entity that—

(i) Provides technical assistance in developing and implementing your default management plan; and

(ii) Is not substantially controlled by a person who also exercises substantial control over your institution.

(2) An independent third party need not be paid by you for its services.

(3) The services of a lender, guaranty agency, or secondary market as an independent third party under this section are not considered to be inducements under 34 CFR 682.200 or 682.401(e).

(e) *Substantial improvement.* (1) For the purposes of this section, your substantial improvement is determined based on—

(i) A reduction in your most recent draft or official cohort default rate;

(ii) An increase in the percentage of delinquent borrowers who avoid default by using deferments, forbearances, and job placement assistance;

(iii) An increase in the academic persistence of student borrowers;

(iv) An increase in the percentage of students pursuing graduate or professional study;

(v) An increase in the percentage of borrowers for whom a current address is known;

(vi) An increase in the percentage of delinquent borrowers that you contacted;

(vii) The implementation of alternative financial aid award policies and development of financial resources that reduce the need for student borrowing; or

(viii) An increase in the percentage of accurate and timely enrollment status changes that you submitted to the National Student Loan Data System (NSLDS) on the Student Status Confirmation Report (SSCR).

(2) When making a determination of your substantial improvement, we consider your performance in light of—

(i) Your history, resources, dollars in default, and targets for default reduction;

(ii) Your level of effort in meeting the terms of your approved default management plan during the previous 1-year period; and

(iii) Any other mitigating circumstance at your institution during the 1-year period.

(f) *Determination.* (1) If we determine that you are in compliance with this section, the provisions of §§ 668.187 and 668.16(m) do not apply to you for that 1-year period, beginning on July 1 of 1999, 2000, or 2001.

(2) If we determine that you are not in compliance with this section, you are subject to the provisions of §§ 668.187 and 668.16(m). You lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs on the date you receive our notice of the determination.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

Appendix A to Subpart M of Part 668—Summaries of Eligibility and Submission Requirements for Challenges, Adjustments, and Appeals

I. Summary of Submission Eligibility

Some types of appeals may be submitted only if you are subject to a loss of eligibility under § 668.187 or to provisional certification under § 668.16(m). These types of appeals are identified in the following table.

		§668	If you meet all other requirements, you may submit... Always	Only if subject to loss of eligibility
Draft Cohort Default Rate	Incorrect Data Challenges	.185(b)	X	
	Participation Rate Index Challenges	.185(c)	X	
Official Cohort Default Rate	Uncorrected Data Adjustments	.190	X	
	New Data Adjustments	.191	X	
	Erroneous Data Appeals	.192		X*
	Loan Servicing Appeals	.193	X	
	Economically Disadvantaged Appeals	.194		X
	Participation Rate Index Appeals	.195		X
	Average Rates Appeals	.196		X
	Thirty-or-Fewer Borrowers Appeals	.197		X

* You may also submit an erroneous data appeal if you are subject to provisional certification under §668.16(m).

II. Summary of Submission Deadlines

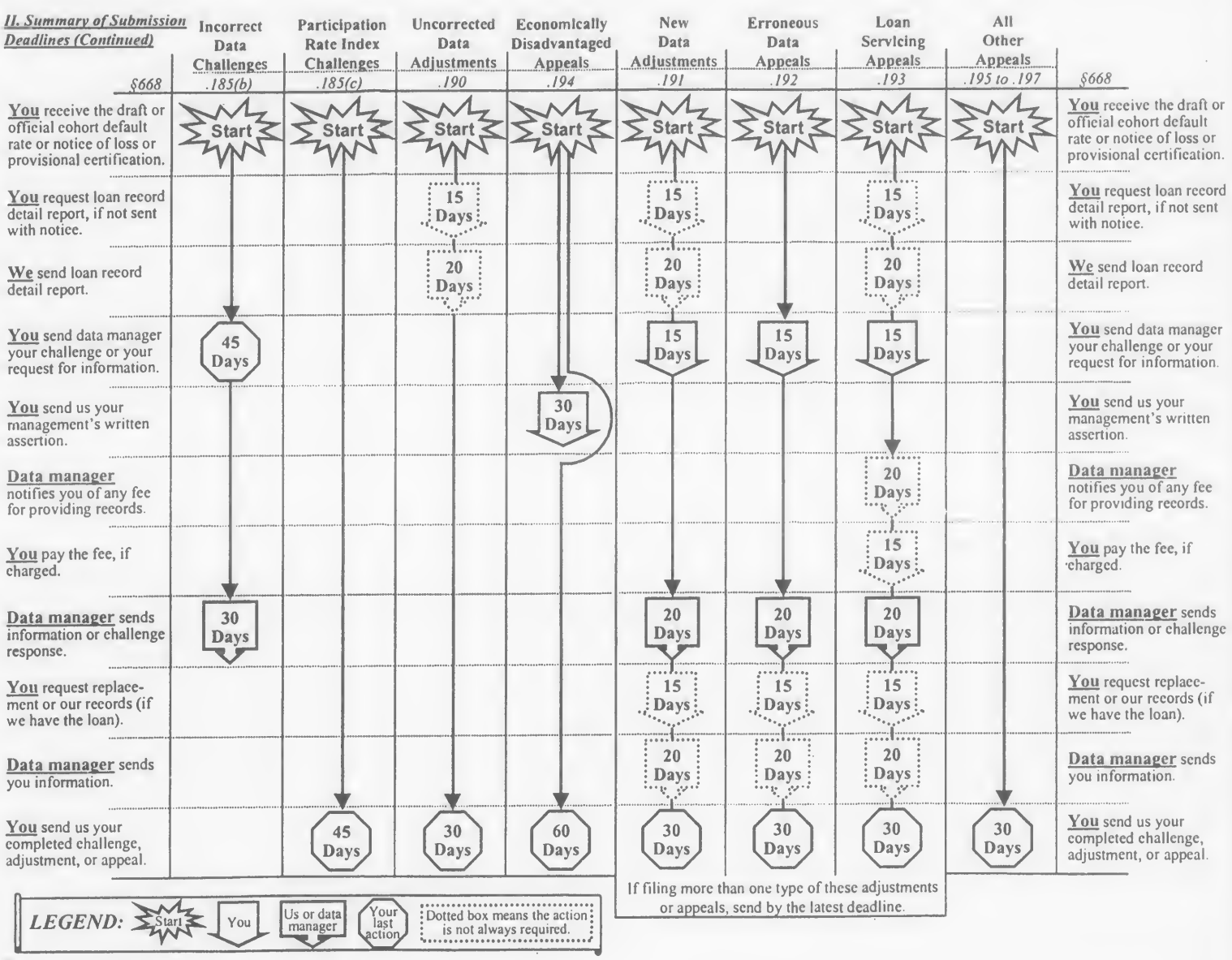
The deadlines you must meet when submitting a challenge, requesting an adjustment, or appealing are summarized in the following table. The full, official requirements for these deadlines are in § 668.189 and in the text cited in the table. Also, in the table—

1. "Days" means the number of *calendar* days within which the action must be performed.

2. Any timeframe that is directly connected by a line to the "Start", at the top of the table, begins when you receive your draft cohort default rate, official cohort default rate, notice of loss of eligibility, or notice of provisional certification. All other timeframes begin when you receive the response to your pending request, except that—

(i) If you are waiting for responses from more than one data manager, your next timeframe begins when you receive the final response from the last data manager; and

(ii) If you do not need to perform an action, the starting date for your next timeframe is based on the last action that was actually performed. (Actions that aren't always required have dotted borders.)


II. Summary of Submission Deadlines (Continued)
Incorrect Data Challenges
Participation Rate Index Challenges
Uncorrected Data Adjustments
Economically Disadvantaged Appeals
New Data Adjustments
Erroneous Data Appeals
Loan Servicing Appeals
All Other Appeals
§668
.185(b)
.185(c)
.190
.194
.191
.192
.193
.195 to .197
§668
You receive the draft or official cohort default rate or notice of loss or provisional certification.
Start
You request loan record detail report, if not sent with notice.
15 Days
We send loan record detail report.
20 Days
You send data manager your challenge or your request for information.
45 Days
15 Days
You send us your management's written assertion.
30 Days
Data manager notifies you of any fee for providing records.
20 Days
You pay the fee, if charged.
15 Days
Data manager sends information or challenge response.
30 Days
You request replacement or our records (if we have the loan).
Data manager sends you information.
You send us your completed challenge, adjustment, or appeal.
45 Days
60 Days
If filing more than one type of these adjustments or appeals, send by the latest deadline.
LEGEND:
Start
You
Us or data manager
Your last action
Dotted box means the action is not always required.

Appendix B to Subpart M of Part 668—Sample Default Management Plan for Special Institutions To Use When Complying With § 668.198.

This appendix is provided as a sample plan for those institutions developing a default management plan in accordance with § 668.198. It describes some measures you may find helpful in reducing the number of students that default on federally funded loans. These are not the only measures you could implement when developing a default management plan. In developing a default management plan, you must consider your history, resources, dollars in default, and targets for default reduction to determine which activities will result in the most benefit to your students and to you.

I. Core Default Reduction Strategies (from § 668.198(c)(1))

1. Establish a default management team by engaging your chief executive officer and relevant senior executive officials and enlisting the support of representatives from offices other than the financial aid office.
2. Identify and allocate the personnel, administrative, and financial resources appropriate to implement the default management plan.
3. Define the roles and responsibilities of the independent third party.
4. Define evaluation methods and establish a data collection system for measuring and verifying relevant default management statistics, including a statistical analysis of the borrowers who default on their loans.
5. Establish annual targets for reductions in your rate.
6. Establish a process to ensure the accuracy of your rate.

II. Additional Default Reduction Strategies

1. Enhance the borrower's understanding of his or her loan repayment responsibilities through counseling and debt management activities.
2. Enhance the enrollment retention and academic persistence of borrowers through counseling and academic assistance.
3. Maintain contact with the borrower after he or she leaves your institution by using activities such as skip tracing to locate the borrower.
4. Track the borrower's delinquency status by obtaining reports from data managers and FFEL Program lenders.
5. Enhance student loan repayments through counseling the borrower on loan repayment options and facilitating contact between the borrower and the data manager or FFEL Program lender.
6. Assist a borrower who is experiencing difficulty in finding employment through career counseling, job placement assistance, and facilitating unemployment deferments.
7. Identify and implement alternative financial aid award policies and develop alternative financial resources that will reduce the need for student borrowing in the first 2 years of academic study.
8. Familiarize the parent, or other adult relative or guardian, with the student's debt profile, repayment obligations, and loan status by increasing, whenever possible, the communication and contact with the parent or adult relative or guardian.

III. Defining the Roles and Responsibilities of Independent Third Party

1. Specifically define the role of the independent third party.
2. Specify the scope of work to be performed by the independent third party.
3. Tie the receipt of payments, if required, to the performance of specific tasks.
4. Assure that all the required work is satisfactorily completed.

IV. Statistics for Measuring Progress

1. The number of students enrolled at your institution during each fiscal year.
2. The average amount borrowed by a student each fiscal year.
3. The number of borrowers scheduled to enter repayment each fiscal year.
4. The number of enrolled borrowers who received default prevention counseling services each fiscal year.
5. The average number of contacts that you or your agent had with a borrower who was in deferment or forbearance or in repayment status during each fiscal year.
6. The number of borrowers at least 60 days delinquent each fiscal year.
7. The number of borrowers who defaulted in each fiscal year.
8. The type, frequency, and results of activities performed in accordance with the default management plan.

13. Appendix A to Part 668 is removed.

14. Appendix B to Part 668 is redesignated as Appendix A to Subpart B of Part 668.

15. Appendix C to Part 668 is redesignated as Appendix B to Subpart B of Part 668.

16. Appendix D to Part 668 is removed.

17. Appendix E to Part 668 is redesignated as Appendix A to Subpart D of Part 668.

18. Appendix F to Part 668 is redesignated as Appendix A to Subpart L of Part 668.

19. Appendix G to Part 668 is redesignated as Appendix B to Subpart L of Part 668.

20. Appendix H to Part 668 is removed.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

21. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

22. In § 682.401, paragraph (b)(15) is revised to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(15) *Guaranty agency verification of default data.* A guaranty agency must meet the requirements and deadlines provided for it in subpart M of 34 CFR part 668 for the cohort default rate process.

* * * * *

23. In § 682.410, paragraph (c)(1)(i)(C) is revised to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(C) Each participating school, located in a State for which the guaranty agency is the principal guaranty agency, that has a cohort default rate, as described in subpart M of 34 CFR part 668, for either of the 2 immediately preceding fiscal years, as defined in 34 CFR 668.182, that exceeds 20 percent, unless the school is under a mandate from the Secretary under subpart M of 34 CFR part 668 to take specific default reduction measures or if the total dollar amount of loans entering repayment in each fiscal year on which the cohort default rate over 20 percent is based does not exceed $100,000; or

* * * * *

24. In § 682.601, paragraph (a)(6) is amended by removing "§ 668.17" and adding, in its place, "subpart M of 34 CFR part 668".

25. In § 682.603, paragraph (g) is amended by removing "an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate" and adding, in its place, "a cohort default rate".

26. Section 682.604 is amended—

A. In paragraphs (c)(5)(i), (c)(5)(ii), (c)(10)(i)(B), and (c)(10)(ii), by removing "an FFEL cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate" and adding, in its place, "a cohort default rate, calculated under subpart M of 34 CFR part 668,".

B. By removing paragraph (f)(3).

C. By redesignating paragraphs (f)(4) and (f)(5) as paragraphs (f)(3) and (f)(4), respectively.

D. By removing paragraph (g)(3).

E. By redesignating paragraphs (g)(4) and (g)(5) as paragraphs (g)(3) and (g)(4), respectively.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

27. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

28. Section 685.301 is amended—

A. In paragraphs (b)(8)(i)(A)(*2*) and (b)(8)(i)(B), by removing "a Direct Loan Program cohort rate, FFEL cohort

default rate, or weighted average cohort rate'' and adding, in its place, ''a cohort default rate, calculated under subpart M of 34 CFR part 668,''.

B. In paragraph (b)(8)(ii), by removing ''an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate'' and adding, in its place, ''a cohort default rate, calculated under subpart M of 34 CFR part 668,''.

29. Section 685.303 is amended—

A. In paragraphs (b)(4)(i)(A) and (b)(4)(i)(B), by removing ''a Direct Loan Program cohort rate, FFEL cohort default rate, or weighted average cohort rate'' and adding, in its place, ''a cohort default rate, calculated under subpart M of 34 CFR part 668,''.

B. In paragraph (b)(4)(ii), by removing ''an FFEL cohort default rate, Direct Loan cohort rate, or weighted average cohort rate'', and adding, in its place, ''a cohort default rate, calculated under subpart M of 34 CFR part 668,''.

30. Section 685.304 is amended—

A. By removing paragraph (a)(4).

B. By redesignating paragraphs (a)(5), (a)(6), and (a)(7) as paragraphs (a)(4), (a)(5), and (a)(6), respectively.

C. By removing paragraph (b)(5).

D. By redesignating paragraphs (b)(6) and (b)(7) as paragraphs (b)(5) and (b)(6), respectively.

PART 690—FEDERAL PELL GRANT PROGRAM

31. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

32. Section 690.7 is amended—

A. In paragraph (c)(1), by removing ''34 CFR 668.17'' and adding, in its place, ''subpart M of 34 CFR part 668''.

B. In paragraph (c)(2), by removing ''34 CFR 668.17(b)'' and adding, in its place, ''34 CFR 668.187'':

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August 2, 2000

Part III

Department of Health and Human Services

Children and Families Administration

Developmental Disabilities: Final Notice of Availability of Financial Assistance and Request for Applications To Support Demonstration Projects Under the Projects of National Significance Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93631–00–03]

Developmental Disabilities: Final Notice of Availability of Financial Assistance and Request for Applications To Support Demonstration Projects Under the Projects of National Significance Program

AGENCY: Administration on Developmental Disabilities (ADD), ACF, DHHS.

ACTION: Invitation to apply for financial assistance.

SUMMARY: The Administration on Developmental Disabilities, Administration for Children and Families, announces that applications are being accepted for funding of Fiscal Year 2000 Projects of National Significance.

This program announcement consists of five parts. Part I, the Introduction, discusses the goals and objectives of ACF and ADD. Part II provides the necessary background information on ADD for applicants. Part III describes the review process. Part IV describes the priority under which ADD requests applications for Fiscal Year 2000 funding of projects. Part V describes in detail how to prepare and submit an application.

Grants will be awarded under this program announcement subject to the availability of funds for support of these activities.

DATES: The closing date for submittal of applications under this announcement is September 1, 2000. Mailed or hand-carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, ACF/Administration on Developmental Disabilities, 370 L'Enfant Promenade SW, Mail Stop 326-HHH, Washington, DC 20447, Attention: Lois Hodge.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, ACF/Administration on Developmental Disabilities, 370 L'Enfant Promendade SW, ACF Mail Center, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "Attention: Lois Hodge". Applicants using express/overnight services should allow two working days prior to the deadline date for receipt of applications. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) Any applications received after 4:30 p.m. on the deadline date will not be considered for competition.

ADD cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ADD electronically will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications which do not meet the criteria above are considered late applications. ADD shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: ADD may extend the deadline for all applicants because of acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. However, if ADD does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

ADDRESSES: Application materials are available from Joan Rucker, 370 L'Enfant Promenade, SW., Rm. 300F, Washington, DC 20447, 202/690–7898, http://www.acf.dhhs.gov/programs/add; or add@acf.dhhs.gov.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families (ACF), Joan Rucker, 370 L'Enfant Promenade, S.W., Rm. 300F, Washington, D.C., 20447, 202/690–7898; or add@acf.dhhs.gov.

Notice of Intent to Submit Application: If you intend to submit an application, please send a post card with the number and title of this announcement, your organization's name and address, and your contact person's name, phone and fax numbers, and e-mail address to: Administration on Developmental Disabilities, 370 L'Enfant Promenade SW., Washington, DC, 20447, Attn: Projects of National Significance.

This information will be used to determine the number of expert reviewers needed and to update the mailing list to whom program announcements are sent.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). Although different from the other ACF program administrations in the specific populations it serves, ADD shares a common set of goals that promote the economic and social well-being of families, children, individuals and communities. Through national leadership, ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned and integrated to improve client access;
- A strong commitment to working with Native Americans, persons with developmental disabilities, refugees and migrants to address their needs, strengths and abilities; and
- A community-based approach that recognizes and expands on the resources and benefits of diversity.

Emphasis on these goals and progress toward them will help more individuals, including people with developmental disabilities, to live productive and independent lives integrated into their communities. The Projects of National Significance Program is one means through which

ADD promotes the achievement of these goals.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs which promote the self-sufficiency and protect the rights of persons with developmental disabilities.

The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000, *et seq.*) (the Act) supports and provides assistance to States and public and private nonprofit agencies and organizations to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, integration and inclusion into the community.

In the Act, Congress expressly found that:

- Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity for independence, productivity, integration and inclusion into the community;
- Individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;
- Individuals with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families;

The Act further established as the policy of the United States:

- Individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, integration and inclusion into the community, and often require the provision of services, supports and other assistance to achieve such;
- Individuals with developmental disabilities have competencies, capabilities and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual;
- Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive; and play decision making roles in policies and programs that affect the lives of such individuals and their families; and
- It is in the nation's interest for people with developmental disabilities to be employed, and to live conventional and independent lives as a part of families and communities.

Toward these ends, ADD seeks: to enhance the capabilities of families in assisting people with developmental disabilities to achieve their maximum potential; to support the increasing ability of people with developmental disabilities to exercise greater choice and self-determination; to engage in leadership activities in their communities; as well as to ensure the protection of their legal and human rights.

The four programs funded under the Act are:

- Federal assistance to State developmental disabilities councils;
- State system for the protection and advocacy of individuals rights;
- Grants to University Affiliated Programs for interdisciplinary training, exemplary services, technical assistance, and information dissemination; and
- Grants for Projects of National Significance.

C. Statutory Authorities Covered Under This Announcement

The Developmental Disabilities Assistance and Bill of Rights Act of 1996, 42 U.S.C. 6000, *et seq.* The Projects of National Significance is Part E of the Developmental Disabilities Assistance and Bill of Rights Act of 1996, 42 U.S.C. 6081, *et seq.*

Part II. Background Information for Applicants

A. Description of Projects of National Significance

Under Part E of the Act, grants and contracts are awarded for projects of national significance that support the development of national and State policy to enhance the independence, productivity, and integration and inclusion of individuals with developmental disabilities through:

- Data collection and analysis;
- Technical assistance to enhance the quality of State developmental disabilities councils, protection and advocacy systems, and university affiliated programs; and
- Other projects of sufficient size and scope that hold promise to expand or improve opportunities for people with developmental disabilities, including:

—Technical assistance for the development of information and referral systems;
—Educating policy makers;
—Federal interagency initiatives;
—The enhancement of participation of minority and ethnic groups in public and private sector initiatives in developmental disabilities;
—Transition of youth with developmental disabilities from school to adult life; and
—Special pilots and evaluation studies to explore the expansion of programs under part B (State developmental disabilities councils) to individuals with severe disabilities other than developmental disabilities.

B. Comments on FY 2000 Proposed Priority Areas

ADD received 21 letters in response to the public comment notice. Commentary was from the following sources:

- Advocacy agencies, including national organizations and associations, national advocacy groups and State/local advocacy groups;
- Service organizations, including agencies that provide services for individuals with developmental disabilities as well as providing advocacy services on behalf of a particular disability, including developmental disabilities councils;
- Educational systems, including schools, colleges, and universities, programs located within a university setting and University Affiliated Programs;
- Private agencies, including national, State, and local nonprofit organizations;
- Government agencies, including Federal, State, county, and local government agencies; and
- Private individuals.

Comments ranged from requests for copies of the final application solicitation, to general support to informative, clarifying responses for this year's proposed funding priorities and recommendations for other priority areas. The vast majority supported and expanded upon what we proposed in the announcement. Other comments relate specifically to the program goals and priorities of the particular agencies that responded to the announcement.

The comments helped highlight the concerns of the developmental disabilities field and have been used in refining the final priority areas.

Comment: Ten letters recommended additional or other funding priorities for FY 2000. Suggestions included projects addressing: recruitment and retention of direct support service staff; waiting lists; adults living with aging parents; aging; child care; transportation; recreation; employment; economic empowerment; self-determination and research issues related to existing PNS projects. Three letters specifically expressed that the proposed areas were not critical areas in their states in the field of developmental disabilities, and did not relate to ADD's efforts in meeting the requirements of the Government Performance and Results Act (GPRA).

Response: ADD appreciates the comments it receives concerning other areas needing attention. Comments refine our understanding of the realities occurring with individuals with developmental disabilities and their families, and are often a sobering reminder of the unfulfilled goals that require our collective attention as a society. The comment process expands our awareness level and provides the basis for new priority areas.

ADD recognizes the need for recruitment and retention of direct support service staff; the elimination of waiting list; the resolution of recreation and transportation issues; the need for economic empowerment, including the use of Indivudial Development Accounts; and the critical impact these and other issues have on the quality of life for people with developmental disabilities. ADD welcomes applications in these and other areas. Such applications would appropriately be submitted under Priority Area 1: Mobilizing for Change/Rapid Deployment of Good Ideas which is open-ended as to subject, issue and topic.

Some of the areas suggested as priorities have been funded previously or are currently funded projects. Employment and the basic supports necessary to perform a job were the objectives of our six natural support projects which ended September, 1996. Strategies for securing first jobs, especially by young people, are two projects that ended in 1998. In June, 1998 ADD was a co-sponsor of the first national forum on careers in the arts and disability and has continued to co-sponsor such activities. In 1997, ADD funded the "National Center on Self-Determination and 21st Century Leadership", a consortium of self-advocacy groups, non-profit organizations and institutions of higher education. The Center was designed to build leadership capacities of people with development disabilities. Additionally, the Center focused on establishing linkages between disability organizations, and organizing national mentorship and consultant networks. The Center developed a clearinghouse on promising self-determination practices and strategies and sponsored a number of summits, forums and teleconferences.

In June, 2000, ADD and the National Council on the Aging co-sponsored a conference/work session on the subject of aging and adult sons and daughters with developmental disabilities living with aging parents. The purpose of the conference was to explore the issues aging parents must face as they continue to provide services to their adult sons and daughters; as well as explore potential resources and examine successful models in the field. Additional information regarding this conference may be obtained by writing to ADD. Additionally, in September, 1999 ADD awarded Family Support Grants to 20 States and 2 territories to develop, implement or enhance family support service system to families of children with disabilities. Several of these projects have goals which support families in planning for a secure future for the aging family member with a developmental disability as well as the aging parent. Finally, nine of ADD's University Affiliated Programs (UAPs) have undertaken projects in the area of Aging. Within ADD's website is a listing of current PNS projects with contact information; other ADD programs can be contacted by using the list contained there.

The majority of comments received were very supportive of the three proposed funding areas; many stated that these Priority Areas offer "incredible opportunities to share information and best practices through a variety of media as well as getting the technology down to the community level." The purpose of the Projects of National Significance program is not only to provide technical assistance to the developmental disabilities councils, the protection and advocacy systems, and the university affiliated programs, but to support projects "that hold promise to expand or improve opportunities for people with developmental disabilities." Representing only 4% of ADD's federal dollars, these PNS funds have initiated cutting edge projects, such as the "Reinventing Quality: Promising Practices in Person-Centered Community Services and quality Assurance for People with Development Disabilities" that are at the forefront of the developmental disabilities field challenging traditional thinking and practices. These priority areas directly relate to ADD's outcomes contained in its "Roadmap to the Future," our plan for implementing GPRA: (1) All are intended to increase community support and promote self-determination, (2) These priority areas will encourage interaction, and collaboration among all sectors of the Developmental Disabilities field to attain and share information.

Part III. The Review Process

A. Eligible Applicants

Before applications under this Announcement are reviewed, each will be screened to determine that the applicant is eligible for funding as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition, and the applicant will be so informed.

Only public or non-profit private entities, not individuals, are eligible to apply under any of the priority areas. All applications developed jointly by more than one agency or organization must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-participants, sub-grantees or subcontractors.

Nonprofit organizations must submit proof of nonprofit status in their applications at the time of submission. One means of accomplishing this is by providing a copy of the applicant's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501 (c) (3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

ADD cannot fund a nonprofit applicant without acceptable proof of its nonprofit status.

B. Review Process and Funding Decisions

Timely applications under this Announcement from eligible applicants received by the deadline date will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the appropriate evaluation criteria listed later in this Part to review and score the applications. The results of this review are a primary factor in making funding decisions.

ADD reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ADD Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ADD in making funding decisions.

In making decisions on awards, ADD will consider whether applications focus on or feature: Services to culturally diverse or ethnic populations among others; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations administering or delivering of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

This year, 5 points will be awarded in scoring for any project that includes partnership and collaboration with the 140 Empowerment Zones/Enterprise Communities. A discussion of how the involvement of the EZ/EC is related to the objectives and/or the activities of the project must be clearly outlined for the award of the 5 points. Also, a letter from the appropriate representatives of the EZ/EC must accompany the application indicating its agreement to participate and describing its role in the project.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ADD may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Process

Using the evaluation criteria below, a panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. To facilitate this review, applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

D. Structure of Priority Area Descriptions

The priority area description is composed of the following sections:

- *Eligible Applicants:* This section specifies the type of organization which is eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.
- *Purpose:* This section presents the basic focus and/or broad goal(s) of the priority area.
- *Background Information:* This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACF and/or other State models are noted, where applicable.
- *Evaluation Criteria:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to need for assistance, results expected, project design, and organizational and staff capabilities. Inclusion and discussion of these items is important since the information provided will be used by the reviewers in evaluating the application against the evaluation criteria. Applicants should review the section on the Uniform Project Description and the evaluation section under each priority area.
- *Minimum Requirements for Project Design:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers to evaluate the applications against the evaluation criteria. Project products, continuation of the project after Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.
- *Project Duration:* This section specifies the maximum allowable length of the project period; it refers to the amount of time for which Federal funding is available.
- *Federal Share of Project Costs:* This section specifies the maximum amount of Federal support for the project.
- *Matching Requirement:* This section specifies the minimum non-Federal contribution, either cash or in-kind match, required.
- *Anticipated Number of Projects To Be Funded:* This section specifies the number of projects ADD anticipates funding under the priority area.
- *CFDA:* This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this priority area will be funded. This information is needed to complete item 10 on the SF 424.

Please note that applications under this Announcement that do not comply with the specific priority area requirements in the section on "Eligible Applicants" will not be reviewed.

Applicants under this Announcement must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Experience has shown that an application which is broader and more general in concept than outlined in the priority area description is less likely to score as well as an application more clearly focused on, and directly responsive to, the concerns of that specific priority area.

E. Available Funds

ADD intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 2000, subject to the availability of funding. The size of the awards will vary. Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose shorter project periods than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas.

For multi-year projects, continued Federal funding beyond the first budget period, but within the approved project period, is subject to the availability of

funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

F. Grantee Share of Project Costs

Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (total project cost is $133,333, of which $33,333 is 25%).

An exception to the grantee cost-sharing requirement relates to applications originating from American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under Section 501(d) of P. L. 95–134, which requires that the Department waive "any requirement for local matching funds for grants under $200,000."

The applicant contribution must generally be secured from non-Federal sources. Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. However, funds from some Federal programs benefiting Tribes and Native American organizations have been used to provide valid sources of matching funds. If this is the case for a Tribe or Native American organization submitting an application to ADD, that organization should identify the programs which will be providing the funds for the match in its application. If the application successfully competes for PNS grant funds, ADD will determine whether there is statutory authority for this use of the funds. The Administration for Native Americans and the DHHS Office of General Counsel will assist ADD in making this determination.

G. General Instructions for the Uniform Project Description

The following ACF Uniform Project Description (UPD) has been approved under OMB Control Number 0970–0139.

1. Introduction: Applicants are required to submit a full project description and must prepare the project description statement in accordance with the following instructions.

2. Project summary/abstract: Provide a summary of the project description (a page or less) with reference to the funding request. Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

3. Objectives and Need for Assistance: Clearly identify the physical, economic, social, financial, institutional and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonies from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids should be attached. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

4. Results or Benefits Expected: Identify the results and benefits to be derived; the extent to which they are consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

5. Approach: Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cites factors which might accelerate or decelerate the work, and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

ADD is particularly interested in discussing the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

6. Organization Profile: Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's

listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled. ADD is particularly interested in the following: that the application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and other work planned, anticipated or under way by the applicant which is being supported by Federal assistance. This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

G. Cooperation in Evaluation Efforts

Grantees funded by ADD may be requested to cooperate in evaluation efforts funded by ADD. The purpose of these evaluation activities is to learn from the combined experience of multiple projects funded under a particular priority area.

H. Closed Captioning for Audiovisual Efforts

Applicants are encouraged to include "closed captioning" in the development of any audiovisual products.

Part IV. Fiscal Year 2000 Priority Areas for Projects of National Significance—Description and Requirements

The following section presents the final priority areas for Fiscal Year 2000 Projects of National Significance (PNS) and solicits the appropriate applications.

Fiscal Year 2000 Priority Area 1: Mobilizing for Change/Rapid Deployment of Good Ideas

- *Eligible Applicants:* State agencies, public or private nonprofit organizations, institutions or agencies, including a consortia of some or all of the above.
- *Purpose:* ADD is interested in awarding grant funds that "reinvent" new projects models in the field of developmental disabilities which will transfer information and knowledge through the utilization of creative and innovative methods of implementation, replication and dissemination. These projects must demonstrate proven success by increasing the independence, productivity, integration and inclusion of people with developmental disabilities and their families in communities in which they live.
- *Background Information:* In March of 1993, President Clinton unveiled his new initiative to reinvent the federal government. He proposed a leaner, more efficient government that viewed the American people as its customers. The President discussed how all of us to some extent count on the government to do certain things such as, "protect the environment, to provide education and health care and other basic needs." However, he pointed out that a "democracy can become quickly an empty phrase, if those who are elected to serve cannot meet the needs of the people except with Government that costs too much or is too slow or too arrogant or too unresponsive." Federal workers were empowered to reinvent their agencies in ways that would put customers first, cut red tape, get results, and get back to basics.

At ADD, our agency efforts resulted in a document called "The Roadmap to the Future," which was developed together with the programs it funds, establishes a course of action for ADD and for its programs. The Roadmap defines the mission and vision of ADD, of the State Developmental Disabilities Councils (DDCs), of the Protection and Advocacy Systems (P&As), of the University Affiliated Programs (UAPs), and of the Projects of National Significance (PNS), and it identifies goals created to increase the independence, productivity, and integration and inclusion of people with developmental disabilities and their families. Program activities will be directed toward achieving the Roadmap goals.

The Projects of National Significance (PNS) Program is one of the activities of ADD. Every year since 1975 there have been model demonstration projects funded to increase the independence, productivity, and integration and inclusion of people with developmental disabilities. These projects have generated inventive approaches, strategies, and methodologies designed to address pervasive problems or needs of individuals with developmental disabilities and their families. Over the years, PNS projects have contributed to the knowledge base of the developmental disabilities field and the larger disability field as well.

In the past decade, the leadership capacity of individuals with developmental disabilities, especially self-advocates, has been nourished and strengthened by the funding of PNS projects.

Although dissemination of information from these projects has been a requirement of funding, it is a concern of ADD's that the rich volume of knowledge and information produced by these projects has not reached a broader range of people who either could directly benefit from it or are in a position to replicate it. More important, depending on the target audience, we have not been successful in influencing permanent behavioral changes. The explosion of communications arts and technology offer new possibilities for reaching a broader audience. A major challenge lies in connecting with those segments of our population who do not have easy access to a computer or English is not their primary language or there are cultural differences. New design models of transferring knowledge and fostering utilization must be explored if we are to meet the needs of Americans with disabilities and their families. ADD is extremely interested in supporting this "reinvention" of new models under this priority area.

These models must surpass our standard methods of communicating best practices, practical solutions to those we serve and those who serve them. Projects must be outcome driven—demonstrating effectiveness and behavioral changes of the targeted population. Content area is open to any proven, positive results-based practice, methodology or process in the field of developmental or other disabilities or directly related field such as universal design. It can be as expansive as systems change or a new paradigm. These new models should consider creative partnering in implementing the project. A few examples of this by the Federal government are the JedI project under the U.S. Geological Survey and The Knowledge Loom under the U.S. Department of Education/Office of Educational Research and Improvement. The former, which stands for joint

education initiative, utilized CD–ROM technology containing different types of data and in conjunction with teachers developed educational materials that could be used in the classroom. The latter is a recent project funded to create an electronic interactive workspace for anyone interested in the education environment.

In the last century we were the beneficiaries of extraordinary human developments that would have been considered inconceivable by many; it has raised our level of expectation for this new century. This is no less true for people with developmental disabilities and their families who, in this age of the Internet, the PC, and satellite downlinks, expect there will be new models available to everyone who needs them. ADD views this priority area as an unprecedented opportunity to take what we have learned through federally funded projects and find enterprising, inventive, and imaginative ways of using the knowledge so that all will benefit—people with developmental disabilities and other disabilities, professionals who serve them, their families, and the communities in which they live.

• *Minimum Requirements for Project Design:* ADD is particularly interested in supporting projects which include the following:

• Partnerships between consumers/advocacy organizations, research foundations, public/private entities and others to coordinate, implement and disseminate information and transfer of knowledge to a broad audience to include consumers and their families and entities that serve them.

• Project design must address barriers and issues of access to the mechanism(s) used to transfer knowledge and information, for persons using various assistive devices and equipment.

• All projects shall provide for the widespread distribution of their products (reports, summary documents, audio-visual materials, etc.) in accessible format and in languages other than English.

• Describe and develop methods/plans to be used to continue the transfer of knowledge and information once the project period ends.

• Develop and implement an evaluation process to ensure that systematic and objective information is available about the utilization and effectiveness of the products from this project.

• Specific outcomes tied to the ADD "Roadmap to the Future" to increase the independence, productivity, integration and inclusion of individuals with developmental disabilities must be built into the project for dissemination to a board audience.

• Describe measurable outcomes.

As a general guide, ADD will expect to fund only those proposals for projects that incorporate the following elements:

• Consumer/self-advocate orientation and participation.

• Key project personnel who have direct life experience with living with a disability.

• Strong advisory components that consist of a majority of individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.

• Research reflecting the principles of participatory action.

• Cultural competency.

• A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.

• Attention to unserved and inadequately served individuals, from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families, with disabilities.

• Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (P.L. 102–569).

• Collaboration through partnerships and coalitions.

• Development of the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.

• Development and establishment of practices and programs beyond project period.

• Dissemination of models, products, best practices, and strategies for distribution between the networks and beyond. A plan describing initial activities is needed between funded projects as well as at the end of the project period. These activities should maintain and share ongoing information, existing resources of consultants/experts, and curriculum/materials with funded projects and within the network.

Evaluation Criteria: The four criteria that follow will be used to review and evaluate each application under this priority area. Each criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description. Additional Information that must be addressed is described below.

Criterion 1: Objectives and Need for Assistance (20 points)

The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids must be attached.

Criterion 2: Results or Benefits Expected (20 points)

The extent to which they are consistent with the objectives of the application, and the extent to which the Application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs is reasonable in view of the expected results.

Criterion 3: Approach (35 points)

Discuss the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4: Organization Profile (25 points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the Experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and the other work planned, anticipated or under way by the applicant which is being supported by Federal assistance.

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. It may include description of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization must be included.

• *Project Duration:* This announcement is soliciting applications

for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.

- *Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a three-year project period.
- *Matching Requirement:* Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (the total project cost is $133,333, of which $33,333 is 25%).
- *Anticipated Number of Projects to be Funded:* It is anticipated that up to six (6) projects will be funded.
- *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Fiscal Year 2000 Priority Area 2: Bridging the Digital Divide: Building Content

Eligible Applicants: State agencies, public or private nonprofit organizations, institutions or agencies, including a consortia of some or all of the above.

Purpose: Under this priority area, ADD will issue a grant award to fund one project, designed to build an Internet site that will provide relevant content and information on the Medicaid program for individuals with developmental disabilities and their families.

Background Information: In a White House speech on February 2, 2000, President Clinton stated: "Access to computers and the Internet and the ability to effectively use this technology are becoming increasingly important for full participation in America's economic, political and social life. People are using the Internet to find lower prices for goods and services, work from home or start their own business, acquire new skills using distance learning, and make better informed decisions about their healthcare needs."

The President expressed his concern over the widening gap of access: "Access to computers and the Internet has exploded during the Clinton-Gore Administration. Unfortunately, there is strong evidence of a 'digital divide'—a gap between those individuals and communities that have access to these Information Age tools and those who don't. In some instances, this divide is actually widening." The President has proposed three basic approaches to narrowing the digital divide: (1) Provide hardware and connections to people who do not yet have them; (2) Provide training in the use of computers and the internet; and (3) build relevant content on the Internet, to attract new users. ADD continues to encourage its grantees and partners in all three of these strategies, but realizes that a national approach is necessary to the third strategy of building relevant content.

A person with a developmental disability is legislatively defined as someone whose disability occurred before age 22; is severe and lifelong; and is likely to result in an ongoing, long-term need for services and supports. In other words, people with developmental disabilities are likely to need to rely on multiple systems of supports in order simply to live their lives. And yet, information that could be used to improve decision-making is not easily accessible to people with developmental disabilities, their families, their advocates, their providers of services and supports, or even to the policymakers who design and fund systems. For people with developmental disabilities, Internet access to relevant information is limited.

For the majority of people with developmental disabilities and their families, Medicaid is the most relevant system; it is a vital component in their life. Yet it is a very complex system that changes almost constantly, and quite rapidly. It is different in every State. As States submit new ideas to the Health Care Finance Administration (HCFA) in Home and Community-Based Services (HCBS) waiver plans, and as these state-generated plans are approved, possibilities for all other States and all other citizens shift. In addition, the Medicaid program is complex due to the "patchwork quilt of incremental statutory amendments and administrative policy changes spread over several decades." (GAO, 1996)

Nevertheless, many (though not all) of the Medicaid questions to which people need answers are repetitive and sometimes simple. Clear, honest, user-friendly answers to frequently asked questions are often a feature of Web sites on any topic and may be one of the best uses of the Internet.

Minimum Requirements for Project Design: ADD is proposing to fund one project to build an Internet site that will provide relevant content and attractive information on what is possible under the Medicaid program.

To be considered seriously for funding applicants must address the following elements:

- The site must be user-friendly and useful to a broad range of users, including people with developmental and other related disabilities, their families, their advocates, DD network members, state policymakers, regional HCFA staff, and other interested persons.
- The site must be responsive to the needs and wants of its users, and should collect and measure user satisfaction.
- Design must be interactive and post frequently asked questions (FAQs) about Medicaid and provide answers, which will encourage frank and open "human" interchanges between users.
- The site must be accessible to people with a broad range of disabilities.
- Proposing organizations must show that they (1) are credible sources of information to people with developmental disabilities and (2) that they intend to comply with accessibility standards and go beyond compliance to improve access as much as possible.
- Special care should be taken to make the site useful and attractive to young persons with developmental and other disabilities.
- Design should make use of audio-clips of personal stories in multiple languages where possible.
- Project Design must include Partnerships that are composed of consumers, family leaders, service providers and professionals working together to assist in addressing conflicting information and interpretations of the Medicaid program; and create a network which would allow for the exchange of ideas and expertise to improve services and effect systemic change.
- Site design must provide interactive links to State and local resources.

As a general guide, ADD will expect to fund only those proposals for projects that incorporate the following elements:

• Consumer/self-advocate orientation and participation.

• Key project personnel who have direct life experience with living with a disability.

• Strong advisory components that consist of a majority of individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.

• Research reflecting the principles of participatory action.

• Cultural competency.

• A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.

• Attention to unserved and inadequately served from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families, with disabilities.

• Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (P.L. 102–569).

• Collaboration through partnerships and coalitions.

• Development of the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.

• *Evaluation Criteria:* The four criteria that follow will be used to review and evaluate each application under this priority area. Each criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description.

Criterion 1: Objectives and Need for Assistance (20 points)

The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids should be attached.

Criterion 2: Results or Benefits Expected (20 points)

The extent to which they are consistent with the objectives of the application, and the extent to which the application indicates the anticipated contribution to policy, practice, theory and/or research. The extent to which the proposed project costs is reasonable in view of the expected results.

Criterion 3: Approach (35 points)

Discuss the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if The results and benefits identified are being achieved.

Criterion 4: Organization Profile (25 points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and the work planned, anticipated or under way by the applicant which is being supported by Federal assistance.

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quality of services it provides, and/or the research and management capabilities it possesses. It may include descriptions of any current or previous experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization must be included.

• *Project Duration:* This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.

• *Federal Share of Project Costs:* The maximum Federal share is not to exceed $300,000 for the first 12-month budget period or a maximum of $900,000 for a three-year project period.

• *Matching Requirement:* Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds (based on an award of $300,000 per budget period) must include a match of at least $100,000 (the total project cost is $400,000, of which your 25% share is $100,000).

• *Anticipated Number of Projects to be Funded:* It is anticipated that one (1) project will be funded.

• *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Fiscal Year 2000 Priority Area 3: Managing Our Program Knowledge Through Web Improvement

Eligible Applicants: Nonprofit organizations, institutions or agencies, including a consortia of some or all of the above.

Purpose: Under this priority area, ADD will issue a grant award to fund one (1) project to develop a model website which would enhance the ability of ADD's programs to exchange information and build upon ongoing diverse enterprise throughout the developmental disabilities community.

Background Information: The Developmental Disabilities Assistance and Bill of Rights Act (DD Act) provides authorization for three State programs and a national program that seek to increase the independence, productivity, and inclusion of persons with developmental disabilities.

A Developmental Disabilities Council (DD Council) in each State promotes, through systemic change, capacity building, and advocacy activities, the development of a comprehensive consumer-centered system of coordinated and culturally competent services, supports, and other assistance. The priority areas addressed by DD Councils include employment, community living, child development, and system coordination and community education.

The Protection and Advocacy (P&A) System provides for the protection and advocacy of legal and human rights. The P&A Systems advocate on behalf of, and provide advocacy services to persons

with developmental disabilities in issue areas related to their disabilities, including: education, abuse and neglect, institutional and habilitation services, guardianship issues, and housing issues.

The University Affiliated Programs (UAPs) are public and private non-profit agencies in the States and territories, each affiliated with a university. Each UAP receives annual discretionary funding for operational and administrative support, which provides a platform for interdisciplinary training, clinical and community-based service activities, technical assistance to community services personnel, and information/dissemination activities.

In addition to State-based programs, ADD funds research and demonstration grants in an effort to address and increase our understanding of issues of national scope. The Projects of National Significance (PNS) program focuses on the most pressing issues affecting people with developmental disabilities and their families. Project issues transcend the borders of States and territories, while project designs are oriented to permit local implementation of practical solutions.

Each of these programs has a uniqueness and breadth of knowledge that if managed through modern technology, would result in a knowledge resource warehouse. The nation can not afford a digital divide between these programs nor between these programs and those they serve. With these programs in mind, ADD is interested in funding a project for the development or enhancement of a model website whose design features are easily utilized by each of the ADD funded programs. It should be seen as the beginning of a new form of fluid cyber architecture with a focus on continuous improvement that will enable those programs to improve their use of the web and their ability to hyperlink to others.

Minimum Requirements for Project Design: This new model website would enhance the ability of ADD's programs to exchange information and build upon ongoing diverse enterprises throughout the developmental disabilities community. ADD envisions that the first year would begin with the UAPs with the understanding that the model website be inclusive of the of the other programs over the duration of the project. To be considered seriously for funding applicants must address the following elements:

- Project design must include the dissemination of contributions and achievements of these programs towards the quality of life of persons with disabilities and their families.
- It should support the development of strategies, technologies, and media channels for the management of knowledge generated/produced by these programs.
- The site should operate as an information center as well as a networking tool for the ADD programs and others. This website is not about outcomes but content and access to content that affects the lives of people with developmental disabilities and their families.
- Priority should be given to PNS projects. It is expected that the site would be open to everyone; including the average citizen, people working in each program, and people working in related programs.
- Site must be accessible to people with a broad range of disabilities utilizing the most current accessibility standards.
- ADD would be supportive of applicants that represent a consortia of UAPs and DD Councils.

As a general guide, ADD will expect to fund only those proposals for projects that incorporate the following elements:

- Consumer/self-advocate orientation and participation.
- Key project personnel who have direct life experience with living with a disability.
- Strong advisory components that consist of a majority of individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.
- Research reflecting the principles of participatory action.
- Cultural competency.
- A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.
- Attention to unserved and inadequately served individuals, from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families, with disabilities.
- Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (P.L. 102–569).
- Collaboration through partnerships and coalitions.
- Development of the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.
- *Evaluation Criteria:* The four criteria that follow will be used to review and evaluate each application under this priority area. Each criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description. Additional information that must be addressed is described below.

Criterion 1: Objectives and Need for Assistance (20 points)

The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids must be attached.

Criterion 2: Results or Benefits Expected (20 points)

To the extent to which they are consistent with the objectives of the application, and the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs is reasonable in view of the expected results.

Criterion 3: Approach (35 points)

Discuss the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4: Organization Profile (25 points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and other work planned, anticipated or underway by the applicant which is being supported by Federal assistance.

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quality of services it provides, and/or the research and management capabilities it posses. It may include descriptions of any

current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization must be included.

• *Project Duration:* This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.

• *Federal Share of Project Costs:* The maximum Federal share is not to exceed $300,000 for the first 12-month budget period or a maximum of $900,000 for a three-year project period.

• *Matching Requirement:* Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds (based on an award of $300,000 per budget period) must include a match of at least $100,000 (total project cost is $400,000, of which $100,000 is 25%).

• *Anticipated Number of Projects to be Funded:* It is anticipated that one (1) project will be funded under this priority area.

Part V. Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. An application package containing forms can be obtained by any of the following methods: Joan Rucker, ADD, 370 L'Enfant Promenade SW., Washington, DC 20447, 202/690–7898; http://www.acf.dhhs. gov/programs/add; or add@acf.dhhs.gov.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part IV.

A. Required Notification of the State Single Point of Contact (SPOC)

All applications under the ADD priority areas are required to follow the Executive Order (E.O.) 12372 process, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/Territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.

As of September 22,1997, all States and territories, except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau, have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions.

Applicants must submit all required materials to the SPOC as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials and indicate the date of this submittal (or date SPOC was contacted, if no submittal is required) on the SF 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application due date to comment on proposed new or competing continuation awards. However, there is insufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to 30 days from the closing date for applications. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in delays in awarding grants.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration on Children Youth and Families, Office of Grants Management, 370 L'Enfant Promenade, SW, Mail Stop 326F–HHH, Washington, DC 20447, Attn: Lois Hodge ADD—Projects of National Significance.

Contact information for each State's SPOC is found in the application package or ADD's website.

B. Notification of State Developmental Disabilities Planning Councils

A copy of the application must also be submitted for review and comment to the State Developmental Disabilities Council in each State in which the applicant's project will be conducted. A list of the State Developmental Disabilities Councils is included in the application package or ADD's website under Programs.

C. Deadline for Submittal of Applications

One signed original and two copies of the application must be submitted on or before September 1, 2000 to: U.S. Department of Health and Human Services, Administration on Children, Youth and Families, Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW, Mail Stop 326F–HHH, Washington, DC 20447, Attn: Lois Hodge.

Applications may be mailed or hand-delivered. Hand-delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications shall be considered as meeting an announced deadline if received by the deadline date at the ACYF Grants Office (Close of Business: 4:30 p.m., local prevailing time).

Late applications: Applications that do not meet the criterion stated above are considered late applications. ACYF/ADD shall notify each late applicant that the application will not be considered in the current competition.

Extension of deadlines: ACYF may extend the deadline for all applicants due to acts of God, such as floods, hurricanes, or earthquakes; or when there is a widespread disruption of the mail. However, if the granting agency

does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

D. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A–Page 2 and Certifications/Assurances are contained in the application package. Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. "Type of Submission"—Preprinted on the form.

Item 2. "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACYF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information".

"Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—Preprinted on the form.

Item 9. "Name of Federal Agency"—Preprinted on the form.

Item 10. "Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. For all of ADD's priority areas, the following should be entered, "93.631—Developmental Disabilities: Projects of National Significance."

Item 11. "Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If Statewide, a multi-State effort, or nationwide, enter "00."

Item 15. Estimated Funding Levels. In completing 15a through 15f, the dollar amounts entered should reflect, for a 17-month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part III, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of program income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this program income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/pre-application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 15 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period of 17 months or less or (2) the first-year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is tangible, non-expendable personal property having a useful life of more than one year and acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, "Other."

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in title 45 of the Code of Federal Regulations, Parts 74.51 and 92.24, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Description

The Project Description is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part IV. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) Objectives and Need for Assistance;

(b) Results and Benefits Expected;

(c) Approach; and

(d) Organization Profile.

The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description.

The narrative should be typed double-spaced on a single-side of an 8 ½" × 11" plain white paper, with 1" margins on all sides, using black print no smaller than 12 pitch or 12 point size. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. This will be strictly enforced. A page is a single side of an 8½ × 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

4. Part V—Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. Applicants must also provide certifications regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications, and need not be mailed back with the application.

In addition, applicants are required under Section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

E. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

____ One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;

____ Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);

____ Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

____ Application for Federal Assistance (SF 424, REV 4–88);

____ A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.

___ Budget Information—Non-Construction Programs (SF 424A, REV 4–88);
___ Budget justification for Section B—Budget Categories;
___ Table of Contents;
___ Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;
___ Copy of the applicant's approved indirect cost rate agreement, if appropriate;
___ Project Description (See Part III, Section C);
___ Any appendices/attachments;
___ Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
___ Certification Regarding Lobbying; and
___ Certification of Protection of Human Subjects, if necessary.
___ Certification of the Pro-Children Act of 1994; signature on the application represents certification.

F. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

G. Paper Reduction Act of 1995 (Pub.L. 104–13)

The Uniform Project Description information collection within this announcement is approved under the Uniform Project Description (0970–0139), Expiration Date 10/31/2000.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(Federal Catalog of Domestic Assistance Number 93.631 Developmental Disabilities—Projects of National Significance)

Dated: July 27, 2000.

Reginald F. Wells,

Deputy Commissioner, Administration on Developmental Disabilities.

[FR Doc. 00–19492 Filed 8–1–00; 8:45 am]

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Federal Register

Wednesday,
August 2, 2000

Part IV

Department of Education

34 CFR Parts 674, 682, and 685
Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682, and 685

RIN 1845–AA12

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education

ACTION: Notice of proposed rulemaking

SUMMARY: The Secretary proposes to amend the regulations governing the Federal Perkins (Perkins) Loan Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations in order to strengthen and improve the processes for granting loan discharges based on a borrower's death or total and permanent disability.

DATES: We must receive your comments on or before September 18, 2000.

ADDRESSES: Address all comments about these proposed regulations to Mr. Brian Smith or Mr. Jon Utz, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: DISABILITYNPRM@ed.gov

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: For the FFEL and Perkins Loan Programs, Mr. Brian Smith, or for the Direct Loan Program, Mr. Jon Utz; U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 13, Washington, DC 20202–5345. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service, (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

Under § 482(c) of the Higher Education Act of 1965, as amended (HEA), final regulations published before November 1 are generally effective on July 1 of the following year. We realize, however, that implementation of these proposed regulations might require significant operational changes for lenders, guaranty agencies, schools, and the Department. Therefore, we invite your comments on whether a later effective date should be considered for these regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th and D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

General

Background

In the Perkins Loan, FFEL, and Direct Loan programs, a borrower's obligation to repay a loan is discharged if the borrower dies or becomes totally and permanently disabled. In all three programs current regulations define a "total and permanent disability" as a medical impairment that (1) prevents an individual from working and earning money or attending school, and (2) is expected to continue indefinitely or result in death.

In June 1999, the Department of Education's Inspector General (IG) issued a report on the process of granting loan discharges in the FFEL Program due to death or total and permanent disability. The report, "Improving the Process for Forgiving Student Loans" (audit control number 06–80001), is available in Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/offices/OIG/Areports.htm The IG identified the borrowers who received death or disability discharges on FFEL Program loans from July 1, 1994 through December 31, 1996, and matched the list against the Social Security Administration's master earnings record. The IG found that 23 percent of borrowers who received total and permanent disability discharges and two percent of borrowers who received death discharges during the period covered by the report earned wages, in some cases in excess of $30,000 per year, after their loans were discharged. The IG also found that a significant number of borrowers whose loans had been discharged based on a total and permanent disability returned to school and received new loans within one year after having the previous loan discharged.

The IG concluded that inappropriate discharges were being granted because of weaknesses in the current procedures for determining eligibility for discharge. Although the IG looked only at discharges in the FFEL Program, current regulations in the Perkins Loan and Direct Loan programs are essentially the same as the FFEL regulations. In response to the IG's findings, we are proposing regulatory changes that would strengthen the current processes for approving discharges based on death or total and permanent disability.

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations for programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants

in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we held listening sessions in Washington, DC, Atlanta, Chicago, and San Francisco. Four half-day sessions were held on September 13 and 14, 1999, in Washington, DC. In addition, we held three regional sessions in Atlanta on September 17, in Chicago on September 24, and in San Francisco on September 27, 1999. The Office of Student Financial Assistance's Customer Service Task Force also conducted listening sessions to obtain public involvement in the development of our regulations.

We then published a notice in the **Federal Register** (64 FR 73458, December 30, 1999) to announce our intention to establish two negotiated rulemaking committees to draft proposed regulations affecting Title IV of the HEA. The notice requested nominations for participants from anyone who believed that his or her organization or group should participate in this negotiated rulemaking process. The notice announced that we would select participants for the process from the nominees of those organizations or groups. The notice also announced a tentative list of issues that each committee would negotiate.

Once the two committees were established, they met to develop proposed regulations over the course of several months, beginning in February. The proposed regulations contained in this NPRM were discussed with Negotiating Committee I (the committee), which was made up of the following members:

- American Association of Collegiate Registrars and Admissions Officers
- American Association of Cosmetology Schools
- American Association of State Colleges and Universities (in coalition with American Association of Community Colleges)
- American Council on Education
- Career College Association
- Coalition of Higher Education Assistance Organizations
- Consumer Bankers Association
- Education Finance Council
- Education Loan Management Resources
- Legal Services
- National Association of College and University Business Officers
- National Association of Independent Colleges and Universities
- National Association of State Universities and Land-Grant Colleges
- National Association of Student Financial Aid Administrators
- National Association of Student Loan Administrators
- National Council of Higher Education Loan Programs
- National Direct Student Loan Coalition
- Sallie Mae, Inc.
- Student Loan Servicing Alliance
- The College Fund/United Negro College Fund
- United States Department of Education
- United States Student Association
- US Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was not reached on the proposed regulations in this document.

During the negotiations, we proposed a conditional approach to granting loan discharges based on total and permanent disability. As reflected in these proposed regulations, a borrower who is initially determined to be totally and permanently disabled would receive a conditional discharge for a period of three years. A final discharge would be granted only if the borrower continues to meet the discharge eligibility requirements over the three-year conditional discharge period.

We believe that the conditional discharge approach proposed in these regulations is the proper response to the IG's findings. The IG's report indicates that the current approach of granting total and permanent disability discharges based on a physician's one-time certification of a borrower's condition has resulted in a significant number of inappropriate discharges being granted to borrowers who, although previously certified as totally and permanently disabled, subsequently had substantial earnings from work. The proposed conditional approach would allow for a more accurate assessment of a borrower's condition by monitoring the borrower's income over an extended period after the onset of the disabling condition. If a borrower had significant earnings from wages during the conditional discharge period, we believe it would be reasonable to conclude that the borrower was not totally and permanently disabled as we define that term in our regulations. The conditional discharge approach acknowledges that, as a result of advances in medicine and rehabilitative technologies, many individuals with conditions that once would have been totally and permanently disabling are now able to return to work. Moreover, the conditional discharge approach is consistent with other major government programs that provide disability benefits. We are not aware of any other major Federal program that provides disability-related benefits based on a one-time review of an individual's condition.

The non-Federal negotiators generally opposed our proposed approach for granting disability discharges. They felt that our proposal to place loans in a conditional discharge status would be unfair to borrowers, and that the conditional discharge approach would be complicated, confusing, and difficult to administer. The non-Federal negotiators believed that other steps should be taken to address the concerns raised by the IG's report, rather than significantly changing the process for granting total and permanent disability discharges. Several of the non-Federal negotiators pointed out that the IG's report had already increased awareness of the problem in the financial aid industry. Some of the non-Federal negotiators referred to a separate pilot program initiated by the Department to address some aspects of the deficiencies identified in the report. Some of the non-Federal negotiators recommended that we make further revisions to the disability discharge request form, in addition to changes that we already made in response to the IG's report. These negotiators expressed the view that a more comprehensive form might make it easier for a physician to determine whether a patient meets the criteria for a total and permanent disability discharge, and would enhance the ability of loan holders to review physician's certifications.

During the negotiations the non-Federal negotiators offered an alternative proposal. Under this proposal, the initial process for granting total and permanent disability discharges would remain substantially unchanged from current practice. However, if a borrower who had received a discharge worked and earned money over a certain income threshold, or took out another title IV loan within two years of receiving a discharge, the Secretary would revoke the discharge.

It is the position of the non-Federal negotiators that most loans discharged are for borrowers who are totally and permanently disabled in accordance with the regulations. The non-Federal negotiators stated that their alternative proposal would allow us to address the concerns raised by the IG's report by focusing directly on cases of potentially erroneous discharges, thus preventing unnecessary confusion and anxiety for all affected borrowers.

We understand the non-Federal negotiators' concerns about the

proposed conditional discharge approach. However, in light of the IG's findings, we are convinced that significant changes to the current procedures for granting discharges based on total and permanent disability are necessary. We believe that the conditional discharge approach proposed in these regulations would be the most fair method to discharge a borrower's loans, and would best protect the interests of taxpayers.

Some non-Federal negotiators also objected to our original proposal to require that a request for a loan discharge based on the death of the borrower (or student in the case of a PLUS loan) be supported by a certified or original copy of a death certificate. They felt that requiring a certified copy or original of a death certificate was not necessary in every case. Many of the negotiators proposed that the loan holder and guaranty agency be authorized to accept alternative documentation in certain circumstances.

We have decided to accept this proposal, in part. These draft regulations would authorize the chief executive officer of the guaranty agency (for FFEL loans) or the chief financial officer of the institution (for Perkins loans) to grant a discharge based on other evidence in exceptional circumstances.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Sections 674.61, 682.402, and 685.212 Death Discharge

Statute: Sections 437(a) and 455(a)(1) of the HEA provide for a discharge of a borrower's FFEL or Direct Loan program loan if the borrower, or the student for whom a parent takes out a PLUS loan, dies. Section 464(c)(1)(F) of the HEA provides for the cancellation of a borrower's Perkins loan if the borrower dies.

Current Regulations: The current Perkins Loan and FFEL Program regulations require a death certificate or other proof of death acceptable under State law in order to discharge a loan based on death. The FFEL Program regulations further provide that if a death certificate or other proof of death under State law is not available, a guaranty agency may discharge the loan based on other evidence establishing that the borrower has died.

The current Direct Loan Program regulations require acceptable documentation of a borrower's death. In practice, acceptable documentation for this purpose is the same types of documentation that are required in the FFEL Program.

Proposed Regulations: The proposed Perkins Loan and FFEL Program regulations would (1) require that the death certificate must be an original or certified copy, and (2) specify that other documentation of death may be used to support a discharge only under exceptional circumstances and only with the approval of the chief executive officer of the guaranty agency (for the FFEL Program) or the institution's chief financial officer (for the Perkins Loan Program).

The proposed Direct Loan Program regulations would (1) specify that an original or certified copy of the death certificate is required, and (2) provide for loan discharge based on other documentation of death only with the Secretary's approval.

Reasons: The proposed regulations address concerns raised in the IG's report. Specifically, the IG found that two percent of borrowers whose loans were discharged due to death during the period covered by the report had earnings from wages after the date of discharge. In reviewing a random sample of death certificates that were used as the basis for loan discharge, the IG found documents that had been typed, except for the deceased's name, which was hand-written. In one case, a guaranty agency reported receiving a death certificate that had been altered by changing the name and social security number of the deceased individual.

We believe that requiring an original or certified copy of the death certificate would help to ensure that death discharges are based on valid documentation. We also believe that this practice would be consistent with the evidence required by insurance companies and other government programs. However, we recognize that, in rare cases, an original or certified copy of the death certificate may not be available. The non-Federal negotiators representing guaranty agencies strongly urged us to permit the use of alternative documentation in some circumstances and to allow the decision to rest with the agency. We have decided to accept this proposal. However, the proposed regulations would limit the conditions under which other documentation may serve as the basis for discharge by requiring a senior official of the agency or school to approve the use of any alternative documentation.

This exception to the general requirement that an original or certified copy of a death certificate be obtained is intended to ensure that alternative documentation of death would be used only rarely, in exceptional circumstances. We expect guaranty agencies and schools to maintain separate records of their use of this exception and to make those records available to us upon request.

Sections 674.51, 682.200, and 685.102 Definitions.

Current Regulations: The current definition of "totally and permanently disabled" provides that an individual must be unable to work and earn money or attend school because of the disabling condition.

Proposed Regulations: The proposed regulations would remove the requirement that an individual be unable to attend school from the definition of "total and permanent disability."

Reasons: We believe that with the development of new technologies to aid disabled individuals and the increased availability of distance learning, it is no longer meaningful to use ability to attend school as a measure of whether an individual is totally and permanently disabled. Moreover, we have determined that our current definition of totally and permanently disabled could have the unintended consequence of discouraging disabled individuals from pursuing further education or retraining. Accordingly, we are proposing to remove the requirement that an individual be unable to attend school from the definition of a "total and permanent disability."

Sections 674.61, 682.402, 685.212, and 685.213 Total and Permanent Disability Discharge

Statute: Sections 437(a) and 455(a)(1) of the HEA provide for discharging a borrower's FFEL or Direct Loan program loan if the borrower becomes permanently and totally disabled. Section 464(c)(1)(F) of the HEA similarly provides for canceling a borrower's Perkins loan if the borrower becomes permanently and totally disabled. In all three programs, permanent and total disability must be determined in accordance with regulations of the Secretary.

Current Regulations: Under current regulations, schools (for Perkins loans), guaranty agencies (for FFEL loans), or the Secretary (for all Direct Loans, and any Perkins or FFEL loans held by the Secretary) discharge title IV loans after determining that a borrower meets the criteria for a total and permanent

disability discharge. Traditionally, in granting these discharges, the Secretary, schools, and guaranty agencies have primarily relied on a physician's certification to make that determination. The FFEL and Direct Loan program regulations define a "total and permanent disability" as "the condition of an individual who is unable to attend school because of an injury or illness that is expected to continue indefinitely or result in death." In the Perkins Loan Program the definition is "the inability to work and earn money or to attend an institution because of an impairment that is expected to continue indefinitely or result in death."

If a borrower sends payments to the loan holder after it has discharged the loan the loan holder returns those payments to the borrower, with a notification that the loan has been discharged and that any further payments are unnecessary.

Under the current regulations, a borrower whose title IV loan has been discharged due to a disability may receive another title IV loan only if a physician certifies that the borrower now can engage in substantial gainful activity. The borrower must also acknowledge that any additional loans that are received cannot be discharged due to the same disability, unless the disability substantially deteriorates.

Proposed Regulations: Under the proposed regulations, a borrower would apply to the loan holder for a disability discharge. Approval of a request for a disability discharge would be based on either a physician's certification or documentation from the Social Security Administration that supports the conclusion that the borrower's condition meets our requirements. If the loan holder (and guaranty agency, for FFEL loans) approves the request, the loan would be assigned to us. We would review the documentation that is submitted. If we denied the request for a discharge, we would continue to hold the loan and resume collection activity. If we approved the request for a discharge, the borrower would receive a conditional discharge of the loan. During the conditional discharge period, which would last for up to three years, the borrower would not be required to make payments on the loan. At the end of the conditional discharge period we would make a final determination of eligibility for a disability discharge. If, during the conditional discharge period, the borrower's annual earnings from work are below the poverty line for a family of two, and the borrower does not receive any additional title IV loans, we would grant a final discharge of the loan. At that time, we would return any payments made on the loan after the onset of the disabling condition.

Sections 674.61(b)(3)(ii), 682.402(c)(2)(ii), and 685.213(b)(2) Use of Social Security Administration Disability Documentation

Proposed Regulations: Under the proposed regulations a borrower could submit, in lieu of the physician's certification, documentation from the Social Security Administration (SSA) that supports the borrower's claim of total and permanent disability. Documentation from the SSA must establish that the borrower is totally and permanently disabled as defined in these proposed regulations. We are also proposing that documentation from the SSA could be used when a borrower, in order to qualify for additional title IV loan funds, needs to document that the borrower's medical condition has improved to the extent that the borrower is capable of substantial gainful activity.

Reasons: Individuals who are eligible to receive disability benefits from the SSA have already gone through an extensive medical review process. For this reason, we are proposing regulations that would permit a borrower who is eligible for SSA disability benefits to receive a disability discharge without obtaining an additional certification from a physician, if the borrower can provide comparable documentation from the SSA establishing that he or she is totally and permanently disabled. Similarly, in the case of a borrower who wishes to receive a title IV loan after having had a previous loan discharged (or conditionally discharged) due to a total and permanent disability, the proposed regulations would not require an additional physician's certification if the borrower provides documentation from the SSA showing that the borrower is able to engage in substantial gainful activity.

The standard that an individual must meet to qualify for SSA disability benefits is not the same as the total and permanent disability standard in the proposed regulations. Some individuals who are eligible to receive SSA disability benefits would not be considered totally and permanently disabled according to our regulatory definition. Therefore, we do not believe that it would be appropriate to accept SSA documentation as an alternative to a physician's certification in all cases.

We are working with the SSA to determine if there is specific documentation that the SSA provides to some individuals that would be comparable to a physician's certification that a borrower is totally and permanently disabled as defined in our regulations. If we determine that the SSA provides such documentation to some borrowers, we will provide guidance on the specific documentation that a borrower would have to provide.

We welcome your comments on the feasibility of using documentation of eligibility for SSA disability benefits, in some cases, as an alternative to a physician's certification of total and permanent disability. We are especially interested in comments on how the use of SSA documentation might affect administrative burden, borrower understanding of the discharge eligibility requirements, and program integrity.

Sections 674.61(b)(3)–(6), 682.402(c)(2)–(12), and 685.213(b) Initial Determination of Total and Permanent Disability

Proposed Regulations: As noted earlier, the proposed regulations would modify the current regulations and establish a new process for evaluating disability discharge applications. Under the proposed regulations, a FFEL or Perkins loan borrower would initiate the discharge application process by submitting a discharge application to the loan holder. If the loan holder, based on a review of the application, determines that the borrower met the requirements for a disability discharge, the loan would be assigned to the Department. We would notify the borrower that we would be reviewing the application and assorted documentation. We would also continue to review disability discharge applications submitted by Direct Loan borrowers. In all three loan programs, we could ask the borrower to provide additional documentation to support the request for discharge.

Under the proposed regulations, if we determine that a borrower meets the eligibility criteria for a conditional disability discharge, we would place the loan into a conditional discharge status for up to three years.

If we determine that the borrower does not qualify for a total and permanent disability discharge, we would notify the borrower that we had denied the request and that we would resume collection activity on the loan.

Reasons: Under the proposed regulations, we would determine whether a borrower meets the eligibility criteria for a total and permanent disability discharge. During the negotiated rulemaking sessions, some negotiators for FFEL loan holders, Perkins Loan schools, and guaranty agencies indicated that they did not believe that they could properly

evaluate disability discharge applications. They felt that they had neither the staff, the resources, nor the expertise to thoroughly review or question a physician's certification of a borrower's disability. The IG found that, in some cases, disability discharges were approved based on an insufficient review of medical documentation. Disability discharges were granted based on physicians' diagnoses that were illegible, or for impairments that clearly were neither "permanent" nor "total." The proposed regulations would require the loan holder (or guaranty agency) to thoroughly review the documentation provided by a borrower requesting a discharge due to a total and permanent disability. However, we would assume the responsibility for making the ultimate decision as to whether to grant the discharge. We believe that this proposed process will help ensure that conditional and final disability discharges are granted based on adequate medical documentation, and that there is a consistent application of the standards for granting those discharges.

Sections 674.61(b)(1), (6), and (7), 682.402(c)(1), (12), and (13), and 685.213(a)(1) and (d) Conditional Discharge

Proposed Regulations: Under the proposed regulations, if we make a conditional determination that a borrower is totally and permanently disabled, we would place the borrower's loan in a conditional discharge status for a period of up to three years from the date of the onset of the disabling condition. We would not require the borrower to make payments on the loan.

If, at the end of the conditional discharge period, the borrower still meets the discharge eligibility requirements, we would make a final determination of eligibility for a total and permanent disability discharge. We would discharge the loan, including any accrued interest, and we would return any payments made on the loan after the onset of the disability.

If the borrower ceased to meet the discharge eligibility requirements during or at the end of the conditional discharge period, we would cancel the conditional discharge, and collection activity would resume on the loan. The borrower would not be required to repay any interest that accrued on the loan during the period when collection activity was suspended.

Reasons: The definition of "totally and permanently disabled" states, in part, that a borrower must be unable to work and earn money because of an impairment that is expected to continue indefinitely or result in death. However, the IG found that a significant number of borrowers who received a total and permanent disability discharge earned wages after their loans were discharged. We believe it is reasonable to conclude that a borrower is not totally and permanently disabled if there is evidence that the borrower has received income from wages in excess of a very modest amount. Under the conditional discharge approach proposed in these regulations, we would monitor a borrower's income—as an indicator of whether the borrower is working—over an extended period of time. We believe that this approach addresses the concerns raised in the IG's report by providing for a more accurate assessment of whether a borrower is totally and permanently disabled than the "snapshot" approach in the current regulations.

To minimize the administrative burden, and allow for final determinations of discharge eligibility in a reasonable period of time, we are proposing a conditional discharge period of up to three years. We are especially interested in receiving comments on whether that conditional discharge period is an appropriate length of time.

Sections 674.61(b)(2),(8), and (9), 682.402(c)(14) and (15), and 685.213(a)(2) and (c) Final Determination of Total and Permanent Disability

Proposed Regulations: These proposed regulations would describe the basis for the decision as to whether to grant a final disability discharge. Under the proposed regulations, the loan would generally be discharged if, during the conditional discharge period, the borrower's income from employment did not exceed the poverty line for a family of two for any 12-month period, and the borrower did not take out any additional title IV loans. If the borrower did earn income from employment above this threshold or did take out additional loans or was otherwise determined not to be totally and permanently disabled, we would not grant the final discharge.

A borrower could not apply for a total and permanent disability discharge on a loan that has gone back into active collection status after being conditionally discharged, unless the borrower's medical condition substantially deteriorated.

Reasons: Under the proposed regulations, a borrower whose loan is in a conditional discharge status would lose eligibility for a final discharge if the borrower's earnings from work exceeded the poverty line for a family of two for any 12-month period. The poverty guidelines are updated annually in the **Federal Register** by the U.S. Department of Health and Human Services (HHS) and are a reliable indicator of current economic conditions that can be used as a measure of minimal earnings. The poverty guidelines are posted on HHS' web site at the following address: http://aspe.hhs.gov/poverty/poverty.htm

The IG found that some borrowers who had received disability discharges were earning substantial wages after the discharge, in some cases over $30,000 a year. We do not believe that a borrower who has worked consistently for a significant period of time, as indicated by earnings above the poverty line, is totally and permanently disabled in accordance with our regulations.

On the other hand, we also believe that terminating a conditional discharge if the borrower had any earnings at all from work during the three-year conditional discharge period could have the undesirable effect of discouraging disabled borrowers from attempting to overcome their disabilities. A disabled borrower might be able to generate modest earnings from work, but find those earnings wiped out if the conditional discharge was immediately cancelled as a result. Therefore, the proposed regulations would not penalize a borrower who has minimal earnings from work. However, a borrower who is clearly capable of engaging in substantial gainful activity (as indicated by earnings in excess of the poverty line) would lose eligibility for the total and permanent disability discharge because, by definition, he or she would not be totally and permanently disabled.

Under the proposed regulations, if a borrower seeks another title IV loan during the conditional discharge period, we would cancel the conditional discharge before the borrower could receive an additional title IV loan. To receive another title IV loan, a borrower who has had a prior loan discharged (or conditionally discharged) due to a total and permanent disability must provide a certification, from a physician or from the SSA, that the borrower can engage in substantial gainful activity. By definition, a borrower who is totally and permanently disabled must be unable to work and earn money. In our view, a borrower no longer meets the eligibility requirements for a total and permanent disability if a physician or the SSA has certified that the borrower is capable of substantial gainful activity. Therefore, the borrower should remain obligated to

repay the loan for which the discharge was previously sought.

Sections 674.61(b)(11) and (12), 682.402(r)(2) and (3), 685.212(g)(2) Payments Received After the Onset of the Disabling Condition

Proposed Regulations: Under the proposed regulations, any payments sent to an institution (on a Perkins Loan) or a lender or guaranty agency (on an FFEL loan) by or on behalf of a borrower whose loan has been assigned to us after the borrower has applied for a disability discharge must be forwarded to us. If those payments are made on a loan that we have placed in a conditional discharge status, the payments will be applied to the loan. Similarly, we will apply any payments we receive for a Direct Loan that we have conditionally discharged to that loan. If we discharge the loan at the end of the conditional discharge period, we will return to the sender payments we received after the date of the onset of the disability.

Reasons: Once a loan is assigned to us, the prior holder of the loan may not know the loan's current status. We could still be in the process of determining if the borrower meets the eligibility requirements for a conditional discharge, the loan could be in the conditional discharge status, or a final determination could have been made and the loan already discharged. While a discharge application is pending or a loan is in a conditional discharge period, a final determination of eligibility for a total and permanent disability discharge has not been made. Until we have made a final determination that a borrower qualifies for a total and permanent disability discharge, any payments made on a loan should be applied to the loan. If it turns out that the borrower was not eligible for a final discharge of the loan, the payments would have reduced the outstanding balance due at the time of that determination. If, on the other hand, the loan is discharged at the end of the conditional discharge period, all payments received after the onset of the disability will be returned to the sender.

Sections 674.9, 682.201 and 685.200 Eligibility for Title IV Loans

Current Regulations: The current regulations state that a borrower who has received a discharge of a previous title IV loan based on total and permanent disability may receive another title IV loan only if a physician certifies that the borrower can now engage in substantial gainful activity. In addition, the borrower must sign a statement acknowledging that the new title IV loan cannot be discharged in the future based on any current impairment, unless that impairment substantially deteriorates.

Proposed regulations: The proposed regulations would establish similar eligibility requirements for a borrower who seeks a title IV loan while a previous title IV loan is in a conditional discharge period. Under the proposed regulations, in this situation, the borrower would be eligible to receive another title IV loan only if (1) a physician or the SSA certifies that the borrower is able to engage in substantial gainful activity, (2) the borrower acknowledges that neither the conditionally discharged loan nor the new loan could be discharged on the basis of a pre-existing impairment (unless the impairment substantially deteriorates), and (3) collection activity resumes on the conditionally discharged loan.

Reasons: The proposed requirements for the physician's (or SSA's) certification and borrower's acknowledgement would ensure that a borrower whose previous loan was approved for a conditional discharge or was permanently discharged is potentially capable of repaying the new loan before receiving that new title IV loan. When the borrower receives the new loan, he or she promises to repay the loan. We do not believe it is appropriate to provide a new loan to a borrower who has no prospect of repaying the loan. These students should request other financial aid that does not require repayment.

The proposed regulations would also prevent a borrower from obtaining a new loan and later having that loan discharged based on a medical condition that the borrower used as the basis for an earlier conditional or permanent discharge. The proposed regulations would allow the certification to be provided by either a physician or the SSA, as in the case with the documentation required for a conditional determination of total and permanent disability.

Under the proposed regulations, a conditional discharge on a borrower's prior loan must be cancelled and collection activity resume on the loan before a borrower may receive an additional loan during the conditional discharge period. This requirement reflects the fact that a borrower who has been certified as capable of substantial gainful activity no longer meets the eligibility requirements for a total and permanent disability discharge.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

These proposed regulations implement new procedures for borrowers who apply for loan discharges due to death or total and permanent disability. As more fully described elsewhere in this preamble, under these regulations a borrower who is initially determined to be totally and permanently disabled would receive a conditional discharge for a period of three years. The Department of Education has estimated that the proposed regulations would result in $72 million in Federal savings over FY 2001–2005 as a result of borrowers who previously would have received a discharge losing eligibility during the three-year conditional period.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, *§ 682.201 Eligible Borrowers*).
- Could the description of the proposed regulations in the

SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in title IV, HEA programs, and individual loan borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit or nonprofit institutions with total annual revenue below $5,000,000 or institutions controlled by governmental entities with populations below 50,000, and lenders with total assets under $100 million, as "small entities." Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered "small entities" under the Regulatory Act. Individuals are not defined as "small entities" under the Regulatory Flexibility Act.

A significant percentage of the over 4,000 lenders participating in the FFEL program meet the definition of "small entities." While these lenders and a number of institutions of higher education fall within the SBA size guidelines, the proposed regulations do not impose significant new costs on these entities.

The Secretary invites comments from small institutions and lenders as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Sections 674.9(h), 674.9(i), 674.61(a), 674.61(b), 682.201(a), 682.402(b), 682.402(c), 685.200(a), 685.212(a), 685.212(b), and 685.213(b) contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Sections 674.9, 682.201, and 685.200—Borrower Eligibility

We are proposing changes in the requirements for a borrower to re-establish eligibility for title IV loans after receiving a disability discharge. Under the proposed regulations, a borrower has the additional option of submitting a statement from the SSA certifying that the borrower can engage in substantial gainful activity. This change gives the borrower more flexibility in re-establishing eligibility for title IV loans, and produces no additional burden.

Under the proposed regulations, before a borrower receives another title IV loan, a conditional discharge on any prior loan must be cancelled and that loan placed in an active collection status. As a condition for receiving an additional title IV loan, the borrower must also sign a statement acknowledging that any new loan, or a loan for which a conditional or permanent discharge was previously granted, may not be discharged in the future on the basis of the same, pre-existing medical condition unless the borrower's medical condition substantially deteriorates.

Borrowers are already required, under current regulations, to sign such a statement to regain eligibility for an additional title IV loan after receiving a total and permanent disability discharge. This change does not alter the burden to borrowers.

Sections 674.61, 682.402, 685.212—Loan Discharge Due to Death

Guaranty agencies currently have the authority to discharge loans based on alternative documentation if a copy of the death certificate is unavailable. The proposed regulations maintain that requirement, but specify that the chief executive officer of the guaranty agency must make the decision to exercise that authority and limits the authority to exceptional circumstances. This change does not increase the burden on guaranty agencies.

Currently, schools in the Perkins Loan Program must base their death cancellations on a death certificate or other evidence acceptable under state law. By allowing only the chief financial officer of the institution to grant total and permanent disability cancellations based on alternative evidence of death, the burden on the schools is not changed.

Sections 674.61, 682.402, 685.212, 695.213—Loan Discharge Due to Disability

The proposed regulations do not alter the process for loan holders and guaranty agencies in the FFEL and Perkins programs to review requests for a discharge of a loan based on a total and permanent disability. The only difference under the proposed process is that the loan holder and guaranty agency will make a preliminary determination of eligibility for the discharge. After making that determination, the guaranty agency or other loan holder assigns the loan to us, and we decide whether to discharge the loan. This change does not increase the burden on loan holders or guaranty agencies.

In the Direct Loan Program, we will continue to make determinations of eligibility for total and permanent disability discharges.

In addition, the proposed regulations allow borrowers to qualify for a conditional discharge of their title IV loans by providing a certification of eligibility for disability benefits from the SSA. This allows borrowers increased flexibility in applying for the discharge, and does not increase burden.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30

days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.037 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 674, 682, and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 26, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 674, 682, and 685 of Title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.9 is amended by:

A. Revising paragraph (h)(1).

B. Redesignating paragraphs (i) and (j) as paragraphs (k) and (l).

C. Adding a new paragraph (i).

D. Adding a new paragraph (j).

The additions and revisions read as follows:

§ 674.9 Student eligibility.

* * * * *

(h)(1) In the case of a borrower whose previous loan under title IV of the HEA was discharged due to total and permanent disability, obtains a certification from a physician or from the Social Security Administration that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

* * * * *

(i) In the case of a borrower whose previous loan under title IV of the HEA was conditionally discharged based on a preliminary determination that the borrower was totally and permanently disabled, the borrower must—

(1) Comply with the requirements of paragraph (h) of this section; and

(2) Sign a statement acknowledging that the loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge, unless that impairment substantially deteriorates.

(j) Does not have any loans under title IV of the HEA on which collection activity has been suspended based on a conditional determination that the borrower was totally and permanently disabled. If a borrower applies for a loan under title IV of the HEA during the conditional discharge period described in §§ 674.61(b), 682.402(c), or 685.212(b), the suspension of collection activity must be ended before the borrower becomes eligible to receive any additional loans.

* * * * *

3. Section 674.51 is amended by adding a new paragraph (s) to read as follows:

§ 674.51 Special definitions.

* * * * *

(s) *Total and permanent disability:* The inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

* * * * *

4. Section 674.61 is amended by:

A. Revising the section heading.

B. Revising paragraph (a).

C. Revising paragraph (b).

§ 674.61 Discharge for death or disability.

(a) *Death.* An institution must discharge the unpaid balance of a borrower's Defense, NDSL, or Perkins loan, including interest, if the borrower dies. The institution must discharge the loan on the basis of an original or certified copy of the death certificate. Under exceptional circumstances and on a case-by-case basis, the chief financial officer of the institution may approve a discharge based upon reliable documentation other than a death certificate that supports the discharge request.

(b) *Total and permanent disability.* (1) If the Secretary has made a conditional determination that the borrower is totally and permanently disabled, as defined in § 674.51(s), the loan is conditionally discharged for up to three years from the date that the disabling condition began. The Secretary suspends collection activity on the loan from the date of the conditional determination of total and permanent disability until the end of the three-year conditional period. If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the conditional discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the onset of the disability as certified under § 674.61(b)(3) are returned to the sender.

(2) A borrower satisfies the criteria for a discharge of a loan based on a total and permanent disability if, during and at the end of the three-year conditional discharge period described in paragraph (b)(1) of this section—

(i) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act; and

(ii) The borrower does not receive an additional loan under the FFEL, Direct Loan or Federal Perkins Loan Programs.

(3) If a borrower becomes totally and permanently disabled after receiving a Defense, NDSL, or Perkins loan, the institution shall, pursuant to § 674.50, assign the loan to the Secretary if—

(i) The borrower submits a certification by a physician and the institution reviewed the application and determined that it is complete and that it supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 674.51(s); or

(ii) The borrower submits documentation from the Social Security Administration that the Secretary has identified as acceptable to support the

conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 674.51(s).

(4) At the time the loan is assigned to the Secretary the institution must notify the borrower that the loan has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge.

(5) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable under the terms of the promissory note.

(6) If the Secretary makes a conditional determination that the borrower is totally and permanently disabled, the Secretary notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years after the onset of the disability as certified under § 674.61(b)(3).

(7) During the conditional discharge period, the borrower—

(i) Is not required to make any payments on the loan beginning on the date the Secretary makes a conditional determination that the borrower is totally and permanently disabled;

(ii) Is not considered past due or in default on the loan;

(iii) Must promptly notify the Secretary of any changes in address or phone number;

(iv) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(2)(i) of this section; and

(v) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for discharge under this section.

(8) If, during and at the end of the conditional discharge period, the borrower continues to satisfy the eligibility criteria for a total and permanent disability discharge, as described in paragraph (b)(2) of this section, the balance of the loan is discharged.

(9) If, at any time during or at the end of the three-year conditional discharge period, the borrower does not continue to meet the eligibility requirements for total and permanent disability discharge, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (b)(6) of this section through the end of the conditional discharge period.

(10) The notification to the borrower described in paragraph (b)(6) of this section identifies the conditions of the conditional discharge period specified in paragraphs (b)(6) through (9) of this section.

(11) If the institution receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the institution must forward those payments to the Secretary for crediting to the borrower's account. At the same time that the institution forwards the payment, it must notify the borrower that there is no obligation to make payments on the loan while it is conditionally discharged prior to a final determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(12) When the Secretary makes a final determination to discharge the loan, the Secretary returns to the sender 100 percent of any payments received, directly or indirectly, from or on behalf of the borrower.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM—

5. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

6. In § 682.200(b) the definition of "Totally and permanently disabled" is revised to read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Totally and permanently disabled. The condition of an individual who is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death.

* * * * *

7. Section 682.201 is amended by:

A. Redesignating paragraphs (a)(5), (a)(6), and (a)(7) as paragraphs (a)(6), (a)(8), and (a)(9).

B. Adding a new paragraph (a)(5).

C. Revising redesignated paragraph (a)(6).

D. Adding a new paragraph (a)(7).

§ 682.201 Eligible borrowers.

(a) * * *

(5) The suspension of collection activity has been lifted from any loan on which collection activity had been suspended based on a conditional determination that the borrower was totally and permanently disabled under § 682.402(c).

(6) In the case of a borrower whose prior loan under title IV of the Act was discharged after a final determination of total and permanent disability, the student must—

(i) Obtain certification from a physician or from the Social Security Administration that the borrower is able to engage in substantial gainful activity; and

(ii) Sign a statement acknowledging that the FFEL loan the borrower receives cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates.

(7) In the case of a borrower whose prior loan under title IV of the Act was conditionally discharged based on a preliminary determination that the borrower was totally and permanently disabled, the borrower must—

(i) Comply with the requirements of paragraph (a)(6) of this section; and

(ii) Sign a statement acknowledging that the loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge, unless that impairment substantially deteriorates.

* * * * *

8. Section 682.402 is amended by:

A. Revising paragraph (b)(2).

B. Revising paragraph (b)(3).

C. Revising paragraph (c)(1)(i).

D. Redesignating paragraphs (c)(1)(ii) and (c)(1)(iii) as paragraphs (c)(1)(iii) and (c)(1)(iv), respectively.

E. Adding a new paragraph (c)(1)(ii).

F. Amending redesignated paragraph (c)(1)(iii) by removing the reference to paragraph "(c)(1)(iii)(A)" and adding, in its place, "(c)(1)(iv)(A)".

G. Amending redesignated paragraph (c)(1)(iv)(A) by removing the reference to paragraphs "(c)(1)(i) and (ii)" and adding, in its place, "(c)(1)(i) through (iii)".

H. Amending redesignated paragraph (c)(1)(iv)(B) by removing the reference to paragraph "(c)(1)(iii)(A)" and adding, in its place, "(c)(1)(iv)(A)".

I. Amending redesignated paragraph (c)(1)(iv)(B) by removing the reference to paragraphs "(c)(1)(i) and (ii)" and adding, in its place, "(c)(1)(i) through (iii)".

J. Amending redesignated paragraph (c)(1)(iv)(C) by removing the reference to paragraph "(c)(1)(iii)(A)" and adding, in its place, "(c)(1)(iv)(A)".

K. Revising paragraph (c)(2).

L. Revising paragraph (c)(3).

M. Redesignating paragraph (c)(4) as paragraph (c)(5).

N. Adding a new paragraph (c)(4).

O. Revising redesignated paragraph (c)(5).

P. Adding new paragraphs (c)(6) through (c)(16).

Q. Revising paragraph (g)(1)(iii).

R. Revising paragraph (g)(1)(iv).

S. Revising paragraph (k)(5)(i).

T. Redesignating paragraph (k)(5)(ii) as paragraph (k)(5)(iii).

U. Adding a new paragraph (k)(5)(ii).

V. Redesignating paragraphs (r)(2) and (r)(3) as paragraphs (r)(4) and (r)(5), respectively.

W. Adding a new paragraph (r)(2).

X. Adding a new paragraph (r)(3).

Y. Revising redesignated paragraph (r)(5).

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(b) * * *

(2) To support a request for a discharge of a loan based on the death of the borrower (or student in the case of a PLUS loan), the borrower's representative (or the parent in the case of a PLUS loan) must provide the lender with an original or certified copy of the death certificate. Under exceptional circumstances and on a case-by-case basis, the chief executive officer of the guaranty agency may approve a discharge based upon other reliable documentation supporting the discharge request.

(3) After receiving reliable information indicating that the borrower (or student) has died, the lender must suspend any collection activity against the borrower for up to 60 days and promptly request that the borrower's representative (or the student's parent in the case of a PLUS loan) provide the documentation described in paragraph (b)(2) of this section. If additional time is required to obtain the documentation, the period of suspension of collection activity may be extended up to an additional 60 days. If the lender is not able to obtain an original or certified copy of the death certificate or other documentation acceptable to the guaranty agency, under the provisions of paragraph (b)(2) of this section, during the period of suspension, the lender must resume collection activity from the point that it had been discontinued. The lender is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

* * * * *

(c) * * *

(1)(i) If the Secretary has made a conditional determination that the borrower is totally and permanently disabled, as defined in § 682.200(b), the loan is conditionally discharged for up to three years from the date that the disabling condition began. The Secretary suspends collection activity on the loan from the date of the conditional determination of total and permanent disability until the end of the conditional period. If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the conditional discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the onset of the disability, as certified under § 682.402(c)(2) are returned to the sender.

(ii) A borrower satisfies the criteria for a discharge of a loan based on a total and permanent disability if, during and at the end of the three-year period described in paragraph (c)(1)(i) of this section—

(A) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act; and

(B) The borrower does not receive an additional loan under the FFEL, Direct Loan or Federal Perkins Loan Programs.

* * * * *

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly requests that the borrower or the borrower's representative—

(i) Submit, on a form approved by the Secretary, a certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 682.200(b); or

(ii) Submit documentation from the Social Security Administration that the Secretary has identified as acceptable to support that the borrower is totally and permanently disabled as defined in § 682.200(b).

(3) The lender must continue collection activities until it receives either the certification of total and permanent disability from a physician, a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled, or documentation from the Social Security Administration, as described in paragraph (c)(2)(ii) of this section. Except as provided in paragraph (c)(5) of this section, after receiving the physician's certification or letter, or the documentation from the Social Security Administration, the lender may not attempt to collect from the borrower or any endorser.

(4) The lender must submit a disability claim to the guaranty agency—

(i) If the borrower submits a certification by a physician and the lender makes a preliminary determination that the certification supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 682.200(b); or

(ii) If the borrower submits documentation from the Social Security Administration that the Secretary has identified as acceptable to support that the borrower is totally and permanently disabled as defined in 682.200(b).

(5) If the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled, or if the lender does not receive the physician's certification of total disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(3) of this section, the lender must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date the lender received the physician's letter requesting additional time and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(6) The guaranty agency must pay a claim submitted by the lender if—

(i) In the case of a preliminary determination of total and permanent disability based on a physician's certification, the guaranty agency has reviewed the application and determined that it is complete and that it supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 682.200(b); or

(ii) In case of a preliminary determination of total and permanent disability based on a documentation from the Social Security Administration, the guaranty agency has determined that the documentation meets the requirements of § 682.402(c)(2)(ii).

(7) If the guaranty agency does not pay the disability claim, the lender must notify the borrower that the application for a disability discharge has been denied and the lender will continue to collect on the loan.

(8) If the guaranty agency pays the disability claim, the lender must notify the borrower that the loan will be assigned to the Secretary for determination of eligibility for a total and permanent disability discharge.

(9) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.

(10) The guaranty agency must assign the loan to the Secretary pursuant to § 682.409(c) and (d) after the Secretary pays the disability claim.

(11) If the Secretary determines that the certification and information provided by the borrower do not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable under the terms of the promissory note.

(12) If the Secretary makes a preliminary determination that the borrower is totally and permanently disabled, the Secretary notifies the borrower that the loan is conditionally discharged and that the conditional discharge period will last for up to three years after the onset of the disability as certified under § 682.402(c)(2).

(13) During the conditional discharge period, the borrower—

(i) Is not required to make any payments on the loan beginning on the date the Secretary makes the conditional determination that the borrower is totally and permanently disabled;

(ii) Is not considered delinquent or in default on the loan;

(iii) Must promptly notify the Secretary of any changes in address or phone number;

(iv) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(1)(ii)(A) of this section; and

(v) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for discharge under this section.

(14) If, during and at the end of the conditional discharge period, the borrower continues to satisfy the eligibility criteria for a total and permanent disability discharge, as described in § 682.402(c)(1)(ii), the balance of the loan is discharged.

(15) If, at any time during or at the end of the three-year conditional discharge period, the borrower does not continue to meet the eligibility requirements for total and permanent disability discharge, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (k)(12) of this section through the end of the conditional discharge period.

(16) The notification to the borrower described in paragraph (c)(12) of this section identifies the conditions of the conditional discharge period specified in paragraphs (c)(12) through (15) of this section.

* * * * *

(g) * * *

(1) * * *

(iii) In the case of a death claim, an original or certified death certificate, or other documentation supporting the discharge request that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in either paragraph (c)(2)(i) or (c)(2)(ii) of this section.

* * * * *

(k) * * *

(5) * * *

(i) For death or bankruptcy claims, the shorter of 60 days or the period from the date the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) dies, or filed a petition for relief in bankruptcy until the Secretary authorizes payment;

(ii) For disability claims, the shorter of 60 days or the period from the date the guaranty agency makes a preliminary determination that the borrower became totally and permanently disabled until the Secretary authorizes payment; or

* * * * *

(r) * * *

(2) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the guaranty agency must forward those payments to the Secretary for crediting to the borrower's account. At the same time that the agency forwards the payment, it must notify the borrower that there is no obligation to make payments on the loan while it is conditionally discharged prior to a final determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(3) When the Secretary makes a final determination to discharge the loan, the Secretary returns to the sender 100 percent of any payments received, directly or indirectly, from or on behalf of the borrower.

* * * * *

(5) If the guaranty agency has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraph (r)(1) of this section, and the borrower (or representative) continues to send payments to the guaranty agency, the agency must remit all of those payments to the Secretary.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

9. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

10. Section 685.200 is amended by revising paragraph (a)(1)(iv) to read as follows:

§ 685.200 Borrower eligibility.

(a)(1) * * *

(iv)(A) In the case of a borrower whose prior loan under title IV of the Act was discharged after a final determination of total and permanent disability, the borrower—

(*1*) Obtains a certification from a physician or from the Social Security Administration that the borrower is able to engage in substantial gainful activity; and

(*2*) Signs a statement acknowledging that the Direct Loan the borrower receives cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates.

(B) In the case of a borrower whose prior loan under title IV of the Act was conditionally discharged based on an initial determination that the borrower was totally and permanently disabled—

(*1*) The suspension of collection activity on the previous loan has been lifted;

(*2*) The borrower complies with the requirement in paragraph (a)(1)(iv)(A)(*1*) of this section; and

(*3*) The borrower signs a statement acknowledging that neither the previous loan nor the Direct Loan Program loan that the borrower receives may be discharged in the future on the basis of any impairment present when the new

loan is made, unless that impairment substantially deteriorates.

* * * * *

11. Section 685.212 is amended as follows:

A. By revising paragraphs (a) and (b).

B. By revising paragraph (g)(1).

C. By redesignating paragraph (g)(2) as (g)(3).

D. By adding a new paragraph (g)(2).

§ 685.212 Discharge of a loan obligation.

(a) *Death.* (1) If a borrower (or the student on whose behalf a parent borrowed a Direct PLUS Loan) dies, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan if the borrower's representative (or the parent in the case of a Direct PLUS Loan) provides the Secretary with an original or certified copy of the borrower's (or student's) death certificate.

(2) If an original or certified copy of the death certificate is not available, the Secretary discharges the loan only if the borrower's representative (or the parent) provides the Secretary with other reliable documentation acceptable to the Secretary establishing that the borrower (or student) has died.

(b) *Total and permanent disability.* If a borrower meets the requirements in § 685.213(c), the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

* * * * *

(g) *Payments received after eligibility for discharge.* (1) *For the discharge conditions in paragraphs (a), (c), (d), and (e) of this section.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender, or, for a discharge based on death, the borrower's estate, any payments received after the date that the eligibility requirements for discharge were met but before the date the discharge was approved. The Secretary also returns any payments received after the date the discharge was approved.

(2) *For the discharge condition in paragraph (b) of this section.* Upon making a final determination of eligibility for discharge based on total and permanent disability, the Secretary returns to the sender any payments received after the onset of the disability, as certified under § 685.213(b). The Secretary also returns any payments received after the date the final discharge was approved.

* * * * *

12. Section 685.214, 685.215, and 685.216 are redesignated as §§ 685.215; 685.216, and 685.220 respectively.

13. Section 685.213 is redesignated as § 685.214; a new § 685.213 is added to read as follows:

§ 685.213 Total and permanent disability discharge.

(a) *General.* (1) If the Secretary makes an initial determination that a borrower is totally and permanently disabled, the Secretary—

(i) Notifies the borrower that the loan will be in a conditional discharge status for up to three years from the date that the disabling condition began; and

(ii) Suspends any efforts to collect on the loan from the date of the initial determination described in paragraph (a)(1) of this section until the end of the conditional discharge period.

(2) If the borrower continues to meet the eligibility requirements for total and permanent disability discharge during and at the end of the three-year conditional discharge period, the Secretary—

(i) Discharges the obligation of the borrower and any endorser to make any further payments on the loan at the end of that period; and

(ii) Returns to the borrower any payments received—

(A) During the three-year conditional discharge period; or

(B) After the date a final discharge was approved under paragraph (a)(2)(i) of this section.

(3) If the borrower does not continue to meet the eligibility requirements for total and permanent disability discharge at any time during or at the end of the three-year conditional discharge period, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (a)(1) of this section through the end of the conditional discharge period.

(4) Except as provided in paragraph (e)(1) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan, unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(b) *Conditional determination of total and permanent disability.* The Secretary makes a conditional determination that a borrower is totally and permanently disabled if the borrower (or the borrower's representative) provides the Secretary with—

(1) A certification (on a form approved by the Secretary) by a physician who is a doctor of medicine or osteopathy and legally authorized to practice in a State that the borrower is totally and permanently disabled as defined in 34 CFR 682.200(b); or

(2) Documentation from the Social Security Administration that the Secretary has identified as acceptable to support that the borrower is totally and permanently disabled as defined in § 682.200(b).

(c) *Eligibility requirements for total and permanent disability discharge.* A borrower meets the eligibility requirements for total and permanent disability discharge if, during and at the end of the three-year conditional discharge period described in paragraph (a)(1) of this section—

(1) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act; and

(2) The borrower does not receive a new loan under the Direct Loan Program, the Federal Family Education Loan Program, or the Federal Perkins Loan Program.

(d) *Conditional discharge period.* During the conditional discharge period described in paragraph (a)(1) of this section, the borrower—

(1) Is not required to make any payments of principal or interest on the loan beginning on the date the Secretary makes a conditional determination that the borrower is totally and permanently disabled;

(2) Is not considered to be delinquent or in default on the loan;

(3) Must promptly notify the Secretary of any changes in the borrower's address or telephone number;

(4) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(1) of this section; and

(5) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for discharge under this section.

(e) *Provisions for discharge of Direct Consolidation Loans.* (1) For a Direct Consolidation Loan, a borrower is considered totally and permanently disabled if he or she would be considered totally and permanently disabled under the provisions of this section for all of the loans that were included in the Direct Consolidation Loan if those loans had not been consolidated.

(2) For the purposes of discharging a loan under paragraph (e)(1) of this section, the provisions of this section apply to each loan included in the

Direct Consolidation Loan, even if the loan is not a Direct Loan Program loan.

(3) If requested, a borrower seeking to discharge a loan obligation under paragraph (e)(1) of this section must provide the Secretary with the disbursement dates of the underlying loans.

[FR Doc. 00–19508 Filed 8–1–00; 8:45 am]
BILLING CODE 4000–01–U

Federal Register

Wednesday,
August 2, 2000

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Emergency for the Summer Flounder Fishery; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000727220–0220–01; I.D. 072400A]

RIN 0648–AO32

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Emergency for the Summer Flounder Fishery

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

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS amends the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations to revise the objective to be achieved by the annual specifications for the 2001 summer flounder fishery from obtaining a fishing mortality rate (F) target to obtaining a biomass (B) target and to require that, if a 2000 state summer flounder commercial quota allocation is not fully harvested, the underage be added to that state's 2001 allocation. The intent of this action is to comply with a decision issued on April 25, 2000, by the United States Court of Appeals for the District of Columbia Circuit (Court) and to protect the summer flounder stock from overfishing.

DATES: This emergency interim rule is effective from August 2, 2000, through January 29, 2001. Comments must be received no later than 5 p.m. EDT September 1, 2000.

ADDRESSES: Copies of the Regulatory Impact Review are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Written comments on this emergency interim rule should be sent to Patricia A. Kurkul at the same address. Comments may also be sent via facsimile (fax) to (978)281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, phone (978)281–9221; fax (978)281–9135; e-mail regina.l.spallone@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder fishery is managed jointly by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The summer flounder stock is currently overfished. The regulations implementing the FMP, at § 648.100, outline the process for specifying annually the catch limits for the commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, season, and area restrictions) intended to achieve the annual F target set forth in the FMP.

On April 25, 2000, the Court issued an opinion on a challenge to the 1999 summer flounder specifications brought by a number of environmental groups. The Court remanded the 1999 summer flounder total quota (as specified by commercial and recreational harvest limits) to NMFS "for further proceedings consistent with [the] opinion." The opinion found that (1) priority must be given to conservation measures, and, only when two different plans achieve similar conservation goals, may the agency consider adverse economic consequences, (2) management measures must provide at least a 50–percent probability of achieving the target reference point, and (3) reliance on conservation measures without quantified benefits is not acceptable to supplement an insufficient quota recommendation. The 1999 total quota, when adopted, relied on unquantified factors that were found insufficient by the Court to supplement the quantified 18–percent likelihood of meeting the conservation goals of the FMP.

In setting the 2000 total quota, unquantified factors were also relied upon to supplement the 25–percent quantified likelihood of not exceeding the conservation goal. NMFS published final specifications for the 2000 summer flounder fishery on May 24, 2000 (65 FR 33486). In that final rule, NMFS stated that it intended to revise the 2000 summer flounder total quota by August 1, 2000, to set it at a level with at least a 50–percent probability of not exceeding the F target as required by the Court's decision.

After reviewing the best available information on the status of the summer flounder stock, and to comply with the Court's decision, NMFS is taking, through this emergency interim rule, an action that differs from that anticipated in the May 24, 2000, final rule. This action establishes a clearer standard to be met in setting the 2001 summer flounder specifications. Specifically, NMFS is establishing a requirement that the 2001 total quota be set at a level that will achieve, with at least a 50–percent probability, the biomass level that would have been achieved at the end of 2001 if the F target had been met in 1999 and 2000 and would have been met in 2001, provided that the resultant F does not exceed the F that results in maximum yield per recruit (F_{max}). This requirement will compensate for the failure of the specifications to achieve the FMP's F target in 1999 and, based on preliminary analysis, in 2000 and put the rebuilding program for summer flounder back on schedule.

The results of an updated assessment of the summer flounder stock peer reviewed in June 2000 will be available in August. The new assessment will provide the best available scientific data on the summer flounder stock, including updated estimates of F and stock biomass. The new assessment will be used to make the necessary projections for the 2001 specifications.

The fishing year for summer flounder began January 1, 2000. Many states have already harvested a significant portion of their commercial allocation, and approximately 75 percent of the coastwide recreational fishery will be concluded by the end of August. It would, thus, be impracticable, if not impossible, for all of the affected states to implement needed management measures to respond to a mid-year adjustment in 2000. In many cases, states' commercial fisheries would immediately close as a result of such an inseason change, thus increasing summer flounder discards. However, this action does contain a measure that will encourage efforts by the states to reduce the commercial harvest for the remainder of this year. This measure is a provision to credit the underharvest of the 2000 commercial quota by individual states. Underages for a state in 2000 would be applied to that state's 2001 allocation and may, thus, reduce the impacts on the commercial sector in those states in that year. However, as noted in the final specifications, adjustments to the 2000 specifications for overages in the 1999 allocation of quota published in that rule were preliminary and subject to change. NMFS will adjust for any additional overages that are identified as those data become final. NMFS will publish those adjustments in the *Federal Register* as required by the FMP.

A similar overage and underage mechanism is not being established for the recreational fishery. Although data collected by the Marine Recreational Fisheries Statistics Survey are used to

estimate the annual recreational harvest of summer flounder, the use of those data to make deductions from the recreational harvest limit for the following year may result in annual quota changes reflective of inter-annual variability in the survey results rather than in actual landings.

Preliminary analyses based on the new stock assessment indicate at this time that the B quota would be 67,500 mt. A total quota with a 50–percent probability of achieving that target at the end of 2001 would be approximately 17.91 million lb (8,125 mt); the total quota with a 60–percent probability would be approximately 17.37 million lb (7,881 mt); and the total quota with a 75–percent probability would be approximately 16.57 million lb (7,515 mt). In the annual specification process for the 2001 fishing year, the Council will use the final assessment results to estimate what the biomass level would have been, had the F targets in 1999 and 2000 been achieved. The total summer flounder quota for 2001 will be set at a level that is expected to result in that biomass at the end of 2001. The total quota selected must have at least a 50–percent probability of achieving the required B target. The total quota will be allocated 60 percent to the commercial sector and 40 percent to the recreational sector, as currently specified in the FMP. Landings in excess of a state's commercial allocation will be deducted from that state's allocation in 2001.

In addition, this rule establishes a new provision that requires any the underharvest of an individual state's commercial quota in 2000 to be applied to the final specifications for 2001 for that state. The overage and underage adjustments will be made when final 2000 landings have been enumerated.

Classification

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

Providing prior notice and opportunity for comment would be contrary to the public interest because the framework established by this rule must be in place before the August meetings of the technical Monitoring Committee and Council so that the Committee and Council may recommend specifications for the 2001 fisheries that address the Court decision and are timely. Delay in instituting the framework would translate into a delay in setting the 2001 specifications and into a delay in addressing the Court decision in an equitable manner for the different states involved. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement for prior notice and opportunity for comment.

Also, providing a 30-day delay in the effective date of this rule is unnecessary, because this rule merely establishes a framework designed to guide the Committee and Council in the specification process for the 2001 fishery and does not impose requirements on members of the public with which they have to comply. Therefore, the AA finds good cause under 5 U.S.C. 553(d)(3) not to delay for 30 days the effective date of this rule.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule.

This emergency rule is exempt from the analytical requirements of the Regulatory Flexibility Act because prior notice and comment is not required by 5 U.S.C. 553 or any other law.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 31, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.100, paragraphs (a) through (e) are suspended, and paragraphs (f) through (j) are added to read as follows:

§ 648.100 Catch quotas and other restrictions.

* * * * *

(f) *Annual review for the 2001 measures.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15, 2000, to determine the biomass level that would have resulted in 2001 (B_{2001}), assuming the target fishing mortality rate (F) been achieved in 1999 and 2000 and would be achieved in 2001, provided that the resultant F does not exceed F_{max}. The Summer Flounder Monitoring Committee shall also review the following data to determine the allowable levels of fishing and other restrictions necessary in 2001 to accomplish, with at least a 50–percent probability of success, the specified B_{2001} by the end of 2001: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(g) *Recommended measures for 2001.* Based on the review outlined in paragraph (f) of this section, the Summer Flounder Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the Commission the following measures to assure that the B_{2001} is achieved with at least a 50–percent probability of success:

(1) Commercial quota set from a range of 0 to the maximum allowed to achieve the specified B_{2001}.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the specified B_{2001}.

(5) Recreational minimum fish size.

(6) Recreational season.

(7) Restrictions on gear other than otter trawls.

(8) Adjustments to the exempted area boundary and season specified in § 648.104(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data specified in paragraph (f) of this section to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

(h) *Annual fishing measures for 2001.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure, with at least a 50–percent probability of success, that B_{2001} will be achieved. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures necessary to assure, with at least a 50–percent probability of success, that B_{2001} will be achieved. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the

environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** by October 15 to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish a proposed rule in the **Federal Register** by February 15 to implement additional management measures for the recreational fishery, if he/she determines that such measures are necessary to assure, with at least a 50–percent probability of success, that B_{2001} will be achieved. After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement the measures necessary to assure, with at least a 50–percent probability of success, that B_{2001} will be achieved.

(i) *Distribution of the annual quota for 2001.* (1) The annual commercial quota for 2001 will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES

State	Share (percent)
Maine	0.04756
New Hampshire	0.00046
Massachusetts	6.82046
Rhode Island	15.68298
Connecticut	2.25708
New York	7.64699
New Jersey	16.72499
Delaware	0.01779
Maryland	2.03910
Virginia	21.31676
North Carolina	27.44584

(2) All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year. If landings in any state implementing a commercial quota for the year 2000 are less than that state's allocation, the amount of the unharvested quota (i.e., quota underage), will be added to that state's 2001 allocation of commercial quota.

(j) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder FMP and Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made and will be effective upon the filing by NMFS of a notice of the approval of the transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the Federal Register.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. If there is a quota underage among one or more of the states involved in the combination of quotas at the end of the 2000 fishing year, the underage will be added to the 2001 quota for each of the states involved in the combined quota. The addition will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (i) of this section.

3. In § 648.101, paragraph (a) is suspended and paragraph (c) is added to read as follows:

§ 648.101 Closures.

* * * * *

(c) *EEZ closure.* The Regional Administrator shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the **Federal Register** if he/she determines that the inaction of one or more states will cause the biomass target (B_{2001}) identified in § 648.100(f) not to be achieved or if the commercial fisheries in all states have been closed. The Regional Administrator may reopen the EEZ if earlier inaction by a state has been remedied by that state or if commercial fisheries in one or more states have been reopened without causing B_{2001} not to be achieved.

4. In § 648.104, the last sentence of paragraph (c) is suspended and paragraph (g) is added to read as follows:

§ 648.104 Gear restrictions.

* * * * *

(g) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.2 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (g), head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh

configuration on the top of the regulated portion of the net, as defined in paragraph (e) of this section, if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in § 648.104(a).

5. In § 648.107, paragraphs (a) and (b) are suspended and paragraphs (c) and (d) are added to read as follows:

§ 648.107 Conservation equivalent measures for the recreational summer flounder fishery.

* * * * *

(c) Through September 5, 2000, states may implement on an annual basis conservation equivalent measures that reduce the recreational catch to the same extent as the annual Federal summer flounder measures specified under § 648.100(h) to achieve the recreational harvest limit in any year. These measures would be a different combination of minimum fish sizes, possession limits, and closed seasons that are the conservation equivalent of those Federal summer flounder measures specified on an annual basis.

(d) A determination of equivalency would be made annually for any state proposing alternative recreational measures by the Summer Flounder Technical Committee of the Commission. Conservation equivalent measures may be implemented by any state without a determination of equivalency by the Summer Flounder Technical Committee review, but only if states use the state-specific tables provided by the Commission and maintain a 15-inch (38-cm) or greater minimum fish size.

(1) Once a state receives a determination of equivalency from the Summer Flounder Technical Committee or a state implements conservation equivalent measures contained in the state-specific table provided by the Commission, the Commission will recommend to the Regional Administrator that a notification be published in the **Federal Register** to waive the annual Federal summer flounder measures specified under § 648.100(h) and to notify vessel permit holders of the equivalent measures approved by the Summer Flounder Technical Committee for landing summer flounder in that state.

(2) States electing not to implement conservation equivalent measures or states that did not receive a determination of equivalency from the Summer Flounder Technical Committee and not implementing conservation equivalent measures contained in the state-specific table provided by the Commission would be required to implement the annual Federal summer flounder measures specified under § 648.100(h) in accordance with the provisions of the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries.

[FR Doc. 00–19650 Filed 7–31–00; 12:32 pm]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 3544/P.L. 106–250

Pope John Paul II Congressional Gold Medal Congressional Gold Medal Act (July 27, 2000; 114 Stat. 622)

H.R. 3591/P.L. 106–251

To provide for the award of a gold medal on behalf of the Congress to former President Ronald Reagan and his wife Nancy Reagan in recognition of their service to the Nation. (July 27, 2000; 114 Stat. 624)

H.R. 4391/P.L. 106–252

Mobile Telecommunications Sourcing Act (July 28, 2000; 114 Stat. 626)

H.R. 4437/P.L. 106–253

Semipostal Authorization Act (July 28, 2000; 114 Stat. 634)

Last List July 28, 2000

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