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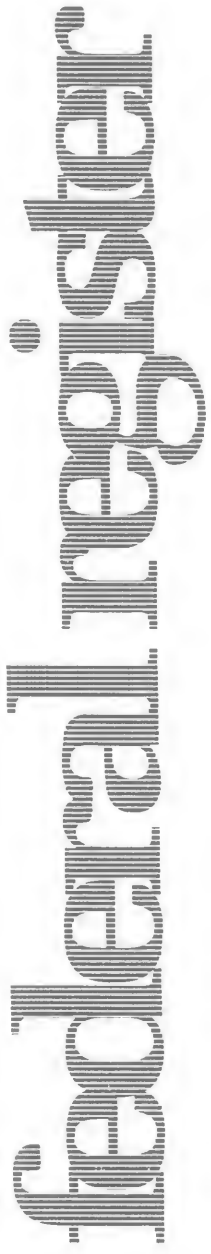

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV97–930–2 FR]

Tart Cherries Grown in the States of Michigan, et al.; Establishment of Rules and Regulations for Grower Diversion and a Compensation Rate for the Cherry Industry Administrative Board Public Member and Alternate Public Member

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes rules and regulations for a grower diversion program under the tart cherry marketing order for the 1998–1999 and following crop years. It also establishes a compensation rate to be paid to the Cherry Industry Administrative Board (Board) public member and/or alternate public member when attending Board meetings.

EFFECTIVE DATE: This rule becomes effective June 20, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–5053, Fax: (202) 720–5698. Small businesses may request information on compliance 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.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930 (7 CFR Part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This final rule establishes rules and regulations for grower diversion under the tart cherry marketing order and also establishes a compensation rate of $250 per meeting for the public member and alternate public member when attending Board meetings. The tart cherry marketing order became effective in September of 1996 and the Board met March 12–13, June 26–27, September 11–12, 1997, and January 29–30, 1998, to establish and recommend to the Secretary rules and regulations to implement order authorities. At its meetings, the Board recommended grower diversion regulations and a compensation rate for the public member and alternate public member to the Department for appropriate action.

An interim final rule was published in the **Federal Register** on August 25, 1997, to establish terms and conditions for the issuance of grower diversion certificates for the 1997–1998 crop season. A final rule was published on April 22, 1998, in the **Federal Register**. A proposed rule establishing the grower diversion program for the 1998–99 and following crop years was published in the **Federal Register** on April 23, 1998, (63 FR 20274). This final rule contains the terms and conditions for the grower diversion program to be used for 1998–1999 and subsequent crop years.

Section 930.33 of the order authorizes the Board to compensate the public member and/or alternate public member for performance of their duties. The Board at its discretion may request the attendance of the alternate public member at any or all meetings, notwithstanding the expected or actual presence of the public member. The $250 compensation rate will allow the Board to compensate the public member and alternate public member for attending Board meetings. Such compensation is a per meeting rate. For example, if a Board meeting is convened and lasts four days or four hours, the public member and/or alternate public member attending the meeting will receive $250. This action is intended to compensate them for loss of work and wages. This payment will be in addition to compensation for travel, lodging, meals, and other related costs incurred in attending public Board meetings.

The order in section 930.50 provides the method of establishing an optimum supply level of cherries for the crop year. The optimum supply is defined as the average of the prior three years' sales of tart cherries, adjusted for carry-in and desired carry-out inventory. The optimum supply consists of a free percentage amount of cherries which a handler could sell to any market and a restricted percentage amount, when warranted, which would have to be withheld from the market. Based on the optimum supply level, the Board establishes preliminary free and restricted percentages. No later than September 15, after harvesting and processing of the crop, the Board computes and recommends to the Secretary final free and restricted percentages based on actual crop

amounts. After receiving the Board's recommendation, the Secretary designates the final free and restricted percentages through informal rulemaking if he finds that such action would tend to effectuate the purposes of the Act. The difference between any final free market percentage and 100 percent is the final restricted percentage. The Board established an optimum supply of 247 million pounds and preliminary free and restricted percentages for tart cherries acquired by handlers during the 1997–98 crop year during its June 26–27, 1997, meeting. Final free and restricted percentages which were recommended by the Board to the Secretary were established during its September 11–12, 1997, meeting. A final rule setting the final free and restricted percentages for the 1997–98 crop year at 55 percent and 45 percent, respectively, was published in the **Federal Register** on April 27, 1998, (63 FR 20522).

Handlers can satisfy their restricted percentage in various ways. The restricted percentage cherries can be maintained in handler-owned inventory reserve pools. Handlers can also satisfy restricted percentage obligations by redeeming grower diversion certificates, exporting cherries to designated countries, shipping to exempt outlets, contributing to charitable organizations or diverting cherries at the handler's facility.

The maximum volume of cherries that can be held in the primary inventory reserve is 50 million pounds. Handlers can establish a secondary inventory reserve after the primary inventory reserve has reached its maximum volume. There is no maximum volume in the secondary inventory reserve. Each handler establishing a reserve (primary and secondary) is required to pay all of his or her own storage expenses. Reserve cherries can be released for sale upon Board approval into commercial outlets when the current crop is not expected to fill demand.

Section 930.58 of the tart cherry marketing order provides authority for voluntary grower diversion. Growers can divert all or a portion of their cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Growers will receive diversion certificates from the Board stating the weight of cherries diverted. The grower could then present this certificate to a handler in lieu of actual cherries. The handler could apply the weight of cherries represented by the certificate against the handler's restricted percentage amount. In comments concerning the 1997–98 grower diversion program there were concerns that such program could act as an insurance policy for cherries that are not marketable contrary to the intent of the order. The overall intent of the order is that only cherries that have reached a harvestable, marketable condition be allowed to be diverted. Therefore, in order to further clarify this concept, this rule will provide that the Board will not allow diversion credit to a grower whose fruit was destroyed before it set and/or matured on the tree, or whose fruit is unmarketable. If marketable fruit were to be damaged or destroyed by acts of nature such as storms or hail, diversion credit could be granted.

A new section 930.158 is added to the rules and regulations specifying the guidelines for grower diversion for the 1998–99 and subsequent crop years. First, any grower desiring to divert in the orchard would need to request an application form from the Board and would need to apply by June 24, 1998, for the 1998–99 crop year and by April 15 for subsequent crop years. The proposed June 15, 1998, date is changed in this final rule to June 24, 1998, to allow growers adequate time to apply for grower diversion for the 1998–99 crop year. The application will include the name, address, phone number and a signed statement certifying that the grower will abide by all the rules and regulations for diversion. In addition, the grower will need to include maps of such grower's orchard. Each map will include the grower's name, address and location of the orchard.

The Board has recommended four types of in-orchard diversion. These are: (1) random row diversion, in which rows of cherry trees are randomly selected by the Board's computer programs to remain unharvested; (2) whole block diversion, in which an entire orchard block is left unharvested; (3) partial block diversion, in which a contiguous portion of a definable block is diverted; and (4) in-orchard tank diversion, in which cherries harvested into tanks are measured, calculated and then diverted in the orchard. The regulations for the 1997–98 crop year only provide for random row and whole block diversion.

For all types of diversion, except tank diversion, growers will need to map each orchard block they intend to divert. A block is defined as a group of trees that are of similar age, running in the same direction and having definable boundaries (e.g., roads, ditches). If a grower desires to divert using the random row method, all of the grower's orchards would need to be mapped, since random row diversion involves diverting a certain amount of trees from all the grower's orchards. If the grower elects whole or partial block diversion, all blocks to be diverted would need to be mapped. The maps would need to be supplied to the Board so that the Board can calculate the diversion amounts. New maps would not need to be prepared each season. However, maps would have to be updated to reflect any substantive changes in the grower's orchard such as new trees or trees destroyed by inclement weather.

For the 1998–99 and subsequent crop years, the proposed rule provided that only trees more than six years old would qualify for diversion. Based on information from the National Agricultural Statistical Service (NASS), and from record testimony, it appears that tart cherry trees do not come into full commercial production before they are five to seven years old. Using trees which are not producing cherries or which are only beginning to come into full production when calculating diversion amounts would result in figures which are not representative of a grower's true production. A comment was received on this issue and will be discussed later in this document as well as the change in the regulations concerning this matter.

By July 1 of each crop year in which volume regulation is recommended, a grower that has provided the Board with the required orchard maps would have to inform the Board of such grower's intention to divert in the orchard and the method of diversion. If a grower does not elect the method of diversion by July 1, then only random row or in-orchard tank diversion would be available and the Board would provide the information necessary for the grower to divert by the random row method.

Random Row Diversion

Based on orchard maps submitted to the Board by the grower, the Board, using a computer program, would randomly designate rows of trees in each orchard block for nonharvest and inform the grower of this designation. This designation would be based upon the preliminary restricted percentage amount computed and announced by the Board. For example, if the preliminary restricted percentage is 20 percent, the Board's computer would randomly select rows of trees across all blocks in the grower's orchard to allow the grower to divert 20 percent of such grower's crop. The grower, however, would not have to choose this diversion amount. No less than seven days prior to each grower's individual harvest date, such grower could request a different diversion percentage (either smaller or greater). The purpose of the seven day notice is to allow the Board adequate

time to prepare a different orchard map using different percentages.

To divert cherries through random row diversion, the grower will not harvest the designated rows. After completing harvest of all trees not designated for diversion, the grower would be required to notify the Board and/or a Board compliance officer. Such grower will also need to provide the Board with total harvested production amounts so the Board could calculate the amount of grower diversion tonnage to be placed on the diversion certificate. Independent confirmation by the Board of the grower's production would also be provided by the handler on Board form number two.

Growers will receive diversion certificates only after confirmation of diversion is provided to the Board. After harvest, the Board's compliance staff will visit the grower's orchards to ensure that the rows selected on the orchard map for random row diversion had not been harvested. Once the orchard has been visited by a compliance officer and the grower has carried out the terms and conditions for random row diversion, a diversion certificate will be issued to the grower. The diversion certificate will represent the weight of cherries diverted by the grower. The grower could then present the certificate to a handler to be redeemed.

Whole Block Diversion

Whole block diversion involves diversion of the production from an entire block of cherry trees.

In whole block diversion, the value of the diversion would be determined by application of a statistical sampling protocol. For example, if a block has 5 rows or less, 3 rows would be randomly chosen to be sampled. If a block has 6 to 15 rows, 4 rows would be randomly chosen to be sampled. If a block has 16 or more rows, 5 rows would be randomly chosen to be sampled.

The Board originally recommended that a 5 percent sample size be used. However, after the first season of operation, the Board determined that the statistical method of sampling would be much more accurate in obtaining the weight of what is to be diverted. From each of the rows to be sampled, ten contiguous originally planted tree sites would be sampled within the rows. A tree site is a planted tree or an area where a tree was planted and may have been uprooted or died. Only trees over the age of six years old would be harvested for the sample. For example, if it is determined that five rows are to be sampled, then 10 tree sites in each of the five rows would be sampled. A total of 50 tree sites would be sampled ((10 original tree sites)×(5 rows)=50 trees). If a total of 4600 pounds is harvested from the sample trees and this is divided by 50 tree sites, a yield of 92 pounds per tree site will be obtained. The yield for the block is found by multiplying 92 pounds per site by 880 trees that were mapped in the block to yield 80,960 pounds per block.

The Board discussed another sampling option. This would have required that mapping be done by the grower each year the grower applied for diversion. However, the Board felt that was an undue burden on the grower. Using the sampling method recommended by the Board will only require the grower to map an orchard one time and update the map, as necessary, to reflect any substantive changes in the grower's orchard. The grower will not need to redo the map every year such grower may want to divert.

Prior to sampling, the grower will notify the Board to allow observation of the sampling process by a compliance officer. After harvest, the compliance officer could again visit the grower's orchard to verify that diversion actually took place.

A diversion certificate will be issued for an amount equal to the volume of cherries diverted by the grower. The grower could then present the certificate to a handler to be redeemed.

Partial Block Diversion

The Board recommended that partial block diversion be available as an option to growers. Inclusion of this option would permit growers added flexibility. Also, it would help discourage the tendency of growers to break up large blocks into multiple small blocks. Partial block diversion would also speed up the orchard diversion activity by decreasing the sampling time for growers and the Board. Growers may wish to divert only partial blocks of marketable, harvestable cherries that have been subjected to storm damage or are of lower quality. For example, this will allow a grower that has a block that is 35 rows by 40 trees per row to divert contiguous rows 1 through 22 and harvest rows 23 through 35. The partial block would be sampled as in whole block diversion. This provides the grower with more options when determining if such grower should in-orchard divert.

The Board recommended limiting partial block diversions to one partial block per grower per year. This will alleviate the time that compliance officers would need to spend observing sampling and diversion at grower's premises. The Board may evaluate partial block diversions at the end of the season to decide if it is not timely or not cost effective to administer by the compliance officers. Based on this evaluation the Board may recommend increasing the number of partial block diversions or eliminate this type of diversion as an option to growers. The grower should inform the Board by July 1 if such grower elects to whole or partial block divert. If whole block or partial block diversion is not selected by July 1, growers who wish to divert could then choose the random row method or the in-orchard tank method of diversion.

In-Orchard Tank Diversion

The Board recommended that in-orchard tank diversion be authorized to growers as another option for diversion. The Board discussed at length the fact that the grower diversion program must be grower friendly in order for growers to take full advantage of the program. Adding options to the grower diversion program provides more flexibility to the grower.

A grower diverting by this method would need to notify the Board and compliance officers of such diversion. Growers may wish to use tank diversion when marketable cherries in part of the orchard have sustained damage or are of lower quality. Such cherries could be picked and placed in harvesting tanks until a compliance officer could come to the orchard to probe the tanks for volume measurement and observe the destruction of the cherries on the grower's premises.

To use this diversion option a grower would need to inform a compliance officer that such grower has tanks ready for diversion. The Board recommended that the grower have no fewer than 10 tanks for diversion prior to informing the compliance officer. This will keep the cost of inspections to a minimum and decrease the compliance officer's time from traveling from location to location to observe a small amount of in-orchard tank diversion. The Board discussed the fact that 10 tanks is not a large amount, since each tank holds about 1,000 pounds and 10 tanks would be about a truckload of cherries. This will not be an undue hardship on small growers that wish to take advantage of such diversion.

After the grower informs the compliance officer of such diversion, the compliance officer will have up to five days to come to the grower's premises to probe the tanks and observe the diversion. This will allow the compliance officer the flexibility to schedule visits throughout the area and save compliance costs.

Compliance

In-orchard diversion by growers is a voluntary action. However, once chosen, growers are expected to meet all of the terms and conditions for diversion to receive a diversion certificate and to be diligent in actually diverting the percentage of the crop for which they have applied. Handlers depend upon growers to accurately divert the percentages requested as they make their marketing and storage decisions throughout the season. Thus, in the case where growers fail to properly divert all of the cherries specified in their application, such growers should not receive diversion credit for the undiverted cherries.

When a grower chooses random row diversion, such grower would not harvest trees in rows that have been randomly chosen by the Board's computer programs, to be left unharvested. Unintended errors could occur during harvest that could void a growers diversion efforts. The Board has recommended that growers who choose random row diversion should be permitted to rectify any unintended errors that may occur during harvest. Therefore, growers who fail to properly divert designated rows, but who otherwise meet the terms and conditions of diversion, will have to divert cherries in addition to those randomly chosen, but will still receive the diversion percentage originally applied for.

For example, a grower's map could require such grower to random row divert rows 5 and 6 and such grower may harvest row 5 in error. Such grower will then be required to divert another two rows to make up for the mistake in diverting. This will discourage mistakes being made in the orchard since such growers know they may have to divert more cherries to correct a mistake. This recommended adjustment will allow a grower to correct an error in the orchard and still receive a diversion certificate.

However, if growers are harvesting at the end of the orchard and thus, do not have an opportunity to rectify a mistake by diverting additional rows or trees, the Board could reduce the grower's diversion certificate by using the two for one method. For example, a grower specifies a diversion amount of 20 percent on the original application for diversion (and does not increase or decrease such percentage by the June 24, 1998, cutoff date for the 1998–99 crop year and by April 15 for subsequent crop years). Subsequently, the grower fails to divert a complete block or all of the specified rows, resulting in diversion of only 16 percent of the crop. Thus, the grower has failed to divert an additional 4 percent of the crop. The Board would then multiply that percent by two and subtract that amount from the original diversion application amount. This would reduce the diversion amount by twice the amount of the mistake that was made and therefore, a 2 for 1 reduction would be made as explained above. In this example, 2 times 4 percent equals 8 percent; which, when subtracted from the original percentage of 20 percent, yields a diversion credit of 12 percent of the grower's total production. Thus, the grower would receive a diversion certificate equal to 12 percent of the originally requested amount.

Growers, when aware of such errors, will need to immediately inform the Board when such errors are made during the diversion process to ensure that they continue to meet the terms and conditions of diversion. Growers who divert more than their preliminary percentage will not receive additional diversion credit. The Department agrees with this recommendation. The "two for one" method is a necessary part of compliance for the diversion provisions because it is important that the industry accurately projects the annual tonnage of cherries available for market.

The Board recommended that all grower diversion certificates should be redeemed with handlers by November 1. After November 1, grower diversion certificates will not be valid. It was intended that diversion certificates be used within the same crop year that they were issued, as if a crop had been produced. The November 1 date will allow handlers adequate time to meet their restricted percentage amounts after final percentages have been established.

Compensation

The Board also recommended adding a new section 930.133 to provide a compensation rate of $250 to be paid to the public member and to the alternate public member for each meeting they attend. Section 930.33 provides that the public member and alternate public member shall receive such compensation as the Board may establish and the Secretary may approve. The public and alternate public member cannot have a financial interest in the tart cherry industry. To attend meetings, it may be necessary for them to be absent from their places of employment. Therefore, the Board recommended a compensation rate be established. This payment will be in addition to compensation for travel, lodging, meals, and other related costs incurred in attending Board meetings. For example, if a Board meeting is convened and lasts for a day or two or only four hours, the public member and/or alternate public member attending the meeting would receive $250.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules 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 40 handlers of tart cherries who are subject to regulation under the order and approximately 1,220 producers or growers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of tart cherries may be classified as small entities.

This final rule establishes rules and regulations for grower diversion under the tart cherry marketing order. The order was promulgated on September 25, 1996. The Board was established on December 20, 1996, met several times in 1997 and recommended numerous rulemaking actions. The Board recommended establishing an assessment rate and late payment charges, procedures for grower and

handler diversion and exemptions for certain order provisions. The Board also recommended regulations for the issuance of grower diversion certificates and final free and restricted percentages for the 1997–98 crop year. These actions were recommended at Board meetings held March 12–13, June 26–27, September 11–12, 1997, and January 29–30, 1998.

The impact of this rule will be beneficial to growers. The receipt of grower diversion certificates is one of the methods under the order that handlers can utilize to meet any such handler's restricted percentage. Growers may voluntarily choose to divert because they have an abundance of low value, poor quality marketable cherries or because they are unable to find a processor willing to process some or all of their cherries. Before choosing to divert, the grower would most likely evaluate the harvesting and other cultural costs that could be saved by diverting and locate a handler that would be willing to redeem such grower's diversion certificate. An interim final rule was published on August 25, 1997, (62 FR 44881) establishing terms and conditions for the issuance of grower diversion certificates by the Board for the 1997–98 crop year. A final rule was published on April 22, 1998, (63 FR 20019) in the **Federal Register**.

Initially, about 700 growers expressed an interest in participating in the voluntary grower diversion program. However, because of the exceptional quality of 1997–98 tart cherry crop, fewer growers opted to participate in the grower diversion program. As such, approximately 120 growers (65 growers diverting by random row and 55 diverting by whole block diversion) received diversion certificates for a total of 6,139,600 pounds of diverted cherries for an average of 51,163 pounds of cherries diverted per grower. Although it is difficult to quantify the overall effect the grower diversion program has had on the tart cherry industry at this time, information from the Board indicates that the program's economic impact on both the handlers and growers appears to have been positive. There seems to be overall satisfaction among both growers and handlers with this year's returns. The economic impact of the grower diversion provisions of this regulation are also expected to be positive. They should result in benefits to both growers and handlers which are similar to those which resulted from the 1997–98 program. In addition, this rule offers growers greater flexibility when diverting their cherries.

With regard to methods of diversion, this rule establishes four different ones: random row, whole block, partial block and in-orchard tank. During diversion for the 1997–1998 season only the first two were used. The Board discussed limiting the blocks to be diverted to 5 acre blocks, but felt that this could have an adverse impact on small growers that produce on less than 5 acre blocks. Therefore, the Board recommended there be no limit on the size of orchard blocks to be diverted. The Board also discussed a sampling option that would have required mapping to be done by the grower each year the grower applied for diversion, but rejected it because it would be an undue burden on the grower. Using the sampling methods in this rule will only require the grower to map an orchard one time and not redo the map every year such grower may want to divert.

This rule also establishes a compensation rate of $250 per meeting for the public member and alternate public member when attending Board meetings. The public member and alternate public member would receive $250 whether the Board meeting convened and lasted for one or two days or only four hours. The compensation to be paid to the public member and alternate public member would compensate such persons for loss of work or wages since such persons do not have a financial interest in the tart cherry industry. There was consideration for a lower compensation rate but the Board decided to proceed with the above mentioned amount. The Board did not support a lower compensation rate because it did not adequately compensate the public member and alternate public member for their time to attend Board meetings.

This rule will not impose any reporting or recordkeeping requirements on either small or large tart cherry growers or handlers in addition to those already considered or approved during the order promulgation proceeding. The only written information requested from a grower is an orchard map and the grower's final production volume. Since growers maintain this information as part of their normal farming operations, it takes approximately 10 minutes to prepare a map and less than a minute to total the final production volume. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177.

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the March, June, September 1997, meetings and January 1998 meeting were public meetings and all entities, both large and small, were allowed to express their views on these issues. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Diversion Subcommittee met on March 12, 1997, and discussed grower diversion in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on Thursday, April 23, 1998, (63 FR 20274). Copies of the rule were also mailed or sent via facsimile to all Board members and cherry handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register.

A 30-day comment period was provided which ended on May 26, 1998. One comment was received in response to the proposal. The commenter is the Executive Director of the Board. The commenter disagreed with the age of the trees for which diversion is authorized. The Board recommended to the Secretary that the age of trees for which diversion of fruit is permitted should be 5 years or older. The proposal stated that only trees seven years or older qualify for diversion. The commenter stated that this is not consistent with the needs of the industry.

The commenter further stated its recommendation for change was not an arbitrary action by the Board. Rather, it is was done to bring the Board's diversion activities and authority in line with cultural practices of the industry. The proposal states that tart cherry trees come into full commercial production

in a range from their fifth to seventh growing season. The point at which a particular tree reaches production capacity depends upon geographic location. The commenter stated that recognition of this variance must be made for in the diversion process. The commenter believes that only allowing trees seven years old or older to qualify for diversion contributes to inequitable treatment of producers in different areas with different circumstances and with different cultural practices. The commenter further stated that the Board unanimously determined that it was more appropriate to recognize the full age range in the diversion of younger trees and orchards. By recognizing the full range, the opportunity for diversion activity is expanded for growers.

After consideration of this comment, the Department is changing the provision in the regulations concerning the age of trees eligible for diversion (§ 930.158(b)) to provide that trees that are four years or younger do not qualify for diversion. This would recognize the full five to seven year range of age maturation for the trees and allow producers with younger fully producing trees to qualify for diversion. This is also in keeping with other provisions of the regulations providing that only cherries that have reached a harvestable, marketable production will be eligible for diversion.

After consideration of all relevant matter 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.

It is hereby found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because growers are expected to begin harvesting and diverting their crop by mid-June and need to know the rules and regulations in order to participate in the grower diversion program. Further, growers are aware of this rule which was recommended at a public meeting.

List of Subjects in 7 CFR Part 930

Marketing agreements, Tart cherries, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 930.133 is added to read as follows:

§ 930.133 Compensation rate.

A compensation rate of $250 per meeting shall be paid to the public member and to the alternate public member when attending Board meetings. Such compensation is a per meeting rate. For example, if a Board meeting is convened and lasts one or two days or only four hours, the public member and/or alternate public member attending the meeting would receive $250 each.

3. A new § 930.158 is added to read as follows:

§ 930.158 Grower diversion and grower diversion certificates.

(a) *Grower diversion certificates.* The Board may issue diversion certificates to growers in districts subject to volume regulation who have voluntarily elected to divert in the orchard all or a portion of their tart cherry production which otherwise, upon delivery to handlers, would become restricted percentage cherries. Growers may offer the diversion certificate to handlers in lieu of delivering cherries. Handlers may redeem diversion certificates with the Board through November 1 of each crop year. After November 1 of the crop year that crop year's grower diversion certificates are no longer valid. Cherries that have reached a harvestable, marketable condition will be eligible for diversion. Diversion will not be granted to growers whose fruit was destroyed before it set and/or matured on the tree, or whose fruit is unmarketable. If marketable fruit were to be damaged or destroyed by acts of nature such as storms or hail diversion credit could be granted.

(b) *Application and mapping for diversion.* Any grower desiring to divert cherries using methods other than random row or in-orchard tank shall submit a map of the orchard or orchards to be diverted, along with a completed Grower Diversion Application, to the Board by June 24, 1998, for the 1998–99 crop year (July 1, 1998 through June 30, 1999) and April 15 for subsequent crop years. The application includes a statement which must be signed by the grower which states that the grower agrees to comply with the regulations established for a tart cherry diversion program. Each map shall contain the grower's name and number assigned by the Board, the grower's address, block name or number when appropriate, location of orchard or orchards and other information which may be necessary to accomplish the desired diversion. On or before July 1, the grower should inform the Board of such grower's intention to divert in-orchard and what type of diversion will be used. The four types of diversion are random row diversion, whole block diversion, partial block diversion and in-orchard tank diversion. A grower who informs the Board about the type of diversion he or she wishes to use by July 1 can elect to use any diversion method or a combination of diversion methods. Only random row or in-orchard tank diversion methods may be used if the Board is not so informed by July 1. Trees that are four years or younger do not qualify for diversion.

(1) *Random row diversion.* Using the orchard map furnished by the grower, the Board will randomly select rows of trees within the orchard to be diverted. The amount of cherries to be diverted will be based on the preliminary restricted percentage amount established pursuant to § 930.50. A grower may elect a different percentage amount; however, the grower needs to inform the Board as soon as possible after the preliminary percentages are announced of this other amount, but in no event shall this be less than seven days in advance of harvest. The designated rows indicated by the map must not be harvested. After completing harvest of the remaining rows in the orchard, the grower must notify the Board and/or the Board's compliance officer. A compliance officer will then be allowed to observe the grower's orchard to assure that the selected rows have not been harvested. The grower must inform the Board of the total production of the orchard to calculate the tonnage that was diverted.

(2) *Whole block diversion.* Based on maps supplied by the grower, a sampling procedure will be used to determine the amount of cherries in the orchard to be diverted. A block is defined as rows that run the same direction, are similar in age, and have definable boundaries. The Board would require a number of trees to be sampled depending on the size of the block. For example, if a block has 5 rows or less, 3 rows would be randomly chosen to be sampled, if a block has 6 to 15 rows, 4 rows would be randomly chosen to be sampled, and if a block has 16 or more rows, 5 rows would be randomly chosen to be sampled. From each of the rows

to be sampled ten contiguous originally planted tree sites will be sampled within the rows. Only trees more than five years old will be harvested for the sample. For example, if it is determined that five rows are to be sampled and 10 trees in the five rows are to be sampled, then a total of 50 trees are to be sampled ((10 original tree sites) × (5 rows)= 50 trees). A total of 4600 pounds will be harvested from the sample trees which is divided by 50 trees to obtain a yield of 92 pounds per tree. To find the yield for the block, 92 pounds is multiplied by 880 trees that were mapped in the block to yield 80,960 pounds per block. The harvested tonnage will be converted to a volume that represents the entire block of cherries. The grower should inform the Board when the samples are being taken so a compliance officer can observe the sampling. The compliance officer would be allowed to confirm that the block has been diverted.

(3) *Partial block diversion.* Partial block diversion will also be accomplished using maps supplied by the grower. Sampling will be done as in whole block diversion except that only partial blocks would be selected and sampled. Growers may divert one partial block per year. Such block must be mapped and would be sampled as described under whole block diversion. Rows used in partial block diversion must be contiguous.

(4) *In-orchard tank diversion.* Growers wishing to in-orchard tank divert must pick the cherries to be diverted and place them in harvesting tanks. A compliance officer would then probe the tanks for volume measurement and observe the destruction of the cherries on the grower's premises. Growers wishing to take advantage of this option must have at least 10 tanks ready for diversion. The compliance officer has up to five days to come to the grower's premises to observe the diversion after being contacted.

(c) *Compliance.* Growers who voluntarily participate in the grower diversion program must sign and file with the Board a Grower Diversion Application. By signing the application, a grower agrees to the terms and conditions of the grower diversion program as contained in these regulations. To be eligible to receive diversion credit, growers voluntarily choosing to divert cherries must meet the following terms and conditions:

(1) In order to receive a certificate, a grower must demonstrate, to the satisfaction of the Board, that rows or trees which were selected for diversion were not harvested. Trees four years old or younger do not qualify for diversion.

(2) The grower must furnish the Board with a total harvested production amount so the Board can calculate the amount of grower diversion tonnage to be placed on the diversion certificate. The Board will confirm the grower's production amount with information provided by handlers (to which the grower delivers cherries) on Board form Number Two.

(3) The grower must agree to allow a Board compliance officer to visit the grower's orchard to confirm that diversion has actually taken place. If the terms and conditions for whole block, partial block or in-orchard tank diversion are not completed, the Board shall not issue the grower a diversion certificate. If a grower who chooses random row diversion harvests rows that were designated not to be harvested, the grower should inform the Board immediately of the error. The grower will then be required to divert twice the amount (rows or trees) incorrectly harvested to correct the mistake. The grower will still receive a diversion certificate equal to the original requested amount. However, in instances where a grower is at the end of harvesting the orchard and fails to divert a complete block or specified rows, the Board shall multiply by two the difference between the original diversion amount and the actual diverted amount. The Board shall subtract that amount from the diversion application amount. Thus, the grower would receive a grower diversion certificate equal to a portion of the originally requested amount. If the grower does not inform the Board of such errors, the grower will not receive a diversion certificate.

Dated: June 15, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–16377 Filed 6–18–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 98–ANE–119; Special Conditions No. 33–001–SC]

Special Conditions: Turbomeca S.A., Model Arriel 2S1 Turboshaft Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Turbomeca S.A., of Bordes, France, Model Arriel 2S1 turboshaft engine. This engine was validated on June 10, 1996, by the Federal Aviation Administration (FAA) and Type Certificate No. E00054EN was issued. The engine will have an additional new novel or unusual engine rating. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by existing airworthiness standards.

EFFECTIVE DATE: June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Chung Hsieh, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; (781) 238–7115; Fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 1998, Turbomeca S.A., applied for an amendment to Type Certificate No. E00054EN to include a new 30-minute engine rating to Model Arriel 2S1 turboshaft engine. The rating is intended for use up to 30 minutes at any time after takeoff in a flight for performing search and rescue missions. The Model Arriel 2S1 turboshaft engine will be rated at 30-Second one engine inoperative (OEI), 2-Minute OEI, Continuous OEI, 30-Minute, Takeoff, and Maximum Continuous ratings.

The applicable airworthiness requirements do not contain a definition for a "30-minute" power rating, and do not contain adequate or appropriate safety standards of this new and unusual engine rating. The FAA published a notice of proposed special conditions on April 29, 1998 (63 FR 23402), Docket No. 98–ANE–119, and requested public comments.

Type Certification Basis

Under the provisions of Title 14 of the Code of Federal Regulations (14 CFR) § 21.101 Turbomeca S.A., must show that the Model Arriel 2S1 turboshaft engine meets the requirements of the applicable regulations in effect on the date of the application, or the applicable provisions of the regulations incorporated by reference in Type Certificate No. E00054EN. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis". The regulations

incorporated by reference in Type Certificate No. E00054EN are 21.29 and part 33, effective February 1, 1965, as amended by Amendments 33–1 through 33–14, and Special Conditions SC–33–ANE–05, Docket No. 95–ANE–46, published on April 15, 1996 (61 FR 16375).

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the additional new engine rating for the Model Arriel 2S1 turboshaft engine because it is a novel or unusual engine rating feature, special conditions are prescribed under the provision of 14 CFR 21.16.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

Novel or Unusual Design Features

The Turbomeca S.A., Model Arriel 2S1 turboshaft engine will incorporate the following novel or unusual design features: Rated 30-minute power. The power available for rotorcraft hovering to perform maritime search and rescue missions is currently limited to the maximum continuous rating power under current part 33. The proposed "30-minute power" rating would provide higher power level than currently available for use up to 30 minutes at any time between takeoff and landing in one flight. This new rating will enhance rotorcraft safety through the availability of increased power for hovering operations calling for greater than maximum continuous power.

Discussion of Comments

Interested persons have been afforded the opportunity to participate in the making of these special conditions. No comments were received on the special conditions as proposed. After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the special conditions without change.

Applicability

As discussed above, these special conditions are applicable to the Turbomeca S.A., Model Arriel 2S1 turboshaft engine. Should Turbomeca S.A., of Bordes, France, apply at a later date for a change to the type certificate to include another model incorporating the same or novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 14 CFR 21.101(a)(1).

These special conditions provide necessary increased hover time to enable operators to better perform critical, life-saving search and rescue missions, particularly in overwater situations. For this reason and because a delay would not be in the public interest, the FAA has determined that good cause exists for adopting these special conditions immediately upon publication.

Conclusion

This action affects only certain novel or unusual design features on one model of engines. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citations for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Turbomeca S.A., Model Arriel 2S1 turboshaft engine:

Section 33.4, Instructions for Continued Airworthiness

(a) In addition to the requirements of § 33.4, the procedures must:

(1) Ensure that the engine deterioration in service will not exceed the level shown in certification using the rated 30-minute rating.

(2) Be included in the airworthiness limitations section of the Instructions for Continued Airworthiness.

Section 33.7, Engine Ratings and Operating Limitations

(a) In addition to the ratings provided in § 33.7, a "Rated 30-minute power" rating is available, which shall be defined as the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established under part 33 of this chapter, and limited in use to periods of not over 30 minutes each.

Section 33.87, Endurance Test

(a) Unless already accomplished under § 33.87(d), in addition to the requirements of § 33.87, the following test must be conducted:

Rated 30-minute power. Thirty minutes at rated 30-minute power during the twenty-five 6-hour endurance test cycles.

Issued in Burlington, Massachusetts on June 12, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–16359 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–46–AD; Amendment 39–10585; AD 98–12–32]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–2, –2A, –2B, –3, –3B, and –3C 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, and –3C series turbofan engines, that requires a one-time eddy current inspection (ECI) for cracks or gouges in certain high pressure turbine rotor (HPTR) disks. This amendment is prompted by a report of a HPTR disk found to have a crack in a rim bolt hole during a routine shop manual ECI. The actions specified by this AD are intended to prevent the potential for an uncontained failure of the HPTR disk, which could result in an inflight engine shutdown, aborted takeoff, or damage to the aircraft.

DATES: Effective July 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 20, 1998.

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) 552–2981, 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: Glorianne Messemer, Aerospace Engineer, Engine Certification Office,

FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132; 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, and –3C series turbofan engines was published in the **Federal Register** on January 22, 1998 (63 FR 3275). That action proposed to require a one-time eddy current inspection for cracks or gouges in certain high pressure turbine rotor (HPTR) disks in accordance with CFM56–2 Service Bulletin (SB) No. 72–817, dated January 14, 1997, CFM56–2A SB No. 72–419, Revision 1, dated January 31, 1997, CFM56–2B SB No. 72–561, Revision 1, dated January 31, 1997, and CFM56–3/–3B/–3C SB No. 72–843, dated January 14, 1997.

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

Three commenters support the rule as proposed.

Since issuance of the proposed rule, CFMI has revised CFM56–2 SB No. 72–817, CFM56–2A SB No. 72–419, and CFM56–3/–3B/–3C SB No. 72–843. These revisions include an update of a HPTR disk serial number identified in Table 1. Therefore, since these SB revisions do not alter the proposed actions, this AD will include reference to CFM56–2 SB No. 72–817, Revision 1, dated November 25, 1997, CFM56–2A SB No. 72–419, Revision 2, dated November 14, 1997, and CFM56–3/–3B/–3C SB No. 72–843, Revision 1, dated November 25, 1997, for the accomplishment of the HPTR disk inspections.

In addition, this AD revises the compliance date requirement for CFM56–2, CFM56–3, –3B, and –3C engines to 45 days after the effective date of this AD.

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 as proposed.

There are approximately 276 engines of the affected design in the worldwide fleet. The FAA estimates that 100 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 300 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Replacement parts, if required, would cost approximately $86,000 per engine. Based on these figures, and assuming that 16 of the inspected HPTR disks will require replacement, the total cost impact of the AD on U.S. operators is estimated to be $3,176,000. The manufacturer has advised the FAA that certain costs incurred from the inspection and replacement of parts affected by this AD may be borne by the manufacturer; therefore, the total cost impact of this AD to U.S. operators may be less than estimated by the FAA.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–12–32 CFM International: Amendment 39–10585. Docket 97–ANE–46–AD.

Applicability: CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines installed on, but not limited to McDonnell Douglas DC–8 series, Boeing 737 series, as well as Boeing E–3, E–6, and KC–135 (military) series aircraft.

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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the potential for an uncontained failure of the high pressure turbine rotor (HPTR) disk, which could result in an inflight engine shutdown, aborted takeoff, or damage to the aircraft, accomplish the following:

(a) Eddy current inspect for cracks or gouges in HPTR disks, Part Numbers 1475M29P01, 1475M29P02, 9514M69P01, 9514M69P04, 9514M69P05, 9514M69P06, and 9514M69P09, with Serial Numbers listed in Table 1 of the applicable Service Bulletin (SB), as follows:

(1) For CFM56–2 engines, in accordance with CFM56–2 SB No. 72–817, Revision 1, dated November 25, 1997, within 45 days after the effective date of this AD.

(2) For CFM56–2A engines, in accordance with CFM56–2A SB No. 72–419, Revision 2, dated November 14, 1997, within 500 cycles in service (CIS) after the effective date of this AD, or by December 31, 1999, whichever occurs first.

(3) For CFM56–2B engines, in accordance with CFM56–2B SB No. 72–561, Revision 1, dated January 31, 1997, within 500 CIS after the effective date of this AD, or by December 31, 1999, whichever occurs first.

(4) For CFM56–3, –3B, and –3C engines, in accordance with CFM56–3/–3B/–3C SB No. 72–843, Revision 1, dated November 25, 1997, within 45 days after the effective date of this AD.

(b) Remove from service HPTR disks found cracked or gouged, and replace with serviceable parts.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may

add comments and then send it to the Manager, Engine Certification Office.

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

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

(e) 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. 72–817	1–2	1	November 25, 1997.
	3–12	Original	January 14, 1997.
	13	1	November 25, 1997.
	14–19	Original	January 14, 1997.
Total Pages: 19.			
CFM56–2A SB No. 72–419	1–2	2	November 14, 1997.
	3–4	1	January 31, 1997.
	5–10	Original	January 14, 1997.
	11–12	2	November 14, 1997.
	13–18	Original	January 14, 1997.
Total Pages: 18.			
CFM56–2B SB No. 72–561	1	1	January 31, 1997.
	2	Original	January 14, 1997.
	3–4	1	January 31, 1997.
	5–19	Original	January 14, 1997.
Total Pages: 19.			
CFM56–3/–3B/–3C SB No. 72–843	1–2	1	November 25, 1997.
	3–11	Original	January 14, 1997.
	12	1	November 25, 1997.
	13–18	Original	January 14, 1997.
Total Pages: 18.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, 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; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 20, 1998.

Issued in Burlington, Massachusetts, on June 5, 1998.

Mark C. Fulmer,

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

[FR Doc. 98–15785 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–53–AD; Amendment 39–10591; AD 98–13–03]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model H.P. 137 Mk1, Jetstream Series 200, and Jetstream Model 3101 Airplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 82–20–04 R1, which currently requires repetitively inspecting the main landing gear (MLG) hinge fitting, support angles, and attachment bolts on British Aerospace H.P. 137 Mk1 and Jetstream series 200 airplanes, and repairing or replacing any part that is cracked beyond certain limits. This AD requires installing improved design MLG fittings, as terminating action for the repetitive inspections that are currently required by AD 82–20–04 R1, and will incorporate the Jetstream Model 3101 airplanes into the Applicability of the AD. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The actions specified by this AD are intended to prevent structural failure of the MLG caused by fatigue cracking, which could result in loss of control of the airplane during landing operations.

DATES: Effective August 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 3, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 671715. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North

Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to British Aerospace (Operations) Limited H.P. 137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on March 4, 1998 (63 FR 10579). The supplemental NPRM proposed to supersede AD 82–20–04 R1 with a new AD that would: (1) initially retain the requirements contained in AD 82–20–04 R1 of repetitively inspecting the MLG hinge fitting, support angles, and attachment bolts, and repairing or replacing any part that is cracked; (2) incorporate the Jetstream Model 3101 airplanes into the Applicability of the AD; and (3) eventually require the installation of improved design MLG fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), as terminating action for the repetitive inspections. Accomplishment of this action would be in accordance with the following service information:

—British Aerospace Jetstream Mandatory Service Bulletin (MSB) No. 7/5, which includes procedures for inspecting the left and right main landing gear hinge attachment nuts to the auxiliary and aft spars for signs of relative movement between the nuts and hinge fitting on H.P. 137 MK1 and Jetstream series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision level	Date
2 and 4	Original Issue.	March 31, 1982.
1 and 3	Revision 1	May 23, 1988.

—British Aerospace MSB No. 7/8, which includes procedures for inspecting the MLG hinge fitting for cracks, and repairing cracked hinge fittings on H.P. 137 MK1 and Jetstream series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8.	Revision 2	January 6, 1983.
1, 3, and 4	Revision 3	May 23, 1988.

—Jetstream Alert Service Bulletin (ASB) 32–A–JA 850127, which includes procedures for inspecting the MLG hinge fitting and support angle for cracks on Jetstream Model 3101 airplanes. This ASB incorporates the following effective pages:

Pages	Revision level	Date
5 through 14.	Original Issue.	April 17, 1985.
1 through 4	Revision 2	November 11, 1994.

—Jetstream Service Bulletin (SB) 57–JM 5218, which includes procedures for installing improved design MLG fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), on H.P. 137 Mk1, Jetstream series 200, and certain Jetstream Model 3101 airplanes. This SB incorporates the following effective pages:

Pages	Revision level	Date
3, 5, 6, 7, 8, 9, 11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31.	Revision 1	September 29, 1987.
25 and 26	Revision 2	August 24, 1988.
10 and 20	Revision 3	January 29, 1990.
1, 2, 4, 13, 14, 15, and 16.	Revision 4	October 31, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

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 the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Differences Between This AD, the British AD, and AD 82–20–04 R1

AD 82–20–04 R1 allows continued flight if cracks are found in the MLG hinge fitting support angles that propagate no further than the tooling holes. The applicable service bulletin specifies replacement of the support angles only if cracks are found exceeding this limit, as does British AD 015–05–85. This AD will not allow continued flight if any crack is found. FAA policy is to disallow airplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven, and then this is only considered a temporary solution until a design correction is developed and incorporated. The main landing gear is considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in this area.

The FAA's Aging Commuter Aircraft Policy

The actions required by this AD are consistent with the FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

The alternative to installing improved design MLG fitting would be to repetitively inspect this area for the life of the airplane.

Cost Impact

The FAA estimates that 71 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 271 workhours (inspections: 61 workhours; installation: 210 workhours) per airplane to accomplish these actions, and that the average labor rate is approximately $60 an hour. Parts to accomplish this AD are provided by the

manufacturer at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,154,460, or $16,260 per airplane. This figure only takes into account the cost of the initial inspections and inspection-terminating modification and does not take into account the cost of repetitive inspections. The FAA has no way of determining the number of repetitive inspections each H.P. 137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplane owner/operator will incur.

This figure is also based on the presumption that no affected airplane operator has accomplished this installation. This action will eliminate the repetitive inspections required by AD 82–20–04 R1. The FAA has no way of determining the operation levels of each individual owner/operator of the affected airplanes, and cannot determine the repetitive inspection costs that will be eliminated by this action. The FAA estimates these costs to be substantial over the long term.

In addition, British Aerospace has informed the FAA that parts have been distributed to owners/operators that will equip approximately 39 of the affected airplanes. Presuming that each set of parts has been installed on an affected airplane, the cost impact of this modification upon the public will be reduced $634,140 from $1,154,460, to $520,320.

Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A "substantial number" is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a proposed rule, or any number of small entities judged to be substantial by the rulemaking official. A "significant economic impact" is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types.

FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, defines a small entity as "a small business or small not-for-profit organization which is independently-owned and operated and has no more than a specified number of employees or aircraft." For operators of aircraft for hire (those entities that are affected by parts 121, 127, and 135 of the Federal Aviation Regulations (14 CFR parts 121, 127, and 135)), the size threshold specified in FAA Order 2100.14A is nine aircraft.

There are only nine different operators of British Aerospace H.P. 137 MK1, Jetstream series 200, and Jetstream Model 3101 airplanes. Of these nine, only four operate less than nine airplanes. Because 4 is a number that is less than 11 and the rulemaking official has not determined this number to be substantial, this AD would not significantly affect a number of small entities.

A copy of the full Cost Analysis and Regulatory Flexibility Determination for this action may be examined at the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Regulatory Impact

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

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 copy of the final 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, 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 Airworthiness Directive (AD) 82–20–04 R1, Amendment No. 39–4468, and by adding a new AD to read as follows:

98–13–03 British Aerospace (Type Certificate No. A21EU formerly held by Jetstream Aircraft Limited): Amendment 39–10591; Docket No. 95–CE–53–AD; Supersedes AD 82–20–04 R1, Amendment 39–4468.

Applicability: The following model and serial number airplanes, certificated in any category, that do not have improved design main landing gear (MLG) fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), installed in accordance with Jetstream Service Bulletin (SB) 57–JM 5218:

Model	Serial Nos.
H.P. 137 MK1	All serial numbers.
Jetstream Series 200 ...	All serial numbers.
Jetstream Model 3101 ..	601 through 695.

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 (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 after the effective date of this AD, unless already accomplished.

To prevent structural failure of the MLG caused by fatigue cracking, which could

result in loss of control of the airplane during landing operations, accomplish the following:

Note 2: The compliance times of this AD are presented in landings. If the total number of airplane landings is not kept or is unknown, hours time-in-service (TIS) may be used by multiplying the total number of airplane hours TIS by 0.75.

(a) For the H.P. 137 MK1 and Jetstream series 200 airplanes, within the next 50 landings after the effective date of this AD or within 200 landings after the last inspection required by AD 82–20–04 R1 (superseded by this AD), whichever occurs first, and thereafter at intervals not to exceed 200 landings, accomplish the following in accordance with British Aerospace Mandatory Service Bulletin (MSB) No. 7/5, which incorporates the following pages:

Pages	Revision level	Date
2 and 4	Original Issue.	March 31, 1982.
1 and 3	Revision 1	May 23, 1988.

(1) Inspect the MLG hinge attachment nuts to auxiliary and aft spars on both the left and right MLG for signs of fuel leakage or signs of relative movement between the nuts and hinge fitting.

(2) If any signs of fuel leakage or relative movement between the nuts and hinge fitting are found, prior to further flight, resecure the MLG hinge fitting to auxiliary spar in accordance with actions 3.8 through 3.16 of British Aerospace MSB No. 7/5.

(b) Upon accumulating 4,000 landings on the left and right MLG fittings or within the next 50 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 400 landings, inspect the MLG hinge support angles for cracks in accordance with the following, as applicable:

(1) For the H.P. 137 MK1 and Jetstream series 200 airplanes: British Aerospace MSB 7/8, which incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8.	Revision 2	January 6, 1983.
1, 3, and 4	Revision 3	May 23, 1988.

(2) For the Jetstream Model 3101 airplanes:

Jetstream Alert Service Bulletin (ASB) 32–A–JA 850127, which incorporates the following effective pages:

Pages	Revision level	Date
5 through 14.	Original Issue.	April 17, 1985.
1 through 4	Revision 2	November 11, 1994.

(c) Install improved design MLG fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), as applicable. Perform these installations at the applicable compliance time presented below (paragraphs (c)(1) and (c)(2) of this AD). Accomplish this installation in accordance with Jetstream Service Bulletin (SB) 57–JM 5218, which incorporates the following effective pages:

Pages	Revision level	Date
3, 5, 6, 7, 8, 9, 11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31.	Revision 1	September 29, 1987.
25 and 26	Revision 2	August 24, 1988.
10 and 20	Revision 3	January 29, 1990.
1, 2, 4, 13, 14, 15, and 16.	Revision 4	October 31, 1990.

(1) Prior to further flight on any fitting found cracked during an inspection required by paragraph (b) of this AD; and

(2) Upon accumulating 20,000 landings on the left MLG fitting or within the next 50 landings after the effective date of this AD (whichever occurs later), unless already accomplished as required by paragraph (c)(1) of this AD; and

(3) Upon accumulating 20,000 landings on the right MLG fitting or within the next 50 landings after the effective date of this AD (whichever occurs later), unless already accomplished as required by paragraph (c)(1) of this AD.

(d) Incorporating both P/N 1379133B1 and P/N 1379133B2 MLG fittings (Modification 5218) as required by paragraph (c), including all subparagraphs, of this AD terminates the repetitive inspection requirement of paragraph (a) of this AD. The repetitive inspections of the MLG support angles required by paragraph (b) of this AD are still required.

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

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance approved in accordance with AD 82–20–04 R1 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) Questions or technical information related to the service information referenced in this AD should be directed to British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 671715. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) The inspections, modifications, and installations required by this AD shall be done in accordance with the following:

—British Aerospace Jetstream Mandatory Service Bulletin No. 7/5, which incorporates the following pages:

Pages	Revision level	Date
2 and 4	Original Issue.	March 31, 1982.
1 and 3	Revision 1	May 23, 1988.

—British Aerospace Mandatory Service Bulletin No. 7/8, which incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8.	Revision 2	January 6, 1983.
1, 3, and 4	Revision 3	May 23, 1988.

—Jetstream Alert Service Bulletin 32–A–JA 850127, which incorporates the following effective pages:

Pages	Revision level	Date
5 through 14.	Original Issue.	April 17, 1985.

Pages	Revision level	Date
1 through 4	Revision 2	November 11, 1994.

—Jetstream Service Bulletin 57–JM 5218, which incorporates the following effective pages:

Pages	Revision level	Date
3, 5, 6, 7, 8, 9, 11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31.	Revision 1	September 29, 1987.
25 and 26	Revision 2	August 24, 1988.
10 and 20	Revision 3	January 29, 1990.
1, 2, 4, 13, 14, 15, and 16.	Revision 4	October 31, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment supersedes AD 82–20–04 R1, mendment 39–4468.

(j) This amendment becomes effective on August 3, 998.

Issued in Kansas City, Missouri, on June 8, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15884 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–21–AD; Amendment 39–10595; AD 98–13–07]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. This AD requires accomplishing a leakage check of all lavatory water tube/hose connections, and correcting the installation of these connections if leakage is found. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent water leakage from the lavatory water duct system, which could collect in the fuselage, freeze in cold weather conditions, and cause the rudder control system to jam.

DATES: Effective August 1, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 1, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain I.A.M. Model Piaggio P–180 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 24, 1998 (63 FR 14049). The NPRM proposed to require accomplishing a leakage check of all lavatory water tube/hose connections, and correcting the installation of these connections if leakage is found. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Piaggio Service Bulletin (Mandatory) No. SB–80–0096, dated January 31, 1997.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

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 the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

Although the potential of the rudder control system to jam because of water freezing will only be unsafe while the airplane is in flight, this unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours time-in-service (TIS) as it is for an airplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $600, or $120 per airplane.

Regulatory Impact

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

implications to warrant the preparation of a Federalism Assessment.

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 copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–13–07 Industrie Aeronautiche E Meccaniche: Amendment 39–10595; Docket No. 98–CE–21–AD.

Applicability: Model Piaggio P–180 airplanes, serial numbers 1002, 1004, 1006 through 1017, 1019, and 1021 through 1030, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent water leakage from the lavatory water duct system, which could collect in the fuselage, freeze in cold weather conditions, and cause the rudder control system to jam, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, accomplish a leakage check of all lavatory water tube/hose connections in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Piaggio Service Bulletin (Mandatory) No. SB–80–0096, dated January 31, 1997. If leakage is found, prior to further flight, correct the installation of these connections in accordance with the above-referenced service bulletin.

Note 2: Although not required by this AD, the FAA recommends an inspection of the rudder cables for corrosion if any evidence of water is found on the cables.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Piaggio Service Bulletin (Mandatory) No. SB–80–0096, dated January 31, 1997, should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The inspection and correction required by this AD shall be done in accordance with Piaggio Service Bulletin (Mandatory) No. SB–80–0096, dated January 31, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Italian AD 97–022, dated March 2, 1997.

(f) This amendment becomes effective on August 1, 1998.

Issued in Kansas City, Missouri, on June 8, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15886 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–13–AD; Amendment 39–10594; AD 98–13–06]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–400 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Model DG–400 gliders. This AD requires replacing the bungees that secure the left engine restraining cable and the bowden cable of the rear engine door. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the engine from locking in flight and not extending because of the left restraining cable or bowden cable of the rear door making contact with the engine, which could result in loss of glider power and potential loss of control.

DATES: Effective August 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 2, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–13–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small

Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Glaser-Dirks Model DG–400 gliders was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 19, 1998 (63 FR 13376). The NPRM proposed to require replacing the bungees that secure the left engine restraining cable and the bowden cable of the rear engine door. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Glaser-Dirks Technical Note No. 826/15, dated October 1, 1985.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

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 the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

Although the left engine restraining cable or bowden cable of the rear engine door would only contact the engine and block the engine extension during flight, this unsafe condition is not a result of the number of times the glider is operated. The chance of this situation occurring is the same for a glider with 10 hours time-in-service (TIS) as it is for a glider with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 27 gliders in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per glider to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $20 per glider. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $5,400, or $200 per glider.

Regulatory Impact

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

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 copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–13–06 Glaser-Dirks Flugzeugbau GMBH: Amendment 39–10594; Docket No. 98–CE–13–AD.

Applicability: Model DG–400 gliders, serial numbers 4–1 through 4–140, certificated in any category.

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

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent the engine from locking in flight and not extending because of the left restraining cable or bowden cable of the rear door catching on the engine, which could result in loss of glider power and potential loss of control, accomplish the following:

(a) Replace the bungees that secure the left engine restraining cable and the bowden cable of the rear engine door in accordance with the Installation plan included with Glaser-Dirks Technical Note No. 826/15, dated October 1, 1985.

(b) 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 glider to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) Questions or technical information related to Glaser-Dirks Technical Note No. 826/15, dated October 1, 1985, should be directed to DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The replacements required by this AD shall be done in accordance with Glaser-

Dirks Technical Note No. 826/15, dated October 1, 1985. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 85–223, dated November 7, 1985.

(f) This amendment becomes effective on August 2, 1998.

Issued in Kansas City, Missouri, on June 8, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15893 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–38–AD; Amendment 39–10610; AD 97–21–07 R1]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. (Formerly Textron Lycoming) Model T5313B, T5317A, and T53 (Military) Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to AlliedSignal Inc. (formerly Textron Lycoming) Model T5313B, T5317A, and T53 series military turboshaft engines approved for installation on aircraft certified in accordance with Section 21.25 of the Federal Aviation Regulations (FAR), that currently requires a one-time visual inspection of accessory drive carrier assemblies for affected serial numbers (S/Ns) designating a defective assembly, and if the S/N is applicable, replacement with a serviceable assembly. This amendment adds military helicopter models and removes one civilian helicopter model to the sentence in the Applicability paragraph of the AD that provides guidance as to the helicopter models with the affected engines. This amendment is prompted by the need to revise the Applicability paragraph. The actions specified by this AD are intended to prevent accessory drive carrier assembly failure, which could result in an N2 overspeed and an uncontained engine failure.

DATES: Effective July 6, 1998.

The incorporation by reference of AlliedSignal Inc. Alert Service Bulletin (ASB) No. T5313B/17A–A0092, Revision 1, dated July 1, 1997, ASB No. T53–L–13B–A0092, dated June 4, 1997, and ASB No. T53–L–703–A0092, dated June 4, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of November 3, 1997 (62 FR 53935, October 17, 1997).

Comments for inclusion in the Rules Docket must be received on or before August 18, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the 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: Ray Vakili, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5262, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On October 8, 1997, the Federal Aviation Administration (FAA) issued AD 97–21–07, Amendment 39–10160 (62 FR 53935, October 17, 1997), applicable to AlliedSignal Inc. (formerly Textron Lycoming) Model T5313B, T5317A, and T53 series military turboshaft engines approved for installation on aircraft certified in accordance with Section 21.25 of the Federal Aviation Regulations (FAR), to require a one-time visual inspection of accessory drive carrier assemblies for affected serial numbers (S/Ns) designating a potentially defective assembly, and if the S/N is applicable, replacement with a serviceable assembly. That action was prompted by a report of an N2 overspeed condition on an AlliedSignal Inc. Model T5317A–1 turboshaft engine. That condition, if not corrected, could result in accessory drive carrier assembly failure, which could result in an N2 overspeed and an uncontained engine failure.

Since the issuance of that AD, the FAA has been informed that the military helicopter models that incorporate this engine installation had been omitted from the sentence in the Applicability paragraph of the AD that provides guidance as to the helicopter models with the affected engines, and that a civilian helicopter model, the Kaman Aircraft Corp. K–1200 series helicopter, should be removed from the list. The military helicopter models, certified in accordance with Section 21.25 of the FAR, are: the UH–1A through E; UH–1G, H, L, M; AH–1F, Q, G, S; HH–1H, K; TH–1L; OV–1C, D; and HH–43. This revised AD makes these changes to the Applicability paragraph. All mandatory actions required by the AD remain the same.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Alert Service Bulletin (ASB) No. T5313B/17A–A0092, Revision 1, dated July 1, 1997; ASB No. T53–L–13B–A0092, dated June 4, 1997; and ASB No. T53–L–703–A0092, dated June 4, 1997. These ASBs describe procedures for performing a one-time visual inspection of accessory drive carrier assemblies for affected S/Ns designating a defective assembly, and if the S/N is applicable, replacement with a serviceable assembly.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD revises AD 97–21–07 to add military helicopter models and remove one civilian helicopter model from the sentence in the Applicability paragraph of the AD that provides guidance as to the helicopter models with the affected engines. The actions are required to be accomplished in accordance with the ASBs described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity

for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–38–AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10160 (62 FR 53935, October 17, 1997) and by adding a new airworthiness directive, Amendment 39–10610, to read as follows:

97–21–07 R1 AlliedSignal Inc.: Amendment 39–10610. Docket 97–ANE–38–AD. Revises AD 97–21–07, Amendment 39–10160.

Applicability: AlliedSignal Inc. (formerly Textron Lycoming) Model T5313B and T5317A series commercial turboshaft engines, and T53 series military turboshaft engines approved for installation on aircraft certified in accordance with Section 21.25 of the Federal Aviation Regulations (FAR), with accessory drive carrier assemblies, part numbers (P/Ns) 1–070–220–03, 1–070–220–12, and 1–070–220–13, that were installed after November 1, 1985, and have serial numbers (S/Ns) listed in AlliedSignal Inc. Alert Service Bulletins (ASBs) No. T5313B/17A–A0092, Revision 1, dated July 1, 1997; ASB No. T53–L–13B–A0092, dated June 4, 1997; or ASB No. T53–L–703–A0092, dated June 4, 1997. These engines are installed on but not limited to Bell Helicopter Textron Model 205A–1 and 205B series helicopters and the following military helicopters certified in accordance with Section 21.25 of the FAR: UH–1A through E; UH–1G, H, L, M; AH–1F, Q, G, S; HH–1H, K; TH–1L; OV–1C, D; and HH–43.

Note 1: A shipping records, engine logbooks, work orders, and parts invoices review may allow an owner or operator to determine if this AD applies.

Note 2: 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent accessory drive carrier assembly failure, which could result in an N2 overspeed and an uncontained engine failure, accomplish the following:

(a) Within 100 hours time in service (TIS), or 6 months after the effective date of this AD, whichever occurs first, accomplish the following in accordance with AlliedSignal Inc. ASB No. T5313B/17A–A0092, Revision 1, dated July 1, 1997; ASB No. T53–L–13B–A0092, dated June 4, 1997; and ASB No. T53–L–703–A0092, dated June 4, 1997, as applicable:

(1) Visually inspect to determine if the accessory drive carrier assembly is marked with an affected S/N listed in the applicable ASBs.

(2) If the accessory drive carrier assembly is not marked with an affected S/N listed in the applicable ASB, no further action is required.

(3) If the accessory drive carrier assembly is marked with an affected S/N listed in the applicable ASB, or the serial number cannot be positively determined, remove the accessory drive carrier assembly from service and replace with a serviceable assembly.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(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 aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following AlliedSignal Inc. ASBs:

Document No.	Pages	Revision	Date
T5313B/17A–A0092	1–7	1	July 1, 1997.

Document No.	Pages	Revision	Date
Total pages: 7.			
T53–L–13B–A0092	1–7	Original	June 4, 1997.
Total pages: 7.			
T53–L–703–A0092	1–7	Original	June 4, 1997
Total pages: 7.			

The incorporation by reference of AlliedSignal Inc. ASB No. T5313B/17A–A0092, Revision 1, dated July 1, 1997, ASB No. T53–L–13B–A0092, dated June 4, 1997, and ASB No. T53–L–703–A0092, dated June 4, 1997, was approved previously by the Director of the Federal Register as of November 3, 1997 (62 FR 53935, October 17, 1997). Copies may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the 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.

(e) This amendment becomes effective on July 6, 1998.

Issued in Burlington, Massachusetts, on June 11, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–16272 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–4]

Amendment to Class D Airspace; MacDill AFB, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class D airspace at MacDill AFB, FL. The control tower at MacDill AFB is now open 24 hours a day. Therefore, the Class D airspace is amended from part time to continuous.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

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) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class D airspace at MacDill AFB, FL (63 FR 17741). The control tower at MacDill AFB is now open 24 hours a day. Therefore, the Class D airspace was proposed to be amended from part time to continuous. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class D airspace designation 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) modifies Class D airspace at MacDill AFB, FL. The MacDill AFB control tower is now open 24 hours a day. Therefore, the Class D airspace is amended from part time to continuous.

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, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 500 Class D airspace.

* * * * *

ASO FL D MacDill AFB, FL [Revised]

MacDill AFB, FL
(Lat. 27°50′57″N, long. 82°31′17″W)
Albert Whitted Airport
(Lat. 27°45′54″N, long 82°37′38″W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius of MacDill AFB; excluding the portion within the Tampa International Airport, FL, Class B airspace area; excluding that portion southwest of a line connecting the 2 points of intersection with a 4-mile radius circle centered on the Albert Whitted Airport.

* * * * *

Issued in College Park, Georgia, on May 29, 1998.

Jeffrey N. Burner,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16310 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–2]

Amendment of Class D and Removal of Class E Airspace; Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class D and removes Class E airspace at Atlanta, GA, for the Fulton County Airport-Brown Field. The control tower at Fulton County Airport-Brown Field is now open 24 hours a day. Therefore, the Class D airspace is amended from part time to continuous. Additionally, the current Class E surface airspace that is effective when the control tower closes is no longer necessary and is removed.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

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) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class D and removing Class E airspace at Atlanta, GA (63 FR 17740). The control tower at Fulton County Airport-Brown Field is now open 24 hours a day. Therefore, the Class D airspace was proposed to be amended from part time to continuous. Additionally, the Class E surface airspace that was effective when the control tower was closed is no longer necessary and was proposed to be removed. Class D airspace designations and Class E airspace areas designated as a surface area for an airport are published in Paragraphs 5000 and 6002 respectively of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class D and 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) modifies Class D and Class E airspace at Atlanta, GA. The Fulton County Airport-Brown Field control tower is now open 24 hours a day. Therefore, the Class D airspace is amended from part time to continuous. Additionally, the Class E surface area airspace that is effective when the control tower is closed is no longer necessary and is removed.

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, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO GA D Atlanta, GA [Revised]

Atlanta, Fulton County Airport-Brown Field, GA
(Lat. 33°46'45"N, long. 84°31'17"W)
Dobbins ARB
(Lat. 33°54'54"N, long. 84°31'00"W)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4-mile radius of Fulton County Airport-Brown Field; excluding the portion north of a line connecting the 2 points of intersection with a 5.5-mile radius circle centered on Dobbins ARB.

* * * * *

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

* * * * *

ASO GA E2 Atlanta, GA [Removed]

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Issued in College Park, Georgia, on May 29, 1998.

Jeffery N. Burner,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16312 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–1]

Establishment of Class E Airspace; Hohenwald, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes Class E airspace at Hohenwald, TN. A Non-Directional Beacon (NDB) Runway (RWY) 2 Standard Instrument Approach Procedure (SIAP) has been developed for John A. Baker Field. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at John A. Baker Field. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

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) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Hohenwald, TN (63 FR 17742). This action provides adequate Class E airspace for IFR operations at John A. Baker Field. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class E designation 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) establishes Class E airspace at Hohenwald, TN. A NDB RWY 2 SIAP has been developed for John A. Baker Field. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at John A. Baker Field. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP.

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 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, 1959–1963 Comp., p. 389.

§ 71.1 Amended

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

ASO TN E5 Hohenwald, TN [New]

John A. Baker Field, TN
(lat. 35°32'45" N, long. 87°35'51" W)

That airspace extending upward from 700 feet or more above the surface within a 6.4-mile radius of John A. Baker Field.

* * * * *

Issued in College Park, Georgia, on May 29, 1998.

Jeffery N. Burner,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16311 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–3]

Amendment of Class E Airspace; Fernandina Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Fernandina Beach, FL. A Global Postioning System (GPS) Runway (RWY) 13 Standard Instrument Approach Procedure (SIAP) has been developed for Fernandina Beach Municipal Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Fernandina Beach Municipal Airport. The Class E airspace has been increased from a 6.4 to a 6.6-mile radius.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On March 30, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Fernandina Beach, FL (63 FR 15110). This action would provide adequate Class E airspace for IFR operations at Fernandina Beach Municipal Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation 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) modifies Class E airspace at Fernandina Beach, FL. A GPS RWY 13 SIAP has been developed for Fernandina Beach Municipal Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Fernandina Beach Municipal Airport.

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 a follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 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 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

ASO FL E5 Fernandina Beach, FL [Revised]

Fernandina Beach Municipal Airport, FL
(lat. 30°36'35" N, long. 81°27'38" W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6.6-mile radius of Fernandina Beach Municipal Airport.

* * * * *

Issued in College Park, Georgia, on May 29, 1998.

Jeffery N. Burner,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16309 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–6]

Amendment of Class E Airspace; Daytona Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Daytona Beach, FL. The Standard Instrument Approach Procedure (SIAP) for VHF Omnidirectional Range (VOR) Runway (RWY) 8 at the Ormond Beach Municipal Airport has been amended to a VOR or Global Positioning System (GPS) RWY 17 SIAP. As result, the airspace for the Ormond Beach Municipal Airport has been amended. The Class E airspace has been increased from a 6.4 to a 7.3-mile radius.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

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) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Daytona Beach, FL, (63 FR 19858). This action provides adequate Class E airspace for IFR operations at Ormond Beach Municipal Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation 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) modifies Class E airspace at Daytona Beach, FL. A VOR or GPS RWY 17 SIAP has been developed for Ormond Beach Municipal Airport. Additional controlled airspace extending upward for 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Ormond Beach Municipal Airport.

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, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

ASO FL E5 Daytona Beach, FL [Revised]

Daytona Beach International Airport, FL
(Lat. 29°10'48" N., long. 81°03'27" W.)
Spruce Creek Airport
(Lat. 20°04'49" N., long. 81°03'27" W.)
Ormond Beach Municipal Airport
(Lat. 29°18'04" N., long. 81°06'50" W.)

That airspace extending upward from 700 feet or more above the surface of the earth within a 10-mile radius of Daytona Beach International Airport, within a 6.4-mile radius of Spruce Creek Airport and within a 7.3-mile radius of Ormond Beach Municipal Airport.

* * * * *

Issued in College Park, Georgia, on June 10, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16355 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AD82

Supplemental Security Income for the Aged, Blind, and Disabled; Valuation of In-Kind Support and Maintenance With Cost-of-Living Adjustment

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These regulations implement section 13735 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993). This statutory provision amends the Social Security Act (the Act) and requires that the new supplemental security income (SSI) benefit rate, as increased by a cost-of-living adjustment (COLA), be used in determining the value of the statutory one-third reduction and the regulatory presumed maximum value for the computation of Federal SSI benefit payments for the first 2 months for which the COLA is in effect. These rules provide that we value the statutory one-third reduction and the regulatory presumed maximum value using the benefit rate as increased by a COLA to determine the amount of in-kind support and maintenance received by an individual which is to be counted for those months. This precludes a decrease in the benefit amount the third month after a COLA, a situation which occurred under the prior law. The legislation is effective for benefits paid for months after calendar year 1994.

EFFECTIVE DATE: These final rules are effective July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Office of Process and Innovation Management, L2109 West Low Rise Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–0001, (410) 965–3298 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Under retrospective monthly accounting (RMA), an individual's current SSI benefit amount is usually determined based upon the individual's income in the second preceding month ("budget month") before the current month. For example, January's SSI benefit amount is based on the individual's November income. In some instances, an individual receives income in the form of in-kind support and maintenance and it is counted using the value of the one-third reduction (VTR) or the presumed maximum value (PMV) rule. Under the law prior to the effective date of section 13735 of Public Law 103–66, the VTR and the PMV were based on the applicable benefit rates in effect in the "budget month." Because of RMA principles, when an annual COLA to the SSI benefit rate became effective in January, we used the VTR/PMV amount from November of the previous year to determine the individual's benefit for January if an individual had in-kind support and maintenance in the "budget month." For example, in figuring an individual's January 1994 benefit, we used November 1993 as the "budget month." Thus, in a computation using the VTR, we would subtract the 1993 VTR amount of $144.66 from the 1994 benefit rate of $446.00, giving the individual an SSI benefit of $301.34. February's benefit amount would also be computed using the new benefit rate and the 1993 VTR amount. However, in computing March's benefit amount, we used the benefit rate of $446.00 less the January 1994 VTR amount of $148.66, resulting in an SSI benefit amount of $297.34. Thus, the individual's January and February payments exceeded the March payment because of the increased amount of the new VTR used when January was the "budget month." Notices were then released to these individuals notifying them of the decrease in their March payment. This was confusing to SSI recipients because their payment amounts increased and then decreased even if there was no change in their living arrangements.

We are changing the method of valuation of the VTR/PMV to reflect section 13735 of Public Law 103–66 for benefits paid after calendar year 1994, by using the new benefit rate as increased by a COLA in determining the VTR or PMV for the computation of SSI benefits for the first 2 months for which the COLA is in effect. Thus, beginning with the COLA effective January 1, 1995, both the new increased benefit rate and new increased VTR or PMV amounts are being used in computing a January and February benefit amount. Unlike the example used previously, the individual's January, February, and March payments calculated by using the VTR amount will be the same assuming all other income remains constant—i.e., there will be no decrease in the SSI benefit amount the third month after a COLA. This eliminates confusion for recipients and also eliminates the need for issuance of notices informing affected recipients of the decrease in their March payment.

We state in the final regulations at § 416.420(a) that we will use the benefit rate, as increased by a COLA, in determining the value of certain in-kind support and maintenance used to compute an individual's SSI benefit amount for the first 2 months in which the COLA is in effect. We have added a third example to § 416.420(a) to further clarify the regulatory intent.

We state in the final regulations at § 416.1130 how we value in-kind support and maintenance when a COLA applies, and we have altered the example to reflect the situation when a COLA becomes effective.

On August 9, 1995, we published these rules as a notice of proposed rulemaking in the **Federal Register** at 60 FR 40542 with a 60-day comment period. We received comments from only one source, and the commenter fully supported the proposed rule because it eliminates a significant anomaly in the SSI program. Therefore, we are publishing the final rules essentially unchanged from the proposed rules.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Paperwork Reduction Act of 1980

These final rules impose no new reporting or recordkeeping requirements subject to OMB clearance.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: June 9, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subparts D and K of part 416 of chapter III of title 20 of the Code of

Federal Regulations are amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart D—[Amended]

1. The authority citation for subpart D of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383).

2. Section 416.420 is amended by revising paragraph (a) to read as follows:

§ 416.420 Determination of benefits; general.

* * * * *

(a) *General rule.* We generally use the amount of your countable income in the second month prior to the current month to determine how much your benefit amount will be for the current month. We will use the benefit rate (see §§ 416.410 through 416.414), as increased by a cost-of-living adjustment, in determining the value of the one-third reduction or the presumed maximum value, to compute your SSI benefit amount for the first 2 months in which the cost-of-living adjustment is in effect. If you have been receiving an SSI benefit and a Social Security insurance benefit and the latter is increased on the basis of the cost-of-living adjustment or because your benefit is recomputed, we will compute the amount of your SSI benefit for January, the month of an SSI benefit increase, by including in your income the amount by which your Social Security benefit in January exceeds the amount of your Social Security benefit in November. Similarly, we will compute the amount of your SSI benefit for February by including in your income the amount by which your Social Security benefit in February exceeds the amount of your Social Security benefit in December.

Example 1. Mrs. X's benefit amount is being determined for September (the current month). Mrs. X's countable income in July is used to determine the benefit amount for September.

Example 2. Mr. Z's SSI benefit amount is being determined for January (the current month). There has been a cost-of-living increase in SSI benefits effective January. Mr. Z's countable income in November is used to determine the benefit amount for January. In November, Mr. Z had in-kind support and maintenance valued at the presumed maximum value as described in § 416.1140(a). We will use the January benefit rate, as increased by the COLA, to determine the value of the in-kind support and maintenance Mr. Z received in November when we determine Mr. Z's SSI benefit amount for January.

Example 3. Mr. Y's SSI benefit amount is being determined for January (the current month). Mr. Y has Social Security income of $100 in November, $100 in December, and $105 in January. We find the amount by which his Social Security income in January exceeds his Social Security income in November ($5) and add that to his income in November to determine the SSI benefit amount for January.

* * * * *

Subpart K—[Amended]

3. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

4. Section 416.1130 is amended by revising paragraph (a) to read as follows:

§ 416.1130 Introduction

(a) *General.* Both earned income and unearned income include items received in kind (§ 416.1102). Generally, we value in-kind items at their current market value and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing food, clothing, or shelter that is received as unearned income (in-kind support and maintenance). This section and the ones that follow discuss these rules. In these sections (§§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

Example: Mr. Jones receives an SSI benefit which is computed by subtracting one-third from the Federal benefit rate. This one-third represents the value of the income he receives because he lives in the household of a son who provides both food and shelter (in-kind support and maintenance). In January, we increase his SSI benefit because of a cost-of-living adjustment. We base his SSI payment for that month on the food and shelter he received from his son two months earlier in November. In determining the value of that food and shelter he received in November, we use the Federal benefit rate for January.

* * * * *

[FR Doc. 98–16206 Filed 6–18–98; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket 96–9; FHWA–97–2281]

RIN 2125–AD89

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices; Pedestrian, Bicycle, and School Warning Signs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final amendment to the Manual on Uniform Traffic Control Devices (MUTCD).

SUMMARY: This document contains an amendment to the MUTCD which has been adopted by the FHWA for inclusion therein. The amendment revises sections of the MUTCD to permit the optional use of fluorescent yellow green (FYG) warning signs related to pedestrian, bicycle, and school applications. The MUTCD is incorporated by reference in FHWA's regulations on traffic control devices on Federal-aid and other streets and highways, and recognized as the national standard for traffic control devices on all public roads. This amendment is intended to expedite traffic, improve safety and provide a more uniform application of highway signs, signals, and markings.

DATES: The final rule is effective on June 19, 1998. Incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Highway Safety (202) 366–9064; or Mr. Ray Cuprill, Office of Chief Counsel, (202) 366–1377, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http:/

/dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

The text for Parts I, II, VII, and IX of the MUTCD is available from the FHWA Office of Highway Safety (HHS–10) or from the FHWA Home Page at the URL: http://www.ohs.fhwa.dot.gov/devices/mutcd.html

Background

The 1988 MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7. It may be purchased for $44 (Domestic) or $55 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. The purchase of the MUTCD includes the 1993 revision of Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility and Incident Management Operation, dated September 1993.

The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received. This amendment contains the disposition of a proposed change which was published on June 7, 1996, at 61 FR 29234. Text changes required as a result of amendments contained herein will be distributed to everyone currently appearing on the FHWA, Office of Highway Safety, Federal Register mailing list and will be published in the next edition of the MUTCD. Those wishing to be added to this Federal Register mailing list should write to the Federal Highway Administration, Office of Highway Safety, HHS–10, 400 Seventh Street, SW., Washington, DC 20590.

Summary of Comments

The FHWA has reviewed the comments received in response to the proposed amendment and other information related to the MUTCD. The FHWA is acting on the following request for change to the 1988 edition of the MUTCD.

This amendment to the MUTCD allows the use of fluorescent yellow green (FYG) as an optional color for Advance Pedestrian Crossing Sign (W11–2), Pedestrian Crossing Sign (W11A–2), Bicycle Crossing Sign (W11–1), School Advance Sign (S1–1), School Crossing Sign (S2–1), and School Bus Stop Ahead Sign (S3–1).

The FHWA received 141 comments in response to the proposed amendment, of which 110 agreed with the FHWA's position; 21 opposed; and 10 were either undecided or suggested recommendations not addressed in the NPRM. The FHWA received 12 comments suggesting this color be adopted for use in incident management. The FHWA is currently conducting research with the States of New Jersey, Maryland and Virginia on the appropriate color for incident management. Included in this research is FYG. Upon conclusion of the research rulemaking action will be considered.

The notice of proposed amendment published on June 7, 1996, included a vague and incomplete reference to the Pedestrian Crossing Sign and the Advance Pedestrian Crossing Sign. Both signs were intended to be embraced by the amendment permitting optional FYG use. Inadvertently, however, the former was referenced by name only; the latter was referenced by sign number only, although dual (name and sign number) references were included for each of the other signs involved in the amendment.

The FHWA believes, however, that it is appropriate to include both the Pedestrian and Advance Pedestrian Crossing Signs in the amendment adopted here. Although comment was not specifically invited concerning the Advance Pedestrian Crossing Sign by name, we note that the sign is equivalent in context to the School Advance Sign which received no opposing comments. Moreover, because the amendment provides for optional installation of FYG signs, inclusion of both the Pedestrian and Advance Pedestrian Crossing Signs should not impose any hardship or result in any detriment. Conversely, failure to include both signs within the scope of the amendment adopted at this time could unduly burden those municipalities that choose to install FYG signs, but would then have to do so under different installation schedules for the Pedestrian Crossing and Advance Pedestrian Crossing Signs. Sequential installation of the signs would contradict the FHWA's recommendation that a systematic approach be used to install the signs, potentially resulting in negative safety implications. Indeed, several commenters questioned the advisability of not including both the Pedestrian Crossing and Advance Pedestrian Crossing Signs. Further, several commenters indicated that a mixing of FYG and standard yellow signs, resulting from failure to include both in this notice, could lead to motorists' confusion and should not be permitted.

Pedestrian-motor vehicle crashes are a serious problem in the United States. A total of 5,412 pedestrians were reported killed and another 82,000 were injured in motor vehicle crashes in 1996. An estimated 59,000 bicyclists were injured and 761 were killed in motor vehicle collisions in 1996. Of the 41,907 people who lost their lives in motor vehicle crashes in 1996, 13 percent were pedestrians and 2 percent were bicyclists (Traffic Safety Facts 1996 (NHTSA)). Although a drop in pedestrian fatalities has occurred in recent years, a serious problem continues to exist in the United States relative to pedestrian and bicyclist deaths and injuries.

The DOT Secretarial Initiative for Pedestrian and Bicycle Safety is a new effort to promote walking and bicycling as a safe, healthy, and efficient way to travel. By the year 2000, the Secretarial Initiative will have attempted to decrease by 10 percent the number of injuries and fatalities occurring to bicyclists and pedestrians, and to double the national percentage of transportation trips made by walking or bicycling.

As reported in the NPRM, the FHWA conducted a nationwide study during 1993–1995. North Carolina State University, Civil Engineering Department, took part in this study and performed an in-depth research study in the use of FYG warning signs. The study involved eight sites in multiple pedestrian environments in multiple cities. The overall results of the study indicate that FYG warning signs produced only marginal improvement in perceived safety at the crossing sites. At three of the crossing sites studied, the evaluation indicated a significant reduction in the number of pedestrian/vehicle conflicts, as well as a significant increase in the percentage of vehicles slowing or stopping. Public opinion surveys reflected a strong indication that the FYG warnings do "stand out" and were associated with the need for caution. (Source: "Field Evaluation of Fluorescent Strong Yellow Green Pedestrian Warning Signs," M.S. Thesis, K.L. Clark, North Carolina State University, 1994.)

Over the last 26 months, the FHWA has approved 28 jurisdictions to experiment with FYG warning signs. Several of the jurisdictions that have taken part in the experimentation have indicated that the use of the FYG warning signs meets pedestrian safety needs and have requested permission to install additional signs. Many other jurisdictions have expressed an interest in their use and are awaiting the FHWA final rule.

Of the 141 comments received in response to the NPRM, 23 represented jurisdictions that either participated in the original two-year experimentation, or that are currently experimenting with FYG, submitted comments. Of those jurisdictions, 22 were in agreement with the proposed optional use, and 1 opposed the proposal.

The City of Chicago has recently implemented a "Safe Route to School Program" for the Chicago Board of Education. This program is a direct result of crashes involving motorists and children in school zones. The City of Chicago has requested and been granted approval to experiment with FYG signs at 10 school crossings that have been identified as "problem locations." Installation of the first FYG sign received media attention and its use has been well received by elected officials, the Board of Education, and the public. In many instances, jurisdictions have publicized the installation of the FYG signs and have received positive responses from educators, parents, students, and motorists.

The NPRM received favorable comments and overwhelming support from local governments, including police departments and public school systems, in addition to special interest groups and the general public. National organizations with safety interests, such as the National Safety Council, Institute of Transportation Engineers, and the American Automobile Association (AAA-Florida, Louisiana, Mississippi), have all responded very positively to the use of FYG warning signs.

Many of the public comments received in response to the NPRM voiced common concerns that will be addressed individually. The NPRM addressed the cost increase of fluorescent sheeting material as one and a half times as much as the high intensity sign material. The FHWA estimated the cost of the fluorescent sheeting material to be $7.45 per sq.ft. versus the high intensity sign material at $5.32 per sq.ft. These costs considered sign blank, sheeting material, and labor costs for a 30" x 30" sign. Several docket comments stated that FYG sheeting material ($4.90 per sq. ft.) actually costs only 30 percent more than high intensity sign material ($3.75 per sq.ft.) When comparing total installed sign costs (fabrication, hardware, installation, and labor costs), the actual cost difference would only be 7 percent ($17.74 per sq. ft. versus $18.90 per sq. ft.) for a 30" School Crossing Sign. The FHWA agrees with this cost statement as these costs follow along with the cost evaluation method using the Bellomo-McGee calculation. (Source: 1987 study conducted by Bellomo-McGee for the FHWA, "Retroreflectivity of Roadway Signs for Adequate Visibility: A Guide," (FHWA/DF–88/001).) The FHWA is also concerned with the cost burden on State and local transportation agencies and believes the "optional" use as opposed to an unfunded mandate will relieve the agencies of an undue cost burden. The overall installation cost for the sign is not much different because the sheeting cost is only a small amount of the total cost of a sign installation.

There is concern that the NPRM gave conflicting guidance in proposing a "systematic approach" at locations selected for use of the FYG warning signs, and the "gradual phase-in" as part of "routine maintenance." Historically, when signs are installed at the same time, they generally deteriorate beyond usefulness at the same time and need to be replaced at the same time. Signs that are taken down to comply with the "systematic approach" and that are in a usable condition may be used again at other locations. Additionally, signs can be taken down and refurbished with new sheeting material and used again at new locations.

Several commenters believe the use of FYG warning signs should be implemented as a mandatory (shall) condition in the MUTCD, rather than an optional condition as proposed in the NPRM. Designation of FYG signs as an option fits in with the present character of the MUTCD which allows the State and local transportation agencies to make a determination on use of traffic control devices that may be beneficial to some locations. An example is the use of channelizing devices in work zones with the optional use of tubular markers, cones, and drums. This is a positive step in allowing State and local agencies to address their safety needs and avoids an undue burden on their budgets.

Concern has been expressed over the "novelty effect" of the FYG signs. While there is always the possibility of a "novelty" effect which could decrease the benefits over time, the experimentation procedures took into consideration the possibility of the novelty effect on drivers by instructing the implementing agency to allow at least 30 days between the time the experimental signs were installed and the time the study proceeded.

The American Society for Testing and Materials (ASTM) publishes standard test methods, specifications, practices, guides, classifications, and terminology. These standards are developed voluntarily and used voluntarily. They become legally binding only when a government body makes them so, or when they are cited in a contract. Specifically, ASTM E991 describes procedures for measuring the color of fluorescent specimens as they would be perceived when illuminated by daylight, and for calculating tristimulus values and chromaticity coordinates for these conditions. ASTM E1247 provides spectrophotometric methods for identifying the presence of fluorescence in object-color specimens.

There is some concern regarding the use of ASTM E991 and E1247 for determining compliance with specifications listed in the NPRM. It was mentioned that most State and local agencies would not have the instrumentation necessary to accurately measure fluorescence specifications. This is not deemed a critical concern as the testing for FYG would be no different than what is done in field offices now. Most States currently have the capability to do initial testing of retroreflectivity. When a State purchases sign material, the manufacturer certifies the specifications; however, some States reserve the option to do their own lab work.

The Commission Internationale de l'Eclairage (CIE) (English: International Commission on Illumination) chromaticity coordinates (x,y), defining the corner of the Fluorescent Yellow Green daytime color region, are stated in the table below. Several docket comments received mentioned that the Y values were omitted from the NPRM; therefore, the Y values have been inserted in the table below:

x	y	Y	Y_F
0.387	0.610	50	20
0.368	0.539	.....	.....
0.421	0.486	.....	.....
0.460	0.540	.....	.....

Fluorescent materials differ from non-fluorescent materials in that the total luminance is the sum of the luminances due to reflection and fluorescence. The luminance factor Y of such materials is the sum of the luminance due to reflection (Y_R) and the luminance due to fluorescence (Y_F). Therefore, $Y=Y_R+Y_F$. If the value of Y_F is greater than zero,

the material is fluorescent; if Y_F equals zero, then the luminance factor Y is equal to Y_R.

These four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 Standard Colorimetric System (2 degree standard observer) measured with CIE Standard Illuminant D65 in accordance with ASTM E991. In addition, the color shall be fluorescent, as determined by ASTM E1247.

Rulemaking Analyses and Notices

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The change in this notice provides additional guidance, clarification, and optional application for traffic control devices. The FHWA expects that application uniformity will improve at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities. This final amendment allows the optional use of alternative traffic control devices and the changes adopted here merely provide expanded guidance and clarification on the selection of appropriate traffic control devices. Based on this evaluation, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rulemaking relates to the Federal-aid Highway Program which is a financial assistance program in which State, local, or tribal governments have authority to adjust their program in accordance with changes made in the program by the Federal government, and thus is excluded from the definition of Federal mandate under the Unfunded Mandates Reform Act of 1995.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. These amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements, Signs, Traffic regulations.

The FHWA hereby amends chapter I of title 23, Code of Federal Regulations, part 655 as set forth below:

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways

2. In section 655.601, paragraph (a) is revised to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), FHWA, 1988, including Revision No.1 dated January 17, 1990, Revision No. 2 dated March 17, 1992, Revision No. 3 dated September 3, 1993, "Errata No. 1 to the 1988 MUTCD, Revision 3 dated November 1, 1994," Revision No. 4 dated November 1, 1994, Revision No. 4a (modified) dated February 19, 1998, Revision No. 5 dated December 24, 1996, and Revision No. 6, dated June 19, 1998. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The 1988 MUTCD, including Revision No. 3 dated September 3, 1993, may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. The amendments to the MUTCD, titled "1988 MUTCD Revision No. 1," dated January 17, 1990, "1988 MUTCD Revision No. 2," dated March 17, 1992, "1988 MUTCD Revision No. 3," dated September 3, 1993, "1988 MUTCD Errata No. 1 to Revision No. 3," dated November 1, 1994, "1988 MUTCD Revision No. 4," dated November 1, 1994, "Revision No. 4a(modified)," dated February 19, 1998, and "1988 MUTCD Revision No. 5," dated December 24, 1996, and Revision No. 6 dated June 19, 1998 are available from the Federal Highway Administration, Office of Highway Safety, HHS–10, 400 Seventh Street, SW., Washington, DC 20590. These documents are available for inspection and copying as prescribed in 49 CFR part 7.

* * * * *

Issued: June 9, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 98–15882 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 7, and 602

[TD 8770]

RIN Nos. 1545–AP81 and 1545–AI32

Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to certain transfers of stock or securities by U.S. persons to foreign corporations pursuant to the corporate organization and reorganization provisions of the Internal Revenue Code, and the reporting requirements related to such transfers. The regulations provide the public with guidance necessary to comply with the Tax Reform Act of 1984.

DATES: These regulations are effective July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Philip L. Tretiak at (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1271. Responses to these collections of information are required in order for certain U.S. shareholders that transfer stock or securities in section 367(a) exchanges to qualify for an exception to the general rule of taxation under section 367(a)(1).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated burden per respondent varies from .5 to 8 hours, depending upon individual circumstances, with an estimated average of 4 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, *Attn:* IRS Reports Clearance Officer, T:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, *Attn:* Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On May 16, 1986, temporary and proposed regulations under sections 367 (a) and (d), and 6038B were published in the **Federal Register** (51 FR 17936). These regulations, which addressed transfers of stock or securities and other assets, as well as related reporting requirements, were published to provide the public with guidance necessary to comply with changes made to the Internal Revenue Code by the Tax Reform Act of 1984. The IRS and the Treasury Department later issued Notice 87–85 (1987–2 C.B. 395), which set forth substantial changes to the 1986 regulations, effective with respect to transfers of domestic or foreign stock or securities occurring after December 16, 1987. A further notice of proposed rulemaking containing rules under section 367(a) with respect to transfers of domestic or foreign stock or securities, as well as section 367(b), was published in the **Federal Register** on August 26, 1991 (56 FR 41993). The section 367(a) portion of the 1991 proposed regulations was generally based upon the positions announced in Notice 87–85, but the regulations proposed certain modifications to Notice 87–85, particularly with respect to transfers of stock or securities of foreign corporations.

Subsequently, the IRS and the Treasury Department have issued guidance focusing on the transfers of stock or securities of domestic corporations. Notice 94–46 (1994–1 C.B. 356) announced modifications to the positions set forth in Notice 87–85 (and the 1991 proposed regulations) with respect to transfers of stock or securities of domestic corporations occurring after April 17, 1994. Temporary and proposed regulations (referred to as the inversion regulations) implementing Notice 94–46 (with certain modifications) were published in the **Federal Register** on December 26, 1995 (60 FR 66739 and 66771). Final inversion regulations, published in the **Federal Register** on December 27, 1996 (61 FR 61849), generally followed the rules contained in the temporary regulations, with modifications.

The final regulations herein address transfers of foreign stock or securities, and other matters addressed in the 1991 proposed regulations under section 367(a) that were not addressed in the 1996 final inversion regulations.

In addition, these final regulations address those portions of the 1991 proposed section 367(b) regulations that relate to transactions that are subject to both sections 367 (a) and (b). The remainder of the 1991 proposed section 367(b) regulations will be finalized at a later date.

This document also contains final regulations under section 6038B with respect to reporting requirements applicable to transfers of stock or securities described under section 367(a). Rules regarding outbound transfers to corporations of assets other than stock (including intangibles), and outbound transfers to foreign partnerships will be addressed in separate guidance.

Finally, these final regulations contain a clarification with respect to the scope of certain outbound transfers of intangibles that are subject to section 367(d).

Explanation of Provisions

Sections 367 (a) and (b): Introduction

Section 367(a)(1) generally treats a transfer of property (including stock or securities) by a U.S. person to a foreign corporation (an outbound transfer) in an exchange described in section 332, 351, 354, 356 or 361 as a taxable exchange unless the transfer qualifies for an exception to this general rule.

Section 367(a)(2) provides that, except as provided by regulations, section 367(a)(1) shall not apply to the transfer of stock or securities of a foreign corporation which is a party to the exchange or a party to the reorganization. Section 367(a)(3) contains an exception to section 367(a)(1) for certain outbound transfers of tangible assets other than stock or securities. Section 367(a)(5) contains limitations on any exceptions to section 367(a)(1) in certain instances.

Section 367(b) provides that, with respect to certain nonrecognition transfers in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation will retain its status as a corporation unless regulations provide otherwise.

These final regulations address transactions described in both sections

367 (a) and (b), and are prescribed under the authority of both sections 367 (a) and (b).

Stock Transfers Under Sections 367 (a) and (b): Scope

Outbound transfers of stock that are subject to section 367(a) may be either direct (such as an outbound transfer of stock described under section 351), indirect (as described below with respect to certain transfers) or constructive (such as an outbound stock transfer that may occur pursuant to a change in an entity's classification). See § 1.367(a)–3(a) (as amended) for the general rules regarding the scope of stock transfers that are subject to section 367(a).

Indirect Stock Transfers: in General

The current temporary regulations contain illustrative examples of certain transactions, including triangular reorganizations described under section 368(a)(1)(A) and either section 368(a)(2)(D) or (E), section 368(a)(1)(B) or (C), that are treated as indirect stock transfers subject to section 367(a) where the acquired company and the acquiring company are domestic corporations and the shareholders of the acquired company receive stock of the acquiring company's foreign parent in the exchange. (Under the terminology used in the proposed and final regulations, in the case of a reorganization described in sections 368(a)(1)(A) and (a)(2)(E), U.S. shareholders exchange their stock for stock of the *acquired* company's foreign parent.)

The proposed regulations clarified the treatment of indirect stock transfers, and provided extensive examples of the rules. The proposed regulations provided that transactions that are treated as indirect stock transfers include: (i) successive section 351 exchanges, and (ii) section 368(a)(1)(C) reorganizations followed by section 368(a)(2)(C) exchanges. In addition, the reorganizations illustrated under the existing temporary regulations are also treated as indirect stock transfers under the proposed regulations where the acquired and/or acquiring corporations are foreign corporations.

The proposed regulations requested comments as to the scope of the indirect stock transfer rules. The IRS and the Treasury Department carefully considered comments received with respect to the scope of the indirect stock transfer rules and have decided to retain the rules set forth in the proposed regulations. These rules are contained in § 1.367(a)–3(d), and additional examples are provided in the final regulations.

Indirect Stock Transfer Rules and Section 367(d)

In the case of a triangular section 368(a)(1)(C) reorganization in which a U.S. target company (UST) transfers its assets to a foreign acquiring company (FA) and UST's U.S. parent company (USP) receives stock of FA's foreign parent (the transferee foreign corporation or TFC) in exchange for the UST stock, the indirect stock transfer rules and the asset transfer rules will apply contemporaneously.

If UST is taxable under section 367(a) with respect to its outbound (section 361) transfer of all or a portion of its tangible assets (because such assets do not qualify for an exception to section 367(a)(1)), USP will receive a step up in the basis of its stock in UST, provided that USP and UST file a consolidated Federal income tax return. See § 1.1502–32. USP will also be deemed to make an indirect transfer of the stock of UST for TFC stock. See § 1.367(a)–3(d)(1)(iv). Thus, if USP receives at least five percent of either the total value or the total voting power of the stock of TFC (i.e., USP is a 5-percent shareholder (which is also referred to as a 5-percent transferee shareholder in § 1.367(a)–3(c)(5)(ii)) and the value of the UST stock exceeds USP's basis in UST (taking into account basis adjustments relating to the asset transfer), USP may qualify for nonrecognition treatment by entering into a gain recognition agreement (GRA), described below, provided that the requirements of § 1.367(a)–3(c)(1) are satisfied. See, e.g., § 1.367(a)–3(d)(3), *Example 7* through *Example 7C.*

If the asset transfer involves tangible assets and the transfer is fully taxable (so that USP's basis in its UST stock equals the value of the UST stock), the indirect stock transfer would not be taxable under section 367(a), and, hence, no GRA would be required. In contrast, if the assets transferred by UST include intangibles that are taxable under section 367(d), the exact manner in which section 367(d) operates is less certain.

The regulations under section 367(d) do not address the tax consequences when the U.S. transferor goes out of existence pursuant to the transaction. The IRS and the Treasury Department are studying the manner in which the rules under section 367(d) should operate when the U.S. transferor goes out of existence contemporaneously with (or subsequent to) its outbound transfer of an intangible. Comments are requested with respect to this issue.

Transactions Subject to Sections 367(a) and (b)

An outbound transfer of foreign stock or securities can be subject to both sections 367(a) and (b). Pursuant to section 367(a)(2), § 1.367(a)–3T(b) of the current temporary regulations provides that, if an exchange is described in section 354 or 361, an outbound transfer of stock or securities of a foreign corporation that is a party to the reorganization is not subject to section 367(a). Thus, for example, an outbound transfer in which a U.S. person exchanges stock in one controlled foreign corporation (CFC) for another CFC that qualifies as a reorganization under section 368(a)(1)(B) (a B reorganization), including a transfer that qualifies as both a B reorganization and a section 351 exchange, is subject only to section 367(b), not section 367(a). In such case, no GRA, described below, is required under the current temporary regulations to preserve nonrecognition treatment. In contrast, an outbound transfer of foreign stock that qualifies as a section 351 exchange but not a B reorganization is currently subject to only section 367(a), not section 367(b), and, thus, a GRA may be required to preserve nonrecognition treatment.

The IRS and the Treasury Department believe that substantially similar transactions, such as these, should not be treated in markedly different manners. Thus, these final regulations adopt the approach contained in the proposed regulations: that all outbound transfers of foreign stock will be subject to sections 367(a) and (b) concurrently, except to the extent that the exchange is fully taxable under section 367(a)(1). See § 1.367(a)–3(b)(2).

Sections 367(a) and (b): Exceptions to Taxation

Once a determination is made that a particular outbound transfer of stock or securities is subject to section 367(a), the next determination is the tax treatment of such transfer. In general, the current rules regarding the outbound transfer of stock or securities under section 367(a) provide for three different tax consequences depending upon the particular facts: (i) certain transfers retain nonrecognition treatment without condition, (ii) certain transfers retain nonrecognition treatment only if the U.S. transferor enters into a GRA, and (iii) certain transfers of stock are taxable to the U.S. transferor under section 367(a)(1) with no option to file a GRA to secure nonrecognition treatment. These final regulations retain this general framework.

The current rules governing whether a taxpayer may qualify for an exception under section 367(a) in the case of an outbound transfer of stock are described in § 1.367(a)–3(c) of the final inversion regulations (in the case of domestic stock or securities) and Notice 87–85 (in the case of foreign stock or securities).

Notice 87–85 provides that in the case of an outbound transfer of foreign stock or securities to which section 367(a) applies, a U.S. transferor may generally qualify for nonrecognition treatment if it either (i) is not a 5-percent shareholder, or (ii) is a 5-percent shareholder but enters into a GRA for a term of 5 or 10 years, depending upon the TFC stock owned by all U.S. transferors. Under current law, a 5-percent shareholder that qualifies for nonrecognition treatment under section 367(a) by filing a GRA agrees that if the TFC disposes of the stock of the transferred corporation in a taxable transaction during the term of the GRA, the 5-percent shareholder must amend its return for the year of the transfer and include in income the amount that it realized but did not recognize with respect to the stock of the transferred corporation, and pay the tax due, plus interest, on this amount. (Under Notice 87–85, the term of the GRA is 5 years if all U.S. transferors, in the aggregate, own less than 50 percent of both the total voting power and the total value of the TFC immediately after the transfer, or 10 years if all U.S. transferors, in the aggregate, own 50 percent or more of either the total voting power or the total value of the TFC immediately after the transfer.) Although GRAs are currently used solely with respect to outbound transfers of stock or securities, the IRS and the Treasury Department may, at a later date, permit taxpayers to secure nonrecognition treatment under section 367(a) with respect to other types of assets by entering into GRAs.

Notice 87–85, however, provides no exception to section 367(a)(1) if a U.S. transferor transfers stock in a CFC in which it is a United States shareholder (as defined in § 7.367(b)–2(b) or section 953(c)) but does not receive back stock in a CFC in which it is a United States shareholder.

The final regulations, following the proposed regulations on this point, provide that a transfer described in the preceding paragraph, such as a section 351 exchange in which a U.S. transferor exchanges stock of a CFC in which it is a United States shareholder for stock of a non-CFC, is not automatically taxable. Instead, both sections 367(a) and (b) apply to the exchange. If the U.S. transferor is required under section 367(a) to enter into a GRA to preserve nonrecognition treatment and fails to do so, the transaction is fully taxable under section 367(a) (and, as a consequence, the section 1248 amount that would be included as a dividend under section 367(b) had a GRA been filed is instead treated as a dividend under section 1248). If the U.S. transferor is required to enter into a GRA and properly does so, the U.S. transferor is required under section 367(b) to include in income the section 1248 amount attributable to the stock exchanged. The amount of the GRA equals the gain realized on the transfer less the inclusion under section 367(b). See § 1.367(a)–3(b)(2).

As noted above, Notice 87–85 addressed outbound transfers of both domestic and foreign stock. The (1996) final inversion regulations superseded Notice 87–85 with respect to outbound transfers of domestic stock. The rules in Notice 87–85 with respect to outbound transfers of foreign stock have been incorporated into these final regulations with respect to transfers that occur prior to July 20, 1998. See § 1.367(a)–3(g). Notice 87–85 will be obsolete when these final regulations are effective.

Section 367(a): Post-GRA Transactions

Section 1.367(a)–8 provides general rules regarding terms and conditions relating to GRAs, and the manner in which post-GRA transactions impact the GRA. The general terms and conditions for GRAs have not changed significantly from the terms and conditions set forth in § 1.367(a)–3T(g) of the current temporary regulations, except that the final regulations contain an election (the GRA election), described below, to permit the taxpayer to include the GRA amount in income in the year of the triggering event (with interest on the tax due from the year of the transfer) rather than on an amended return for the year of the initial transfer. In addition, the final regulations generally follow the proposed regulations by providing a more comprehensive explanation of the manner in which the GRA is affected by both taxable and nontaxable dispositions by the U.S. transferor, the TFC, and the transferred corporation.

The current temporary regulations provide that the GRA is triggered if (i) the TFC disposes of all or a portion of the stock of the transferred corporation, or (ii) the transferred corporation disposes of a substantial portion of its assets. The term *substantial portion* was not defined in the regulations.

Both the final and the proposed regulations use the rule from the current temporary regulations that a GRA is triggered to the extent that the TFC disposes of all or a portion of the stock of the transferred corporation. The final regulations also adopt the rule contained in the proposed regulations that a GRA is triggered if the transferred corporation disposes of substantially all of its assets (within the meaning of section 368(a)(1)(C)). In addition, the final regulations provide that a GRA will be triggered if the U.S. transferor is either a U.S. citizen or long-term resident (as defined in section 877(e)(2)) at the time of the initial transfer and such person ceases to be a U.S. citizen or long-term resident during the GRA term.

Under the current temporary regulations, if a GRA is triggered, the U.S. transferor must amend its tax return for the year of the initial transfer, include in income the gain that was realized but not recognized, and pay the tax due thereon with interest. The proposed regulations would have maintained the amended return/interest charge requirement, but requested comments as to (i) the amount of gain to be recognized by the U.S. transferor upon a triggering event, (ii) the year in which the gain should be included in the income of the U.S. transferor, and (iii) whether an interest charge is appropriate.

A number of commentators have suggested that the 10-year GRA term under Notice 87–85 in certain instances is too restrictive because a disposition of the stock of the transferred corporation in year 8, for example, would likely not be a tax avoidance transfer but the interest charges would be burdensome in such case. Other commentators suggested a deferred income approach similar to that applicable in the consolidated return deferred intercompany context.

In response to these comments, these final regulations contain two significant modifications to the current temporary regulations. First, in conformity with the final inversion regulations, these regulations provide that the GRA term will be 5 years in all cases involving outbound transfers of foreign stock. (Moreover, taxpayers may elect to apply these final regulations to past transactions so that any 10-year GRA that is in existence (i.e., has not been triggered) on July 20, 1998 will be a 5-year GRA. Thus, the 10-year GRA will be considered to be a 5-year GRA by the IRS, and, such GRA will terminate on the fifth full taxable year following the close of the taxable year of the initial transfer.) Second, because the IRS and the Treasury Department are concerned that the amended return requirement can be burdensome to taxpayers in the event that a GRA is triggered, the final regulations contain an election (the GRA election), which must be filed with the

U.S. transferor's tax return that includes the date of the initial transfer, that permits taxpayers to report a triggering event in the year of the triggering event rather than on an amended return for the year of the initial transfer. (No such election is available with respect to GRAs that are in existence when these final regulations become effective.)

Even if a transferor makes a GRA election, such person is still required to extend the statute of limitations, comply with all of the applicable GRA reporting requirements (such as filing annual certifications) and, in the case of a triggering event, include in income the GRA amount plus interest in the same manner as under the current temporary regulations, except that (i) the GRA amount and interest would be included on the U.S. transferor's tax return for the year that includes the triggering event, and (ii) other computations, such as the section 1248 amount (if any) attributable to the transferred stock, will be determined on the triggering date rather than the date of the initial transfer.

Consistent with the proposed regulations, the final regulations clarify that post-GRA nonrecognition transactions (e.g., nonrecognition transactions in which the U.S. transferor transfers the stock of the TFC, the TFC transfers the stock of the transferred corporation, or the transferred corporation transfers substantially all of its assets) generally do not trigger the GRA, provided that the U.S. transferor reports the transaction and amends the GRA to reflect the post-GRA transaction.

The current temporary regulations do not provide instances that would cause the GRA to be terminated (i.e., extinguished). The proposed regulations would have provided that the GRA would be terminated if either (i) the U.S. transferor disposed of all of its TFC stock in a taxable transaction, or (ii) the transferred company is a U.S. company that sold substantially all of its assets in a taxable transaction (but only if the transferred company was affiliated with the U.S. transferor under section 1504(a)(2) prior to the initial transfer).

The final regulations retain these two rules. In addition, the final regulations also provide that a GRA will be terminated if (i) the TFC distributes the stock of the transferred corporation back to the U.S. transferor in a section 355 exchange, or (ii) the TFC liquidates into the U.S. transferor under section 332, provided that, immediately after the section 355 distribution or section 332 liquidation, the U.S. transferor's basis in the transferred stock is less than or equal to the basis that it had in the transferred stock immediately prior to the initial transfer of such stock.

Finally, the current temporary regulations provide (and the 1991 proposed regulations would have provided) certain restrictions on taxpayers' ability to use net operating losses and credits to offset the amount of gain recognized upon the trigger of a GRA. In response to suggestions from commentators, the final regulations remove these restrictions.

Section 367(a) and "Check-the-Box" Rules

The IRS and the Treasury Department are aware that taxpayers may attempt to use the entity classification (i.e., check-the-box) regulations to avoid entering into GRAs. For example, assume that a U.S. transferor (USP) owns all of the stock of two CFCs, CFC1 and CFC2. USP transfers the stock of CFC2 to CFC1 in an exchange otherwise described as both a section 351 exchange and a B reorganization. USP elects under § 301.7701–3(c) to treat CFC2 as a disregarded entity, and such election is effective immediately prior to the transfer.

Provided that the election is respected, USP would, for Federal income tax purposes, transfer the assets (and not the stock) of CFC2 to CFC1 in a section 351 exchange. If the assets will be used by CFC1 in the active conduct of a trade or business outside the United States, the transfer of the assets by USP will qualify for the exception contained in section 367(a)(3) and § 1.367(a)–2T (as limited by certain provisions, including §§ 1.367(a)–4T through 1.367(a)–6T). If the assets are disposed of (either directly by CFC2 or because the stock of CFC2 is disposed of by CFC1) in connection with the transfer to CFC1, the step transaction doctrine may apply to deny nonrecognition treatment to the outbound transfer to the extent it is treated as an asset transfer. In addition, the active trade or business exception under § 1.367(a)–2T is inapplicable if, as part of the same transaction in which the TFC received the assets, it disposes of such assets. See § 1.367(a)–2T(c). Thus, if USP intended to sell CFC2 or its business at the time of the election or the asset transfer, the transfer would be treated as a taxable exchange under section 367(a)(1). If the step transaction doctrine and the active trade or business anti-avoidance rule do not apply, however, the use of the "check-the-box" regulations in this context will not be viewed as inconsistent with the purposes of section 367(a), and, therefore, the transaction will be respected as an asset transfer.

Section 367(a) and Tax-Motivated Transactions

The IRS and the Treasury Department are aware that certain taxpayers have entered into (or are contemplating) transactions that are designed to avoid the inversion regulations under § 1.367(a)–3(c). In these transactions (where a foreign corporation acquires the stock of a domestic corporation), one or more U.S. transferors attempt to avoid taxation under the inversion regulations by retaining an equity interest (or receiving a modified equity interest) in the domestic target corporation. Such interest, however, is typically coupled with an interest in the foreign acquirer, or a right to convert the interest in the domestic target into stock of the foreign acquirer.

The IRS and the Treasury Department are currently scrutinizing these transactions on a case-by-case basis using substance over form (or other) principles, and are studying whether it is appropriate to issue specific guidance with respect to these transactions. Comments are requested as to the instances in which a U.S. transferor that receives (or maintains) a stock interest in the domestic target in circumstances similar to those described above should not be treated as having received stock in the foreign acquirer for purposes of section 367(a).

Section 367(b)

This document finalizes the 1991 proposed section 367(b) regulations to the extent necessary to address those transfers of foreign stock subject to both sections 367(a) and (b) under the 1991 proposed regulations.

In addition, this document contains a number of other miscellaneous provisions, at the request of commentators.

First, under current law, if a United States shareholder (defined under § 7.367(b)–2(b) as a 10 percent shareholder of a CFC within the past 5 years) exchanges, under section 351, stock of a foreign corporation for stock of a domestic corporation, the U.S. transferor is not taxable under section 367(b). However, if the transaction constitutes a section 354 exchange, under § 7.367(b)–7(c)(1) the United States shareholder must include in income the section 1248 amount attributable to the stock exchanged. Consistent with the 1991 proposed regulations as well as the purpose of these final regulations to harmonize the Federal income tax consequences of substantially similar transactions, the final section 367(b) regulations provide that a section 1248 inclusion generally

is not required in the case of the section 354 exchange described above. (This result is accomplished by excluding domestic stock from the categories of nonqualifying consideration described in § 1.367(b)–4(b)(1). Thus, these transfers will generally be respected as nonrecognition exchanges under 367(b).)

Second, consistent with the principles of section 367(b), in cases where the final regulations do not require that the section 1248 amount be included in income, the regulations clarify the appropriate treatment of post-reorganization exchanges under section 1248 or 367(b). See § 1.367(b)–4(b)(5).

Third, in an effort to reduce the reporting burdens of U.S. persons that make outbound transfers of foreign stock or securities, the section 367(b) regulations are amended to provide that, to the extent that a transaction is described in both sections 367(a) and (b), and the exchanging shareholder is not a United States shareholder of the corporation whose stock is exchanged, reporting under section 367(b) is not required. See § 1.367(b)–1(c).

Finally, the proposed section 367(b) regulations provided that final regulations generally would be effective for exchanges that occur on or after 30 days after the final regulations were published in the **Federal Register**. However, § 1.367(b)–2(d) (relating to the definition of the all earnings and profits amount) was proposed to be effective for transfers occurring on or after August 26, 1991. In response to comments regarding this provision and its effective date, a separate notice of proposed rulemaking is issued with these final regulations to delete the August 26, 1991, effective date with respect to the all earnings and profits amount. Thus, the definition of the all earnings and profits amount that will be included in forthcoming section 367(b) final regulations will apply to exchanges that occur on or after 30 days after the issuance of those final regulations.

The IRS and the Treasury Department will issue guidance at a later date to address section 367(b) provisions described in the 1991 proposed regulations that are not addressed herein.

Section 6038B: In General

Section 6038B, as enacted under the Deficit Reduction Act of 1984 (Public Law 98–369), provided that U.S. persons that made certain outbound transfers of property to foreign corporations were required to report those transfers in the manner prescribed by regulations. The penalty for failure to comply with the regulations was 25 percent of the gain realized on the exchange, unless the failure was due to reasonable cause and not to willful neglect. (The penalty was modified by the Taxpayer Relief Act of 1997 (TRA '97).)

Section 1.6038B–1T, promulgated on May 15, 1986, by TD 8087 (together with regulations under sections 367(a) and (d)), provided rules concerning the information that was required to be reported under section 6038B with respect to transfers of property to foreign corporations.

Section 6038B: Transfers of Stock or Securities

Section 1.6038B–1T(b)(2)(i) of the current temporary regulations provides, inter alia, that no notice is required under section 6038B with respect to a transfer of stock or securities described in § 1.367(a)–3T(f)(1) of the current temporary regulations. Section 1.367(a)–3T(f)(1) had provided that an outbound transfer of stock or securities of a domestic or foreign corporation was not taxable under section 367(a)(1) if immediately after the transfer (i) all U.S. transferors owned in the aggregate less than 20 percent of both the total voting power and the total value of the stock of the TFC, or (ii) all U.S. transferors owned in the aggregate 20 percent or more of either the total voting power or the total value of the stock of the TFC, but less than 50 percent of that total voting power and total value and the subject U.S. transferor was not a 5-percent shareholder.

Notice 87–85 superseded the 1986 temporary regulations under section 367(a) (including § 1.367(a)–3T(f)(1)) with respect to the exceptions available for outbound stock transfers. Notice 87–85 provided that final regulations would incorporate the rules contained in the Notice, for transfers occurring after December 16, 1987. The exceptions in the 1986 temporary regulations, including § 1.367(a)–3T(f)(1) of the current temporary regulations, were removed as deadwood (for transfers occurring after December 16, 1987) by the 1995 temporary inversion regulations (TD 8638).

Prior to the issuance of these final regulations, however, section 6038B had not been amended with respect to outbound transfers of stock or securities. Thus, there was uncertainty whether a U.S. transferor that qualified under the inversion regulations or Notice 87–85 for nonrecognition treatment without filing a GRA (i.e., such U.S. transferor was not a 5-percent shareholder) was required to comply with section 6038B.

To reduce the reporting burdens on U.S. taxpayers that make outbound transfers of stock subject to section 6038B, the final section 6038B regulations provide that, with respect to transfers occurring after December 16, 1987, and before these final regulations are generally effective, a U.S. transferor that makes an outbound transfer subject to section 367(a) will not be subject to section 6038B with respect to such transfer if (i) such person was not a 5-percent shareholder and the transfer qualified for nonrecognition treatment under section 367(a), or (ii) such person was not a 5-percent shareholder in the case of a taxable transaction but such person included the gain on its Federal income tax return for the taxable year that included the date of the transfer.

With respect to transfers occurring after these final regulations are effective, these regulations contain the two exceptions described above. In addition, a 5-percent shareholder that is required to file a GRA is not subject to section 6038B provided that a GRA is properly filed. Moreover, U.S. transferors that are taxable on their outbound transfers of stock or securities (such as under the inversion regulations or because a 5-percent shareholder that was eligible to qualify for nonrecognition treatment chose not to file a GRA) are not subject to section 6038B if they properly report the gain recognized on the transfer on their tax returns that include the date of the transfer.

Thus, a U.S. transferor that does not properly report the gain recognized on its outbound stock transfer has not met its section 6038B filing obligation with respect to such transfer, and will be subject to the penalty under section 6038B, unless the transferor's failure to report the gain from the outbound transfer was due to reasonable cause and not willful neglect. Such person will also be subject to the extended statute of limitations under section 6501(c)(8).

Section 6038B: Transfers of Cash and Unappreciated Property

As noted above, prior to the enactment of TRA '97, the penalty for failure to comply with section 6038B was 25 percent of the gain realized on the outbound transfer. Thus, in the case of an outbound transfer of cash or unappreciated property required to be reported under section 6038B, no penalty was imposed upon the failure to report the transfer.

Pursuant to the TRA '97, the penalty for failure to report under section 6038B is revised from 25 percent of the gain realized in the property transferred to 10 percent of the fair market value of the property transferred, but limited to $100,000 unless the failure to report the

exchange was due to intentional disregard. (The final regulations reflect the modification to the penalty provision under section 6038B.)

In response to the TRA '97 change to the penalty structure under section 6038B, these final regulations clarify that transfers of unappreciated property are required to be reported, or the 10 percent penalty will apply. These final regulations, however, do not require outbound transfers of cash to be reported. Rules regarding outbound transfers of cash will be provided in future regulations.

Section 6038B: Other Transfers

Pursuant to TRA '97, certain outbound transfers to foreign partnerships are required to be reported under section 6038B. Rules regarding outbound transfers to foreign corporations of assets not covered in these final regulations (such as intangibles), and outbound transfers to foreign partnerships, will be addressed in separate guidance.

Section 367(d) and Other TRA '97 Matters

A clarification provides that certain rules under section 367(a) will also apply under section 367(d) for purposes of determining the identity of the transferor that makes an outbound transfer of an intangible subject to section 367(d). Section 367(a)(4) and § 1.367(a)–1T(c)(5) provide that, for purposes of section 367(a), a partnership is treated as an aggregate in cases where a U.S. person transfers a partnership interest or a partnership makes an outbound transfer of stock (or other assets).

The IRS and the Treasury Department believe that the identity of the transferor has been and must be consistent under both sections 367(a) and (d). Consequently, a U.S. person may not attempt the use of a foreign partnership as an intermediary (in light of the repeal of section 1491) for an outbound transfer of an intangible by a U.S. person to a foreign corporation to avoid section 367(d). In the case of a transfer of an intangible by a partnership to a foreign corporation that qualifies as a section 351 exchange, each partner that is a U.S. person is treated as transferring its share of the intangible in a transfer that is subject to section 367(d).

Guidance under TRA '97 relating to the repeal of section 1491 may address situations in which inappropriate results can be achieved through transactions facilitated by such repeal. For example, guidance may address the appropriate tax consequences when a U.S. person who is a United States shareholder of a CFC transfers stock in the CFC to a foreign partnership, and immediately after the transfer the foreign corporation loses its status as a CFC. Guidance is generally not, however, expected to require gain recognition under section 721(c) in cases where gain is not inappropriately shifted to foreign persons.

Effective Dates

The final regulations contained herein are generally effective for transfers occurring on or after July 20, 1998. However, taxpayers generally may elect to apply the final regulations under § 1.367(a)–3(b) and (d) to transfers of foreign stock or securities occurring after December 17, 1987. A taxpayer that makes the election must apply section 367(b) and the regulations thereunder to such transfers. In the case of a transfer described in section 351, an electing transferor must apply section 367(b) and the regulations thereunder as if the exchange was described in § 7.367(b)–7. Thus, for example, in a case of a section 351 exchange in which a U.S. person exchanges stock of a CFC in which it is a United States shareholder but does receive back stock of a CFC in which it is a United States shareholder, the electing transferor must include in income the section 1248 amount with respect to the transferred stock.

Special Analyses

It has been determined that this regulation is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these final regulations generally reduce the reporting requirements in comparison with the requirements contained under current law and the proposed sections 367(a) and (b) regulations. For example, the maximum term of the GRA under section 367(a) is reduced from 10 to 5 years, thus eliminating the need for annual certifications in years 5 through 9. Moreover, the requirements under section 6038B have been substantially revised for outbound transfers of stock described in section 367(a) so that the amount of filing required under that section will be significantly reduced. In addition, as a general matter, these regulations will primarily affect large shareholders and U.S. multinational corporations with foreign operations. Thus, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Drafting Information

The principal author of these regulations is Philip L. Tretiak of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Parts 1 and 7

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 7 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for section 1.367(b)–7 and adding new entries to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.367(a)–3 also issued under 26 U.S.C. 367(a) and (b).

Section 1.367(a)–8 also issued under 26 U.S.C. 367(a) and (b).

Section 1.367(b)–1 also issued under 26 U.S.C. 367(a) and (b). * * *

Section 1.367(b)–4 also issued under 26 U.S.C. 367(a) and (b).

Section 1.367(b)–7 also issued under 26 U.S.C. 367(a) and (b). * * *

Par. 2. Section 1.367(a)–1T is amended as follows:

1. Paragraph (a), fourth sentence is amended by removing the reference "§ 1.367(a)–3T" and adding "§ 1.367(a)–3" in its place.

2. Paragraph (a), last sentence is amended by removing the reference "§ 1.6038B–1T" and adding "§§ 1.6038B–1 and 1.6038B–1T" in its place.

3. Paragraph (b)(2)(i) is removed and reserved.

4. Paragraph (b), the concluding text immediately following paragraph (b)(2)(iii) is removed.

5. Paragraph (c)(1), the last sentence is removed.

6. Paragraph (c)(2) is revised to read as set forth below.

7. Paragraph (c)(3)(ii)(C), the second sentence of the concluding text immediately following paragraph (c)(3)(ii)(C)(*2*) is amended by removing the language "§ 1.367(a)–3T" and adding "§ 1.367(a)–3" in its place.

§ 1.367(a)–1T Transfers to foreign corporations subject to section 367(a): in general (temporary).

* * * * *

(c) * * *

(2) *Indirect transfers in certain reorganizations.* [Reserved] For further guidance, see § 1.367(a)–3(d).

* * * * *

Par. 3. Section 1.367(a)–3 is amended as follows:

1. Paragraphs (a) and (b) are revised.

2. Paragraph (c)(1)(iii)(B) is amended by removing the reference "§ 1.367(a)–3T(g)" and adding "§ 1.367(a)–8" in its place.

3. Revising paragraph (d).

4. Removing paragraphs (e) through (h) and adding paragraphs (e), (f) and (g).

The revisions and additions read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

(a) *In general.* This section provides rules concerning the transfer of stock or securities by a U.S. person to a foreign corporation in an exchange described in section 367(a). In general, a transfer of stock or securities by a U.S. person to a foreign corporation that is described in section 351, 354 (including a reorganization described in section 368(a)(1)(B) and including an indirect stock transfer described in paragraph (d) of this section), 356 or section 361(a) or (b) is subject to section 367(a)(1) and, therefore, is treated as a taxable exchange, unless one of the exceptions set forth in paragraph (b) of this section (regarding transfers of foreign stock or securities) or paragraph (c) of this section (regarding transfers of domestic stock or securities) applies. However, if in an exchange described in section 354, a U.S. person exchanges stock of one foreign corporation for stock of another foreign corporation in a reorganization described in section 368(a)(1)(E), or a U.S. person exchanges stock of a domestic corporation for stock of a foreign corporation pursuant to an asset reorganization described in section 368(a)(1)(C), (D) or (F) that is not treated as an indirect stock transfer under paragraph (d) of this section, such section 354 exchange is not a transfer to a foreign corporation subject to section 367(a). See, e.g., paragraph (d)(3) *Example 12.* For rules regarding other indirect or constructive transfers of stock or securities subject to section 367(a), see § 1.367(a)–1T(c). For additional rules relating to an exchange involving a foreign corporation in connection with which there is a transfer of stock, see section 367(b) and the regulations under that section. For additional rules regarding a transfer of stock or securities in an exchange described in section 361(a) or (b), see section 367(a)(5) and any regulations under that section. For rules regarding reporting requirements with respect to transfers described under section 367(a), see section 6038B and the regulations thereunder.

(b) *Transfers by U.S. persons of stock or securities of foreign corporations to foreign corporations*—(1) *General rule.* Except as provided in section 367(a)(5), a transfer of stock or securities of a foreign corporation by a U.S. person to a foreign corporation that would otherwise be subject to section 367(a)(1) under paragraph (a) of this section shall not be subject to section 367(a)(1) if either—

(i) *Less than 5-percent shareholder.* The U.S. person owns less than five percent (applying the attribution rules of section 318, as modified by section 958(b)) of both the total voting power and the total value of the stock of the transferee foreign corporation immediately after the transfer; or

(ii) *5-percent shareholder.* The U.S. person enters into a five-year gain recognition agreement with respect to the transferred stock or securities as provided in § 1.367(a)–8.

(2) *Certain transfers subject to sections 367(a) and (b)*—(i) *In general.* A transfer of foreign stock or securities described in section 367(a) or any regulations thereunder as well as in section 367(b) or any regulations thereunder shall be concurrently subject to sections 367(a) and (b) and the regulations thereunder, except to the extent that the transferee foreign corporation is not treated as a corporation under section 367(a)(1). The example in paragraph (b)(2)(ii) of this section illustrates the rules of this paragraph (b)(2). For an illustration of the interaction of the indirect stock transfer rules under section 367(a) (described under paragraph (d) of this section) and the rules of section 367(b), see paragraph (d)(3) *Example 11* of this section.

(ii) *Example.* The following example illustrates the provisions of this paragraph (b)(2):

Example. (i) *Facts.* DC, a domestic corporation, owns all of the stock of FC1, a controlled foreign corporation within the meaning of section 957(a). DC's basis in the stock of FC1 is $50, and the value of such stock is $100. The section 1248 amount with respect to such stock is $30. FC2, also a foreign corporation, is owned entirely by foreign individuals who are not related to DC or FC1. In a reorganization described in section 368(a)(1)(B), FC2 acquires all of the stock of FC1 from DC in exchange for 20 percent of the voting stock of FC2. FC2 is not a controlled foreign corporation after the reorganization.

(ii) *Result without gain recognition agreement.* Under the provisions of this paragraph (b), if DC fails to enter into a gain recognition agreement, DC is required to recognize in the year of the transfer the $50 of gain that it realized upon the transfer, $30 of which will be treated as a dividend under section 1248.

(iii) Result with gain recognition agreement. If DC enters into a gain recognition agreement under § 1.367(a)–8 with respect to the transfer of FC1 stock, the exchange will also be subject to the provisions of section 367(b) and the regulations thereunder to the extent that it is not subject to tax under section 367(a)(1). In such case, DC will be required to recognize the section 1248 amount of $30 on the exchange of FC1 for FC2 stock. See § 1.367(b)–4(b). The deemed dividend of $30 recognized by DC will increase its basis in the FC1 stock exchanged in the transaction and, therefore, the basis of the FC2 stock received in the transaction. The remaining gain of $20 realized by DC (otherwise recognizable under section 367(a)) in the exchange of FC1 stock will not be recognized if DC enters into a gain recognition agreement with respect to the transfer. (The result would be unchanged if, for example, the exchange of FC1 stock for FC2 stock qualified as a section 351 exchange, or as an exchange described in both sections 351 and 368(a)(1)(B).)

* * * * *

(d) *Indirect stock transfers in certain nonrecognition transfers*—(1) *In general.* For purposes of this section, a U.S. person who exchanges, under section 354 (or section 356) stock or securities in a domestic or foreign corporation for stock or securities in a foreign corporation in connection with one of the following transactions described in paragraphs (d)(1)(i) through (v) of this section (or who is deemed to make such an exchange under paragraph (d)(1)(vi) of this section) shall be treated as having made an indirect transfer of such stock or securities to a foreign corporation that is subject to the rules of this section, including, for example, the requirement, where applicable, that the U.S. transferor enter into a gain recognition agreement to preserve nonrecognition treatment under section 367(a). If the U.S. person exchanges stock or securities of a foreign corporation, see also section 367(b) and the regulations thereunder. For an example of the concurrent application of the indirect stock transfer rules under section 367(a) and the rules of section 367(b), see, e.g., paragraph (d)(3) *Example 11* of this section.

(i) *Mergers described in sections 368(a)(1)(A) and (a)(2)(D).* A U.S. person exchanges stock or securities of a corporation (the acquired corporation)

for stock or securities of a foreign corporation that controls the acquiring corporation in a reorganization described in sections 368(a)(1)(A) and (a)(2)(D). See, e.g., paragraph (d)(3) *Example 1* of this section.

(ii) *Mergers described in sections 368(a)(1)(A) and (a)(2)(E).* A U.S. person exchanges stock or securities of a corporation (the acquiring corporation) for stock or securities in a foreign corporation that controls the acquired corporation in a reorganization described in sections 368(a)(1)(A) and (a)(2)(E).

(iii) *Triangular reorganizations described in section 368(a)(1)(B).* A U.S. person exchanges stock of the acquired corporation for voting stock of a foreign corporation that is in control (as defined in section 368(c)) of the acquiring corporation in connection with a reorganization described in section 368(a)(1)(B). See, e.g., paragraph (d)(3) *Example 4* of this section.

(iv) *Triangular reorganizations described in section 368(a)(1)(C).* A U.S. person exchanges stock or securities of a corporation (the acquired corporation) for voting stock or securities of a foreign corporation that controls the acquiring corporation in a reorganization described in section 368(a)(1)(C). See, e.g., paragraph (d)(3) *Example 5* of this section (for an example of a triangular section 368(a)(1)(C) reorganization involving domestic acquired and acquiring corporations), and paragraph (d)(3) *Example 7* of this section (for an example involving a domestic acquired corporation and a foreign acquiring corporation). If the acquired corporation is a foreign corporation, see paragraph (d)(3) *Example 11* of this section, and section 367(b) and the regulations thereunder.

(v) *Reorganizations described in sections 368(a)(1)(C) and (a)(2)(C).* A U.S. person exchanges stock or securities of a corporation (the acquired corporation) for voting stock or securities of a foreign acquiring corporation in a reorganization described in sections 368(a)(1)(C) and (a)(2)(C) (other than a triangular section 368(a)(1)(C) reorganization described in paragraph (d)(1)(iv) of this section). In the case of a reorganization in which some but not all of the assets of the acquired corporation are transferred pursuant to section 368(a)(2)(C), the transaction shall be considered to be an indirect transfer of stock or securities subject to this paragraph (d) only to the extent of the assets so transferred. (Other assets shall be treated as having been transferred in an asset transfer rather than an indirect stock transfer, and such asset transfer would be subject to the other provisions of section 367, including sections 367(a)(1), (3), (5) and (d) if the acquired corporation is a domestic corporation). See, e.g., paragraph (d)(3) *Example 5B* of this section.

(vi) *Successive transfers of property to which section 351 applies.* A U.S. person transfers property (other than stock or securities) to a foreign corporation in an exchange described in section 351, and all or a portion of such assets transferred to the foreign corporation by such person are, in connection with the same transaction, transferred to a second corporation that is controlled by the foreign corporation in one or more exchanges described in section 351. For purposes of this paragraph (d)(1) and § 1.367(a)–8, the initial transfer by the U.S. person shall be deemed to be a transfer of stock described in section 354. (Any assets transferred to the foreign corporation that are not transferred by the foreign corporation to a second corporation shall be treated as a transfer of assets subject to the general rules of section 367, including sections 367(a)(1), (3), (5) and (d), and not as an indirect stock transfer under the rules of this paragraph (d).) See, e.g., paragraph (d)(3) *Example 10* and *Example 10A* of this section.

(2) *Special rules for indirect transfers.* If a U.S. person is considered to make an indirect transfer of stock or securities described in paragraph (d)(1) of this section, the rules of this section and § 1.367(a)–8 shall apply to the transfer. For purposes of applying the rules of this section and § 1.367(a)–8:

(i) *Transferee foreign corporation.* The transferee foreign corporation shall be the foreign corporation that issues stock or securities to the U.S. person in the exchange.

(ii) *Transferred corporation.* The transferred corporation shall be the acquiring corporation, except that in the case of a triangular section 368(a)(1)(B) reorganization described in paragraph (d)(1)(iii) of this section, the transferred corporation shall be the acquired corporation; in the case of a triangular section 368(a)(1)(C) reorganization described in paragraph (d)(1)(iv) of this section followed by a section 368(a)(2)(C) transfer or a section 368(a)(1)(C) reorganization followed by a section 368(a)(2)(C) transfer described in paragraph (d)(1)(v) of this section, the transferred corporation shall be the transferee corporation; and in the case of successive section 351 transfers described in paragraph (d)(1)(vi) of this section, the transferred corporation shall be the transferee corporation in the final section 351 transfer. The transferred property shall be the stock or securities of the transferred corporation, as appropriate in the circumstances.

(iii) *Amount of gain.* The amount of gain that a U.S. person is required to include in income in the event of a disposition (or a deemed disposition) of some or all of the stock or securities of the transferred corporation shall be the proportionate share (as determined under § 1.367(a)–8(e)) of the U.S. person's gain realized but not recognized in the initial exchange (or deemed exchange) of stock or securities under section 354.

(iv) *Gain recognition agreements involving multiple parties.* The U.S. transferor's agreement to recognize gain, as provided in § 1.367(a)–8, shall include appropriate provisions, consistent with the principles of these rules, requiring the transferor to recognize gain in the event of a direct or indirect disposition of the stock or assets of the transferred corporation. For example, in the case of a triangular section 368(a)(1)(B) reorganization described in paragraph (d)(1)(iii) of this section, a disposition of the transferred stock shall include an indirect disposition of such stock by the transferee foreign corporation, such as a disposition of such stock by the acquiring corporation or a disposition of the stock of the acquiring corporation by the transferee foreign corporation. See, e.g., paragraph (d)(3) *Example 4* of this section.

(v) *Determination of whether the transferred corporation disposed of substantially all of its assets.* For purposes of applying § 1.367(a)–8(e)(3)(i) to determine whether the transferred corporation has disposed of substantially all of its assets, the following assets shall be taken into account (but only if such assets are not fully taxable under section 367 in the taxable year that includes the indirect transfer)—

(A) In the case of a sections 368(a)(1)(A) and (a)(2)(D) reorganization, and a triangular section 368(a)(1)(C) reorganization described in paragraph (d)(1)(i) or (iv) of this section, respectively, the assets of the acquired corporation;

(B) In the case of a sections 368(a)(1)(A) and (a)(2)(E) reorganization described in paragraph (d)(1)(ii) of this section, the assets of the acquiring corporation immediately prior to the transaction;

(C) In the case of a sections 368(a)(1)(C) and (a)(2)(C) reorganization described in paragraph (d)(1)(v) of this section, the assets of the acquired corporation that are subject to a transfer described in section 368(a)(2)(C); and

(D) In the case of successive section 351 exchanges described in paragraph (d)(1)(vi) of this section, the assets that are both transferred initially to the foreign corporation, and transferred by the foreign corporation to a second corporation.

(vi) *Coordination between asset transfer rules and indirect stock transfer rules.* If, pursuant to any of the transactions described in paragraph (d)(1) of this section, a domestic corporation transfers (or is deemed to transfer) assets to a foreign corporation (other than in an exchange described in section 354), the rules of section 367, including sections 367(a)(1), (a)(3) and (a)(5), as well as section 367(d), and the regulations thereunder shall apply prior to the application of the rules of this section. However, if a transaction is described in this paragraph (d), section 367(a) shall not apply in the case of a domestic acquired corporation that transfers its assets to a foreign acquiring corporation, to the extent that such assets are re-transferred to a domestic corporation in a transfer described in section 368(a)(2)(C) or paragraph (d)(1)(vi) of this section, but only if the domestic transferee's basis in the assets is no greater than the basis that the domestic acquired company had in such assets. See, e.g., paragraph (d)(3) *Example 8* and *Example 10A* of this section.

(3) *Examples.* The rules of this paragraph (d) and § 1.367(a)–8 are illustrated by the following examples:

Example 1. Section 368(a)(1)(A)/(a)(2)(D) reorganization—(i) *Facts.* F, a foreign corporation, owns all the stock of Newco, a domestic corporation. A, a domestic corporation, owns all of the stock of W, also a domestic corporation. A and W file a consolidated Federal income tax return. A does not own any stock in F (applying the attribution rules of section 318, as modified by section 958(b)). In a reorganization described in sections 368(a)(1)(A) and (a)(2)(D), Newco acquires all of the assets of W, and A receives 40% of the stock of F in an exchange described in section 354.

(ii) *Result.* Pursuant to paragraph (d)(1)(i) of this section, the reorganization is subject to the indirect stock transfer rules. F is treated as the transferee foreign corporation, and Newco is treated as the transferred corporation. Provided that the requirements of paragraph (c)(1) of this section are satisfied, including the requirement that A enter into a five-year gain recognition agreement as described in § 1.367(a)–8, A's exchange of W stock for F stock under section 354 will not be subject to section 367(a)(1). If F disposes (within the meaning of § 1.367(a)–8(e)) of all (or a portion) of Newco's stock within the five-year term of the agreement (and A has not made a valid election under § 1.367(a)–8(b)(1)(vii)), A is required to file an amended return for the year of the transfer and include in income, with interest, the gain realized but not recognized on the initial section 354 exchange. If A has made a valid election under § 1.367(a)–8(b)(1)(vii) to include the amount subject to the gain recognition agreement in the year of the triggering event, A would instead include the gain on its tax return for the taxable year that includes the triggering event, together with interest.

Example 1A. Transferor is a subsidiary in consolidated group—(i) *Facts.* The facts are the same as in *Example 1*, except that A is owned by P, a domestic corporation, and for the taxable year in which the transaction occurred, P, A and W filed a consolidated Federal income tax return.

(ii) *Result.* Even though A is the U.S. transferor, P is required under § 1.367(a)–8(a)(3) to enter into the gain recognition agreement and comply with the requirements under § 1.367(a)–8. In the event that A leaves the P group, A would make the annual certifications required under § 1.367(a)–8(b)(5)(ii). P would remain liable with A under the gain recognition agreement.

Example 2. Taxable inversion pursuant to indirect stock transfer rules—(i) *Facts.* The facts are the same as in *Example 1*, except that A receives more than fifty percent of either the total voting power or the total value of the stock of F in the transaction.

(ii) *Result.* A is required to include in income in the year of the exchange the amount of gain realized on such exchange. See paragraph (c)(1)(i) of this section. If A fails to include the income on its timely-filed return, A will also be liable for the penalty under section 6038B (together with interest and other applicable penalties) unless A's failure to include the income is due to reasonable cause and not willful neglect. See § 1.6038B–1(f).

Example 3. Disposition by U.S. transferred corporation of substantially all of its assets—(i) *Facts.* The facts are the same as in *Example 1*, except that, during the third year of the gain recognition agreement, Newco disposes of substantially all (as described in § 1.367(a)–8(e)(3)(i)) of the assets described in paragraph (d)(2)(v)(A) of this section for cash and recognizes currently all of the gain realized on the disposition.

(ii) *Result.* Under § 1.367(a)–8(e)(3)(i), the gain recognition agreement is generally triggered when the transferred corporation disposes of substantially all of its assets. However, under the special rule contained in § 1.367(a)–8(h)(2), because A and W filed a consolidated Federal income tax return prior to the transaction, and Newco, the transferred corporation, is a domestic corporation, the gain recognition agreement is terminated and has no further effect.

Example 4. Triangular section 368(a)(1)(B) reorganization—(i) *Facts.* F, a foreign corporation, owns all the stock of S, a domestic corporation. U, a domestic corporation, owns all of the stock of Y, also a domestic corporation. U does not own any of the stock of F (applying the attribution rules of section 318, as modified by section 958(b)). In a triangular reorganization described in section 368(a)(1)(B) and paragraph (d)(1)(iii) of this section, S acquires all the stock of Y, and U receives 10% of the voting stock of F.

(ii) *Result.* U's exchange of Y stock for F stock will not be subject to section 367(a)(1), provided that all of the requirements of paragraph (c)(1) are satisfied, including the requirement that U enter into a five-year gain recognition agreement. For purposes of this section, F is treated as the transferee foreign corporation and Y is treated as the transferred corporation. See paragraphs (d)(2)(i) and (ii) of this section. Under paragraph (d)(2)(iv) of this section, the gain recognition agreement would be triggered if F sold all or a portion of the stock of S, or if S sold all or a portion of the stock of Y.

Example 5. Triangular section 368(a)(1)(C) reorganization—(i) *Facts.* F, a foreign corporation, owns all of the stock of R, a domestic corporation that operates an historical business. V, a domestic corporation, owns all of the stock of Z, also a domestic corporation. V does not own any of the stock of F (applying the attribution rules of section 318 as modified by section 958(b)). In a triangular reorganization described in section 368(a)(1)(C) (and paragraph (d)(1)(iv) of this section), R acquires all of the assets of Z, and V receives 30% of the voting stock of F.

(ii) *Result.* The consequences of the transfer are similar to those described in *Example 1*; V is required to enter into a 5-year gain recognition agreement under § 1.367(a)–8 to secure nonrecognition treatment under section 367(a). Under paragraphs (d)(2)(i) and (ii) of this section, F is treated as the transferee foreign corporation and R is treated as the transferred corporation. In determining whether, in a later transaction, R has disposed of substantially all of its assets under § 1.367(a)–8(e)(3)(i), see paragraph (d)(2)(v)(A) of this section.

Example 5A. Section 368(a)(1)(C) reorganization followed by section 368(a)(2)(C) exchange—(i) *Facts.* The facts are the same as in *Example 5*, except that the transaction is structured as a section 368(a)(1)(C) reorganization, followed by a section 368(a)(2)(C) exchange, and R is a foreign corporation. The following additional facts are present. Z has 3 businesses: Business A with a basis of $10 and a value of $50, Business B with a basis of $10 and a value of $40, and Business C with a basis of $10 and a value of $30. V and Z file a consolidated Federal income tax return and V has a basis of $30 in the Z stock, which has a value of $120. Assume that Businesses A and B consist solely of assets that will satisfy the section 367(a)(3) active trade or business exception; none of Business C's assets will satisfy the exception. Z transfers all 3 businesses to F in exchange for 30 percent of the F stock, which Z distributes to V pursuant to a section 368(a)(1)(C) reorganization. F then contributes Businesses B and C to R pursuant to section 368(a)(2)(C).

(ii) *Result.* The transfer of the Business A assets by Z to F is subject to the general rules under section 367, as such transfer does not constitute an indirect stock transfer. The transfer by Z of the Business B and C assets to F must first be tested under sections 367(a)(1), (3) and (5). Z recognizes $20 of gain on the outbound transfer of the Business C

assets, as such assets do not qualify for an exception to section 367(a)(1). The Business B assets, which will be used by R in an active trade or business outside the United States, qualify for the exception under section 367(a)(3) and § 1.367(a)–2T(c)(2). V is deemed to transfer the stock of Z to F in a section 354 exchange subject to the rules of paragraph (d). V must enter into the gain recognition agreement in the amount of $30 to preserve Z's nonrecognition treatment with respect to its transfer of Business B assets. Under paragraphs (d)(2)(i) and (ii) of this section, F is the transferee foreign corporation and R is the transferred corporation.

Example 5B. Section 368(a)(1)(C) reorganization followed by section 368(a)(2)(C) exchange with U.S. transferee—(i) *Facts.* The facts are the same as in *Example 5A*, except that R is a U.S. corporation.

(ii) *Result.* As in *Example 5A*, the outbound transfer of Business A assets to F is subject to section 367(a) and is not affected by the rules of this paragraph (d). The Business B assets qualified for nonrecognition treatment; the Business C assets did not. However, pursuant to paragraph (d)(2)(vi) of this section, the Business C assets are not subject to section 367(a)(1), provided that the basis of the assets in the hands of R is no greater than the basis of the assets in the hands of Z. V is deemed to make an indirect transfer under the rules of this paragraph (d). To preserve nonrecognition treatment under section 367(a), V must enter into a 5-year gain recognition agreement in the amount of $50, the amount of the appreciation in the Business B and C assets, as the transfer of such assets by Z were not taxable under section 367(a)(1) but were treated as an indirect stock transfer.

Example 6. Triangular section 368(a)(1)(C) reorganization followed by 351 exchange—(i) *Facts.* The facts are the same as in *Example 5*, except that, during the fourth year of the gain recognition agreement, R transfers substantially all of the assets received from Z to K, a wholly-owned domestic subsidiary of R, in an exchange described in section 351.

(ii) *Result.* The disposition by R, the transferred corporation, of substantially all of its assets would trigger the gain recognition agreement if the assets were disposed of in a taxable transaction. However, because the assets were transferred in a nonrecognition transaction, such transfer does not trigger the gain recognition agreement if V satisfies the reporting requirements contained in § 1.367(a)–8(g)(3)(i) (which includes the requirement that V amend its gain recognition agreement to reflect the transaction). See also paragraph (d)(2)(iv) of this section. To determine whether substantially all of the assets are disposed of, any assets of Z that were transferred by Z to R and then contributed by R to K are taken into account.

Example 6A. Triangular section 368(a)(1)(C) reorganization followed by section 351 exchange with foreign transferee—(i) *Facts.* The facts are the same as in *Example 6* except that K is a foreign corporation.

(ii) *Result.* This transfer of assets by R to K must be analyzed to determine its effect upon the gain recognition agreement, and such transfer is also an outbound transfer of assets that is taxable under section 367(a)(1) unless the active trade or business exception under section 367(a)(3) applies. If the transfer is fully taxable under section 367(a)(1), the transfer is treated as if the transferred company, R, sold substantially all of its assets. Thus, the gain recognition agreement would be triggered (but see § 1.367(a)–8(b)(3)(ii) for potential offsets to the gain to be recognized). If each asset transferred qualifies for nonrecognition treatment under section 367(a)(3) and the regulations thereunder (which require, under § 1.367(a)–2T(a)(2), the transferor to comply with the reporting requirements under section 6038B), the result is the same as in *Example 6*. If a portion of the assets transferred qualify for nonrecognition treatment under section 367(a)(3) and a portion are taxable under section 367(a)(1) (but such portion does not result in the disposition of substantially all of the assets), the gain recognition agreement will not be triggered if such information is reported as required under § 1.367(a)–8(b)(5) and (e)(3)(i).

Example 7. Concurrent application of asset transfer and indirect stock transfer rules in consolidated return setting—(i) *Facts.* Assume the same facts as in *Example 5*, except that R is a foreign corporation and V and Z file a consolidated return for Federal income tax purposes. The properties of Z consist of Business A assets, with an adjusted basis of $50 and fair market value of $90, and Business B assets, with an adjusted basis of $50 and a fair market value of $110. Assume that the Business A assets do not qualify for the active trade or business exception under section 367(a)(3), but that the Business B assets do qualify for the exception. V's basis in the Z stock is $100, and the value of such stock is $200.

(ii) *Result.* Under paragraph (d)(2)(vi), the assets of Businesses A and B that are transferred to R must be tested under sections 367(a)(3) and (a)(5) prior to consideration of the indirect stock transfer rules of this paragraph (d). Thus, Z must recognize $40 of income under section 367(a)(1) on the outbound transfer of Business A assets. Under § 1.1502–32, because V and Z file a consolidated return, V's basis in its Z stock increases from $100 to $140 as a result of Z's $40 gain. Provided that all of the other requirements under paragraph (c)(1) of this section are satisfied, to qualify for nonrecognition treatment with respect to V's indirect transfer of Z stock, V must enter into a gain recognition agreement in the amount of $60 (the gain realized but not recognized by V in the stock of Z after the $40 basis adjustment). If F sells a portion of its stock in R during the term of the agreement, V will be required to recognize a portion of the $60 gain subject to the agreement. To determine whether R disposes of substantially all of its assets (under § 1.367(a)–8(e)(3)(i)), only the Business B assets will be considered (because the transfer of the Business A assets was taxable to Z under section 367). See paragraph (d)(2)(v)(A) of this section.

Example 7A. Concurrent application without consolidated returns—(i) *Facts.* The facts are the same as in *Example 7*, except that V and Z do not file consolidated income tax returns.

(ii) *Result.* Z would still recognize $40 of gain on the transfer of its Business A assets, and the Business B assets would still qualify for the active trade or business exception under section 367(a)(3). However, V's basis in its stock of Z would not be increased by the amount of Z's gain. V's indirect transfer of stock will be taxable unless V enters into a gain recognition agreement (as described in § 1.367(a)–8) for the $100 of gain realized but not recognized with respect to the stock of Z.

Example 7B. Concurrent application with individual U.S. shareholder—(i) Facts. The facts are the same as in *Example 7*, except that V is an individual U.S. citizen.

(ii) *Result.* Section 367(a)(5) would prevent the application of the active trade or business exception under section 367(a)(3). Thus, Z's transfer of assets to R would be fully taxable under section 367(a)(1). Z would recognize $100 of income. V's basis in its stock of Z is not increased by this amount. V is taxable with respect to its indirect transfer of its Z stock unless V enters into a gain recognition agreement in the amount of the $100, the gain realized but not recognized with respect to its Z stock.

Example 7C. Concurrent application with nonresident alien shareholder—(i) *Facts.* The facts are the same as in *Example 7*, except that V is a nonresident alien.

(ii) *Result.* Pursuant to section 367(a)(5), the active trade or business exception under section 367(a)(3) is not available with respect to Z's transfer of assets to R. Thus, Z has $100 of gain with respect to the Business A and B assets. Because V is a nonresident alien, however, V is not subject to section 367(a) with respect to its indirect transfer of Z stock.

Example 8. Concurrent application with section 368(a)(2)(C) Exchange—(i) *Facts.* The facts are the same as in *Example 7*, except that R transfers the Business A assets to M, a wholly-owned domestic subsidiary of R, in an exchange described in section 368(a)(2)(C).

(ii) *Result.* Pursuant to paragraph (d)(2)(vi) of this section, section 367(a)(1) does not apply to Z's transfer of Business A assets to

R, because such assets are transferred to M, a domestic corporation. Sections 367(a)(1), (3) and (5), as well as section 367(d), apply to Z's transfer of assets to R to the extent that such assets are not transferred to M. However, the Business B assets qualify for an exception to taxation under section 367(a)(3). Thus, if the requirements of paragraph (c)(1) of this section are satisfied, including the requirement that V enter into a 5-year gain recognition agreement and comply with the requirements of § 1.367(a)–8 with respect to the gain realized on the Z stock, $100, the entire transaction qualifies for nonrecognition treatment under section 367(a)(1). See also section 367(a)(5) and any regulations issued thereunder. Under paragraphs (d)(2)(i) and (ii) of this section, the transferee foreign corporation is F and the transferred corporation is M. Pursuant to paragraph (d)(2)(iv) of this section, a disposition by F of the stock of R, or a disposition by R of the stock of M, will trigger the gain recognition agreement. To determine whether substantially all of the assets have been disposed of (as described under § 1.367(a)–8(e)(3)(i)), the Business A assets in M and the Business B assets in R must both be considered.

Example 9. Concurrent application of direct and indirect stock transfer rules—(i) *Facts.* F, a foreign corporation, owns all of the stock of O, also a foreign corporation. D, a domestic corporation, owns all of the stock of E, also a domestic corporation, which owns all of the stock of N, also a domestic corporation. Prior to the transactions described in this *Example 9*, D, E and N filed a consolidated income tax return. D has a basis of $100 in the stock of E, which has a fair market value of $160. The N stock has a fair market value of $100, and E has a basis of $60 in such stock. In addition to the stock of N, E owns the assets of Business X. The assets of Business X have a fair market value of $60, and E has a basis of $50 in such assets. Assume that the Business X assets qualify for nonrecognition treatment under section 367(a)(3). D does not own any stock in F (applying the attribution rules of section 318 as modified by section 958(b)). In a triangular reorganization described in section 368(a)(1)(C) and paragraph (d)(1)(iv) of this section, O acquires all of the assets of E, and D exchanges its stock in E for 40% of the voting stock of F.

(ii) *Result.* E's transfer of its assets, including the N stock, must be tested under the general rules of section 367(a) before consideration of D's indirect transfer of the stock of E. E's transfer of the assets of Business X qualify for nonrecognition under section 367(a)(3). E could qualify for nonrecognition treatment with respect to its transfer of N stock if it enters into a gain recognition agreement (and all of the requirements of paragraph (c)(1)(i) of this section are satisfied); however under § 1.367(a)–8(f)(2)(i), D, the parent of the consolidated group, must enter into the agreement. O is the transferee foreign corporation; N is the transferred corporation. D may also qualify for nonrecognition with respect to its indirect transfer of the stock of E if it enters into a separate gain recognition agreement with respect to the E stock (and all of the requirements of paragraph (c)(1)(i) of this section are satisfied). As to this transfer, F is the transferee foreign corporation; O is the transferred corporation. The amount of the gain recognition agreement is $60. See also section 367(a)(5) and any regulations issued thereunder.

Example 10. Successive section 351 exchanges—(i) *Facts.* D, a domestic corporation, owns all the stock of X, a controlled foreign corporation that operates an historical business, which owns all the stock of Y, a controlled foreign corporation that also operates an historical business. The properties of D consist of Business A assets, with an adjusted basis of $50 and a fair market value of $90, and Business B assets, with an adjusted basis of $50 and a fair market value of $110. Assume that the Business B assets qualify for the exception under section 367(a)(3) and § 1.367(a)–2T(c)(2), but that the Business A assets do not qualify for the exception. In an exchange described in section 351, D transfers the assets of Businesses A and B to X, and, in connection with the same transaction, X transfers the assets of Business B to Y in another exchange described in section 351.

(ii) *Result.* Under paragraph (d)(1)(vi) of this section, this transaction is treated as an indirect stock transfer for purposes of section 367(a), but the transaction is not recharacterized for purposes of section 367(b). Moreover, under paragraph (d)(2)(vi) of this section, the assets of Businesses A and B that are transferred to X must be tested under section 367(a)(3). The Business A assets, which were not transferred to Y, are subject to the general rules of section 367(a), and not the indirect stock transfer rules described in this paragraph (d). D must recognize $40 of income on the outbound transfer of Business A assets. The transfer of the Business B assets is subject to both the asset transfer rules (under section 367(a)(3)) and the indirect stock transfer rules of this paragraph (d) and § 1.367(a)–8. Thus, D's transfer of the Business B assets will not be subject to section 367(a)(1) if D enters into a five-year gain recognition agreement with respect to the stock of Y. Under paragraphs (d)(2)(i) and (ii) of this section, X will be treated as the transferee foreign corporation and Y will be treated as the transferred corporation for purposes of applying the terms of the agreement. If X sells all or a portion of the stock of Y during the term of the agreement, D will be required to recognize a proportionate amount of the $60 gain that was realized by D on the initial transfer of the Business B assets.

Example 10A. Successive section 351 exchanges with ultimate domestic transferee—(i) *Facts.* The facts are the same as in *Example 10*, except that Y is a domestic corporation.

(ii) *Result.* As in *Example 10*, D must recognize $40 of income on the outbound transfer of the Business A assets. Although the Business B assets qualify for the exception under section 367(a)(3) (and end up in U.S. corporate solution, in Y), the $60 of gain realized on the Business B assets is nevertheless taxable under paragraphs (c)(1) and (d)(1)(vi) of this section because the transaction is considered to be a transfer by D of stock of a domestic corporation, Y, in which D receives more than 50 percent of the stock of the transferee foreign corporation, X. A gain recognition agreement is not permitted.

Example 11. Concurrent application of indirect stock transfer rules and section 367(b)—(i) *Facts.* F, a foreign corporation, owns all of the stock of Newco, which is also a foreign corporation. P, a domestic corporation, owns all of the stock of S, a foreign corporation that is a controlled foreign corporation within the meaning of section 957(a). P's basis in the stock of S is $50 and the value of S is $100. The section 1248 amount with respect to S stock is $30. In a reorganization described in section 368(a)(1)(C) (and paragraph (d)(1)(iv) of this section), Newco acquires all of the properties of S, and P exchanges its stock in S for 49 percent of the stock of F.

(ii) *Result.* P's exchange of S stock for F stock under section 354 will be taxable under section 367(a) (and section 1248 will be applicable) if P fails to enter into a 5-year gain recognition agreement in accordance with § 1.367(a)–8. Under paragraph (b)(2) of this section, if P enters into a gain recognition agreement, the exchange will be subject to the provisions of section 367(b) and the regulations thereunder as well as section 367(a). Under § 7.367(b)–7(c)(1)(i) of this chapter, P must recognize the section 1248 amount of $30 because P exchanged stock of a controlled foreign corporation, S, for stock of a foreign corporation that is not a controlled foreign corporation, F. The indirect stock transfer rules do not apply with respect to section 367(b). The deemed dividend of $30 recognized by P will increase P's basis in the F stock received in the transaction, and F's basis in the Newco stock. Thus, the amount of the gain recognition agreement is $20 ($50 gain realized on the transfer less the $30 inclusion under section 367(b)). Under paragraphs (d)(2)(i) and (ii) of this section, F is treated as the transferee foreign corporation and Newco is the transferred corporation.

Example 11A. Triangular section 368(a)(1)(C) reorganization involving foreign acquired corporation—(i) *Facts.* Assume the same facts as in Example 11, except that P receives 51 percent of the stock of F.

(ii) *Result.* P may still enter into a gain recognition agreement to avoid taxation under section 367(a). There is, however, no inclusion under section 367(b) because P would be exchanging stock in one controlled foreign corporation for another. The amount of the gain recognition agreement is $50. See, also, § 1.367(b)–4(b)(4).

Example 12. Direct asset reorganization not subject to stock transfer rules—(i) *Facts.* D is a publicly traded domestic corporation. D's assets consist of tangible assets, including stock or securities. In a reorganization described in section 368(a)(1)(F), D becomes a foreign corporation, F.

(ii) *Result.* The reorganization is characterized under § 1.367(a)–1T(f). D's outbound transfer of assets is taxable under section 367(a)(1). Even if any of D's assets would have otherwise qualified for an exception to section 367(a)(1), section 367(a)(5) provides that no exception can

apply. The section 368(a)(1)(F) reorganization is not an indirect stock transfer described in paragraph (d) of this section. Moreover, the exchange by D's shareholders of D stock for F stock in an exchange described under section 354 is not an exchange described under section 367(a). See paragraph (a) of this section.

(e) *Effective dates*—(1) *In general.* The rules in paragraphs (a), (b) and (d) of this section apply to transfers occurring on or after July 20, 1998. The rules in paragraph (c) of this section with respect to transfers of domestic stock or securities are generally applicable for transfers occurring after January 29, 1997. See § 1.367(a)–3(c)(11). For rules regarding transfers of domestic stock or securities after December 16, 1987, and before January 30, 1997, and transfers of foreign stock or securities after December 16, 1987, and before July 20, 1998, see paragraph (g) of this section.

(2) *Election.* Notwithstanding paragraphs (e)(1) and (g) of this section, taxpayers may, by timely filing an original or amended return, elect to apply paragraphs (b) and (d) of this section to all transfers of foreign stock or securities occurring after December 16, 1987, and before July 20, 1998, except to the extent that a gain recognition agreement has been triggered prior to July 20, 1998. If an election is made under this paragraph (e)(2), the provisions of § 1.367(a)–3T(g) (see 26 CFR part 1, revised April 1, 1998) shall apply, and, for this purpose, the term *substantial portion* under § 1.367(a)–3T(g)(3)(iii) (see 26 CFR part 1, revised April 1, 1998) shall be interpreted to mean *substantially all* as defined in section 368(a)(1)(C). In addition, if such an election is made, the taxpayer must apply the rules under section 367(b) and the regulations thereunder to any transfers occurring within that period as if the election to apply § 1.367(a)–3(b) and (d) to transfers occurring within that period had not been made, except that in the case of an exchange described in section 351 the taxpayer must apply section 367(b) and the regulations thereunder as if the exchange was described in § 7.367(b)–7 of this chapter. For example, if a U.S. person, pursuant to a section 351 exchange, transfers stock of a controlled foreign corporation in which it is a United States shareholder but does not receive back stock of a controlled foreign corporation in which it is a United States shareholder, the U.S. person must include in income under § 7.367(b)–7 of this chapter the section 1248 amount attributable to the stock exchanged (to the extent that the fair market value of the stock exchanged exceeds its adjusted basis). Such inclusion is required even though § 7.367(b)–7 of this chapter, by its terms, did not apply to section 351 exchanges.

(f) *Former 10-year gain recognition agreements.* If a taxpayer elects to apply the rules of this section to all prior transfers occurring after December 16, 1987, any 10-year gain recognition agreement that remains in effect (has not been triggered in full) on July 20, 1998 will be considered by the Internal Revenue Service to be a 5-year gain recognition agreement with a duration of five full taxable years following the close of the taxable year of the initial transfer.

(g) *Transition rules regarding certain transfers of domestic or foreign stock or securities after December 16, 1987, and prior to July 20, 1998*—(1) *Scope.* Transfers of domestic stock or securities described under section 367(a) that occurred after December 16, 1987, and prior to April 17, 1994, and transfers of foreign stock or securities described under section 367(a) that occur after December 16, 1987, and prior to July 20, 1998 are subject to the rules contained in section 367(a) and the regulations thereunder, as modified by the rules contained in paragraph (g)(2) of this section. For transfers of domestic stock or securities described under section 367(a) that occurred after April 17, 1994 and before January 30, 1997, see Temporary Income Regulations under section 367(a) in effect at the time of the transfer (§ 1.367(a)–3T(a) and (c), 26 CFR part 1, revised April 1, 1996) and paragraph (c)(11) of this section. For transfers of domestic stock or securities described under section 367(a) that occur after January 29, 1997, see § 1.367(a)–3(c).

(2) *Transfers of domestic or foreign stock or securities: additional substantive rules*—(i) *Rule for less than 5-percent shareholders.* Unless paragraph (g)(2)(iii) of this section applies (in the case of domestic stock or securities) or paragraph (g)(2)(iv) of this section applies (in the case of foreign stock or securities), a U.S. transferor that transfers stock or securities of a domestic or foreign corporation in an exchange described in section 367(a) and owns less than 5 percent of both the total voting power and the total value of the stock of the transferee foreign corporation immediately after the transfer (taking into account the attribution rules of section 958) is not subject to section 367(a)(1) and is not required to enter into a gain recognition agreement.

(ii) *Rule for 5-percent shareholders.* Unless paragraph (g)(2)(iii) or (iv) of this section applies, a U.S. transferor that transfers domestic or foreign stock or securities in an exchange described in section 367(a) and owns at least 5 percent of either the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer (taking into account the attribution rules under section 958) may qualify for nonrecognition treatment by filing a gain recognition agreement in accordance with § 1.367(a)–3T(g) in effect prior to July 20, 1998 (see 26 CFR part 1, revised April 1, 1998) for a duration of 5 or 10 years. The duration is 5 years if the U.S. transferor (5-percent shareholder) determines that all U.S. transferors, in the aggregate, own less than 50 percent of both the total voting power and the total value of the transferee foreign corporation immediately after the transfer. The duration is 10 years in all other cases. See, however, § 1.367(a)–3(f). If a 5-percent shareholder fails to properly enter into a gain recognition agreement, the exchange is taxable to such shareholder under section 367(a)(1).

(iii) *Gain recognition agreement option not available to controlling U.S. transferor if U.S. stock or securities are transferred.* Notwithstanding the provisions of paragraph (g)(2)(ii) of this section, in no event will any exception to section 367(a)(1) apply to the transfer of stock or securities of a domestic corporation where the U.S. transferor owns (applying the attribution rules of section 958) more than 50 percent of either the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer (i.e., the use of a gain recognition agreement to qualify for nonrecognition treatment is unavailable in this case).

(iv) *Loss of United States shareholder status in the case of a transfer of foreign stock.* Notwithstanding the provisions of paragraphs (g)(2)(i) and (ii) of this section, in no event will any exception to section 367(a)(1) apply to the transfer of stock of a foreign corporation in which the U.S. transferor is a United States shareholder (as defined in § 7.367(b)–2(b) of this chapter or section 953(c)) unless the U.S. transferor receives back stock in a controlled foreign corporation (as defined in section 953(c), section 957(a) or section 957(b)) as to which the U.S. transferor is a United States shareholder immediately after the transfer.

§ 1.367(a)–3T [Removed]

Par. 4. Section 1.367(a)–3T is removed.

Par. 5. Section 1.367(a)–8 is added to read as follows:

§ 1.367(a)–8 Gain recognition agreement requirements.

(a) *In general.* This section specifies the general terms and conditions for an agreement to recognize gain entered into pursuant to § 1.367(a)–3(b) or (c) to qualify for nonrecognition treatment under section 367(a).

(1) *Filing requirements.* A transferor's agreement to recognize gain (described in paragraph (b) of this section) must be attached to, and filed by the due date (including extensions) of, the transferor's income tax return for the taxable year that includes the date of the transfer.

(2) *Gain recognition agreement forms.* Any agreement, certification, or other document required to be filed pursuant to the provisions of this section shall be submitted on such forms as may be prescribed therefor by the Commissioner (or similar statements providing the same information that is required on such forms). Until such time as forms are prescribed, all necessary filings may be accomplished by providing the required information to the Internal Revenue Service in accordance with the rules of this section.

(3) *Who must sign.* The agreement to recognize gain must be signed under penalties of perjury by a responsible officer in the case of a corporate transferor, except that if the transferor is a member but not the parent of an affiliated group (within the meaning of section 1504(a)(1)), that files a consolidated Federal income tax return for the taxable year in which the transfer was made, the agreement must be entered into by the parent corporation and signed by a responsible officer of such parent corporation; by the individual, in the case of an individual transferor (including a partner who is treated as a transferor by virtue of § 1.367(a)–1T(c)(3)); by a trustee, executor, or equivalent fiduciary in the case of a transferor that is a trust or estate; and by a debtor in possession or trustee in a bankruptcy case under Title 11, United States Code. An agreement may also be signed by an agent authorized to do so under a general or specific power of attorney.

(b) *Agreement to recognize gain*—(1) *Contents.* The agreement must set forth the following information, with the heading "GAIN RECOGNITION AGREEMENT UNDER § 1.367(a)–8", and with paragraphs labeled to correspond with the numbers set forth as follows—

(i) A statement that the document submitted constitutes the transferor's agreement to recognize gain in accordance with the requirements of this section;

(ii) A description of the property transferred as described in paragraph (b)(2) of this section;

(iii) The transferor's agreement to recognize gain, as described in paragraph (b)(3) of this section;

(iv) A waiver of the period of limitations as described in paragraph (b)(4) of this section;

(v) An agreement to file with the transferor's tax returns for the 5 full taxable years following the year of the transfer a certification as described in paragraph (b)(5) of this section;

(vi) A statement that arrangements have been made in connection with the transferred property to ensure that the transferor will be informed of any subsequent disposition of any property that would require the recognition of gain under the agreement; and

(vii) A statement as to whether, in the event all or a portion of the gain recognition agreement is triggered under paragraph (e) of this section, the taxpayer elects to include the required amount in the year of the triggering event rather than in the year of the initial transfer. If the taxpayer elects to include the required amount in the year of the triggering event, such statement must be included with all of the other information required under this paragraph (b), and filed by the due date (including extensions) of the transferor's income tax return for the taxable year that includes the date of the transfer.

(2) *Description of property transferred*—(i) The agreement shall include a description of each property transferred by the transferor, an estimate of the fair market value of the property as of the date of the transfer, a statement of the cost or other basis of the property and any adjustments thereto, and the date on which the property was acquired by the transferor.

(ii) If the transferred property is stock or securities, the transferor must provide the information contained in paragraphs (b)(2)(ii)(A) through (F) of this section as follows—

(A) The type or class, amount, and characteristics of the stock or securities transferred, as well as the name, address, and place of incorporation of the issuer of the stock or securities, and the percentage (by voting power and value) that the stock (if any) represents of the total stock outstanding of the issuing corporation;

(B) The name, address and place of incorporation of the transferee foreign corporation, and the percentage of stock (by voting power and value) that the U.S. transferor received or will receive in the transaction;

(C) If stock or securities are transferred in an exchange described in section 361(a) or (b), a statement that the conditions set forth in the second sentence of section 367(a)(5) and any regulations under that section have been satisfied, and an explanation of any basis or other adjustments made pursuant to section 367(a)(5) and any regulations thereunder;

(D) If the property transferred is stock or securities of a domestic corporation, the taxpayer identification number of the domestic corporation whose stock or securities were transferred, together with a statement that all of the requirements of § 1.367(a)–3(c)(1) are satisfied;

(E) If the property transferred is stock or securities of a foreign corporation, a statement as to whether the U.S. transferor was a United States shareholder (a U.S. transferor that satisfies the ownership requirements of section 1248(a)(2) or (c)(2)) of the corporation whose stock was exchanged, and, if so, a statement as to whether the U.S. transferor is a United States shareholder with respect to the stock received, and whether any reporting requirements contained in regulations under section 367(b) are applicable, and, if so, whether they have been satisfied; and

(F) If the transaction involved the transfer of assets other than stock or securities and the transaction was subject to the indirect stock transfer rules of § 1.367(a)–3(d), a statement as to whether the reporting requirements under section 6038B have been satisfied with respect to the transfer of property other than stock or securities, and an explanation of whether gain was recognized under section 367(a)(1) and whether section 367(d) was applicable to the transfer of such assets, or whether any tangible assets qualified for nonrecognition treatment under section 367(a)(3) (as limited by section 367(a)(5) and §§ 1.367(a)–4T, 1.367(a)–5T and 1.367(a)–6T).

(3) *Terms of agreement*—(i) *General rule.* If prior to the close of the fifth full taxable year (i.e., not less than 60 months) following the close of the taxable year of the initial transfer, the transferee foreign corporation disposes of the transferred property in whole or in part (as described in paragraphs (e)(1) and (2) of this section), or is deemed to have disposed of the transferred property (under paragraph (e)(3) of this section), then, unless an election is made in paragraph (b)(1)(vii) of this section, by the 90th day thereafter the U.S. transferor must file an amended return for the year of the transfer and recognize thereon the gain realized but

not recognized upon the initial transfer, with interest. If an election under paragraph (b)(1)(vii) of this section was made, then, if a disposition occurs, the U.S. transferor must include the gain realized but not recognized on the initial transfer in income on its Federal income tax return for the period that includes the date of the triggering event. In accordance with paragraph (b)(3)(iii) of this section, interest must be paid on any additional tax due. (If a taxpayer properly makes the election under paragraph (b)(1)(vii) of this section but later fails to include the gain realized in income, the Commissioner may, in his discretion, include the gain in the taxpayer's income in the year of the initial transfer.)

(ii) *Offsets.* No special limitations apply with respect to net operating losses, capital losses, credits against tax, or similar items.

(iii) *Interest.* If additional tax is required to be paid, then interest must be paid on that amount at the rates determined under section 6621 with respect to the period between the date that was prescribed for filing the transferor's income tax return for the year of the initial transfer and the date on which the additional tax for that year is paid. If the election in paragraph (b)(1)(vii) of this section is made, taxpayers should enter the amount of interest due, labelled as "sec. 367 interest" at the bottom right margin of page 1 of the Federal income tax return for the period that includes the date of the triggering event (page 2 if the taxpayer files a Form 1040), and include the amount of interest in their payment (or reduce the amount of any refund due by the amount of the interest). If the election in paragraph (b)(1)(vii) of this section is made, taxpayers should, as a matter of course, include the amount of gain as taxable income on their Federal income tax returns (together with other income or loss items). The amount of tax relating to the gain should be separately stated at the bottom right margin of page 1 of the Federal income tax return (page 2 if the taxpayer files a Form 1040), labelled as "sec. 367 tax."

(iv) *Basis adjustments*—(A) *Transferee.* If a U.S. transferor is required to recognize gain under this section on the disposition by the transferee foreign corporation of the transferred property, then in determining for U.S. income tax purposes any gain or loss recognized by the transferee foreign corporation upon its disposition of such property, the transferee foreign corporation's basis in such property shall be increased (as of the date of the initial transfer) by the amount of gain required to be recognized (but not by any tax or interest required to be paid on such amount) by the U.S. transferor. In the case of a deemed disposition of the stock of the transferred corporation described in paragraph (e)(3)(i) of this section, the transferee foreign corporation's basis in the transferred stock deemed disposed of shall be increased by the amount of gain required to be recognized by the U.S. transferor.

(B) *Transferor.* If a U.S. transferor is required to recognize gain under this section, then the U.S. transferor's basis in the stock of the transferee foreign corporation shall be increased by the amount of gain required to be recognized (but not by any tax or interest required to be paid on such amount).

(C) *Other adjustments.* Other appropriate adjustments to basis that are consistent with the principles of this paragraph (b)(3)(iv) may be made if the U.S. transferor is required to recognize gain under this section.

(D) *Example.* The principles of this paragraph (b)(3) are illustrated by the following example:

Example—(i) *Facts.* D, a domestic corporation owning 100 percent of the stock of S, a foreign corporation, transfers all of the S stock to F, a foreign corporation, in an exchange described in section 368(a)(1)(B). The section 1248 amount with respect to the S stock is $0. In the exchange, D receives 20 percent of the voting stock of F. All of the requirements of § 1.367(a)–3(c)(1) are satisfied, and D enters into a five-year gain recognition agreement to qualify for nonrecognition treatment and does not make the election contained in paragraph (b)(1)(vii) of this section. One year after the initial transfer, F transfers all of the S stock to F1 in an exchange described in section 351, and D complies with the requirements of paragraph (g)(2) of this section. Two years after the initial transfer, D transfers its entire 20 percent interest in F's voting stock to a domestic partnership in exchange for an interest in the partnership. Three years after the initial exchange, S disposes of substantially all (as described in paragraph (e)(3)(i) of this section) of its assets in a transaction that would be taxable under U.S. income tax principles, and D is required by the terms of the gain recognition agreement to recognize all the gain that it realized on the initial transfer of the stock of S.

(ii) *Result.* As a result of this gain recognition and paragraph (b)(3)(iv) of this section, D is permitted to increase its basis in the partnership interest by the amount of gain required to be recognized (but not by any tax or interest required to be paid on such amount), the partnership is permitted to increase its basis in the 20 percent voting stock of F, F is permitted to increase its basis in the stock of F1, and F1 is permitted to increase its basis in the stock of S. S, however, is not permitted to increase its basis in its assets for purposes of determining the direct or indirect U.S. tax results, if any, on the sale of its assets.

(4) *Waiver of period of limitation.* The U.S. transferor must file, with the agreement to recognize gain, a waiver of the period of limitation on assessment of tax upon the gain realized on the transfer. The waiver shall be executed on Form 8838 (Consent to Extend the Time to Assess Tax Under Section 367—Gain Recognition Agreement) and shall extend the period for assessment of such tax to a date not earlier than the eighth full taxable year following the taxable year of the transfer. Such waiver shall also contain such other terms with respect to assessment as may be considered necessary by the Commissioner to ensure the assessment and collection of the correct tax liability for each year for which the waiver is required. The waiver must be signed by a person who would be authorized to sign the agreement pursuant to the provisions of paragraph (a)(3) of this section.

(5) *Annual certification*—(i) *In general.* The U.S. transferor must file with its income tax return for each of the five full taxable years following the taxable year of the transfer a certification that the property transferred has not been disposed of by the transferee in a transaction that is considered to be a disposition for purposes of this section, including a disposition described in paragraph (e)(3) of this section. The U.S. transferor must include with its annual certification a statement describing any taxable dispositions of assets by the transferred corporation that are not in the ordinary course of business. The annual certification pursuant to this paragraph (b)(5) must be signed under penalties of perjury by a person who would be authorized to sign the agreement pursuant to the provisions of paragraph (a)(3) of this section.

(ii) *Special rule when U.S. transferor leaves its affiliated group.* If, at the time of the initial transfer, the U.S. transferor was a member of an affiliated group (within the meaning of section 1504(a)(1)) filing a consolidated Federal income tax return but not the parent of such group, the U.S. transferor will file the annual certification (and provide a copy to the parent corporation) if it leaves the group during the term of the gain recognition agreement, notwithstanding the fact that the parent entered into the gain recognition agreement, extended the statute of limitations pursuant to this section, and remains liable (with other corporations that were members of the group at the time of the initial transfer) under the

gain recognition agreement in the case of a triggering event.

(c) *Failure to comply*—(1) *General rule.* If a person that is required to file an agreement under paragraph (b) of this section fails to file the agreement in a timely manner, or if a person that has entered into an agreement under paragraph (b) of this section fails at any time to comply in any material respect with the requirements of this section or with the terms of an agreement submitted pursuant hereto, then the initial transfer of property is described in section 367(a)(1) (unless otherwise excepted under the rules of this section) and will be treated as a taxable exchange in the year of the initial transfer (or in the year of the failure to comply if the agreement was filed with a timely-filed (including extensions) original (not amended) return and an election under paragraph (b)(1)(vii) of this section was made). Such a material failure to comply shall extend the period for assessment of tax until three years after the date on which the Internal Revenue Service receives actual notice of the failure to comply.

(2) *Reasonable cause exception.* If a person that is permitted under § 1.367(a)–3(b) or (c) to enter into an agreement (described in paragraph (b) of this section) fails to file the agreement in a timely manner, as provided in paragraph (a)(1) of this section, or fails to comply in any material respect with the requirements of this section or with the terms of an agreement submitted pursuant hereto, the provisions of paragraph (c)(1) of this section shall not apply if the person is able to show that such failure was due to reasonable cause and not willful neglect and if the person files the agreement or reaches compliance as soon as he becomes aware of the failure. Whether a failure to file in a timely manner, or materially comply, was due to reasonable cause shall be determined by the district director under all the facts and circumstances.

(d) *Use of security.* The U.S. transferor may be required to furnish a bond or other security that satisfies the requirements of § 301.7101–1 of this chapter if the district director determines that such security is necessary to ensure the payment of any tax on the gain realized but not recognized upon the initial transfer. Such bond or security will generally be required only if the stock or securities transferred are a principal asset of the transferor and the director has reason to believe that a disposition of the stock or securities may be contemplated.

(e) *Disposition (in whole or in part) of stock of transferred corporation*—(1) *In general*—(i) *Definition of disposition.* For purposes of this section, a disposition of the stock of the transferred corporation that triggers gain under the gain recognition agreement includes any taxable sale or any disposition treated as an exchange under this subtitle, (e.g., under sections 301(c)(3)(A), 302(a), 311, 336, 351(b) or section 356(a)(1)), as well as any deemed disposition described under paragraph (e)(3) of this section. It does not include a disposition that is not treated as an exchange, (e.g., under section 302(d) or 356(a)(2)). A disposition of all or a portion of the stock of the transferred corporation by installment sale is treated as a disposition of such stock in the year of the installment sale. A disposition of the stock of the transferred corporation does not include certain transfers treated as nonrecognition transfers (under paragraph (g) of this section) in which the gain recognition agreement is retained but modified, or certain transfers (under paragraph (h) of this section) in which the gain recognition agreement is terminated and has no further effect.

(ii) *Example.* The provisions of this paragraph (e) are illustrated by the following example:

Example. Interaction between trigger of gain recognition agreement and subpart F rules—(i) *Facts.* A U.S. corporation (USP) owns all of the stock of two foreign corporations, CFC1 and CFC2. USP's section 1248 amount with respect to CFC2 is $30. USP has a basis of $50 in its stock of CFC2; CFC2 has a value of $100. In a transaction described in section 351 and 368(a)(1)(B), USP transfers the stock of CFC2 in exchange for additional stock of CFC1. The transaction is subject to both sections 367 (a) and (b). See §§ 1.367(a)–3(b) and 1.367(b)–1(a). To qualify for nonrecognition treatment under section 367(a), USP enters into a 5-year gain recognition agreement for $50 under this section. No election under paragraph 8(b)(1)(vii) of this section is made. USP also complies with the notice requirement under § 1.367(b)–1(c).

(ii) *Trigger of gain recognition agreement with no election.* Assume that in year 2, CFC1 sells the stock of CFC2 for $120, and that there were no distributions by CFC2 prior to the sale. USP must amend its return for the year of the initial transfer and include $50 in income (with interest), $30 of which will be recharacterized as a dividend pursuant to section 1248. As a result, CFC1 has a basis of $100 in CFC2. As a result of the sale of CFC2 stock by CFC1, USP will have $20 of subpart F foreign personal holding company income. See section 951, et. seq., and the regulations thereunder.

(iii) *Trigger of gain recognition agreement with election.* Assume the same facts as in paragraphs (i) and (ii) of this *Example*, except that when USP attached the gain recognition agreement to its timely filed Federal income tax return for the year of the initial transfer, it elected under paragraph (b)(1)(vii) of this section to include the amount of gain realized but not recognized on the initial transfer, $50, in the year of the triggering event rather than in the year of the initial transfer. In such case, the result is the same as in paragraph (e)(1)(ii)(B) of this section, except that USP will include the $50 of gain on its year 2 return, together with interest. For purposes of determining the dividend component, if any, of the $50 inclusion, USP will take into account the section 1248 amount of CFC2 at the time of the disposition in Year 2.

(2) *Partial disposition.* If the transferee foreign corporation disposes of (or is deemed to dispose of) only a portion of the transferred stock or securities, then the U.S. transferor is required to recognize only a proportionate amount of the gain realized but not recognized upon the initial transfer of the transferred property. The proportion required to be recognized shall be determined by reference to the relative fair market values of the transferred stock or securities disposed of and retained. Solely for purposes of determining whether the U.S. transferor must recognize income under the agreement described in paragraph (b) of this section, in the case of transferred property (including stock or securities) that is fungible with other property owned by the transferee foreign corporation, a disposition by such corporation of any such property shall be deemed to be a disposition of no less than a ratable portion of the transferred property.

(3) *Deemed dispositions of stock of transferred corporation*—(i) *Disposition by transferred corporation of substantially all of its assets*—(A) *In general.* Unless an exception applies (as described in paragraph (e)(3)(i)(B) of this section), a transferee foreign corporation will be treated as having disposed of the stock or securities of the transferred corporation if, within the term of the gain recognition agreement, the transferred corporation makes a disposition of substantially all (within the meaning of section 368(a)(1)(C)) of its assets (including stock in a subsidiary corporation or an interest in a partnership). If the initial transfer that necessitated the gain recognition agreement was an indirect stock transfer, see § 1.367(a)–3(d)(2)(v). If the transferred corporation is a U.S. corporation, see paragraph (h)(2) of this section.

(B) The transferee foreign corporation will not be deemed to have disposed of the stock of the transferred corporation if the transferred corporation is liquidated into the transferee foreign corporation under sections 337 and 332,

provided that the transferee foreign corporation does not dispose of substantially all of the assets formerly held by the transferred corporation (and considered for purposes of the substantially all determination) within the remaining period during which the gain recognition agreement is in effect. A nonrecognition transfer is not counted for purposes of the substantially all determination as a disposition if the transfer satisfies the requirements of paragraph (g)(3) of this section. A disposition does not include a compulsory transfer as described in § 1.367(a)–4T(f) that was not reasonably forseeable by the U.S. transferor at the time of the initial transfer.

(ii) *U.S. transferor becomes a non-citizen nonresident. If a U.S. transferor loses U.S. citizenship or a long-term resident ceases to be taxed as a lawful permanent resident (as defined in section 877(e)(2)), then immediately prior to the date that the U.S. transferor loses U.S. citizenship or ceases to be taxed as a long-term resident, the gain recognition agreement will be triggered as if the transferee foreign corporation disposed of all of the stock of the transferred corporation in a taxable transaction on such date. No additional inclusion is required under section 877, and a gain recognition agreement under section 877 may not be used to avoid taxation under section 367(a) resulting from the trigger of the section 367(a) gain recognition agreement.*

(f) *Effect on gain recognition agreement if U.S. transferor goes out of existence*—(1) *In general.* If an individual transferor that has entered into an agreement under under paragraph (b) of this section dies, or if a U.S. trust or estate that has entered into an agreement under paragraph (b) of this section goes out of existence and is not required to recognize gain as a consequence thereof with respect to all of the stock of the transferee foreign corporation received in the initial transfer and not previously disposed of, then the gain recognition agreement will be triggered unless one of the following requirements is met—

(i) The person winding up the affairs of the transferor retains, for the duration of the waiver of the statute of limitations relating to the gain recognition agreement, assets to meet any possible liability of the transferor under the duration of the agreement;

(ii) The person winding up the affairs of the transferor provides security as provided under paragraph (d) of this section for any possible liability of the transferor under the agreement; or

(iii) The transferor obtains a ruling from the Internal Revenue Service providing for successors to the transferor under the gain recognition agreement.

(2) *Special rule when U.S. transferor is a corporation*—(i) *U.S. transferor goes out of existence pursuant to the transaction.* If the transferor is a U.S. corporation that goes out of existence in a transaction in which the transferor's gain would have qualified for nonrecognition treatment under § 1.367(a)–3(b) or (c) had the U.S. transferor remained in existence and entered into a gain recognition agreement, then the gain may generally qualify for nonrecognition treatment only if the U.S. transferor is owned by a single U.S. parent corporation and the U.S. transferor and its parent corporation file a consolidated Federal income tax return for the taxable year that includes the transfer, and the parent of the consolidated group enters into the gain recognition agreement. However, notwithstanding the preceding sentence, a U.S. transferor that was controlled (within the meaning of section 368(c)) by five or fewer domestic corporations may request a ruling that, if certain conditions prescribed by the Internal Revenue Service are satisfied, the transaction may qualify for nonrecognition treatment.

(ii) *U.S. corporate transferor is liquidated after gain recognition agreement is filed.* If a U.S. transferor files a gain recognition agreement but is liquidated during the term of the gain recognition agreement, such agreement will be terminated if the liquidation does not qualify as a tax-free liquidation under sections 337 and 332 and the U.S. transferor includes in income any gain from the liquidation. If the liquidation qualifies for nonrecognition treatment under sections 337 and 332, the gain recognition agreement will be triggered unless the U.S. parent corporation and the U.S. transferor file a consolidated Federal income tax return for the taxable year that includes the dates of the initial transfer and the liquidation of the U.S. transferor, and the U.S. parent enters into a new gain recognition agreement and complies with reporting requirements similar to those contained in paragraph (g)(2) of this section.

(g) *Effect on gain recognition agreement of certain nonrecognition transactions*—(1) *Certain nonrecognition transfers of stock or securities of the transferee foreign corporation by the U.S. transferor.* If the U.S. transferor disposes of any stock of the transferee foreign corporation in a nonrecognition transfer and the U.S. transferor complies with reporting requirements similar to those contained in paragraph (g)(2) of this section, the U.S. transferor shall continue to be subject to the terms of the gain recognition agreement in its entirety.

(2) *Certain nonrecognition transfers of stock or securities of the transferred corporation by the transferee foreign corporation.* (i) If, during the period the gain recognition agreement is in effect, the transferee foreign corporation disposes of all or a portion of the stock of the transferred corporation in a transaction in which gain or loss would not be required to be recognized by the transferee foreign corporation under U.S. income tax principles, such disposition will not be treated as a disposition within the meaning of paragraph (e) of this section if the transferee foreign corporation receives (or is deemed to receive), in exchange for the property disposed of, stock in a corporation, or an interest in a partnership, that acquired the transferred property (or receives stock in a corporation that controls the corporation acquiring the transferred property); and the U.S. transferor complies with the requirements of paragraphs (g)(2)(ii) through (iv) of this section.

(ii) The U.S. transferor must provide a notice of the transfer with its next annual certification under paragraph (b)(5) of this section, setting forth—

(A) A description of the transfer;

(B) The applicable nonrecognition provision; and

(C) The name, address, and taxpayer identification number (if any) of the new transferee of the transferred property.

(iii) The U.S. transferor must provide with its next annual certification a new agreement to recognize gain (in accordance with the rules of paragraph (b) of this section) if, prior to the close of the fifth full taxable year following the taxable year of the initial transfer, either—

(A) The initial transferee foreign corporation disposes of the interest (if any) which it received in exchange for the transferred property (other than in a disposition which itself qualifies under the rules of this paragraph (g)(2)); or

(B) The corporation or partnership that acquired the property disposes of such property (other than in a disposition which itself qualifies under the rules of this paragraph (g)(2)); or

(C) There is any other disposition that has the effect of an indirect disposition of the transferred property.

(iv) If the U.S. transferor is required to enter into a new gain recognition

agreement, as provided in paragraph (g)(2)(iii) of this section, the U.S. transferor must provide with its next annual certification (described in paragraph (b)(5) of this section) a statement that arrangements have been made, in connection with the nonrecognition transfer, ensuring that the U.S. transferor will be informed of any subsequent disposition of property with respect to which recognition of gain would be required under the agreement.

(3) *Certain nonrecognition transfers of assets by the transferred corporation.* A disposition by the transferred corporation of all or a portion of its assets in a transaction in which gain or loss would not be required to be recognized by the transferred corporation under U.S. income tax principles, will not be treated as a disposition within the meaning of paragraph (e)(3) of this section if the transferred corporation receives in exchange stock or securities in a corporation or an interest in a partnership that acquired the assets of the transferred corporation (or receives stock in a corporation that controls the corporation acquiring the assets). If the transaction would be treated as a disposition of substantially all of the transferred corporation's assets, the preceding sentence shall only apply if the U.S. transferor complies with reporting requirements comparable to those of paragraphs (g)(2)(ii) through (iv) of this section, providing for notice, an agreement to recognize gain in the case of a direct or indirect disposition of the assets previously held by the transferred corporation, and an assurance that necessary information will be provided to appropriate parties.

(h) *Transactions that terminate the gain recognition agreement*—(1) *Taxable disposition of stock or securities of transferee foreign corporation by U.S. transferor.* (i) If the U.S. transferor disposes of all of the stock of the transferee foreign corporation that it received in the initial transfer in a transaction in which all realized gain (if any) is recognized currently, then the gain recognition agreement shall terminate and have no further effect. If the transferor disposes of a portion of the stock of the transferee foreign corporation that it received in the initial transfer in a taxable transaction, then in the event that the gain recognition agreement is later triggered, the transferor shall be required to recognize only a proportionate amount of the gain subject to the gain recognition agreement that would otherwise be required to be recognized on a subsequent disposition of the transferred property under the rules of paragraph (b)(2) of this section. The proportion required to be recognized shall be determined by reference to the percentage of stock (by value) of the transferee foreign corporation received in the initial transfer that is retained by the United States transferor.

(ii) The rule of this paragraph (h) is illustrated by the following example:

Example. A, a United States citizen, owns 100 percent of the outstanding stock of foreign corporation X. In a transaction described in section 351, A exchanges his stock in X (and other assets) for 100 percent of the outstanding voting and nonvoting stock of foreign corporation Y. A submits an agreement under the rules of this section to recognize gain upon a later disposition. In the following year, A disposes of 60 percent of the fair market value of the stock of Y, thus terminating 60 percent of the gain recognition agreement. One year thereafter, Y disposes of 50 percent of the fair market value of the stock of X. A is required to include in his income in the year of the later disposition 20 percent (40 percent interest in Y multiplied by a 50 percent disposition of X) of the gain that A realized but did not recognize on his initial transfer of X stock to Y.

(2) *Certain dispositions by a domestic transferred corporation of substantially all of its assets.* If the transferred corporation is a domestic corporation and the U.S. transferor and the transferred corporation filed a consolidated Federal income tax return at the time of the transfer, the gain recognition agreement shall terminate and cease to have effect if, during the term of such agreement, the transferred corporation disposes of substantially all of its assets in a transaction in which all realized gain is recognized currently. If an indirect stock transfer necessitated the filing of the gain recognition agreement, such agreement shall terminate if, immediately prior to the indirect transfer, the U.S. transferor and the acquired corporation filed a consolidated return (or, in the case of a section 368(a)(1)(A) and (a)(2)(E) reorganization described in § 1.367(a)–3(d)(1)(ii), the U.S. transferor and the acquiring corporation filed a consolidated return) and the transferred corporation disposes of substantially all of its assets (taking into account § 1.367(a)–3(d)(2)(v)) in a transaction in which all realized gain is recognized currently.

(3) *Distribution by transferee foreign corporation of stock of transferred corporation that qualifies under section 355 or section 337.* If, during the term of the gain recognition agreement, the transferee foreign corporation distributes to the U.S. transferor, in a transaction that qualifies under section 355, or in a liquidating distribution that qualifies under sections 332 and 337, the stock that initially necessitated the filing of the gain recognition agreement (and any additional stock received after the initial transfer), the gain recognition agreement shall terminate and have no further effect, provided that immediately after the section 355 distribution or section 332 liquidation, the U.S. transferor's basis in the transferred stock is less than or equal to the basis that it had in the transferred stock immediately prior to the initial transfer that necessitated the GRA.

(i) *Effective date.* The rules of this section shall apply to transfers that occur on or after July 20, 1998. For matters covered in this section for periods before July 20, 1998, the corresponding rules of § 1.367(a)–3T(g) (see 26 CFR part 1, revised April 1, 1998) and Notice 87–85 ((1987–2 C.B. 395); see § 601.601(d)(2)(ii) of this chapter) apply. In addition, if a U.S. transferor entered into a gain recognition agreement for transfers prior to July 20, 1998, then the rules of § 1.367(a)–3T(g) (see 26 CFR part 1, revised April 1, 1998) shall continue to apply in lieu of this section in the event of any direct or indirect nonrecognition transfer of the same property. See, also, § 1.367(a)–3(f).

Par. 6. Section 1.367(b)–1 is added to read as follows:

§ 1.367(b)–1 Other transfers.

(a) *Scope.* Section 367(b) and the regulations thereunder set forth certain rules regarding the extent to which a foreign corporation shall be considered to be a corporation in connection with an exchange to which section 367(b) applies. An exchange to which section 367(b) applies is any exchange described in section 332, 351, 354, 355, 356 or 361, with respect to which the status of a foreign corporation as a corporation is relevant for determining the extent to which income shall be recognized or for determining the effect of the transaction on earnings and profits, basis of stock or securities, or basis of assets. Notwithstanding the preceding sentence, a section 367(b) exchange does not include a transfer to the extent that the foreign corporation fails to be treated as a corporation by reason of section 367(a)(1). See § 1.367(a)–3(b)(2)(ii) for an illustration of the interaction of sections 367 (a) and (b). This paragraph applies for transfers occurring on or after July 20, 1998.

(b) [Reserved]. For further guidance, see § 7.367(b)–1(b) of this chapter.

(c) *Notice required*—(1) *In general.* If any person referred to in section 6012

(relating to the requirement to make returns of income) realized gain or other income (whether or not recognized) on account of any exchange to which section 367(b) applies, such person must file a notice of such exchange on or before the last date for filing a Federal income tax return (taking into account any extensions of time therefor) for the person's taxable year in which such gain or other income is realized. This notice must be filed with the district director with whom the person would be required to file a Federal income tax return for the taxable year in which the exchange occurs. Notwithstanding anything in this paragraph (c)(1) to the contrary, no notice under this paragraph (c)(1) is required to the extent a transaction is described in both section 367(a) and (b), and the exchanging person is not a United States shareholder of the corporation whose stock is exchanged. This paragraph applies to transfers occurring on or after July 20, 1998.

(c)(2) through (f) [Reserved]. For further guidance, see § 7.367(b)–1(c)(2) through (f) of this chapter.

Par. 6a. Section 1.367(b)–4 is added to read as follows:

§ 1.367(b)–4 Certain exchanges of stock described in section 354, 351, or sections 354 and 351.

(a) *In general.* This section applies to an exchange of stock in a foreign corporation by a United States shareholder if the exchange is described in section 351, or is described in section 354 and is made pursuant to a reorganization described in section 368(a)(1)(B) (including an exchange that is also described in section 351), without regard to whether the exchange may also be described in section 361.

(b) *Recognition of income.* If an exchange is described in paragraph (b)(1), (2) or (3) of this section, the exchanging shareholder shall include in income as a deemed dividend the section 1248 amount attributable to the stock that it exchanges. See, also, § 1.367(a)–3(b)(2). However, in the case of a recapitalization described in paragraph (b)(3) of this section that occurred prior to July 20, 1998, the exchanging shareholder shall include the section 1248 amount on its tax return for the taxable year that includes the exchange described in paragraph (b)(2)(iii) of this section (and not in the taxable year of the recapitalization), except that no inclusion is required if both the recapitalization and the exchange described in paragraph (b)(2)(iii) of this section occurred prior to July 20, 1998.

(1) *Loss of United States shareholder or controlled foreign corporation status.* An exchange is described in this paragraph (b)(1) if—

(i) An exchanging shareholder receives stock of a foreign corporation that is not a controlled foreign corporation;

(ii) An exchanging shareholder receives stock of a controlled foreign corporation as to which the exchanging United States shareholder is not a United States shareholder; or

(iii) The corporation whose stock is exchanged is not a controlled foreign corporation immediately after the transfer.

(2) *Receipt by domestic corporation of preferred or other stock in certain instances.* An exchange is described in this paragraph (b)(2) if—

(i) Immediately before the exchange, the foreign acquired corporation and the foreign acquiring corporations are not members of the same affiliated group (within the meaning of section 1504(a), but without regard to the exceptions set forth in section 1504(b), and substituting the words "more than 50" in place of the words "at least 80" in sections 1504(a)(2)(A) and (B));

(ii) Immediately after the exchange, a domestic corporation meets the ownership threshold specified by section 902(a) or (b) such that it may qualify for a deemed paid foreign tax credit if it receives from the foreign acquiring corporation a distribution (directly or through tiers) of its earnings and profits; and

(iii) The exchanging shareholder receives preferred stock (other than preferred stock that is fully participating with respect to dividends, redemptions and corporate growth) in consideration for common stock or preferred stock that is fully participating with respect to dividends, redemptions and corporate growth, or, in the discretion of the District Director (and without regard to whether the stock exchanged is common stock or preferred stock), receives stock that entitles it to participate (through dividends, redemption payments or otherwise) disproportionately in the earnings generated by particular assets of the foreign acquired corporation or foreign acquiring corporation. See, e.g., paragraph (b)(4) *Example 1* through *Example 3* of this section.

(3) *Certain exchanges involving recapitalizations.* An exchange pursuant to a recapitalization under section 368(a)(1)(E) shall be deemed to be an exchange described in this paragraph (b)(3) if the following conditions are satisfied—

(i) During the 24-month period immediately preceding or following the date of the recapitalization, the corporation that undergoes the recapitalization (or a predecessor of, or successor to, such corporation) also engages in a transaction that would be described in paragraph (b)(2) of this section but for paragraph (b)(2)(iii) of this section, either as the foreign acquired corporation or the foreign acquiring corporation; and

(ii) The exchange in the recapitalization is described in paragraph (b)(2)(iii) of this section.

(4) *Examples.* The rules of paragraph (b)(2) of this section are illustrated by the following examples:

Example 1—(i) *Facts.* FC1 is a foreign corporation. DC is a domestic corporation that is unrelated to FC1. DC owns all of the outstanding stock of FC2, a foreign corporation, and FC2 has no outstanding preferred stock. The value of FC2 is $100 and DC has a basis of $50 in the stock of FC2. The section 1248 amount attributable to the stock of FC2 held by DC is $20. In a reorganization described in section 368(a)(1)(B), FC1 acquires all of the stock of FC2 and, in exchange, DC receives FC1 voting preferred stock that constitutes 10 percent of the outstanding voting stock of FC1 for purposes of section 902(a). Immediately after the exchange, FC1 and FC2 are controlled foreign corporations and DC is a United States shareholder of FC1, so paragraph (b)(1) of this section does not require inclusion in income of the section 1248 amount.

(ii) *Result.* Pursuant to § 1.367(a)–3(b)(2), the transfer is subject to both section 367(a) and section 367(b). Under § 1.367(a)–3(b)(1), DC will not be subject to tax under section 367(a)(1) if it enters into a gain recognition agreement in accordance with § 1.367(a)–8. The amount of the gain recognition agreement is $50 less any inclusion under section 367(b). Even though paragraph (b)(1) of this section does not apply to require inclusion in income by DC of the section 1248 amount, DC must nevertheless include the $20 section 1248 amount in income as a deemed dividend from FC2 under paragraph (b)(2) of this section. Thus, if DC enters into a gain recognition agreement, the amount is $30 (the $50 gain realized less the $20 recognized under section 367(b)). (If DC fails to enter into a gain recognition agreement, it must include in income under section 367(a)(1) the $50 of gain realized; $20 of which is treated as a dividend. Section 367(b) does not apply in such case.)

Example 2—*(i) Facts.* The facts are the same as in *Example 1*, except that DC owns all of the outstanding stock of FC1 immediately before the transaction.

(ii) *Result.* Both section 367(a) and section 367(b) apply to the transfer. Paragraph (b)(2) of this section does not apply to require inclusion of the section 1248 amount. Under paragraph (b)(2)(i) of this section, the transaction is outside the scope of paragraph (b)(2) of this section, because FC1 and FC2 are, immediately before the transaction, members of the same affiliated group (within the meaning of such paragraph). Thus, if DC enters into a gain recognition agreement in

accordance with § 1.367(a)–8, the amount of such agreement is $50. As in *Example 1*, if DC fails to enter into a gain recognition agreement, it must include in income $50, $20 of which will be treated as a dividend.

Example 3—(i) *Facts.* FC1 is a foreign corporation. DC is a domestic corporation that is unrelated to FC1. DC owns all of the stock of FC2, a foreign corporation. The section 1248 amount attributable to the stock of FC2 held by DC is $20. In a reorganization described in section 368(a)(1)(B), FC1 acquires all of the stock of FC2 in exchange for FC1 voting stock that constitutes 10 percent of the outstanding voting stock of FC1 for purposes of section 902(a). The FC1 voting stock received by DC in the exchange carries voting rights in FC1, but by agreement of the parties the shares entitle the holder to dividends, amounts to be paid on redemption, and amounts to be paid on liquidation, which are to be determined by reference to the earnings or value of FC2 as of the date of such event, and which are affected by the earnings or value of FC1 only if FC1 becomes insolvent or has insufficient capital surplus to pay dividends.

(ii) *Result.* Under § 1.367(a)–3(b)(1), DC will not be subject to tax under section 367(a)(1) if it enters into a gain recognition agreement with respect to the transfer of FC2 stock to FC1. Under § 1.367(a)–3(b)(2), the exchange will be subject to the provisions of section 367(b) and the regulations thereunder to the extent that it is not subject to tax under section 367(a)(1). Furthermore, even if DC would not otherwise be required to recognize income under this section, the District Director may nevertheless require that DC include the $20 section 1248 amount in income as a deemed dividend from FC2 under paragraph (b)(2) of this section.

(5) *Special rules for applying section 1248 to subsequent exchanges.* (i) If income is not required to be recognized under paragraph (b) of this section in a transaction described in paragraph (b)(1) of this section involving a foreign acquiring corporation, then, for purposes of applying section 1248 or 367(b) to subsequent exchanges, the earnings and profits attributable to an exchanging shareholder's stock received in the transaction shall be determined by reference to the exchanging shareholder's pro rata interest in the earnings and profits of the foreign acquiring corporation and foreign acquired corporation that accrue after the transaction, as well as its pro rata interest in the earnings and profits of the foreign acquired corporation that accrued prior to the transaction. See also section 1248(c)(2)(D)(ii). The earnings and profits attributable to an exchanging shareholder's stock received in the transaction shall not include any earnings and profits of the foreign acquiring corporation that accrued prior to the transaction.

(ii) The following example illustrates this paragraph (b)(5):

Example. (i) *Facts.* DC1, a domestic corporation, owns all of the stock of FC1, a foreign corporation. DC1 has owned all of the stock of FC1 since FC1's formation. DC2, a domestic corporation, owns all of the stock of FC2, a foreign corporation. DC2 has owned all of the stock of FC2 since FC2's formation. DC1 and DC2 are unrelated. In a reorganization described in section 368(a)(1)(B), DC1 transfers all of the stock of FC1 to FC2 in exchange for 40 percent of FC2. DC1 enters into a five-year gain recognition agreement under the provisions of §§ 1.367(a)–3(b) and 1.367(a)–8 with respect to the transfer of FC1 stock to FC2.

(ii) *Result.* DC1's transfer of FC1 to FC2 is an exchange described in paragraph (b) of this section. Because the transfer is not described in paragraph (b)(1), 2) or (3) of this section, DC1 is not required to include in income the section 1248 amount attributable to the exchanged FC1 stock and the special rule of this paragraph (b)(5) applies. Thus, for purposes of applying section 1248 or section 367(b) to subsequent exchanges, the earnings and profits attributable to DC1's interest in FC2 will be determined by reference to 40 percent of the post-reorganization earnings and profits of FC1 and FC2, and by reference to 100 percent of the pre-reorganization earnings and profits of FC1. The earnings and profits attributable to DC1's interest in FC2 do not include any earnings and profits accrued by FC2 prior to the transaction. Those earnings and profits are attributed to DC2 under section 1248.

(6) *Effective date.* This section applies to transfers occurring on or after July 20, 1998.

(c) and (d) [Reserved]. For further guidance, see § 7.367(b)–4(c) and (d) of this chapter.

Par. 7. In § 1.367(b)–7, paragraphs (a) and (b) are added to read as follows:

§ 1.367(b)–7 Exchange of stock described in section 354.

(a) Scope. (1) This section applies to an exchange of stock in a foreign corporation (other than a foreign investment company as defined in section 1246(b)) occurring on or after July 20, 1998.

(i) The exchange is described in section 354 or 356 and is made pursuant to a reorganization described in section 368(a)(1)(B) through (F); and

(ii) The exchanging person is either a United States shareholder or a foreign corporation having a United States shareholder who is also a United States shareholder of the corporation whose stock is exchanged.

(2) However, this section shall not apply if a United States shareholder exchanges stock of a foreign corporation in an exchange described in section 368(a)(1)(B). For further guidance, see § 1.367(b)–4.

(b) [Reserved]. For further guidance, see § 7.367(b)–7(b) of this chapter.

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Par. 8. Section 1.367(d)–1T is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 1.367(d)–1T Transfers of intangible property to foreign corporations (temporary).

(a) * * * For purposes of determining whether a U.S. person has made a transfer of intangible property that is subject to the rules of section 367(d), the rules of § 1.367(a)–1T(c) shall apply.

* * * * * *

Par. 9. Section 1.6038B–1 is added to read as follows:

§ 1.6038B–1 Reporting of certain transactions.

(a) *Purpose and scope.* This section sets forth information reporting requirements under section 6038B concerning certain transfers of property to foreign corporations. Paragraph (b) of this section provides general rules explaining when and how to carry out the reporting required under section 6038B with respect to the transfers to foreign corporations. Paragraph (c) of this section and § 1.6038B–1T(d) specify the information that is required to be reported with respect to certain transfers of property that are described in section 6038B(a)(1)(A) and 367(d), respectively. Section 1.6038B–1T(e) specifies the limited reporting that is required with respect to transfers of property described in section 367(e)(1). Paragraph (f) of this section sets forth the consequences of a failure to comply with the requirements of section 6038B and this section. For effective dates, see paragraph (g) of this section. For rules regarding transfers to foreign partnerships, see section 6038B(a)(1)(B) and any regulations thereunder.

(b) *Time and manner of reporting*—(1) *In general*—(i) *Reporting procedure.* Except for stock or securities qualifying under the special reporting rule of paragraph (b)(2) of this section, or cash, which is currently not required to be reported, any U.S. person that makes a transfer described in section 6038B(a)(1)(A), 367(d) or (e)(1) is required to report pursuant to section 6038B and the rules of this section and must attach the required information to Form 926 (Return by Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership). For purposes of determining a U.S. transferor that is subject to section 6038B, the rules of § 1.367(a)–1T(c) and § 1.367(a)–3(d) shall apply with respect to a transfer described in section 367(a), and the rules of § 1.367(a)–1T(c) shall apply with respect to a transfer described in section 367(d). Notwithstanding any

statement to the contrary on Form 926, the form and attachments must be attached to, and filed by the due date (including extensions) of, the transferor's income tax return for the taxable year that includes the date of the transfer (as defined in § 1.6038B–1T(b)(4)). Any attachment to Form 926 required under the rules of this section is filed subject to the transferor's declaration under penalties of perjury on Form 926 that the information submitted is true, correct, and complete to the best of the transferor's knowledge and belief.

(ii) *Reporting by corporate transferor.* If the transferor is a corporation, Form 926 must be signed by an authorized officer of the corporation. If, however, the transferor is a member of an affiliated group under section 1504(a)(1) that files a consolidated Federal income tax return, but the transferor is not the common parent corporation, an authorized officer of the common parent corporation must sign Form 926.

(iii) *Transfers of jointly-owned property.* If two or more persons transfer jointly-owned property to a foreign corporation in a transfer with respect to which a notice is required under this section, then each person must report with respect to the particular interest transferred, specifying the nature and extent of the interest. However, a husband and wife who jointly file a single Federal income tax return may file a single Form 926 with their tax return.

(2) *Exceptions and special rules for transfers of stock or securities under section 367(a)*—(i) *Transfers on or after July 20, 1998.* A U.S. person that transfers stock or securities on or after July 20, 1998 in a transaction described in section 6038(a)(1)(A) will be considered to have satisfied the reporting requirement under section 6038B and paragraph (b)(1) of this section if either—

(A) The U.S. transferor owned less than 5 percent of both the total voting power and the total value of the transferee foreign corporation immediately after the transfer (taking into account the attribution rules of section 318 as modified by section 958(b)), and either:

(*1*) The U.S. transferor qualified for nonrecognition treatment with respect to the transfer (i.e., the transfer was not taxable under §§ 1.367(a)–3(b) or (c)); or

(*2*) The U.S. transferor is a tax-exempt entity and the income was not unrelated business income; or

(*3*) The transfer was taxable to the U.S. transferor under § 1.367(a)–3(c), and such person properly reported the income from the transfer on its timely-filed (including extensions) Federal income tax return for the taxable year that includes the date of the transfer; or

(B) The U.S. transferor owned 5 percent or more of the total voting power or the total value of the transferee foreign corporation immediately after the transfer (taking into account the attribution rules of section 318 as modified by section 958(b)) and either:

(*1*) The transferor (or one or more successors) properly entered into a gain recognition agreement under § 1.367(a)–8; or

(*2*) The transferor is a tax-exempt entity and the income was not unrelated business income; or

(*3*) The transferor properly reported the income from the transfer on its timely-filed (including extensions) Federal income tax return for the taxable year that includes the date of the transfer.

(ii) *Transfers before July 20, 1998.* With respect to transfers occurring after December 16, 1987, and prior to July 20, 1998, a U.S. transferor that transferred U.S. or foreign stock or securities in a transfer described in section 367(a) is not subject to section 6038B if such person is described in paragraph (b)(2)(i)(A) of this section.

(3) *Special rule for transfers of cash.* [Reserved].

(4) [Reserved]. For further guidance, see § 1.6038B–1T(b)(4).

(c) *Information required with respect to transfers described in section 6038B(a)(1)(A).* A U.S. person that transfers property to a foreign corporation in an exchange described in section 6038B(a)(1)(A) (including unappreciated property other than cash) must provide the following information, in paragraphs labelled to correspond with the number or letter set forth in this paragraph (c) and § 1.6038B–1T(c)(1) through (5). If a particular item is not applicable to the subject transfer, the taxpayer must list its heading and state that it is not applicable. For special rules applicable to transfers of stock or securities, see paragraph (b)(2)(ii) of this section.

(1) through (5) [Reserved]. For further guidance, see § 1.6038B–1T(c)(1) through (5).

(6) *Application of section 367(a)(5).* If the asset is transferred in an exchange described in section 361(a) or (b), a statement that the conditions set forth in the second sentence of section 367(a)(5) and any regulations under that section have been satisfied, and an explanation of any basis or other adjustments made pursuant to section 367(a)(5) and any regulations thereunder.

(d) and (e) [Reserved]. For further guidance, see § 1.6038B–1T(d) and (e).

(f) *Failure to comply with reporting requirements*—(1) *Consequences of failure.* If a U.S. person is required to file a notice (or otherwise comply) under paragraph (b) of this section and fails to comply with the applicable requirements of section 6038B and this section, then with respect to the particular property as to which there was a failure to comply—

(i) That property shall not be considered to have been transferred for use in the active conduct of a trade or business outside of the United States for purposes of section 367(a) and the regulations thereunder;

(ii) The U.S. person shall pay a penalty under section 6038B(b)(1) equal to 10 percent of the fair market value of the transferred property at the time of the exchange, but in no event shall the penalty exceed $100,000 unless the failure with respect to such exchange was due to intentional disregard (described under paragraph (g)(4) of this section); and

(iii) The period of limitations on assessment of tax upon the transfer of that property does not expire before the date which is 3 years after the date on which the Secretary is furnished the information required to be reported under this section. See section 6501(c)(8) and any regulations thereunder.

(2) *Failure to comply.* A failure to comply with the requirements of section 6038B is—

(i) The failure to report at the proper time and in the proper manner any material information required to be reported under the rules of this section; or

(ii) The provision of false or inaccurate information in purported compliance with the requirements of this section. Thus, a transferor that timely files Form 926 with the attachments required under the rules of this section shall, nevertheless, have failed to comply if, for example, the transferor reports therein that property will be used in the active conduct of a trade or business outside of the United States, but in fact the property continues to be used in a trade or business within the United States.

(3) *Reasonable cause exception.* The provisions of paragraph (f)(1) of this section shall not apply if the transferor shows that a failure to comply was due to reasonable cause and not willful neglect. The transferor may do so by providing a written statement to the district director having jurisdiction of the taxpayer's return for the year of the transfer, setting forth the reasons for the failure to comply. Whether a failure to comply was due to reasonable cause

shall be determined by the district director under all the facts and circumstances.

(4) *Definition of intentional disregard.* If the transferor fails to qualify for the exception under paragraph (f)(3) of this section and if the taxpayer knew of the rule or regulation that was disregarded, the failure will be considered an intentional disregard of section 6038B, and the monetary penalty under paragraph (f)(1)(ii) of this section will not be limited to $100,000. See § 1.6662–3(b)(2).

(g) *Effective date.* This section applies to transfers occurring on or after July 20, 1998. See § 1.6038B–1T for transfers occurring prior to July 20, 1998.

Par. 10. Section 1.6038B–1T is amended as follows:

1. The section heading is revised.
2. Paragraphs (a) through (b)(2) are revised.
3. Paragraph (b)(3) is redesignated as paragraph (b)(4).
4. New paragraph (b)(3) is added and reserved.
5. Paragraph (c) introductory text is revised and paragraph (c)(6) is added.
6. Paragraph (f) is revised.
7. Paragraph (g) is added.

The revisions and additions read as follows:

§ 1.6038B–1T Reporting of certain transactions (temporary).

(a) through (b)(2) [Reserved]. For further guidance, see § 1.6038B–1(a) through (b)(2).

(b)(3) [Reserved].

* * * * *

(c) Introductory text [Reserved]. For further guidance, see § 1.6038B–1(c).

* * * * *

(6) [Reserved]. For further guidance, see § 1.6038B–1(c)(6).

* * * * *

(f) [Reserved]. For further guidance, see § 1.6038B–1(f).

(g) *Effective date.* This section applies to transfers occurring after December 31, 1984, except paragraph (e)(1) applies to transfers occurring on or after September 13, 1996. See § 1.6038B–1T(a) through (b)(2), (c) introductory text, and (f) (26 CFR part 1, revised April 1, 1998) for transfers occurring prior to July 20, 1998. See § 1.6038B–1 for transfers occurring on or after July 20, 1998.

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Par. 11. The authority citation for part 7 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 12. Section 7.367(b)–1 is amended as follows:

1. Paragraphs (a) and (c)(1) are revised.
2. The authority citation at the end of the section is removed.

The revisions read as follows:

§ 7.367(b)–1 Other transfers.

(a) [Reserved] For guidance relating to transfers occurring on or after July 20, 1998, see § 1.367(b)–1(a) of this chapter.

* * * * *

(c)(1) [Reserved] For guidance relating to transfers occurring on or after July 20, 1998, see § 1.367(b)–1(c) of this chapter.

* * * * *

Par. 13. Section 7.367(b)–4 is amended as follows:

1. Paragraphs (a) and (b) are revised.
2. The authority citation at the end of the section is removed.

The revision reads as follows:

§ 7.367(b)–4 Certain changes described in more than one Code provision.

(a) and (b) [Reserved]. For guidance relating to transfers occurring on or after July 20, 1998, see § 1.367(b)–4(a) and (b) of this chapter.

* * * * *

Par 14. Section 7.367(b)–7 is amended as follows:

1. Paragraph (a) is revised.
2. The authority citation at the end of the section is removed.

The revision reads as follows:

§ 7.367(b)–7 Exchange of stock described in section 354.

* * * * *

(a) [Reserved] For guidance relating to transfers occurring on or after July 20, 1998, see § 1.367(b)–7(a) of this chapter.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par 15. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par 16. In § 602.101, paragraph (c) is amended by:

1. Removing the following entry from the table:

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.367(a)–3T	1545–0026
* * * * *	

2. Adding the following entry to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.367(a)–8	1545–1271
* * * * *	

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: May 13, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–15454 Filed 6–18–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 62 and 66

[USCG 97–3112; CGD 97–018]

RIN 2115–AF45

Merger of the Uniform States Waterway Marking System With the United States Aids to Navigation

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard commences a five year phased-in merger of the Uniform State Waterway Marking System with the United States Aids to Navigation System. This merger eliminates distinctions between the two systems and creates safer, less confusing waterways.

DATES: This final rule is effective July 20, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, [USCG–97–3112], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: For questions on this rule contact Dan Andrusiak, OPN–2 Short Range Aids to Navigation Division, USCG Headquarters, telephone (202) 267–0327, For questions on viewing material in the docket, contact Carol Kelley, Coast Guard Dockets Team Leader, or

Paulette Twine, Chief Documentary Services Division, U.S. Department of Transportation, telephone (202) 366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 23, 1997, the Coast Guard published a notice of proposed rulemaking entitled "Merger of the Uniform State Waterway Marking System and the United States Aids to Navigation System" in the **Federal Register** (62 FR 67031). The Coast Guard received five letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Uniform State Waterways Marking System (USWMS), 33 CFR 66.10, prescribes regulatory markers and aids to navigation that may mark navigable waters that the Commandant designates as state waters in accordance with 33 CFR 66.05–5. The USWMS may also mark the non-navigable internal waters of a state.

The United States Aids to Navigation System (USATONS), 33 CFR 62, prescribes regulatory markers and aids to navigation that mark navigable waters of the United States. Navigable waters, defined by 33 CFR 62.02–25, include territorial seas and internal waters that have been or can be used for interstate commerce, either by themselves or in connection with other waterways.

Section 66.10–1(b), allows the use USATONS on state and non-navigable internal waters, and many states already use the USATONS instead of the USWMS.

In 1992, the National Association of State Boating Law Administrators (NASBLA) passed a resolution requesting that the Coast Guard:

1. Change the meaning of the red and white striped buoy from the USWMS meaning of obstruction to the USATONS meaning of safewater,
2. Change the black USWMS buoy to the green USATONS buoy, and
3. Use a phased-in implementation period for these changes.

NASBLA requested these changes because they believe the current USWMS markings, which are different from the USATONS markings, confuse boaters and could cause casualties. A comparison of these two systems showed that almost all of the requirements of the USWMS are contained in the USATONS.

The major differences between the two systems are:

1. The USMWS has the additional requirement of orange bands on regulatory buoys;
2. The USWMS allows for lights on mooring buoys whereas the USATONS is silent; and,
3. The USWMS uses the cardinal system to mark obstructions and the USATONS uses the lateral System of marking obstructions.

Discussion of Comments and Changes

One comment suggested that in §§ 62.1(b)(2), 62.21(a), 66.05–1, 66.05–5(b), and 66.05–20 (c)(3) the wording "insert date five years from the date of publication in the **Federal Register** of the final rule" be changed to "December 31, 2003". The Coast Guard agrees with this suggestion, and will also change § 66.10–1.

One comment suggested that in § 62.33(b) the Coast Guard delete "of international orange" from the first sentence. The Coast Guard concurs and has changed § 62.33(b). This change eliminates potential confusion from a belief that two different shades of orange are required.

One comment suggested that in § 62.33(b) in the second sentence, change "at the top" to "near the top." The Coast Guard agrees with this suggestion because an orange band at the very top of a buoy would cease to be a band but would result in a buoy with an orange top.

One comment suggested the Coast Guard not add the lighting requirements for mooring buoys to § 62.35, but to § 62.45(d)(6), which prescribes the light rhythm requirements. The Coast Guard agrees.

One comment suggested that in § 62.54 the wording be changed to be less ambiguous. Specifically the comment suggested that § 62.54 read "Succinct, concise ownership identification which does not compromise signal effectiveness is permitted on aids to navigation." The Coast Guard disagrees with the suggested wording. Historically, ownership identification on private or State aids to navigation has not been a problem. Additionally, the Coast Guard does not desire at this time to expand the authority for ownership markings to Federal aids to navigation.

Another comment suggested that the reference to the "second category" in paragraph 66.10–15(a) be removed and this paragraph changed to read "USWMS aids to navigation may have lateral or cardinal meaning." The Coast Guard agrees, The "first category" of USWMS aids was regulatory markers discussed in § 66.10–5. This section is removed since equivalent regulatory marks exist in § 62.33. Therefore, because no "first category" exists, discussion of a "second category" may be confusing.

One comment expressed concern over the change in definition of the red and white striped buoy, because this would eliminate an aid which provides the mariner specific information "not to pass between the buoy and the nearest shore". The comment also stated that in an area where it is hard to determine the head of navigation, the use of side marks would be impracticable. The comment suggested the creation of a black and white vertically striped buoy available for use on Inland Waters, with the meaning "do not pass between the buoy and the nearest shore". The Coast Guard agrees. A new section has been added that allows the use of a black and white striped buoy on Inland waters, where the head of navigation is hard to define, which warns mariners not to pass between the buoy and the nearest shore. Further, to avoid confusion, USWMS red and white striped obstruction buoys under § 66.10–15(e)(3) will not be permitted to exist on a body of water for which the new USATONS black and white vertically striped buoy is used.

Another comment suggested that once the regulations from the two systems are merged, proper training must be given to all users. The Coast Guard agrees, and will provide education and outreach information regarding the merger of these two systems through the office of Boating Safety website (www.uscgboating.org) and through the Coast Guard Customer Information Line at 1–800–368–5647. Additionally, the Coast Guard expects that the various State Boating Law Administrators will modify existing educational materials to reflect the changes.

One comment suggested that in addition to changing the meaning of the red and white striped buoy, the Coast Guard also change the shape of this aid. The USATONS requires the red and white safe water mark to be spherical or display spherical top mark. This is the requirement for all newly established safe water marks and for all safe water marks at the end of the phase-in period.

One comment suggested that the costs associated with this change would impose a monetary burden on the states currently using USWMS. The replacement of USWMS aids is linked to the aid's lifecycle. Since, the existing aids will need replacement during the phase-in period, no additional costs should be incurred. Also, most existing educational materials will need to be replaced during this five year phase-in period. Further, through training and education the Coast Guard believes any

confusion from the existence of the two systems on one waterway to be minimal.

Discussion of Rule

Regulatory and Informational Markers: The USATONS provides a system for information and regulatory markers nearly identical to the USWMS. The only USWMS requirement not prescribed by the USATONS is that buoys have two horizontal orange bands, one just above the water line and one near the top of the buoy. The Coast Guard amends 33 CFR 62.33 to add the USWMS requirement of two horizontal orange bands to the USATONS.

Channel markers: The USWMS black buoy will be replaced, via a phased-in process, with the green buoy required by the USATONS. The phase-in process avoids unnecessary replacement costs to the states.

Red and white striped buoy: The meaning of the red and white striped buoy changes from the USWMS "do not pass between the buoy and nearest shore" to the USATONS "safewater all around." Obstructions marked with the USWMS red and white striped buoy can be marked, via a phased-in process, with the USATONS' sidemark prescribed in 33 CFR 62.25(b), with an isolated danger mark prescribed in 33 CFR 62.29, or with the new black and white striped buoy prescribed in 33 CFR 62.32.

Cardinal marks: In the USWMS, white buoys with a red top band mean that the mariner can pass safely south or west of the buoy, and white buoys with a black top band mean that the mariner can pass safely north or east of the buoy. The USATONS does not contain cardinal marks, and areas presently marked with these USWMS aids can be replaced with the USATONS isolated danger mark prescribed in 33 CFR 62.29, or a side mark prescribed in 33 CFR 62.25(b), or with an isolated danger mark prescribed in 33 CFR 62.29, or with the new black and white striped buoy prescribed in 33 CFR 62.32.

Mooring buoys: Unlike the USWMS, the USATONS is silent on prescribing lights on mooring buoys. The Coast Guard amends 33 CFR 62.45 to incorporate mooring buoys, allowing white lights of various rhythms.

Numbers, letters, or words on markers: The guidance in the USATONS, 33 CFR 62.43(a) & (b), is similar to that in the USWMS 33 CFR 66.10–25, so the merging of the two systems does not affect numbers, letters, or words on marks.

Reflectors and retroeflective materials: The USATONS guidance for the uses of retroreflective material, 33 CFR 62.43(c), is less restrictive than the USWMS guidance found in 33 CFR 66.10–30, so the merger does not require a change in the use of reflectors or retroflective material.

Navigation lights: The USATONS requirements for the use of navigation lights, 33 CFR 62.45, is similar to that of the USWMS found in 33 CFR 66.10–35, so the merger does not affect the use of navigation lights.

Size, shape, material, and construction of markers: No specific guidance for size, shape, material and construction of markers exists in the USATONS. The USWMS wording on these items, found in 33 CFR 66.10–20, is not necessary and is not inserted into the USATONS.

Ownership identification: The USWMS, in 33 CFR 66.10–40, allows for the discretionary use of ownership identification on aids to navigation. The USATONS does not prohibit use of ownership identification. Ownership identification, however, should not be placed on an aid in a way that would change the meaning of the aid to navigation. The Coast Guard adds a section to the USATONS stating language to this effect.

Changes to 33 CFR Subpart 66.05

The merging of the USWMS with the USATONS requires conforming editorial corrections to Subpart 66.05 entitled, "State Aids to Navigation," to reflect the new rules.

Changes to 33 CFR Subpart 66.10

Sections 66.10–5, 66.10–10, 66.10–20, 66.10–25, 66.10–30, 66.10–40, and 66.10–45 are removed because the provisions of these sections are contained in the USATONS, or are being inserted into the USATONS.

The only sections remaining in subpart 66.10 are the general section, the aids to navigation section, and that portion of the navigation lights section which refers to lights on cardinal marks. These sections may be used until December 31, 2003.

General, § 66.10–1: This section is revised to reflect the merger of the two systems, the implementation date, and to remove references to deleted sections.

Aids to Navigation, § 66.10–15: This section provides information concerning the marking of channels and the cardinal system of marking, and as such remains until the end of the phase-in period.

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. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Merging the USWMS with the USATONS, via a phased-in implementation period, linked to the aid's lifecycle, will not impose an increased monetary burden on the States currently using the USWMS. There is currently no price difference between aids with the USWMS markings and aids with USATONS markings. Further, because the replacement of the aid is linked to its lifecycle, purchase of a USATONS aid is not required until the end of the USWMS aid's lifecycle, any additional costs are eliminated.

Consequently, the Coast Guard believes that this rulemaking will not impose any additional costs on the states.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considers whether this rule will have a significant 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 less than 50,000. The USWMS is a system that regulates state aids to navigation and will not directly impact small entities. Therefore, 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.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

If you have questions concerning its provisions or options for compliance, please contact Mr. Dan Andrusiak, Short Range Aids to Navigation Division, USCG Headquarters, Telephone: (202) 267–0327.

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 proposal under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Pursuant to 14 U.S.C. 85, the Coast Guard, as delegated by the Secretary, Department of Transportation, has responsibility to create all regulations concerning aids to navigation for all waters subject to the jurisdiction of the United States. This rule does not affect the states ability to prescribe regulations for its own internal non-navigable waters.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to access 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 proposed and final rules that contain any 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 aggregate, $100 million or more in any one year the UMRA analysis is required. This 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 proposal and concluded that, under figure 2–1, paragraph 34(a) and (i) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Merging the USWMS with the USATONS has no environmental implications. A Categorical Exclusion Determination is available in the rulemaking docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 62

Navigation (water).

33 CFR Part 66

Intergovernmental relations, navigation (water).

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 62 and 66 as follows:

PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

1. The authority citation for part 62 continues to read as follows:

Authority: 14 U.S.C. 85; 33 U.S.C. 1233; 43 U.S.C. 1333; 49 CFR 1.46.

2. In § 62.1, redesignate paragraph (b) as paragraph (b)(1), and add a paragraph (b)(2) to read as follows:

§ 62.1 Purpose.

* * * * *

(b)(1) * * *

(2) The regulations found in 33 CFR subpart 66.10 expire on December 31, 2003, at which time the provisions of this part will apply.

* * * * *

§ 62.21 [Amended]

3. In § 62.21(a), add after the words "The navigable waters of the United States" the words "and non-navigable State waters after December 31, 2003,".

4. Add § 62.32 to subpart B to read as follows:

§ 62.32 Inland waters obstruction mark.

(a) On inland waters designated by the Commandant as State waters in accordance with § 66.05–5 of this chapter and on non-navigable internal waters of a State which have no defined head of navigation, a buoy showing alternate vertical black and white stripes may be used to indicate to a vessel operator that an obstruction to navigation extends from the nearest shore to the buoy.

(b) The black and white buoy's meaning is "do not pass between the buoy and the shore". The number of white and black stripes is discretionary, provided that the white stripes are twice the width of the black stripes. Prior to December 31, 2003, this aid shall not be used on a waterway which has a red and white striped obstruction marker defined in § 66.10–15(e)(3) of this chapter, unless all obstruction markers are replaced.

5. In § 62.33, redesignate the introductory text as paragraph (a), redesignate existing paragraphs (a) through (d) as (a)(1) to (a)(4), and add a new paragraph (b) to read as follows:

§ 62.33 Information and regulatory marks.

* * * * *

(b) When a buoy is used as an information or regulatory mark it shall be white with two horizontal orange bands placed completely around the buoy circumference. One band shall be near the top of the buoy body, with a second band placed just above the waterline of the buoy so that both bands are clearly visible.

6, In § 62.45, revise paragraph (d)(6) to read as follows:

§ 62.34 Light characteristics.

* * * * *

(d) * * *

(6) Mooring Buoys and Information and Regulatory Marks display white lights of various rhythms.

* * * * *

7. Add § 62.54 to subpart B to read as follows:

§ 62.54 Ownership identification.

Ownership identification on private or state aids to navigation is permitted so long as it does not change or hinder an understanding of the meaning of the aid to navigation.

PART 66—PRIVATE AIDS TO NAVIGATION

8. The authority citation for part 66 continues to read as follows:

Authority: 14 U.S.C. 83, 85; 43 U.S.C. 1333; 49 CFR 1.46.

§ 66.01–10 [Amended]

9. In § 66.01–10 remove paragraph (b) and remove the paragraph designation (a).

10. Revise § 66.05–1 to read as follows:

§ 66.05–1 Purpose.

The purpose of the regulations in this subpart is to prescribe the conditions under which state governments may regulate aids to navigation owned by state or local governments, or private parties. With the exception on the provisions of subpart 66.10, which are valid until December 31, 2003, aids to navigation must be in accordance with the United States Aids to Navigation System in part 62 of this subchapter.

11. In § 66.05–5, revise the section heading and paragraph (b) to read as follows:

§ 66.05–5 Definitions.

* * * * *

(b) The term Uniform State Waterway Marking System (USWMS) means the system of private aids to navigation which may be operated in State waters. Subpart 66.10, which describes the USWMS, expires on December 31, 2003.

* * * * *

§ 66.05–20 [Amended]

12. In § 66.05–20(c)(3) add to the beginning of the paragraph the words "If prior to December 31, 2003," and uncapitalize the word "Specification".

13. Revise § 66.10–1 to read as follows:

§ 66.10–1 General.

(a) Until December 31, 2003, the Uniform State Waterway Marking System's (USWMS) aids to navigation provisions for marking channels and obstructions may be used in those navigable waters of the U.S. that have been designated as state waters for private aids to navigation and in those internal waters that are non-navigable waters of the U.S. All other provisions for the use of regulatory markers and other aids to navigation shall be in accordance with United States Aid to Navigation System, described in part 62 of this subchapter.

(b) The USATONS may be used in all U.S. waters under state jurisdiction, including non-navigable state waters.

§ 66.10–5 [Removed]

14. Remove § 66.10–5.

§ 66.10–10 [Removed]

15. Remove § 66.10–10.

16. In § 66.10–15 revise paragraph (a) to read as follows:

§ 66.19–15 Aids to navigation.

(a) USWMS aids to navigation may have lateral or cardinal meaning.

* * * * *

§ 66.10–20 [Removed]

17. Remove § 66.10–20.

§ 66.10–25 [Removed]

18. Remove § 66.10–25.

§ 66.10–30 [Removed]

19. Remove § 66.10–30.

20. Revise § 66.10–35 to read as follows:

§ 66.10–35 Navigation lights.

A red light shall only be used on a solid colored red buoy. A green light shall only be used on a solid colored black or a solid colored green buoy. White lights shall be used for all other buoys. When a light is used on a cardinal system buoy or a vertically striped white and red buoy, it shall always be quick flashing.

§ 66.10–40 [Removed]

21. Remove § 66.10–40.

§ 66.10–45. [Removed]

22. Remove § 66.10–45.

Dated: June 11, 1998.

Ernest R. Riutta,

Assistant Commandant for Operations.

[FR Doc. 98–16242 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–98–037]

RIN 2115–AE46

Special Local Regulations: EZ Challenge Speed Boat Race, Ohio River, Beech Bottom, West Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the EZ Challenge Speed Boat Race. This event will be held on Saturday and Sunday, July 4 and 5, 1998, between 9:30 a.m. and 6:30 p.m. Eastern Standard Time (EST) on the Ohio River. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective at 9:30 a.m. and terminate at 6:30 p.m. EST on July 4 and 5, 1998.

FOR FURTHER INFORMATION CONTACT: LT Ted Ferring, Coast Guard Marine Safety Office, Pittsburgh, PA at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LT Ted Ferring, Project Officer, Coast Guard Marine Safety Office, Pittsburgh and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication in the **Federal Register**. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received with sufficient time remaining to publish proposed rules in advance of the event or to provide for a delay effective date.

Background and Purpose

The marine event requiring this regulation is a powered boat race called the "EZ Challenge Speed Boat Race." This event is sponsored by Beech Bottom Marina. It will consist of approximately 20 participants operating at high speeds. Also, 50–100 spectator craft are expected for this event. The speed boat race will occur near Beech Bottom, West Virginia on the Ohio River. The resulting congestion of navigable channels creates an extra and unusual hazard in the navigable waters.

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 the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary, as this regulation will be in effect for approximately eighteen hours in a limited area of the Ohio River.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this 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 field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities, because the regulation is in effect for approximately eighteen hours in a limited part of the Ohio River.

Collection of Information

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

Federalism Assessment

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with section 2–1, paragraph (34)(h), Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subject in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and record keeping requirements. Waterways.

Temporary Regulation.

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulation, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T08–028 is added to read as follows:

§ 100.35–T08–028 Special Local Regulation, Ohio River, Beech Bottom, WV.

(a) Regulated Area: A regulated area is established on the Ohio River, which consists of all waters, bank-to-bank, inside mile markers 77.2 to 78.0.

(b) Special Local Regulation:

(1) Entry into the regulated area is closed to all commercial and recreational marine traffic from 9:30 a.m. to 6:30 p.m. EST on July 4 and 5, 1998 without the consent of the Captain of the Port, Pittsburgh.

(2) Only vessels participating in the speed boat race and sponsor safety vessels will be permitted in the regulated area.

(3) There will be periodic breaks in the schedule. Vessels wishing to transit the area must coordinate passage with the Coast Guard Patrol Commander.

(c) Dates: This section is effective at 9:30 a.m. and terminates at 6:30 p.m. EST on July 4 and 5, 1998.

Dated: June 11, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 98–16371 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–028]

Drawbridge Operating Regulation; Lafourche Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the SR 1 vertical lift bridge across Lafourche Bayou, mile 13.3, in Leeville, Lafourche Parish, Louisiana. This deviation allows the Louisiana Department of Transportation and Development to close the bridge to navigation continuously from 7 a.m. on Tuesday through 7 p.m. on Thursday each week from July 7, 1998 through July 30, 1998. This temporary deviation is issued to allow for the replacement of all four sets of lift cables for the vertical lift span.

DATES: This deviation is effective from 7 a.m. on July 7, 1998 until 7 p.m. on July 9, 1998; from 7 a.m. on July 14, 1998 until 7 p.m. on July 16, 1998; from 7 a.m. on July 21, 1998 until 7 p.m on July 23, 1998; and from 7 a.m. on July 28, 1998 until 7 p.m. on July 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson or Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The SR 1 vertical lift span bridge across Lafourche Bayou at Leeville, Lafourche Parish, Louisiana has a vertical clearance of 40 feet above mean high water in the closed-to-navigation position. Mean high water elevation is 3 feet above Mean Sea Level (MSL). Navigation on the waterway consists primarily of fishing vessels, some tugs with tows and occasional recreational craft. Presently, the draw opens on signal for the passage of vessels.

The Louisiana Department of Transportation and Development requested a temporary deviation from the normal operation of the bridge in order to do maintenance work on the bridge. The work consists of replacing all four sets of lift cables of the vertical lift span. The cables are worn, have begun to fray, and are in need of immediate replacement. This work is essential for the continued safe operation of the vertical lift span.

The District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.5 authorizing the SR 1 vertical lift span bridge across Lafourche Bayou, Louisiana to remain in the closed-to-navigation position continuously from 7 a.m. on Tuesday through 7 p.m. on Thursday each week from July 7, 1998 through July 30, 1998.

Dated: June 11, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 98–16372 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–98–025]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the regulations governing the operation of the Flagler Beach Bridge (SR 100) mile 810.6, at Flagler Beach, Florida. This drawbridge has been removed and replaced by a higher fixed bridge and there is no longer a need for the regulation.

DATES: This rule is effective June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Evelyn Smart, Project Manager, Bridge Section, at (305) 536–6546.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The bridge regulation for the Flagler Beach Bridge (SR 100) was published in the **Federal Register** on October 13, 1995 [60 FR 53274]. The regulation established draw times for the opening of the drawbridge. This drawbridge was replaced by a new higher fixed level bridge, which opened to vehicular traffic in June, 1997. All parts of the old drawbridge not used in the new fixed bridge have been removed from the waterway. Therefore, the regulation governing the operation of the old drawbridge is no longer necessary and the Coast Guard is removing 33 CFR 117.261(e).

The Coast Guard finds in accordance with 5 U.S.C. 553, that good cause exists for proceeding directly to final rule and making this rule effective in less than 30 days. This final rule removes a bridge regulation for a drawbridge that was removed in June 1997. Therefore, publishing a notice of proposed rulemaking or delaying the effective date of the final rule is unnecessary and the Coast Guard is proceeding to final rule, effective upon publication in the **Federal Register.**

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 under that order has not

reviewed it. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policy and procedures of DOT is unnecessary. We conclude this because the drawbridge to which the rule applies no longer exists.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. Small entities may include small businesses and not for profit organizations that are independently owned and operated and are not dominant in their field and government jurisdictions with populations of less than 50,000.

Therefore the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities, because the drawbridge has been replaced with a new fixed bridge and the drawbridge regulation is no longer necessary.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and has determined pursuant to figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation. A Categorical Exclusion determination has been prepared and is available for inspection and copying in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

117.261 [Removed and Reserved]

2. In 117.261, remove and reserve paragraph (e).

Dated: May 18, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 98–16370 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–98–029]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast guard is removing the regulations governing the operation of the Seabreeze Boulevard Bridge, mile 829.1 at Daytona Beach, Florida. This drawbridge has been replaced by two higher fixed bridges and there is no longer a need for the regulations.

DATES: This rule is effective June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Evelyn Smart, Project Manager, Bridge Section, at (305) 536–6546.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The bridge regulation for the Seabreeze Boulevard Bridge, mile 829.1, was published in the **Federal Register** February 8, 1979 [44 FR 7981] and revised in the **Federal Register** on November 19, 1979 [44 FR 66195]. This regulation established draw times on the opening of the State Road 430 drawbridge. This drawbridge was replaced by two higher fixed level bridges, which opened to vehicular traffic in June, 1997. All parts of the old drawbridge not used in the new fixed bridges have been removed from the waterway. Therefore, the regulation governing the operation of the old drawbridge is no longer necessary and the Coast Guard is removing 33 CFR 117.261(f).

The Coast Guard finds in accordance with U.S.C. 553, good cause exists for proceeding directly to final rule and making this rule effective in less than 30 days. This final rule removes a bridge regulation for a drawbridge that was removed in October, 1997. Therefore, publishing a notice of proposed rulemaking or delaying the effective date of the final rule is unnecessary and the Coast Guard is proceeding to final rule, effective upon publication in the **Federal Register**

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require a assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget under that order has not reviewed it. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policy and procedures of DOT is unnecessary. We conclude this because the drawbridge to which the rule applies no longer exists.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. Small entities may include small businesses and not for profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Therefore 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, because the drawbridge has been replaced with two new fixed bridges and the drawbridge regulation is no longer necessary.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria

contained in Executive Order 12612 and have determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and has determined pursuant to figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation. A Categorical Exclusion determination has been prepared and is available for inspection and copying in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.261 [Removed and Reserved]

2. In § 117.261, remove and reserve paragraph (f).

Dated: May 18, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 98–16369 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–023]

Drawbridge Operating Regulation; Dulac Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117.5 governing the operation of the SR 57 swing span drawbridge across Dulac Bayou, mile 0.6, at Dulac, Terrebonne Parish, Louisiana. This deviation allows the Louisiana Department of Transportation and Development to close the bridge from 7 a.m. and noon and from 12:30 p.m. until 3:30 p.m., on July 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28 and 29, 1998. The span will open for the passage of traffic from noon until 12:30 on each of these days. The bridge will operate normally at all other times. This temporary deviation is issued to allow for the cleaning and painting of the swing span, an extensive but necessary maintenance operation.

DATES: This deviation is effective from 7 a.m. on July 6 until 3:30 p.m. on July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The SR 57 swing span drawbridge across Dulac Bayou, mile 0.6, in Dulac, Terrebonne Parish, Louisiana, has a vertical clearance of 7 feet above high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels, and other recreational craft. The Louisiana Department of Transportation and Development requested a temporary deviation from the normal operation of the bridge in order to accommodate the maintenance work. The maintenance work involves cleaning and painting of the swing span. This work is essential for the continued operation of the draw span.

This deviation allows the draw of the SR 57 swing span bridge across Dulac Bayou, mile 0.6, at Dulac to remain in the closed-to-navigation position between 7 a.m. and noon and from 12:30 p.m. until 3:30 p.m., on July 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28 and 29, 1998. The span will open for the passage of traffic from noon until 12:30 on each of these days. The bridge will operate normally at all other times.

This deviation will be effective from 7 a.m. on July 6 until 3:30 p.m. on July 29, 1998. Presently, the draw opens on signal at any time.

Dated: June 11, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 98–16368 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–030]

Drawbridge Operating Regulation; Lafourche Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the SR 1 vertical lift bridge across Lafourche Bayou, mile 13.3, in Leeville, Lafourche Parish, Louisiana. This deviation allows the Louisiana Department of Transportation and Development to close the bridge to navigation from 7 a.m. until 9 a.m.; 9:30 a.m. until noon; 12:30 p.m. until 3 p.m.; and 3:30 p.m. until 7 p.m., Monday through Friday, except Federal holidays, from August 3, 1998, until October 2, 1998. This temporary deviation is issued to allow for general maintenance repairs.

DATES: This deviation is effective from 7 a.m. on August 3, 1998, until 7 p.m. on October 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson or Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The SR 1 vertical lift span bridge across Lafourche Bayou at Leeville, Lafourche Parish, Louisiana has a vertical clearance of 40 feet above mean high water in the closed-to-navigation position. Mean high water elevation is 3 feet above Mean Sea Level (MSL). Navigation on the waterway consists primarily of fishing vessels, some tugs with tows and occasional recreational craft. Presently, the draw opens on signal for the passage of vessels.

The Louisiana Department of Transportation and Development requested a temporary deviation from the normal operation of the bridge in order to do maintenance work on the bridge. The work consists of mechanical, electrical, and structural repairs which require the bridge to remain in the closed to navigation position for several hours at a time. During portions of this repair work, scaffolding may be placed below the bridge over the navigation channel reducing the approved vertical

clearance to less than 40 feet above mean high water. The reduction in the vertical clearance will be approximately 4 feet. Alternate routes are available. This work is essential for the continued safe operation of the vertical lift span.

The District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.5 authorizing the SR 1 vertical lift span bridge across Lafourche Bayou, Louisiana to remain in the closed-to-navigation position from 7 a.m. until 9 a.m.; 9:30 a.m. until noon; 12:30 p.m. until 3 p.m.; and 3:30 p.m. until 7 p.m., Monday through Friday, except Federal holidays, from August 3, 1998, until October 2, 1998.

Dated: June 11, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 98–16367 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–040]

RIN 2115–AA97

Safety Zone: Great Catskills Triathlon, Hudson River, Kingston, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Great Catskills Triathlon located on the Hudson River in the vicinity of Kingston Point Reach, Kingston, New York. The safety zone is in effect from 7 a.m. until 8:30 a.m. on Sunday, July 12, 1998. 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 the Hudson River, in the vicinity of Kingston Point Reach.

DATES: This rule is effective from 7 a.m. until 8:30 a.m. on Sunday, July 12, 1998, unless terminated sooner by the Captain of the Port, New York.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–98–040), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays

FOR FURTHER INFORMATION CONTACT: Lietuenant (Junior Grade) A. Kenneally, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354–4195.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date this application was received, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway to protect swimmers and the maritime public from the hazards associated with 500 athletes competing in the swimming portion of the Great Catskills Triathlon.

Background and Purpose

On April 12, 1998, the New York Triathlon Club, submitted an Application for Approval of Marine Event to hold the swimming competition of the Great Catskills Triathlon on the waters of the Hudson River in the vicinity of Kingston Point Reach. this regulation establishes a safety zone in all waters of the Hudson River within a 1000 year radius of 41°56′06″ N 073°57′57″ W (NAD 1983). This area encompasses approximately 1,800 yards of Kingston Point Reach, from just south of red buoy #74 to green buoy #77. The safety zone is in effect from 7 a.m. until 8:30 a.m. on Sunday, July 12, 1998, unless terminated sooner by the Captain of the Port, New York. The safety zone prevents vessels from transiting this portion of the Hudson River and is needed to protect swimmers and boaters from the hazards associated with 500 swimmers competing in a confined area of the Hudson River.

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 limited marine traffic in the area, the minimal time that vessels will be restricted from the zone, and advance notifications which will be made by the Local Notice to Mariners and marine information broadcasts. Recreational traffic will be able to transit the river to the east of the safety zone during this event. Commercial traffic is not heavy in this area of the Hudson River. It is expected that no more than 1 or 2 commercial vessels may be effected by this event. Due to the advance advisories being made, commercial traffic will be able to adjust their transit time to arrive before or after the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this 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.

For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final 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 12612, and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

Under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded

from further environmental documentation. 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, and 160.5; 49 CFR 1.46.

2. Add temporary section 165.T01–040 to read as follows:

§ 165.T01–040 Safety Zone: Great Catskills Triathlon, Hudson River, Kingston, New York.

(a) *Location.* The following area is a safety zone: all waters of the Hudson River within a 1000 yard radius of 41°56′06″N 073°57′57″W (NAD 1983). This area encompasses approximately 1,800 yards of Kingston Point Reach, from just south of red buoy #74 to green buoy #77.

(b) *Effective period.* This section is effective from 7 a.m. until 8:30 a.m. on Sunday, July 12, 1998.

(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. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 4, 1998.

Richard C. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 98–16239 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 0

RIN 2900–AJ27

Delegation of Authority for Certain Ethics Matters

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations captioned "Standards of Ethical Conduct and Related Responsibilities." It removes material regarding certain ethics determinations for agency employees. This material is not required to be published in the Code of Federal Regulations because it does not affect the public. It affects only internal VA practices.

DATES: *Effective Date:* June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Walter A. Hall, Assistant General Counsel (023) and Designated Agency Ethics Official, Department of Veterans Affairs, Office of General Counsel, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–6334.

SUPPLEMENTARY INFORMATION: This document does not constitute rulemaking under the provisions of 5 U.S.C. 552 and 553. Accordingly, there is no basis for prior notice and comment or a delayed effective date.

This document does not concern a "rule" as defined in the Regulatory Flexibility Act. 5 U.S.C. 601. Nevertheless, the Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, because the amendment only affects individuals.

There is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 0

Conflict of interests.

Approved: May 27, 1998.

Togo D. West, Jr.,

Secretary.

For the reasons set forth in the preamble, 38 CFR part 0, subpart A, is amended as follows:

PART 0—STANDARDS OF ETHICAL CONDUCT AND RELATED RESPONSIBILITIES

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301; 38 U.S.C. 501; see sections 201, 301, and 502(a) of E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215 as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 0.735–2 [Removed]

2. Section 0.735–2 is removed.

§ 0.735–3 [Redesignated as § 0.735–2]

3. Section 0.735–3 is redesignated as § 0.735–2.

[FR Doc. 98–16275 Filed 6–18–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Board of Veterans' Appeals

38 CFR Part 20

RIN 2900–AI87

Board of Veterans' Appeals: Rules of Practice—Continuation of Representation Following Death of a Claimant or Appellant

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) to eliminate a rule which automatically assigns a deceased appellant's representative to the appellant's survivor. This change is necessary because of a court ruling which eliminates the need for such a provision.

DATES: *Effective Date:* July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202–565–5978).

SUPPLEMENTARY INFORMATION: On October 23, 1997, VA published in the **Federal Register** (62 FR 55200) a proposed rule which would eliminate a provision in the Board's Rules of Practice—Rule 611 (38 CFR 20.611)—permitting a deceased appellant's representative to continue to act with respect to any appeal pending upon the death of the appellant. We proposed this change because the U.S. Court of Veterans Appeals had ruled that, generally, a claim for benefits does not survive the death of the claimant. *Smith (Irma)* v. *Brown,* 10 Vet. App. 330 (1997).

The public was given 60 days to submit comments. VA received no comments.

Accordingly, based on the rationale set forth in the proposed rule document,

we are adopting without change the provisions of the proposed rule as a final rule.

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect only the processing of claims by VA and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. In addition, since no notice of proposed rule making is required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: April 6, 1998.

Togo D. West, Jr.,

Acting Secretary.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

§ 20.611 [Removed]

2. In subpart G, § 20.611 is removed.

[FR Doc. 98–16363 Filed 6–18–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 159

[OPP–60010J; FRL–5792–2]

RIN 2070–AB50

Reporting Requirements For Risk/Benefit Information; Amendment and Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This is a two-fold action to make minor adjustments to the reporting requirements for risk/benefit information regulation. EPA is amending and correcting the final regulation published in the **Federal Register** on September 19, 1997 (62 FR 49370). The regulation codified EPA's interpretation and enforcement policy regarding the requirement of pesticide registrants to report to the Agency information concerning unreasonable adverse effects of their products as mandated in section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In the first part of this action, EPA is issuing a final rule to change the definition of a registrant to provide consistency with that which is in the statute. The amendment to the regulation will also serve to clarify the scope of the registrant's responsibilities and liabilities. In the second part of this action, the Agency is making technical corrections to the regulations for clarification purposes. These corrections include omitted, yet implied, reporting time frames and required information, missing conjunctions, and minor editorial changes.

DATES: These actions will become effective June 19, 1998.

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

SUPPLEMENTARY INFORMATION:

I. Affected Parties

Entities potentially affected by this rule are persons who hold or ever held a pesticide registration under FIFRA section 3 or 24(c). This rule may also affect any officer, employee, agent, or any other person acting on behalf of a registrant. This listing is not intended to be exhaustive, but rather to provide examples of those entities that are likely to be affected by this action. To determine whether you or your business is affected, refer to the regulatory text contained in § 159.153 (definition of registrant), and § 159.155(d). Any questions regarding applicability should be directed to the Agency Contact Person listed above.

II. Background

In the **Federal Register** of September 19, 1997 (62 FR 49370) (FRL–5739–1), EPA issued a final rule to codify its interpretation and enforcement policy under section 6(a)(2) of FIFRA. This section of the law requires pesticide registrants to report information concerning unreasonable adverse effects of their products to EPA. The rule clarifies what information must be submitted, how and when to submit it, as well as what failures to report information, or delays in reporting, will be regarded by EPA as violations of FIFRA section 6(a)(2), and actionable under FIFRA sections 12(a)(2)(B)(ii) and 12 (a)(2)(N). The rule is to become effective on June 16, 1998. As published, the final regulation contains several errors which may prove to be misleading and are in need of clarification. This notice makes the needed corrections to the regulation.

EPA is issuing the first part of this action as a final rule without prior proposal because it believes public comment on this part of the rule would be unnecessary, impracticable, and contrary to the public interest, and therefore is not required pursuant to the "good cause' exemption under section 553(b)(B) of the Administrative Procedure Act. The Agency believes it is important to make this change as expeditiously as possible, so that the change can be incorporated into the new part 159 before publication of the next volume of the Code of Federal Regulations, and so that the change can be effective before the new part 159 becomes effective on June 16, 1998. A provision for public comments is not warranted because the rule only implements a technical correction and does not impose any new requirements. As explained below, the change is being made to assure that the definition of registrant in the rule is consistent with that which is in the underlying statute authorizing the rule.

III. Agency Decision

Section 6(a)(2) of FIFRA imposes an obligation on pesticide registrants to report to the Agency additional factual information regarding unreasonable adverse effects on the environment related to their pesticide products. By its terms, this requirement is placed only on a "registrant," a term defined in section 2(y) of FIFRA as "a person who has registered any pesticide pursuant to [FIFRA]."

The Agency changed the definition of "registrant" in the final rule issued on September 19, 1997 from that in the proposal to include agents and other persons acting on behalf of a registrant. As explained in the preamble to the final rule, the purpose of the change was to clarify that "registrants [are] responsible for the actions of their agents" and that "registrants will be held liable for the actions of their agents." The intent in drafting the rule was to make absolutely clear that a registrant is deemed to possess information when certain people

working for the benefit of the registrant possess the information.

The effect of including language on agents in the definition of registrant in § 159.153, however, was to make agents potentially liable themselves for failing to report information to the Agency pursuant to section 6(a)(2). A number of persons have complained to the Agency that this broadens the reach of section 6(a)(2), because the statutory requirement is imposed only upon registrants, and because agents who have never registered a pesticide product can not be considered a registrant under FIFRA. This was never the Agency's intent, and the Agency agrees that the definition in the final rule published in September 1997 could be interpreted to exceed, as written, the statutory reach of section 6(a)(2).

The Agency is therefore issuing this final rule to correct the definition of registrant in § 159.153, so that it only will include "any person who holds, or ever held, a registration for a pesticide product issued under FIFRA section 3 or 24(c)." The rest of the definition in the final rule published in September 1997 referring to employees and agents has been moved to § 159.155(b) (redesignated as § 159.155(d) in this document). The effect of this change is that registrants are still responsible under section 6(a)(2) for information possessed by their employees and agents, but the employees and agents themselves, who are not registrants under FIFRA, are not themselves responsible for reporting adverse effects information to the Agency.

IV. Technical Corrections

The corrections listed in this notice address errors in the regulation published on September 19, 1997. The technical corrections consist of three types: reporting time frames, required information, and editorial.

The majority of the corrections ensure that the time frames for submitting all types of adverse effects information are clearly established. In the proposed rule, the time frame for reporting all section 6(a)(2) information was 30 days. In response to the public comments it received, the Agency decided to allow for different reporting schedules for different types of information. The final rule, however, listed only those categories where the time frames had been changed and erroneously failed to establish time frames for all other types of submissions.

Information concerning pesticides in food or feed above the tolerance level or if no tolerance has been established; metabolites, degradates, contaminants, and impurities; efficacy failure studies for public health products; substantiated incidents of pest resistance; and other information described in § 159.195 must be received by EPA no later than the 30th calendar day after the registrant first possesses or knows of the information. Incidents of efficacy failure of public health products and pesticide detections in water above the maximum contaminant level (MCL) or health advisory level (HAL) may be accumulated for 1 month and submitted by the end of the month following the accumulation period.

A correction will be made to the regulation to specify that detections of pesticides in water below the MCL or HAL but otherwise reportable (§ 159.178(b)) may be accumulated for 3 months and submitted by the end of the second month following the accumulation period. The preamble to the final rule stated that this type of information must be aggregated into quarterly statistical summaries as described in § 159.184(d)(3) and (e).

Other technical corrections ensure that useful information is submitted to the Agency. Although these informational items are implied, the specifics relating to the information required was inadvertently omitted. First, for detections of pesticides in or on food or feed (§ 159.178), and in surface water and ground water (§ 159.184(c)(4)(iv) and (v)) will be changed to specify that the amount of pesticide detected is reportable. Second, the technical corrections will create a cross reference between the requirement to report detections of pesticides in or on food or feed, or water found in § 159.178 with the appropriate specified reportable data elements listed in § 159.184(c).

The last group of corrections to the regulation include missing conjunctions, typographical errors, and minor cross referencing errors.

V. Statutory Review Requirements

A draft of this rule was provided to the Secretary of Agriculture (USDA), the Committee on Agriculture, Nutrition, and Forestry of the United States Senate, and to the Committee on Agriculture of the House of Representatives. The FIFRA Scientific Advisory Panel has waived its review of this rule.

VI. Regulatory Assessment Requirements

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

VII. Submission to Congress and the General Accounting Office

Pursuant to the Congressional Review Act (5 U.S.C. 801(a)(1)(A)), the Agency 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 this rule in today's **Federal Register**. This is a technical correction to the CFR and is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 159

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

Dated: June 5, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Amendment to 40 CFR Part 159

Therefore, 40 CFR part 159 is amended as follows:

PART 159—[AMENDED]

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

Authority: 7 U.S.C. 136–136y.

2. In § 159.153 the definition of "Registrant" is revised to read as follows:

§ 159.153 Definitions.

* * * * *

Registrant includes any person who holds, or ever held, a registration for a pesticide product issued under FIFRA section 3 or 24(c).

* * * * *

Correction to Rule Published in the Federal Register

Accordingly, the publication on September 19, 1997 of the final regulations which were the subject of FR Doc. 97-24937 and published on page 49370 is corrected as follows:

1. On page 49388, in the table of contents for part 159, the title of § 159.160 is corrected to read "Obligations of former registrants."

2. On page 49388, § 159.155 is corrected to read as follows:

§ 159.155 When information must be submitted.

(a) The following reportable information must be received by EPA not later than the 30th calendar day after the registrant first possesses or knows of the information:

(1) Scientific studies described in § 159.165.

(2) Information about discontinued studies described in § 159.167.

(3) Human epidemiological and exposure studies described in § 159.170.

(4) Detection of a pesticide in or on food or feed described in § 159.178(a).

(5) Detection of metabolites, degradates, contaminants, impurities described in § 159.179.

(6) Failure of performance studies described in § 159.188(a)(2), (b)(2), and (c).

(7) Other information described in § 159.195.

(b) Reportable information concerning detections of pesticides in water described in § 159.178(b), adverse effects incidents described in § 159.184(a), and efficacy failure incidents described in § 159.188(a)(1) and (b)(1) must be reported according to the time frames set forth in § 159.184(d).

(c) EPA may, in its discretion, notify a registrant in writing of a different reporting period that will apply to specific types of reportable information or eliminate reporting requirements entirely. Such notification supersedes otherwise applicable reporting requirements set forth in this part.

(d) For purposes of this part, a registrant possesses or knows of information at the time any officer, employee, agent, or other person acting for the registrant first comes into possession of, or knows of, such information; provided that, such person performs any activities for the registrant related to the development, testing, sale or registration of a pesticide or the person could be reasonably expected to come into possession of information otherwise reportable under this part. In the case of information known to or possessed by an agent or other person acting for the registrant, a registrant is responsible for such information only if the agent or other person acquired such information while acting for the registrant.

§ 159.158 [Corrected]

3. On page 49389, § 159.158 is corrected as follows:

i. In paragraph (a) the introductory text, the second sentence is corrected to read:

(a) * * * Information relevant to the assessment of the risks or benefits also includes conclusion(s) or opinion(s) rendered by a person who meets any of the following:

* * * * *

ii. In paragraph (b)(1), after the heading, the introductory text is corrected to read:

(b) * * *

(1) * * * Information need not be submitted if before that date on which the registrant must submit such information if all of the following conditions are met:

* * * * *

iii. In paragraph (b)(3) introductory text, the phrase "either of the categories described in paragraphs (b)(3)(i) or (b)(3)(ii) of this section." is corrected to read "either of the following categories:".

iv. On page 49390, paragraph (b)(4) introductory text, the phrase "reportable under this part, if:" is corrected to read "reportable under this part, if both of the following conditions are met:".

§ 159.159 [Corrected]

4. On page 49390, in § 159.159 is corrected as follows:

i. Paragraph (a)(1) introductory text is corrected to read:

(a) * * *

(1) Information is otherwise reportable under § 159.184, and pertains to an incident that is alleged to have occurred on or after January 1, 1994, and to have involved any of the following:

* * * * *

ii. In paragraph (a)(2), the reference to "§ 159.195(b)," is corrected to read "§ 159.195(c)."

§ 159.160 [Corrected]

5. On page 49390, in § 159.160, in paragraphs (b)(1), (3), and (4), the phrase "formerly-registered" is corrected to "formerly registered."

§ 159.165 [Corrected]

6. On page 49390 § 159.165 is corrected as follows:

i. In paragraph (b)(4), the introductory text is corrected to read:

* * * * *

(b) * * *

(4) For plants when tested at the maximum label application rate or less, if either of the following conditions is met:

* * * * *

ii. On page 49391, paragraphs (d)(1) and (d)(2), the introductory text in both paragraphs is corrected to read:

(d) * * *

(1)* * * A study using a test regimen lasting 90 calendar days or less, and all of the following conditions are met:

* * * * *

(2)* * * A study using a test regimen lasting 90 calendar days or less, and all of the following conditions are met:

* * * * *

§ 159.178 [Corrected]

7. On page 49391, § 159.178 is corrected as follows:

i. In paragraph (a), the phrase "the pesticide is present on food or feed" is corrected to read "the pesticide is present in or on food or feed."

ii. In paragraph (a) by adding a new sentence to the end thereof reading as follows:

(a) * * * The information to be submitted is the same as that required in § 159.184(c)(1), (2), (3), and (4)(iv)(E), (F), (G), and (H).

* * * * *

iii. In paragraph (b)(1), in the introductory text, the phrase "the water reference level in:" is corrected to read "the water reference level in any of the following instances:".

iv. By adding paragraph (b)(5) to read as follows:

* * * * *

(b) * * *

(5) Information to be submitted is the same as that required in § 159.184(c)(1), (2), (3), (4)(iv) and (v), and (5)(vi).

§ 159.179 [Corrected]

8. On page 49391 § 159.179 is corrected as follows:

i. In paragraph (a), in the introductory text, the phrase "must be submitted if:" is corrected to read "must be submitted if either of the following conditions is met:".

ii. In paragraph (a)(2), in the introductory text, the phrase "and one of the conditions in paragraph (a)(3)(i)

or (ii) of this section is met:" is corrected to read "and either of the following conditions is met:".

§ 159.184 [Corrected]

9. On page 49392, § 159.184 is corrected as follows:

i. In paragraph (c)(2), in the introductory text, the phrase "reports must be submitted if the registrant" is corrected to read "reports must be submitted for each pesticide that may have contributed to the incident, if the registrant".

ii. Paragraph (c)(2)(vi) is removed.

iii. On page 49393, paragraph (c)(4)(iv)(G), is corrected to read:

* * * * *

(c) * * *

(4) * * *

(iv) * * *

(G) Pesticides and degradates analyzed for, the detection limits, and the amount detected.

* * * * *

iv. In paragraph (c)(4)(v)(A) is corrected to read:

* * * * *

(c) * * *

(4) * * *

(v) * * *

(A) Pesticides and degradates analyzed for, the analytical method used, the detection limits, and the amount detected.

* * * * *

v. On page 49393 in paragraph (c)(5)(iii), in the introductory text, the phrase "if any of the criteria listed in paragraphs (c)(5)(iii)(A) through (c)(5)(iii)(G) of the section are met, or" is corrected to read "if any of the following criteria are met, or".

vi. On page 49393, in paragraph (c)(5)(iii)(D), the word "relativelycommon" is corrected to read "relatively common."

vii. On page 49394, in paragraph (c)(5)(iii)(G), the word "orthreatened" is corrected to read "or threatened."

viii. On page 49394, paragraph (c)(5)(iv), in the introductory text, the phrase "if the single criterion listed in paragraph (c)(5)(iv)(A) of this section is met, or" is corrected to read "if the following criterion is met, or".

ix. On page 49394, paragraphs (d)(2) and (d)(3) are corrected to read as follows:

* * * * *

(d) * * *

(2) Information concerning incidents which meet the criteria for the following exposure and severity category labels described in paragraph (c)(5) of this section, reports of detections of pesticides in water, and efficacy failure incidents described in § 159.188(a)(1) and (b)(1), may be accumulated for a 30–day period, and submitted to the Agency within 30 days after the end of each 30–day accumulation period for: Humans, H-B, and H-C; Wildlife, W-A; Plants, P-A; Water, G-A; Property Damage, PD-A.

(3) Incidents or reports of detections of pesticides in water meeting all other exposure and severity label categories, information may be accumulated by registrants for 90 days and submitted within 60 days after the end of each 90–day accumulation period.

* * * * *

§ 159.195 [Corrected]

10. On page 49395, in § 159.195, paragraph (b), the word "sectioin" is corrected to read "section," and the phrase "otherwise-reportable" is corrected to read "otherwise reportable."

[FR Doc. 98–16410 Filed 6–18–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

**[OPP–300667; FRL–5794–7]
RIN 2070–AB78**

Buprofezin; Extension of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends time–limited tolerances for residues of the pesticide buprofezin and its metabolite BF 12 in or on citrus fruit at 2.0 parts per million (ppm); dried citrus pulp at 10 ppm; cotton seed at 1.0 ppm; cotton gin byproducts at 20 ppm; milk at 0.03 ppm; and cattle, sheep, hogs, goats, and horse meat at 0.02 ppm, fat at 0.02 ppm, and meat byproducts at 0.5 ppm for an additional 1–year period, to July 31, 1999. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on citrus and cotton. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time–limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective June 19, 1998. Objections and requests for hearings must be received by EPA, on or before August 18, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300667], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300667], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e–mail) to: opp– docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e–mail.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location , telephone number, and e–mail address: Rm. 267, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9356; e–mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of July 30, 1997 (62 FR 40735) (FRL–5732–1), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time–limited tolerance for the residues of buprofezin and its metabolites in or on citrus fruit at 2.0 ppm, dried citrus pulp at 10 ppm; cotton seed at 1.0 ppm; cotton gin byproducts at 20 ppm; milk at 0.03 ppm, and cattle, sheep, hogs, goats, and horse meat at 0.02 ppm, fat at 0.02 ppm, and meat byproducts at 0.5 ppm, with an expiration date of July 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA

requires EPA to establish a time–limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of buprofezin on citrus for this year's growing season to control red scale, which has developed resistance to available controls in some areas of California, and has caused significant losses for affected growers; this situation remains unchanged from that of last year. EPA also received requests from California and Arizona to extend the use of buprofezin on cotton for this year's growing season since the situation has remained the same as last year; a recently–introduced new strain or species of whitefly has caused significant losses to cotton growers and has demonstrated resistance to available controls. After having reviewed the submission, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of buprofezin on citrus for control of red scale and on cotton for control of whiteflies.

EPA assessed the potential risks presented by residues of buprofezin in or on citrus, cotton, and animal commodities. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of July 30, 1997 (62 FR 40735). Based on that data and information considered, the Agency reaffirms that extension of the time–limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time–limited tolerances are extended for an additional 1–year period. Although these tolerances will expire and are revoked on July 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on citrus fruit; dried citrus pulp; cotton seed; cotton gin byproducts; milk; and the meat, fat and meat byproducts of cattle sheep, hogs, goats, and horse, after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 18, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments may be sent directly to EPA at:

opp–docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 51/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300667]. No CBI should be submitted through e–mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends time–limited tolerances that were previously established by EPA under FFDCA section 408(d) in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR

58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low–Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of existing time–limited tolerances does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 4, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.511 [Amended]

2. In § 180.511, by amending the table in paragraph (b) for all of the commodities by changing the expiration dates "7/31/98" to read "7/31/ 99."

[FR Doc. 98–16409 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 96–262, 94–1, 91–213, and 95–72; FCC 97–420]

Universal Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of January 13, 1998, a document making certain changes, on reconsideration, to the Commission's universal service rules. This document corrects those rules.

DATES: Effective on June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Sheryl Todd, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published in FR Doc. 98–541, published in the **Federal Register** of January 13, 1998 (63 FR 2094) a summary of the Commission's Fourth Order on Reconsideration in CC Docket No. 96–45 and Report and Order in CC Docket Nos. 96–45, 96–262, 94–1, 91–213, 95–72, FCC 97–420 (Fourth Order on Reconsideration). On January 29, 1998, the Commission released errata to the Fourth Order on Reconsideration. This correction reflects the changes included in that errata. The full text of the errata is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW, Washington, DC.

In rule FR Doc. 98–541, published on January 13, 1998 (63 FR 2094) make the following corrections.

1. On page 2125, in the third column, in § 54.101, paragraph (a)(1), line 3, remove the period and add, in its place, a semi-colon.

2. On page 2127, in the second column, in § 54.301, revise paragraph (c)(5) to read as follows:

(c) * * *

(5) Corporate Operations Expenses (Accounts 6710, 6720) shall be allocated according to the following factor:

{[Account 2210 Category 3 ÷ (Account 2210 + Account 2220 + Account 2230)}] × (Account 6210 + Account 6220 + Account 6230)} + [(Account 6530 + Account 6610 + Account 6620) × (Account 2210 Category 3 ÷ Account 2001)] ÷ (Account 6210 + Account 6220 + Account 6230 + Account 6310 + Account 6410 + Account 6530 + Account 6610 + Account 6620).

3. On page 2127, in the second column, in § 54.301, in paragraph (c)(6), lines 6 and 7, add the word "Account" in the parentheses before "2210", "2220", and "2230."

4. On page 2127, in the second column, in § 54.301, in paragraph (d) in the heading and in the introductory text, line 2, add the phrase "projected annual unseparated" before "local switching revenue requirement"; in line 3 of the introductory text add the word "by" before "summing."

5. On page 2127, in the second column, in § 54.301, in the first sentence of paragraph (d)(1) revise to read as follows:

(d) * * *

(1) Return on Investment attributable to COE Category 3 shall be obtained by multiplying the average projected unseparated local switching net investment by the authorized interstate rate of return. Projected unseparated local switching net investment shall be calculated as of each December 31 by deducting the accumulated reserves, deferrals and customer deposits attributable to the COE Category 3 investment from the gross investment attributable to COE Category 3. The average projected unseparated local switching net investment shall be calculated by summing the projected unseparated local switching net investment as of December 31 of the calendar year following the filing year and such investment as of December 31 of the filing year and dividing by 2.

6. On page 2127, in the second column, in § 54.301, in the second sentence of paragraph (d)(1) remove the word "Unseparated" and add, in its place, "Projected unseparated".

7. On page 2127, in the second column, in § 54.301, in the third sentence of paragraph (d)(1) remove the phrase "projected unseparated local switching average" and add, in its place, "average projected unseparated local switching" and remove "and the projected unseparated local switching net" and add, in its place, "year and such".

8. On page 2127, in the second column, in § 54.301, in paragraph (d)(3) add the phrase ",excluding depreciation expense," after the word "expenses".

9. On page 2127, in the second column, in § 54.301 revise paragraph (d)(4) to read as follows:

(d) * * *

(4) Federal income tax attributable to COE Category 3 shall be calculated

using the following formula; the accounts listed shall be allocated pursuant to paragraph (c) of this section: [Return on Investment attributable to COE Category 3 − Account 7340 − Account 7500 − Account 7210)] × [Federal Income Tax Rate ÷ (1 − Federal Income Tax Rate)].

10. On page 2128, in the first column, in § 54.303, in paragraph (b)(1) revise to read as follows:

(b) * * *

(1) To calculate the unadjusted base-level of Long Term Support for 1998, the Administrator shall calculate the difference between the projected Common Line revenue requirement of association Common Line tariff participants projected to be recovered in 1997 and the sum of end user common line charges and the 1997 projected revenue recovered by the association Carrier Common Line charge as calculated pursuant to § 69.105(b)(2) of this chapter.

11. On page 2130, in the third column, in § 54.511, in paragraph (c)(1), in lines 7 and 8, remove the phrase "competitive bid" and change the reference from "§ 54.504(a)" to "§ 54.504(a), (b)(3), and (b)(4)"; in paragraph (c)(1)(i), in line 3, add the word "of" between "life" and "the contract"; and in paragraph (c)(1)(ii), in line 7, remove the phrase "that were provided" and add, in its place, "that are provided".

12. On page 2131, in the first column, in § 54.518, in the section heading remove the word "Wide" and add, in its place "Support for wide".

13. On page 2131, in the first column, in § 54.519, in paragraph (a)(3), remove the phrase "Make a good faith effort" and add, in its place, "Take reasonable steps".

14. On page 2131, in the second column, in § 54.604, in paragraph (a), in line 5, remove the phrase "service provider" and add, in its place, "telecommunications carrier".

15. On page 2131, in the third column, in § 54.604, in paragraph (c), in the last line, remove the phrase "service providers" and add, in its place, "telecommunications carriers".

16. On page 2132, in the second column, in § 54.703, in the first sentence of paragraphs (b) and (c) remove the phrase "The following entities will not be required to contribute on the basis of revenues derived from the provision of interstate telecommunications" and add, in its place, "The following entities will not be required to contribute to universal service" and in line 9 of paragraphs (b) and (c) remove the phrase "of video programming" after the word "broadcasters".

17. On page 2132, in the second column, in § 54.703, in paragraph (c), in line 9, remove the comma before "systems integrators" and add in its place, a semi-colon.

Federal Communications Commission.

Lisa Gelb,

Chief, Accounting Policy Division.

[FR Doc. 98–13239 Filed 6–18–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 213, 219, 252, and 253

[DFARS Case 90–D011]

Defense Federal Acquisition Regulation Supplement; Direct Award of 8(a) Contracts

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a Memorandum of Understanding (MOU) dated May 6, 1998, between the Small Business Administration (SBA) and DoD. The MOU streamlines the processing procedures for contract awards under the SBA's 8(a) Program.

DATES: *Effective date:* June 19, 1998.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 18, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 98–D011 in all correspondence related to this issue. E-mail comments should cite DFARS Case 98–D011 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 601–0131.

SUPPLEMENTARY INFORMATION:

A. Background

The SBA's 8(a) Program, named for the section of the Small Business Act (Pub. L. 85–536, as amended) which it implements, helps small disadvantaged businesses compete for Federal contracts. The program authorizes the SBA to enter into all types of contracts with other agencies and award subcontracts for performing these contracts to firms eligible for program participation. The SBA's subcontractors are referred to as "8(a) contractors."

Section 8(a) requires the SBA to function as an intermediary for 8(a) contracts, but permits the SBA to delegate its authority through special agreements. One such agreement is the Memorandum of Understanding dated May 6, 1998, between SBA and DoD. The MOU streamlines the processing procedures for contract awards under the SBA's 8(a) Program by authorizing DoD to award contracts directly to 8(a) contractors; by reducing SBA's response time to a DoD offering and for making an eligibility determination; and by providing a number of other changes to procurement procedures under the 8(a) Program. This interim rule amends Parts 213, 219, 252, and 253 of the DFARS to implement the MOU.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only affects the administrative process established for award of 8(a) contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite 5 U.S.C. 601, *et seq.* (DFARS Case 98–D011), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary to implement a MOU dated May 6, 1998, between the SBA and DoD. The MOU streamlines the processing procedures for contract awards under the SBA's 8(a)

Program by authorizing DoD to award contracts directly to 8(a) concerns; by reducing SBA's response times; and by providing a number of other changes to procurement procedures under the 8(a) Program. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 213, 219, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 213, 219, 252, and 253 are amended as follows:

1. The authority citation for 48 CFR parts 213, 219, 252, and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Subpart 213.70 is added to read as follows:

Subpart 213.70—Simplified Acquisition Procedures Under the 8(a) Program

Sec.
213.7001 Policy.
213.7002 Procedures.
213.7003 Purchase orders.
213.7003–1 Obtaining contractor acceptance and modifying purchase orders.
213.7003–2 Contract clauses.

Subpart 213.70—Simplified Acquisition Procedures Under the 8(a) Program

213.7001 Policy.

For sole source acquisitions under the 8(a) Program, contracting officers may use the procedures established in the Memorandum of Understanding cited in 219.800.

213.7002 Procedures.

For acquisitions that are otherwise appropriate to be conducted using procedures set forth in this part, and also eligible for the 8(a) Program, contracting officers may use—

(1)(i) For sole source purchase orders not exceeding the simplified acquisition threshold, the procedures in 219.804–2(2); or

(ii) For other types of acquisitions, the procedures in subpart 219.8, excluding the procedures in 219.804–2(2); or

(2) The procedures for award to the Small Business Administration in FAR subpart 19.8.

213.7003 Purchase orders

213.7003–1 Obtaining contractor acceptance and modifying purchase orders.

The contracting officer need not obtain a contractor's written acceptance of a purchase order or modification of a purchase order for an acquisition under the 8(a) Program pursuant to 219.804–2(2).

213.7003–2 Contract clauses.

Use the clauses prescribed in 219.811–3(1) and (3) for purchase orders under the 8(a) Program pursuant to the Memorandum of Understanding cited in 219.800.

PART 219—SMALL BUSINESS PROGRAMS

3. Section 219.800 is added to read as follows:

219.800 General.

(a) By Memorandum of Understanding (MOU) dated May 6, 1998, between the Small Business Administration (SBA) and the Department of Defense (DoD), the SBA delegated to the Under Secretary of Defense for Acquisition and Technology its authority under paragraph 8(a)(1)(A) of the Small Business Act (5 U.S.C. 637(a)) to enter into 8(a) prime contracts, and its authority under paragraph 8(a)(1)(B) of the Small Business Act to award the performance of those contracts to eligible 8(a) Program participants. Consistent with the provisions of this subpart, this authority is hereby redelegated to DoD contracting officers within the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia, to the extent that it is consistent with any dollar or other restrictions established in individual warrants. This authority is being delegated and redelegated on a pilot test basis and shall expire on May 5, 2001. Notwithstanding this MOU, contracting officers may elect to award the contract pursuant to the provisions of FAR subpart 19.8.

(b) Awards under the MOU may be awarded directly to the 8(a) participant on either a sole source or competitive basis.

(c) Contracts awarded under the MOU may be awarded directly to the 8(a) participant. An SBA signature on the contract is not required.

4. Sections 219.804–2, 219.804–3, 219.805, 219.805–2, 219.806, 219.808, 219.808–1, 219.811, 219.811–1, 219.811–2, 219.811–3, and 219.812 are added to read as follows:

219.804–2 Agency offering.

(1) For requirements processed under the MOU cited in 219.80 (but see paragraph (2) of this subsection for procedures related to purchase orders that do not exceed the simplified acquisition threshold), the notification to the SBA shall clearly indicate that the requirement is being processed under the MOU. All notifications should be submitted in writing, using facsimile or electronic mail, when possible, and shall specify that—

(i) Under the MOU, an SBA acceptance or rejection of the offering is required within 5 working days of receipt of the offering; and

(ii) (A) For sole source requirements, an SBA acceptance shall include a size verification and a determination of the 8(a) firm's eligibility, and, upon acceptance, the contracting officer will solicit a proposal, conduct negotiations, and make award directly to the 8(a) firm; or

(B) For competitive requirements, upon acceptance, the contracting officer will solicit offers, conduct source selection, and, upon receipt of an eligibility verification, award a contract directly to the selected 8(a) firm.

(2) Under the MOU cited in 219.800, no separate agency offering or SBA acceptance is needed for requirements that are issued under purchase orders that do not exceed the simplified acquisition threshold. After an 8(a) contractor has been identified, the contracting officer shall establish the prices, terms, and conditions with the 8(a) contractor and shall prepare a purchase order consistent with the procedures in part 213 and FAR part 13, including the applicable clauses required by this subpart. No later than the day that the purchase order is provided to the 8(a) contractor, the contracting officer shall provide to the cognizant SBA Business Opportunity Specialist, using facsimile or electronic mail—

(i) A copy of the purchase order; and

(ii) A notice stating that the purchase order is being processed under the MOU. The notice also shall indicate that the 8(a) contractor will be deemed eligible for award and will automatically begin work under the purchase order unless, within 2 working days after SBA's receipt of the purchase order, the 8(a) contractor and the contracting officer are notified that the 8(a) contractor is ineligible for award.

219.804–3 SBA acceptance.

For requirements processed under the MOU cited in 219.800, SBA's acceptance is required within 5 working days (but see 219.804–2(2) for purchase

orders that do not exceed the simplified acquisition threshold).

219.805 Competitive 8(a).

219.805–2 Procedures.

(c) For requirements processed under the MOU cited in 219.800—

(i) For sealed bid and negotiated acquisitions, the SBA will determine the eligibility of the firms and will advise the contracting officer within 2 working days after its receipt of a request for an eligibility determination; and

(ii) For negotiated acquisitions, the contracting officer may submit a request for an eligibility determination on as many as three of the most highly rated offerors.

219.806 Pricing the 8(a) contract.

For requirements processed under the MOU cited in 219.800—

(1) The contracting officer shall obtain cost or pricing data from the 8(a) contractor, if required by FAR subpart 15.4; and

(2) SBA concurrence in the negotiated price is not required. However, except for purchase orders not exceeding the simplified acquisition threshold, the contracting officer shall notify the SBA prior to withdrawing a requirement from the 8(a) Program due to failure to agree on price or other terms and conditions.

219.808 Contract negotiations.

219.808–1 Sole source.

For requirements processed under the MOU cited in 219.800—

(1) The agency may negotiate directly with the 8(a) contractor. The contracting officer is responsible for initiating negotiations;

(2) The 8(a) contractor is responsible for negotiating within the time established by the contracting officer;

(3) If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the contracting officer may, after notifying the SBA, proceed with the acquisition from other sources;

(4) If requested by the 8(a) contractor, the SBA may participate in negotiations; and

(5) SBA approval of the contract is not required.

219.811 Preparing the contracts.

219.811–1 Sole source.

(a) Awards under the MOU cited in 219.800 may be made directly to the 8(a) contractor and, except as provided in paragraph (b) of this subsection and in 219.811–3, award documents shall be prepared in accordance with procedures established for non-8(a) contracts, using any otherwise authorized award forms. The "Issued by" block shall identify the awarding DoD contracting office. The contractor's name and address shall be that of the 8(a) participant.

(b) Use the following alternative procedures for direct awards made under the MOU cited in 219.800:

(i) Cite 10 U.S.C. 2304(c)(5) as the authority for use of other than full and open competition;

(ii) Include the clause at 252.219–7009, which allows for direct award to the 8(a) contractor, and identify the cognizant SBA district office for the 8(a) contractor;

(iii) No SBA contract number is required; and

(iv) Do not require an SBA signature on the award document.

219.811–2 Competitive.

Awards made under the MOU cited in 219.800 shall be prepared in accordance with 219.811–1.

219.811–3 Contract clauses.

(1) Use the clause at 252.219–7009, Section 8(a) Direct Award, instead of the clauses at FAR 52.219–11, Special 8(a) Contract Conditions, FAR 52.219–12, Special 8(a) Subcontract Conditions, and FAR 52.219–17, Section 8(a) Award, in solicitations and contracts processed in accordance with the MOU cited in 219.800.

(2) Use the clause at FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, with 252.219–7010, Alternate A, in solicitations and contracts processed in accordance with the MOU cited in 219.800.

(3) Use the clause at 252.219–7011, Notification to Delay Performance, in solicitations and purchase orders issued in accordance with 219.804–2(2).

219.812 Contract administration.

(d) Awards under the MOU cited in 219.800 are subject to Section 407 of Pub. L. 100–656. These contracts include the clause at 252.219–7009, Section 8(a) Direct Award, which requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Sections 252.219–7009, 252.219–7010, and 252.219–7011 are added to read as follows:

252.219–7009 Section 8(a) Direct Award.

As prescribed in 219.811–3(1), use the following clause:

Section 8(a) Direct Award (Jun 1998)

(a) This contract is issued as a direct award between the contracting office and the 8(a) Contractor pursuant to the Memorandum of Understanding dated May 6, 1998, between the Small Business Administration (SBA) and the Department of Defense. Accordingly, the SBA is not a party to this contract. SBA does retain responsibility for 8(a) certification, for 8(a) eligibility determinations and related issues, and for providing counseling and assistance to the 8(a) Contractor under the 8(a) Program. The cognizant SBA district office is:

_____

_____

_____

_____

[*To be completed by the Contracting Officer at the time of award*]

(b) The contracting office is responsible for administering the contract and for taking any action on behalf of the Government under the terms and conditions of the contract; provided that the contracting office shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting office also shall coordinate with the SBA prior to processing any novation agreement. The contracting office may assign contract administration functions to a contract administration office.

(c) The Contractor agrees that—

(1) It will notify the Contracting Officer, simultaneous with its notification to the SBA (as required by SBA's 8(a) regulations at 13 CFR 124.308), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with Section 407 of Pub. L. 100–656, transfer of ownership or control shall result in termination of the contract for convenience, unless the SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and

(2) It will not subcontract the performance of any of the requirements of this contract without the prior written approval of the SBA and the Contracting Officer.

(End of clause)

252.219–7010 Alternate A.

Alternate A (Jun 1998)

As prescribed in 219.811–3(2), substitute the following paragraph (c) for paragraph (c) of the clause at FAR 52.219–18:

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

252.219–7011 Notification to Delay Performance.

As prescribed in 219.811-3 (3), use the following clause NOTIFICATION TO DELAY PERFORMANCE (JUN 1998)

The Contractor shall not begin performance under this purchase order until 2 working days have passed from the date of its receipt. Unless the Contractor receives notification from the Small Business Administration that

it is ineligible for this 8(a) award, or otherwise receives instructions from the Contracting Officer, performance under this purchase order may begin on the third working day following receipt of the purchase order. If a determination of ineligibility is issued within the 2-day period, the purchase order shall be considered canceled.

(End of clause)

PART 253—FORMS

6. Section 253.204–70 is amended by revising paragraph (d)(5)(iv)(B)(*2*) to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(d) * * *

(5) * * *

(iv) * * *

(B) * * *

(*2*) *Code B—Section 8(a).* Enter code B if the contract was awarded to—

(i) The Small Business Administration (SBA) under Section 8(a) of the Small Business Act (FAR subpart 19.8); or

(ii) An 8(a) contractor under the direct award procedures at 219.811.

* * * * *

7. Section 253.204–71 is amended by revising paragraph (g)(2)(ii)(A) to read as follows:

253.204–71 DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less.

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(A) Block E2a, Through SBA-Section 8(a). Enter actions with the Small Business Administration pursuant to Section 8(a) of the Small Business Act (FAR subpart 19.8) or under the 8(a) direct award procedures at 219.811.

* * * * *

[FR Doc. 98–16282 Filed 6–18–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1, Amdt. 1–293]

Organization and Delegation of Powers and Duties; Delegation to the Assistant Secretary for Budget and Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Assistant Secretary for Budget and Programs the authority to make appropriate Congressional notification pursuant to The National Energy Conservation Policy Act, as amended (42 U.S.C. 8287 et seq.). The Act requires the agency head to provide Congressional notification for awards of Energy Savings Performance Contracts (ESPCs) with cancellation ceilings in excess of $750,000. In order that the Code of Federal Regulations reflect the delegation to the Assistant Secretary for Budget and Programs regarding Congressional notification for ESPC awards, an addition to section 1.58 of Title 49 is necessary.

EFFECTIVE DATE: June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Lesley Field, Office of Acquisition and Grant Management, Department of Transportation, (202) 366–4960, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Pursuant to The National Energy Conservation Policy Act, the head of the agency is required to provide Congressional notification for ESPCs with cancellation ceilings in excess of $750,000 (42 U.S.C. 8287(a)(2)(D)). The Act authorizes federal agencies to enter into multiyear ESPCs for a period not to exceed 25 years, without funding of cancellation charges before cancellation, provided certain conditions are met. One of these conditions is that appropriate notice be given to Congress 30 days prior to award of a contract that contains a cancellation ceiling in excess of $750,000.

Delegating the notification function to the Assistant Secretary for Budget and Programs will expedite the notification process. Since the notification in question is to the Appropriation Committees and Authorizing Committees, the Budget Office is well situated to implement the notification requirement as it handles contacts with these committees on many other Departmentwide budgetary issues.

This rule is being published as a final rule and is being made effective on the date of publication. It relates to departmental management, organization, procedure, and practice. For this reason, the Secretary finds good cause, under 5 U.S.C. 553(b) and (d)(3), that notice, and public procedure on the notice are unnecessary and that this rule should be made effective on the date of publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub.L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

§ 1.58 [Amended]

2. Section 1.58 is amended by adding a new paragraph (h) to read as follows:

§ 1.58 Delegations to Assistant Secretary for Budget and Programs.

The Assistant Secretary for Budget and Programs is delegated authority to:

* * * * *

(h) Provide Congressional Notification for Energy Savings Performance Contracts (ESPCs) with cancellation ceilings in excess of $750,000, pursuant to the National Energy Conservation Policy Act, as amended, 42 U.S.C. 8287 et seq.

Issued in Washington, DC this 15th day of June, 1998.

Rodney Slater,

Secretary of Transportation.

[FR Doc. 98–16281 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1, Amdt. 1–294]

Organization and Delegation of the Powers and Duties Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation delegates to the Commandant, United States Coast Guard, the authority contained in the National Defense Authorization Act for Fiscal Year 1998 to allow personnel to participate in management of certain non-Federal entities. Participation under this authority includes acting as an officer or voting board member. The term "Non-Federal entities" includes, but is not limited to, the following organizations: Coast Guard Mutual Assistance, the National Collegiate Athletics Association, the Coast Guard Academy Athletic Association, the Freedom Football Conference, the New England Women's and Men's Athletic Conference, the Pilgrim Conference, the

United States Olympic Committee, the New England Association of Schools and Colleges, the International Association of Management Education, the American Medical Association, the Aerospace Medical Association, the American Public Health Association, and the American Dental Association.

EFFECTIVE DATE: June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Michael J. Lodge, Office of the General Law (G–LGL), (202) 267–6921, United States Coast Guard, 2100 Second Street, SW, Washington, DC 20593; or Ms. Gwynneth Radloff, Office of General Counsel, C–50, (202) 366–9305, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Pub. L. 105–85 is the National Defense Authorization Act for Fiscal Year 1998 (Act). Section 593 of the Act amends Title 10 U.S. Code Chapters 53 and 81 by adding sections 1033 and 1589. These two new sections authorize and direct actions by the Secretary, on behalf of the Coast Guard. This rule amends 49 CFR 1.46, by adding a new paragraph (ooo) to reflect the delegation of the Secretary's authority under the National Defense Authorization Act for Fiscal Year 1998 (10 U.S.C. Chapters 53 and 81).

This rule is published as a final rule and is effective on the date of publication. It relates to departmental management, organization, procedure, and practice. For this reason, The Secretary, for good cause, finds, under 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3), that notice, and the opportunity for public comment before the effective date of the rule are unnecessary and that the rule should be made effective in less than 30 days after publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.46 is amended by adding the following paragraph (ooo) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(ooo) Carry out the functions and responsibilities and exercise the authorities vested in the Secretary by the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85, pertaining to authority for personnel to participate in management of certain non-Federal entities (10 U.S.C. Chapters 53 and 81).

Issued at Washington, DC this 11th day of June, 1998.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–16380 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–14–P

Proposed Rules

Federal Register
Vol. 63, No. 118
Friday, June 19, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–9]

Proposed Establishment of Class E Airspace; Villa Rica, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Villa Rica, GA. A Global Positioning System (GPS) Runway (RWY) 10 Standard Instrument Approach Procedure (SIAP) has been developed for Stockmar Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Stockmar Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98–ASO–9, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

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) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ASO–9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Villa Rica, GA. A GPS RWY 10 SIAP has been developed for Stockmar Airport. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Stockmar Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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, when promulgated, 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 7400.9D, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

Spruce Creek Airport

(Lat. 29°04'49" N, long. 81°03'27" W)

Ormond Beach Municipal Airport

(Lat. 29°18'04" N, long. 81°06'50" W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 10-mile radius of Daytona Beach International Airport, within a 6.4-mile radius of Spruce creek Airport and within a 7.3-mile radius of Ormond Beach Municipal Airport.

* * * * *

Issued in College Park, Georgia, on June 10, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–16354 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 334

[Docket No. 78N–036L]

RIN 0910–AA01

Laxative Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Tentative Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is reopening the administrative record and proposing to amend the tentative final monograph (proposed rule) for over-the-counter (OTC) laxative drug products to reclassify the stimulant laxative ingredients aloe, bisacodyl, cascara sagrada, and senna (including sennosides A and B) from Category I (generally recognized as safe and effective and not misbranded) to Category III (further testing is required). FDA is issuing this proposed rulemaking after considering data and information on the safety of bisacodyl, senna, and two related stimulant laxative ingredients, danthron and phenolphthalein. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Submit written comments by September 17, 1998. Written comments on the agency's economic impact determination by September 17, 1998. New data by June 21, 1999. Comments on the new data by August 19, 1999.

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

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 21, 1975 (40 FR 12902), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC laxative, antidiarrheal, emetic, and antiemetic drug products, together with the recommendations of the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in these classes. In the advance notice of proposed rulemaking, the Panel recommended Category I status for the OTC stimulant laxative ingredients aloe, bisacodyl, cascara sagrada preparations, danthron, phenolphthalein, and senna preparations (40 FR 12902 at 12908 to 12910). The agency concurred with the Panel's Category I classification of these ingredients in the tentative final monograph published in the **Federal Register** of January 15, 1985 (50 FR 2124 at 2152 to 2156).

II. Danthron and Phenolphthalein

In the **Federal Register** of September 2, 1997 (62 FR 46223), the agency reopened the administrative record for this rulemaking, discussed the carcinogenic risk of danthron and phenolphthalein, and proposed to reclassify these two anthraquinone laxative ingredients from Category I to Category II (not generally recognized as safe and effective or misbranded). The agency is evaluating the data and comments submitted in response to that proposal and will discuss this subject further in a future issue of the **Federal Register**.

III. Bisacodyl

The FDA Center for Drug Evaluation and Research (CDER) Carcinogenicity Assessment Committee (CAC) has recommended that the anthraquinone laxatives (aloe, cascara sagrada, and senna) and bisacodyl be tested in the standard battery of genotoxicity tests and under the test conditions by which phenolphthalein was found to be positive (Ref. 1). Phenolphthalein and bisacodyl are diphenylmethane derivatives with a similar chemical structure and pharmacological characteristics. The CAC recommended the Syrian Hamster Embryo (SHE) cell transformation assay as an early screen for bisacodyl and, based on its results, either the p53 transgenic mouse assay or another in vivo alternative assay, as appropriate, follow. Two-year carcinogenicity studies would then be contingent upon the results of these assays.

The agency has informed industry that additional testing for bisacodyl will be necessary (Ref. 2). Subsequently, industry submitted data from two mutagenicity studies (Ames test and rat bone marrow micronucleus assay) and a chromosomal aberration study in Chinese hamster ovary cells. The agency has reviewed these studies and determined that the results of all of the tests were negative (Ref. 3). Phenolphthalein was tested in two of these tests and was found negative in one (Ames test). However, findings from further studies indicated that phenolphthalein presents a potential carcinogenic risk. Thus, because of the chemical similarity of bisacodyl to phenolphthalein and the lack of previous carcinogenicity testing of bisacodyl, the agency is requesting that bisacodyl undergo further testing to assess its carcinogenic potential. Industry has completed dose range finding studies intended to select bisacodyl doses for a 6-month oral gavage carcinogenicity study in the p53 transgenic mouse (Ref. 4).

IV. Senna

The agency has reviewed metabolic, genotoxicity, and carcinogenicity data on senna and its components (Ref. 5). Senna contains a number of components, including but not limited to: Sennosides A and B, sennosides C and D, rhein (including rhein anthrone-8-monoglucoside and rhein-8-monoglucoside), chrysophanol, emodin, and aloe-emodin. The metabolic studies show that varying amounts of senna and its metabolites are absorbed into the

systemic circulation. The data do not present conclusive absorption information, nor indicate whether any of the metabolites present a safety hazard, if absorbed.

The agency believes that there are sufficient mutagenicity (Ames test) data in the literature on the senna extracts sennosides A and B, aloe-emodin, chrysophanol, and emodin. The data indicate that sennosides A and B are negative, while the senna extracts aloe-emodin, emodin, and chrysophanol are positively genotoxic (Ref. 5). Thus, senna preparations containing any of these components (or kaempferol or quercetin) may have mutagenic properties. These potentially mutagenic anthrones are found in the dried leaves and pods of senna. Therefore, until manufacturers can show that commercially available senna preparations do not contain mutagenic/genotoxic components, the agency is unable to state that sennosides A and B do not pose a relative risk to humans.

The agency also reviewed a 2-year carcinogenicity study with sennosides in the rat (Ref. 6). However, the agency found this study deficient because of the limited and incomplete histopathologic examination of tissues (Ref. 5). The agency concludes that further testing is necessary to assess the carcinogenic potential of senna products. In these studies, specific analysis of the test substance should be done to enable quantitative estimation of each component of the preparation. The senna dose selection should be based on a 1-month dose ranging study for an alternative assay or a 3-month dose ranging study for a 2-year carcinogenicity study in the rodent species and strains selected for the carcinogenicity studies. Histopathologic examination of all tissues from all groups of animals should be conducted (Ref. 5).

V. Aloe and Cascara Sagrada Preparations

Aloe and cascara sagrada are other anthraquinone ingredients. Cascara sagrada ingredients included in the tentative final monograph are casanthranol, cascara fluidextract aromatic, cascara sagrada bark, cascara sagrada extract, and cascara sagrada fluidextract (50 FR 2124 at 2152). The agency has not received any mutagenicity, genotoxicity, or carcinogenicity data for these ingredients. The agency concludes that these ingredients need to have these types and other toxicity data using tests similar to those used and found positive for phenolphthalein.

VI. References

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

1. Comment No. MM13, Docket No. 78N–036L, Dockets Management Branch.

2. Letter from D. Bowen, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association (NDMA), coded LET111, Docket No. 78N–036L, Dockets Management Branch.

3. Letter from D. Bowen, FDA, to L. Totman, NDMA, coded LET175, Docket No. 78N–036L, Dockets Management Branch.

4. Comment No. C178, Docket No. 78N–036L, Dockets Management Branch.

5. Letter from D. Bowen, FDA, to J. Conover, The Purdue Frederick Co., coded LET173, Docket No. 78N–036L, Dockets Management Branch.

6. Comment No. LET113, Docket No. 78N–036L, Dockets Management Branch.

VII. Summary of the Agency's Changes to the Proposed Rule

The agency is proposing to reclassify the stimulant laxative ingredients aloe, bisacodyl, cascara sagrada (including casanthranol), and senna (including sennosides A and B) from Category I (monograph) to Category III (more data needed). The agency recommends that persons interested in testing these drugs consult the agency about carcinogenicity study requirements and protocols before initiating any studies. If these data are not provided or are inadequate for any of these ingredients, these ingredients will be placed in Category II (nonmonograph) in a final rule. The agency will add any of these ingredients that become nonmonograph to the list of stimulant laxatives in § 310.545(a)(12)(iv) (21 CFR 310.545(a)(12)(iv)) in new § 310.545(a)(12)(iv)(C). The agency will also amend proposed §§ 334.18, 334.30, 334.32, 334.60, 334.66, and 334.80 to remove any of these ingredients and their labeling if any of these ingredients are not included in the final monograph.

VIII. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). 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). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this proposed rule is to establish conditions under which the OTC stimulant laxative ingredients aloe, bisacodyl, cascara sagrada, and senna are or are not generally recognized as safe and effective. If the ingredients are determined to be safe and effective, no product reformulation will be necessary. If the ingredients are not determined to be safe and effective, product reformulation will be needed. There are a number of other laxative ingredients in proposed part 334 (50 FR 2124 at 2152) or one of these ingredients, if found safe and effective, that could be used if product reformulation becomes necessary.

The cost to reformulate a product will vary greatly depending on the nature of the change in formulation, the product, the process, and the size of the firm. Because of the large number of monograph active ingredients available for substitution, no manufacturer should need to change its dosage form; however, a manufacturer would have to redo the validation (product, process, new supplier), conduct stability tests, change master production records, and, for some dosage forms, conduct palatability tests. Competitive market forces and increased public awareness of a potential safety hazard of these ingredients would most likely lead all manufacturers to move to alternative products over time.

Manufacturers of these products will also incur costs to relabel their products to reflect the new formulation. The agency obtained estimates of relabeling costs for the type of changes required by this proposed rule ranging from $2,700 to $10,000 per standard stock keeping unit (SKU) (individual products, packages, and sizes) for nationally branded products and from $500 to $1,500 per SKU for private label products. The agency estimates the number of SKU's that will need to be relabeled as a result of reformulation as between 500 and 1,000, depending if

some or all of the involved ingredients are not included in the final monograph for OTC laxative drug products. Most of these label changes will be made by private label manufacturers that tend to use simpler and less expensive labeling.

Finally, some manufacturers that do not reformulate and validate their products by the effective date of the final rule may incur a loss of revenue. Nevertheless, because of the large number of substitute products that are available, many in the same dosage form, there should be no significant drop in the overall consumption of laxative drug products. Some manufacturers already have other laxative products. If products need to be reformulated eventually, manufacturers will be able to retain the same brand names. Consumer loyalty to these brands should lessen the revenue losses to these firms.

Because these products must be manufactured in compliance with the pharmaceutical current good manufacturing practices (21 CFR parts 210 and 211), all firms have the necessary skills and personnel to perform the tasks of reformulation, validation, and relabeling either in-house or by contractual arrangement. The rule will not require any new reporting and recordkeeping activities. No additional professional skills are needed. There are no other Federal rules that duplicate, overlap, or conflict with this rule.

Small business impact. The U.S. Small Business Administration designates an entity as small if it employs less than 750 employees. The agency does not believe that any small firms will be conducting genotoxicity or carcinogenicity studies on any of the laxative ingredients included in this proposal. Small firms that may have to reformulate their products could incur significant costs as a result of this rule. The agency is attempting to reduce this burden by keeping industry informed of the findings of new research on these products through public meetings and letters to manufacturers of products containing these ingredients. In this manner, manufacturers should be aware of which ingredients are likely to be included or excluded from the final monograph and can make their marketing decisions accordingly.

The agency considered but rejected the following alternatives: (1) Fewer testing requirements, and (2) an exemption from coverage for small entities. The agency does not consider either of these approaches acceptable because they do not assure that consumers will have safe and effective OTC laxative drug products at the earliest possible time. The agency does not believe that there are any significant alternatives to the proposed rule that would adequately provide for the safe and effective use of these OTC drug products.

The agency expects that this proposed rule will not be economically significant under Executive Order 12866, nor would it impose an Unfunded Mandate (as that term is described in the Unfunded Mandate Act). The agency also believes that it is undertaking steps to reduce the burden to small entities. Nevertheless, some entities may incur significant impacts, especially manufacturers that may have to reformulate their products and, to a lesser extent, private label manufacturers that provide labeling for a number of the affected products. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

Finally, the agency specifically invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC laxative drug products containing aloe, bisacodyl, cascara sagrada, and senna, particularly the costs associated with reformulation. Comments regarding the impact of this rulemaking on OTC laxative drug products containing any of these ingredients should be accompanied by appropriate documentation. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that labeling requirements related to this proposed rule are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, this proposed rulemaking involves labeling that is a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

X. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that is categorically excluded from the preparation of an environmental assessment because these actions, as a class, will not result in the production or distribution of any substance and therefore will not result in the production of any substance into the environment.

XI. Request for Comments

Interested persons may, on or before September 17, 1998, submit written comments on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before September 17, 1998. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may also submit new data demonstrating the safety of any of those conditions not classified in Category I on or before June 21, 1999. Written comments on the new data may be submitted on or before August 19, 1999. Three copies of all data and comments should be submitted as stated previously, and received data and comments may be seen as stated previously. In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on August 19, 1999. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner of Food and Drugs finds good cause has been shown that warrants earlier consideration.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 334

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 310 and 334 (as proposed in the **Federal Register** of January 15, 1985 (50 FR 2124), September 2, 1993 (58 FR 46589), and September 2, 1997 (62 FR 46223)) be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

2. Section 310.545 is amended by adding new paragraphs (a)(12)(iv)(C) and (d)(30), and by revising paragraph (d) introductory text to read as follows:

§ 310.545 Drug products containing active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(12) * * *

(iv)(C) *Stimulant laxatives*—Approved as of (date of publication in the Federal Register).

Aloe

Bisacodyl

Cascara sagrada in any form (e.g., casanthranol, cascara fluidextract aromatic, cascara sagrada bark, cascara sagrada extract, cascara sagrada fluidextract)

Senna in any form (e.g., senna fluidextract, senna fruit extract, senna leaf powder, senna pod concentrate, senna syrup, or sennosides A and B)

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(30) of this section.

* * * * *

(30) (Date 6 months after date of publication in the Federal Register), for products subject to paragraph (a)(12)(iv)(C) of this section.

PART 334—LAXATIVE DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 334 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 334.18 [Amended]

4. Section 334.18 *Stimulant laxative active ingredients* is amended by removing paragraphs (a), (b), (c)(1) through (c)(5), and (f) and redesignating paragraphs (d) and (e) as paragraphs (a) and (b), respectively.

§ 334.30 [Amended]

5. Section 334.30 *Permitted combinations of active laxative ingredients* is amended by removing and reserving paragraphs (c), (e), (g), (h), and (i).

§ 334.32 [Amended]

6. Section 334.32 *Bowel cleansing systems* is amended by removing and reserving paragraph (a).

§ 334.60 [Amended]

7. Section 334.60 *Labeling of stimulant laxative drug products* is amended by removing paragraphs (b)(3), (d)(1) through (d)(7), (d)(10), and (d)(11), by removing and reserving paragraph (c), and by redesignating paragraphs (d)(8) and (d)(9) as paragraphs (d)(1) and (d)(2), respectively.

§ 334.66 [Amended]

8. Section 334.66 *Labeling of bowel cleansing systems identified in § 334.32* is amended in paragraph (a) by removing "§ 334.32(a)" and adding in its place "§ 334.32"and by removing and reserving paragraphs (c)(1) and (d)(3)(iii)(A).

§ 334.80 [Amended]

9. Section 334.80 *Professional labeling* is amended in paragraph (a)(2) by removing the words "or bisacodyl identified in § 334.18(b)", by removing paragraphs (a)(4) and (c)(5) through (c)(10), and by adding the word "or" after "§ 334.16(a)" in paragraph (a)(2), and by redesignating paragraphs (c)(11), (c)(12), and (c)(13) as paragraphs (c)(5), (c)(6), (c)(7), respectively.

Dated: June 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16290 Filed 6–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209035–86]

RIN 1545–AI32

Foreign Liquidations and Reorganizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Amendment to notice of proposed rulemaking.

SUMMARY: This document removes from an existing (1991) notice of proposed rulemaking the special (August 26, 1991) effective date rule for the definition of the all earnings and profits amount. The IRS and the Treasury Department believe that issues regarding the all earnings and profits amount should be studied: thus, when final regulations under section 367(b) are issued with respect to the all earnings and profits amount, such regulations will have a prospective effective date. This modification may affect domestic corporations in connection with an acquisition of a foreign corporation in a liquidation described in section 332 or in an asset acquisition described in section 368(a)(1)).

DATES: Written comments must be received by September 17, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209035–86), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209035–86), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip L. Tretiak at (202) 622–3860 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 367(b) was enacted in its current form by the Tax Reform Act of 1976. On December 27, 1977, proposed and temporary regulations §§ 7.367(b)–1 through 7.367(b)–12 were adopted (TD 7530, 1978–1 C.B. 92). Prior to the issuance of a notice of proposed rulemaking in 1991 (the 1991 proposed regulations), discussed below, the regulations under section 367(b) were amended on several occasions. The 1991 proposed regulations, which were published in the Federal Register on August 26, 1991 (56 FR 41993), propose to completely revise the regulations under section 367(b), as well as the rules under section 367(a) with respect to certain transfers of stock or securities by U.S. persons to foreign corporations.

Section 1.367(b)–6(a) of the proposed regulations provides that the rules contained in the section 367(b) proposed regulations will be effective for exchanges that occur on or after the date that is 30 days after final regulations are published. However, an exception to the general effective date provides that § 1.367(b)–2(d) (relating to the definition and computation of the "all earnings and profits amount") is effective for exchanges that occur on or after August 26, 1991.

A package of final regulations, published elsewhere in this issue of the Federal Register, contains final rules with respect to the section 367(a) portion of the 1991 proposed regulations (to the extent that such rules were not previously finalized) and final

rules with respect to the section 367(b) portion of the 1991 proposed regulations, but generally only to the extent that a particular transaction is subject to both sections 367(a) and (b). The final regulations do not address the all earnings and profits amount.

The IRS and the Treasury Department believe that issues regarding the all earnings and profits amount should be studied before final regulations are promulgated. Moreover, the IRS and the Treasury Department believe that the final regulations concerning the all earnings and profits amount should not be subject to a special effective date. Thus, this notice of proposed rulemaking removes from the 1991 proposed regulations the special (August 26, 1991) effective date rule for the definition of the all earnings and profits amount. When final regulations under section 367(b) are issued with respect to the all earnings and profits amount, such regulations will have a prospective effective date.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that this regulation does not have a significant impact on small entities because this regulation, which only contains a limited effective date rule, impacts only U.S. corporations with investments in foreign corporations. Thus, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the Internal Revenue Service. All comments will be available for public inspection and copying.

Drafting Information

The principal author of these proposed regulations is Philip L. Tretiak of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income tax, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805. * * *

§ 1.367(b)–6 [Amended]

Par. 2. Section 1.367(b)–6, as proposed to be added on Monday, August 26, 1991 (56 FR 42015), is amended by removing the last sentence of paragraph (a).

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–15453 Filed 6–18–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–98–033]

RIN 2115–AE46

Special Local Regulations; St. Johns River, Jacksonville, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the permanent special local regulations for the Annual Greater Jacksonville Kingfish Tournament, by increasing the size of the No Wake Zone on the waters of the St. Johns River and establishing the annual date of the event during the second full week of July. The increased size of the zone is needed to safeguard the increasingly larger number of participants and other vessels transiting the St. Johns River and Sisters Creek during the Annual Greater Jacksonville Kingfish Tournament. Vessel operators should use minimum speed in this area to avoid creating wakes, unless otherwise authorized by the Captain of the Port.

DATES: Comments must be received on or before July 9, 1998.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Mayport, 4200 Ocean Street, Mayport, FL 32233, or may be delivered to the operations office at the same address between 7:30 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: Ensign Gary Watson, Group Mayport, Tel: (904) 247–7318.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names, addresses, identify this rulemaking (CGD07–98–033), and the specific section of this proposal to which their comments apply, and give reasons for each comment.

The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES** and stating why a hearing would be beneficial. The comment period of twenty days is justified because the persons affected by this rulemaking are within the greater Jacksonville area and additional efforts are being made to notify that community of the rulemaking so they may be able to comment within the shortened period.

Background and Purpose

The event requiring this regulation is the Annual Greater Jacksonville Kingfish Tournament, which will be held annually during the second full week in July. It will begin in 1998 on July 14 in the Sisters Creek Marina, Sisters Creek, Jacksonville, Florida, at 6 a.m. and terminate at 4 p.m. each day until July 19. Due to the large number of participants and spectator craft, a larger No Wake Zone has been proposed on the waters of the St. Johns River lying between the eastern boundary formed by St. Johns River Lighted Buoy 7 position 30–23.56N, 081–23.04W, and Lighted Buoy 8 position 30–24.03N, 081–23.01W, and the western boundary formed by Lighted Buoy 25 position 30–23.40N, 081–28.26W, and Short Cut Light 26 position 30–23.46N, 081–28.16W with the northern and southern boundaries formed by the banks of the St. Johns River and extended north from the boundary formed by the St. Johns River and the Intracoastal Waterway, Sisters Creek, to Lighted Buoy 83 on the

Intracoastal Waterway. The zone is needed to safeguard vessels transiting in the St. Johns River and Sisters Creek during this event. This event will occur annually and the date and times will be published in the **Federal Register** and in a Local Notice to Mariners. During each of these events, local law enforcement agents will be on scene to assist in enforcing the No Wake Zone and to monitor vessel traffic. This regulation is issued pursuant to 33 U.S.C. 1233 through 1236 as set out in the authority citation for all of Part 100.

Regulatory Evaluation

This proposed 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 proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Only a small amount of recreational and fishing vessel traffic is expected to be disrupted by the increased size of the No Wake Zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposed rule would 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 field and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the No Wake Zone will only be in effect in a limited area for approximately 60 hours each year.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and has concluded under Figure 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis checklist will be completed during the comment period.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The Authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. Revise § 100.710 to read as follows:

§ 100.710 Annual Greater Jacksonville Kingfish Tournament; Jacksonville, Florida.

(a) *Regulated area.* A regulated area is established for the waters of the St. Johns River lying between a eastern boundary formed by St. Johns River Lighted Buoy 7 (LLNR (7145) position 30–23.56N, 081–23.04W, and Lighted Buoy 8 (LLNR 7150) position 30–24.03N, 081–23.01W, and the western boundary formed by Lighted Buoy 25 (LLNR 7305) position 30–23.40N, 081–28.26W, and Short Cut Light 26 (LLNR 7310) position 30–23.46N, 081–28.16W with the northern and southern boundaries formed by the banks of the St. Johns River and extended north from the boundary formed by the St. Johns River and the Intracoastal Waterway, Sisters Creek, to Lighted Buoy 83 (LLNR 38330) on the Intracoastal Waterway.

(b) *Regulations.* Vessels operating in the regulated area must operate at No Wake Speed.

(c) *Dates.* This section is effective annually during the second full week of July. Coast Guard Group Mayport will issue a Local Notice to Mariners each year announcing future specific times and dates of the event. In 1998, the event will occur from July 14 to July 19 from 6 a.m. to 4 p.m. each day.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 98–16241 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[ID 21–7001; FRL–6113–4]

Designation of Areas for Air Quality Planning Purposes: State of Idaho and the Fort Hall Indian Reservation

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this action, the Environmental Protection Agency (EPA) proposes to revise the designation for particulate matter with an aerodynamic diameter of less than a nominal 10 microns (PM–10) for the Power-Bannock Counties PM–10 nonattainment area by creating two distinct nonattainment areas that together cover the identical geographic area as the original nonattainment area. The revised areas would be divided at the boundary between State lands and the Fort Hall Indian Reservation, with one revised area comprised of State lands and the other revised area comprised of lands within the exterior boundary of the Fort Hall Indian Reservation. The redesignation is based upon a request from the State of Idaho, which is supported by monitoring and modeling information. Both areas would retain PM–10 nonattainment designations and classification as moderate PM–10 nonattainment areas as a result of this proposed action.

In a concurrent notice of proposed rulemaking published today, EPA is proposing to make a finding that the proposed PM–10 nonattainment area within the exterior boundary of the Fort Hall Indian Reservation failed to attain the National Ambient Air Quality Standards (NAAQS) for PM–10 by the applicable attainment date. Such a finding would, by operation of law, result in the reclassification of the proposed PM–10 nonattainment area within the Fort Hall Indian Reservation to a serious PM–10 nonattainment area.

EPA recently established a new standard for particulate matter with a diameter equal to or less than 2.5 microns and also revised the existing PM–10 standards. Today's proposal,

however, does not address these new and revised standards.

DATES: All written comments should be submitted to Steven K. Body, EPA Region 10, [Docket #ID 21–7001], at the address indicated below by July 20, 1998.

ADDRESSES: Information supporting this action can be found in Public Docket No. [#ID 21–7001]. The docket is located at EPA, Region 10, 1200 Sixth Avenue, Seattle WA 98101. The docket may be inspected from 9:00 am to 4:30 pm on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA Region 10, Office of Air Quality (OAQ–107), EPA, Seattle, Washington; (206) 553–0782.

I. Background

A portion of Power and Bannock Counties in Idaho is designated nonattainment for PM–10 [1] and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act upon enactment of the Clean Air Act Amendments of 1990 (Act or CAA). *See* 40 CFR 81.313 (PM–10 Initial Nonattainment Areas); *see also* 55 FR 45799 (October 31, 1990); 56 FR 11101 (March 15, 1991); 56 FR 37654 (August 8, 1991); 56 FR 56694 (November 6, 1991).[2] For an extensive discussion of the history of the designation of the Power-Bannock Counties PM–10 nonattainment area, please refer to the discussion at 61 FR 29667, 29668–29670 (June 12, 1996).

The Power-Bannock Counties PM–10 nonattainment area covers approximately 266 square miles in south central Idaho and comprises both trust and fee lands within the exterior boundary of the Fort Hall Indian Reservation and State lands in portions of Power and Bannock Counties. Approximately 75,000 people live in the nonattainment area, most of whom live in the cities of Pocatello and Chubbuck, which are located near the center of the nonattainment area on State lands. Approximately 15 miles northwest of downtown Pocatello is an area known as the "industrial complex," which includes the two major stationary sources of PM–10 in the nonattainment area. The boundary between the Fort Hall Indian Reservation and State lands runs through the industrial complex. One of the major stationary sources of PM–10, FMC Corporation (FMC), is located primarily on fee lands within the exterior boundary of the Fort Hall Indian Reservation.[3] The other major stationary source of PM–10 in the nonattainment area, J.R. Simplot Corporation (Simplot), is located on State lands immediately adjacent to the Reservation.

The State of Idaho has established and operates four PM–10 State and Local Air Monitoring Stations (SLAMS) in the current Power-Bannock Counties PM–10 nonattainment area, all of which are on State lands (the State monitors). All of the State monitors meet EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E. There have been no violations of the annual PM–10 standard at any of the State monitors since 1990. No levels above the 24-hour standard have been recorded at any of the State monitors since January of 1993.

The Shoshone-Bannock Tribes began operating a PM–10 monitor on the portion of the nonattainment area within the exterior boundary of the Reservation in February 1995. Prior to this time, the Tribes relied on data from the State operated samplers for area designations and classifications. This reliance was due to a lack of resources to establish and operate their own Tribal monitoring stations. In 1994 the Tribes requested and EPA granted the Tribes additional program support grant funds to enable the Tribes to establish their own monitoring stations to collect ambient air quality data representative of conditions on the Reservation and to generate data to support Tribal air quality planning efforts. This monitor, called the "Sho-Ban site," is located approximately 100 feet north of the FMC facility across a frontage road. Due to operational problems with the sampler and quality assurance problems, valid data were not reported for this monitor until October 1, 1996. Also in October 1996, the Tribes initiated monitoring at two new sites. The "primary site" is located approximately 100 feet north of the FMC facility across the frontage road, 600 feet east of the Sho-Ban site and approximately 600 feet from the boundary between the Fort Hall Indian Reservation and State lands. The "Tribal background site" is approximately one and one-half miles southwest of the FMC facility upwind of the predominant wind direction from the industrial complex. All three monitoring sites are owned by the Tribes and operated by a contractor for the Tribes. The Tribal monitoring sites meet EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E. Both the Sho-Ban and Primary sites on the Reservation portion of the nonattainment area have recorded numerous PM–10 concentrations above the level of the 24-hour PM–10 NAAQS since October 1996.[4]

II. This Action

A. Idaho's Request

Pursuant to section 107(d)(3)(D) of the Act, the Governor of any State, on the Governor's own motion, is authorized to submit to the Administrator a revised designation of any area or portions thereof within the State. On April 16, 1998, the State of Idaho submitted to EPA a request to revise the designation of the Power-Bannock Counties PM–10 nonattainment area to split the nonattainment area into two separate nonattainment areas at the boundary between the Fort Hall Indian Reservation and State lands. Together, the two nonattainment areas would cover the same geographic area as the

[1] There are two pre-existing PM–10 NAAQS, a 24-hour standard and an annual standard. See 40 CFR 50.6. EPA promulgated these NAAQS on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulate with new standards applying only to particulate matter up to ten microns in diameter (PM–10). The annual PM–10 standard is attained when the expected annual arthimetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (ug/m3). Attainment of the 24-hour PM–10 standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 ug/m3. The 24-hour PM–10 standard is attained when the expected number of days with levels above the standard, averaged over a three year period, is less than or equal to one. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

[2] The 1990 Amendments to the CAA made significant changes to the Act. *See* Public Law No. 101–549, 104 Stat. 2399. References herein are to the CAA as amended. The CAA is codified, as amended, in the United States Code at 42 U.S.C. 7401, *et seq.*

[3] EPA has learned that a portion of the FMC facility is located on State lands. This issue is discussed in more detail below.

[4] Private industry operated a seven station air monitoring network, funded by FMC and Simplot, on and near the industrial complex from October 1, 1993, through September 30, 1994 (EMF monitors). There were no measured PM–10 concentrations above the level of the 24-hour PM–10 NAAQS (150 ug/m3) at any of the EMF stations. EMF Site #2, however, which was on the Fort Hall Indian Reservation less than 300 yards east of where the primary site is now located, reported several 24-hour concentrations of PM–10 at or near the level of the NAAQS. EMF Site #2 also reported an annual concentration of 55.1 ug/m3 for the one year period the network was in operation. This is 10% greater than the 50 ug/m3 level of the annual PM–10 NAAQS. Because the EMF network did not collect a calendar year's worth of data, EPA concluded that data from EMF Site #2 did not document a violation of the annual NAAQS. *See* 61 FR 66602, 66604 (December 18, 1996). EPA also stated, however, that the number of the recorded 24-hour concentrations at or near the level of the standard and the high annual concentration for the one-year period EMF Site #2 was in operation indicated that a serious air quality problem continued in the Power-Bannock Counties PM–10 nonattainment area. *Id.* This is confirmed by the more recent data from the Tribal monitors.

existing Power-Bannock Counties PM–10 nonattainment area.

In support of its request, the State of Idaho noted that the State has the primary PM–10 planning responsibility under the Clean Air Act for State lands within the nonattainment area, whereas EPA and the Tribes have the primary PM–10 planning responsibility for the Tribal lands within the nonattainment area. The State also noted that it has largely completed the PM–10 planning and implementation of control measures for the PM–10 sources located on State lands within the nonattainment area whereas no controls have been proposed or imposed on sources in the Tribal portion of the nonattainment area.

The State also supported its request with monitoring data which shows that State monitors have not recorded any PM–10 concentrations above the level of the 24-hour PM–10 NAAQS since January 1993 and that the State lands within the nonattainment area have attained the PM–10 NAAQS. In addition, the State provided an analysis of pollution concentrations recorded at the Tribal primary site and the Sho-Ban site as a function of wind direction which shows that violations of the PM–10 NAAQS at the Tribal sites are not the result of emissions from sources located on State lands. The State also provided modeling information to support its assertion that sources on State lands are not contributing to the violations of the PM–10 NAAQS that have been recorded at the Tribal monitors.

On May 21, 1998, the Shoshone-Bannocks Tribes and FMC submitted to the State of Idaho documents opposing Idaho's request to EPA to split the nonattainment area into two nonattainment areas. The Tribes and FMC contend that the State failed to follow Idaho law in submitting the request to EPA without first providing public notice and opportunity for comment. The Tribes also expressed concern that splitting the area into two PM–10 nonattainment areas at the State-Reservation boundary could result in a less comprehensive approach to air quality planning in the area. In addition to its contention that the State failed to comply with State requirements for public notice and opportunity for public comment, FMC further contends that the State failed to comply with the Clean Air Act in making its request and noted that part of the FMC facility is located on State lands.

On May 29, 1998, Idaho provided EPA with a letter from the Idaho Attorney General's Office stating that public notice and opportunity to comment were not required under State law. The letter also responded to the other issues raised by FMC and asked EPA to move forward on the State's request to split the nonattainment area. The State also provided EPA with a copy of the State's letter responding to the issues raised by the Tribes. Copies of the letters from FMC and the Tribes to the State and from the State to EPA and the Tribes are in the Docket for this proposal.

B. EPA's Proposed Action on Idaho's Request

In determining whether to approve or deny a State's request for a revision to the designation of an area under section 107(d)(3)(D), EPA believes it is appropriate to consider the same factors Congress directed EPA to consider when EPA initiates a revision to a designation of an area on its own motion under section 107(d)(3)(A). These factors include "air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate." Based on the information submitted by Idaho and other information available to EPA, EPA believes that the air quality data, planning and control considerations, and other air quality-related considerations support the State's request to revise the Power-Bannock Counties PM–10 nonattainment area into two PM–10 nonattainment areas at the boundary between the Fort Hall Indian Reservation and State lands. EPA therefore proposes to create two separate nonattainment areas in place of the existing Power-Bannock Counties PM–10 nonattainment area. One area, to be called the "Portneuf Valley PM–10 Nonattainment Area", would consist of the existing portion of the Power-Bannock Counties PM–10 nonattainment area outside of the exterior boundary of the Fort Hall Indian Reservation and under the regulatory jurisdiction of the State of Idaho. The other area, to be called the "Fort Hall PM–10 nonattainment area," would consist of the existing portion of the nonattainment area within the exterior boundary of the Fort Hall Reservation. Both areas would continue to be designated nonattainment for PM–10 and classified as moderate should this proposal be finalized by EPA.

Although the comments from the Tribes and FMC were directed to the State in the context of the State proceeding, and not to EPA, EPA has considered those issues in making this proposal, as is discussed in more detail below. The Tribes and FMC will also have an opportunity to raise those and other issues in the public comment period on this proposal.

1. Air Quality Data and Other Air Quality-Related Considerations

As stated above, there have been no violations of the annual PM–10 standard at any of the four State monitoring sites since 1990 and no levels above the 24-hour standard have been recorded at any of the State sites since January of 1993. The data recorded at the State monitors also show a decline in the yearly annual average at each State monitoring station since 1993 and, with the exception of the Sewage Treatment Plant (STP) monitoring station, a decline in the highest and second highest 24-hour PM–10 readings for each year at each of the State monitoring stations. The STP monitoring site did record a 24-hour PM–10 concentration of 149 ug/m3, just below the level of the 24-hour standard of 150 ug/m3. Even if that monitoring site had recorded one PM–10 concentration above the standard, however, the 24-hour PM–10 standard would not have been violated because the site operates on an everyday sampling schedule and the expected exceedence rate, averaged over a three year period, would have been less than 1.1. Moreover, the second highest 24-hour PM–10 readings for each year at the STP site have remained fairly constant since 1993, and there has been a decline in the yearly PM–10 annual average at the STP site since 1992. In summary, the State monitors show attainment of the PM–10 standard in the State portion of the nonattainment area, as well as a general decline in the PM–10 values recorded on the State monitors.

In contrast, the monitors located within the Tribal portion of the nonattainment area continue to show numerous levels above the standard. Although the monitors did not begin recording valid data until October 1996, the number of PM–10 concentrations above the level of the 24-hour PM–10 NAAQS between October and December 1996 resulted in a violation of the 24-hour PM–10 NAAQS as of December 31, 1996, the attainment date for the area.[5] Appendix K of 40 CFR part 50, contains "gapfilling" techniques for situations where less than three complete years of data are available. Using the gapfilling techniques of appendix K, the number

[5] The Power-Bannock Counties PM–10 nonattainment area originally had an attainment date of December 31, 1994, see section 188(a) and (c)(1), but the area could not demonstrate attainment by that date. At the request of the State of Idaho, EPA granted the area two one-year extensions of the attainment date, in accordance with section 188(d) of the CAA. See 60 FR 44452 (August 28, 1995) (proposed action on first extension); 61 FR 20730 (May 8, 1996) (final action on first extension); 61 FR 66602 (December 18, 1996)(direct final action on second extension).

of exceedences reported from the Sho-Ban and primary sites during the last three months of 1996 represent a violation of the 24-hour PM–10 NAAQS. The expected exceedence rate of the 24-hour standard, averaged over the years 1994, 1995, and 1996, from these two monitors is greater than 1.1, even if the days during which the monitors did not operate or collect valid data had reported zero PM–10 levels. Numerous levels above the standard have been recorded since December 31, 1996, as well.

In addition to the monitoring data which document that the monitors on State lands show attainment of the PM–10 standard, the State of Idaho also provided monitoring and modeling information to support its request to divide the current nonattainment area at the State-Reservation boundary. The State first presented information to demonstrate that there are two separate areas of air quality impacts and sources within the current nonattainment area. One area, which the State refers to as the "urban complex," encompasses the City of Pocatello and is solely on State lands. The other area is the industrial complex, which includes FMC within the Fort Hall Indian Reservation and J.R. Simplot on State lands. Based on chemical analysis of the particulate collected on the filters from both State and Tribal monitors and comparing these results to the chemical composition of emissions from various sources, the State determined that the urban area is impacted by PM–10 emissions from residential wood burning, traffic, and commercial establishments. In contrast, the industrial complex is impacted by industrial emissions.

Analysis of the 1993 dispersion modeling used by the State in developing its SIP shows that the urban complex and the industrial complex have different sources contributing to the high PM–10 levels that have been recorded in each area. The modeling also shows that there is no evidence of significant mixing of emissions between the industrial complex and the urban complex. Appendix A to the State's request contains a detailed discussion of these modeling results, including an analysis of four specific days with worst case meteorology. In general, this analysis consists of PM–10 concentration isopleth graphs that demonstrate two separate areas of maximum concentrations of PM–10, one located over the urban complex and the second located over the FMC and J.R. Simplot industrial facilities.

The State also showed that, within the industrial complex, it is possible to separate the impacts of sources on Tribal lands from sources on State lands at the State-Reservation boundary. In the process of developing the PM–10 plan for the Tribal portion of the nonattainment area, EPA constructed "pollution wind roses" from the ambient PM–10 monitoring data from two of the Tribal monitors (the Sho-Ban site and the primary site) and the meteorological station at the primary site. "Pollution wind roses" relate pollutant concentration measurements (in this case PM–10 levels) and the wind direction that occurred during that measurement. The State reviewed pollution wind roses for the period from October 1996 and May 1997. The data show that, on days when the primary site recorded values greater than the 24-hour standard (150 ug/m3), the wind was blowing from the FMC facility toward the monitor, i.e., from the southwest. Similarly, on days when the Sho-Ban site recorded values greater than the standard, the wind was blowing from FMC facility toward the Sho-Ban monitor, i.e., from the south. In contrast, on days when the wind was blowing from State lands, particularly Simplot, toward the primary and Sho-Ban monitors, high PM–10 values were not recorded on the monitors. The State concludes from this information that sources on State lands, particularly Simplot, are effectively controlled and do not contribute to violations of the PM–10 NAAQS on State or Tribal lands.

EPA evaluated the information submitted by the State along with the more recent information provided by FMC to the State that a portion of the FMC facility is located on State lands. FMC property extends approximately 7000 feet east-west along a frontage road of which 1100 feet appears to extend east onto State lands. The only PM–10 sources of potential significance on this portion of FMC property (i.e., on State lands) are a portion (approximately 1100 feet) of the north and south main ore shale storage piles and a small number of unpaved access roads. The piles are approximately 1500 feet long and 300 feet wide of which two-thirds extend onto State lands. EPA estimates that PM–10 emissions from that portion of the FMC facility located on State lands account for only 89 pounds of the 12,021 pounds per day of total PM–10 emissions from the facility, or less than 1% of total FMC emissions of PM–10. When the "pollution rose" graphs relied on by the State are laid over a map of the area, it is apparent that violations at the primary site occur when winds are blowing from the south to west-southwest, which is down wind of the FMC calcining operations, furnace building, and slag pit operations. Violations occur at the Sho-Ban site when the winds are blowing from the west-southeast to east-southwest, which is again downwind from the FMC calcining operations, furnace building, and slag pit operations. Violations have not occurred with a wind direction blowing from the eastern portion of the FMC property, which is the portion of the FMC facility located on State lands, or from the Simplot facility, which is also located on State lands. Based on the small percentage of emissions from the FMC PM–10 sources located on State lands to total FMC PM–10 emissions and EPA's review of the pollution and wind roses for the area, EPA does not believe that the new information provided by FMC—that part of the FMC facility is located on State lands—alters the analysis provided by the State to support its request to split the existing nonattainment area into two nonattainment areas at the State-Reservation boundary. In summary, EPA agrees with the State's analysis and with the State's conclusion that emissions from sources on State lands do not appear to be contributing to the exceedences that have been recorded on the Tribal monitors. In light of the recent information provided by FMC to the State, however, EPA specifically requests comment on this issue.

2. Planning and Control Considerations

The current Power-Bannock Counties PM–10 nonattainment area encompasses two different regulatory jurisdictions: the State of Idaho for the State portion of the nonattainment area and the Shoshone-Bannock Tribes and EPA for the Reservation portion of the nonattainment area. Under the Clean Air Act, the State has the primary PM–10 planning responsibilities for the State portion of the nonattainment area. See CAA sections 110 and 189. In furtherance of those planning obligations, the State of Idaho, along with several local agencies, developed and implemented control measures on PM–10 sources located on State lands within the Power-Bannock Counties PM–10 nonattainment area. The State submitted these control measures in 1993 for the Power-Bannock Counties PM–10 nonattainment area as part of its moderate PM–10 nonattainment State Implementation Plan (SIP) under section 189(a) of the Act. These control measures include a comprehensive residential wood combustion program, including a mandatory woodstove curtailment program; stringent controls on fugitive road dust, including controls on winter road sanding and a limited

unpaved road paving program; and a revised operating permit that represents reasonably available control technology (RACT) for the J.R. Simplot facility, the only major stationary source of PM–10 on the portion of the nonattainment area on State lands. Although EPA has not yet taken final action to approve the State's moderate PM–10 SIP for the area, EPA has previously stated (based on EPA's preliminary review in the context of approving the State's requests for extensions of the attainment date) that these control measures substantially meet EPA's guidance for reasonably available control measures (RACM), including RACT, for sources of primary particulate on the State portion of the nonattainment area. See 61 FR 66602, 66604–66605 (December 18, 1996).

The effect of these control measures on air quality can be seen in the reported ambient PM–10 measurements at the State monitoring sites. As discussed above, there have been no violations of the annual PM–10 standard since 1990 at any of the State monitoring sites, no violations or exceedences of the 24-hour PM–10 standard at any of the State sites since January 1993, and a general decline in the reported ambient PM–10 concentrations at the State sites since 1993. The beginning of the decline in the ambient concentrations roughly coincides with the period when the State began to impose the PM–10 control measures discussed above. These facts support the State's assertion that the State's PM–10 planning efforts have been effective.

In its request to split the nonattainment area, the State also discusses how it is addressing the deficiencies that EPA had previously identified in the State's SIP submission. The State has advised EPA that it will submit a SIP revision in the near future that addresses these deficiencies. The deficiencies previously identified by EPA include the State's failure to address PM–10 precursors in the State's emissions inventory and control strategy and the fact that the 1993 SIP did not demonstrate attainment in the downtown Pocatello area due to road dust emissions. The State also plans to address PM–10 emissions from Bannock-Paving Company, Incorporated. A summary of the State's plans with respect to addressing these deficiencies is presented below.

Section 189(e) of the Act states that the control requirements applicable to major stationary sources of PM–10 shall also apply to major stationary sources of PM–10 precursors, except where EPA determines that major stationary sources of PM–10 precursors do not contribute significantly to PM–10 levels which exceed the PM–10 standard in the area. At the time the State developed and submitted its SIP, PM–10 precursors were not thought to contribute to PM–10 levels which exceeded the PM–10 standard in the Power-Bannock Counties PM–10 nonattainment area. However, subsequent monitoring data and analysis of the particulates collected on the filters by the State in January 1993 showed significant levels of secondary aerosol and necessitated a reevaluation of the contribution of PM–10 precursors to the nonattainment problem in the Power-Bannock Counties PM–10 nonattainment area.[6] Accordingly, in conjunction with EPA and the Tribes, the State developed a work plan for analyzing and addressing the contribution of PM–10 precursors to the nonattainment problem in the Power-Bannock Counties PM–10 nonattainment area.

Since PM–10 precursors were first identified in particulate samples collected in January 1993 as a potential contributor to the nonattainment problem in the nonattainment area, however, no levels above the standard have been recorded at any of the State monitors. Instead, it appears that PM–10 precursors represent a significant fraction of the total PM–10 mass loading only during very specific meteorological conditions—cold stagnant winter days with relative high humidity. There have been only two days between 1986 and 1997 in which violations of the PM–10 NAAQS in the Power-Bannock Counties PM–10 nonattainment area have been attributed to secondary aerosols. Based on the fact that the State monitors have not recorded an exceedence since January 1993, it does not appear that major stationary sources of PM–10 precursors contribute significantly to PM–10 levels which exceed the standard within the portion of the Power-Bannock Counties PM–10 nonattainment area located on State lands. Although EPA reserves final determination on this issue until the State submits its SIP revision and EPA takes final action on that revision, EPA's preliminary determination is that stationary sources of PM–10 precursors do not appear to contribute significantly to PM–10 levels which exceed the standard on the portion of the nonattainment area on State lands. Final action on such a finding would mean that the State will not be required to further address PM–10 precursors in completing its SIP planning obligations for the State portion of the Power-Bannock Counties PM–10 nonattainment area.

EPA is aware that the Shoshone-Bannock Tribes and citizens in the Power-Bannock counties PM–10 nonattainment area believe that particulate precursors contribute to air quality problems in the area and should be addressed. EPA shares this concern. On July 18, 1997, EPA promulgated new, more stringent, air quality standards for particulate matter with an aerodynamic diameter equal to or less than 2.5 microns (PM–2.5). These standards were promulgated to address the serious health effects associated with these very small particles, of which secondary aerosol makes up a significant fraction. EPA, the State, and the Tribes are just now in the process of establishing PM–2.5 air monitoring stations to better define and characterize the nature and extent of the fine particulate air quality problem in the Portneuf Valley and Fort Hall area. EPA's preliminary determination that PM–10 precursors do not need to be addressed by the State in its current PM–10 planning process for the Portneuf Valley area should not be interpreted to imply that particulate precursors will not need to be addressed under the new PM–2.5 standard. To the contrary, EPA believes it is likely that particulate precursors will need to be addressed in the Portneuf Valley and Fort Hall area under the new PM–2.5 standard.

Another deficiency previously identified by EPA in the State's PM–10 planning process was the State's inability to model attainment of the PM–10 standard in the Pocatello urban area due to projected fugitive road dust emissions. The State has long suspected that the emission factors it used to estimate road dust emissions in the emissions inventory and attainment demonstration (AP–42 emission factors) were far too high. Idaho therefore commissioned a study to measure road dust emissions in the Pocatello area and to develop new emission factors if appropriate. Preliminary results from the study, which are included in the Docket for this rulemaking, indicate that the emission factors derived from the study are, on average, 68% less than the AP–42 emission factors used to develop the original emissions inventory. The State therefore asserts that the modeled exceedences of the PM–10 standard in the downtown Pocatello area appear to be due to the erroneously high road dust emission factors and are not representative of actual ambient conditions. Although EPA defers a final

[6] Secondary aerosol particulates are small particles formed in the atmosphere through chemical reactions from emissions of precursor gases.

determination on this issue until it receives and reviews the State's SIP revision, EPA tentatively agrees with the State that additional controls on road dust emissions do not appear to be necessary to demonstrate attainment in the State portion of the nonattainment area.

As discussed above, the State also intends to address emissions from Bannock Paving Company, Incorporated (Bannock Paving), in its SIP revision. Bannock Paving operates five portable facilities that operate in attainment and nonattainment areas in the State of Idaho, each of which is a minor source of PM–10.[7] The State has submitted the existing construction permits for the Bannock Paving facilities, which were issued under a federally enforceable permit program. The existing permits contain several emission limitations that control PM–10, such as opacity limits, grain loading standards, and requirements for controlling fugitive emissions, and the State asserts that the level of controls currently imposed on Bannock Paving in these construction permits represents RACT. The State has also advised EPA that it intends to consolidate all of the existing construction permits the State has issued for Bannock Paving into a new operating permit for Bannock Paving and submit the revised permit and a demonstration that the permit constitutes RACT in its SIP revision. EPA defers a final determination on this issue until EPA has received the State's SIP revision, but notes that Bannock Paving is currently subject to controls on PM–10 emissions.

Based on the controls that have been previously imposed by the State on the sources of PM–10 on State lands within the nonattainment area and the discussion by the State of its soon-to-be submitted SIP revision in support of its request to split the nonattainment area, EPA believes that the State has largely completed its PM–10 planning obligations under the Clean Air Act. Indeed, on its portion of the nonattainment area, the State is demonstrating and, in all likelihood will continue to demonstrate, attainment of the PM–10 NAAQS. In light of the information that some sources of PM–10 emissions at the FMC facility are located on State lands, however, the State's SIP revision will also need to address the PM–10 emissions from that portion of the FMC facility located on State lands.

In contrast, the PM–10 requirements for the Tribal portion of the nonattainment area are still under development.[8] Because of long-standing concerns about the air quality in the Power-Bannock County PM–10 nonattainment area, EPA has been developing a Federal Implementation Plan (FIP) for the portion of the nonattainment area within the exterior boundary of the Fort Hall Indian Reservation. The plan is being developed in close consultation with the Tribes and with extensive public participation. EPA intends to propose the FIP by the end of January 1999, and to finalize the FIP in the year 2000.

The Clean Air Act Amendments of 1990 greatly expanded the role of Indian Tribes in implementing the provisions of the Clean Air Act in Indian country. Section 301(d) of the Act authorizes EPA to issue regulations specifying the provisions of the Clean Air Act for which Indian tribes may be treated in the same manner as States. See CAA sections 301(d)(1) and (2). EPA promulgated the final rule under section 301(d) of the Act, entitled "Indian Tribes: Air Quality Planning and Management," on February 12, 1998. 63 FR 7254. The rule is generally referred to as the "Tribal Authority Rule" or "TAR". The TAR implements the provisions of section 301(d) of the Act to authorize eligible Tribes to implement their own Tribal air programs. This includes a delegation of authority, to Tribes which meet certain requirements and request delegation, to develop, adopt and submit PM–10 nonattainment area Tribal Implementation Plans for lands within the exterior boundary of Indian Reservations, including fee lands. Until promulgation of the TAR in February 1998, however, the Shoshone-Bannock Tribes did not have authority under the Clean Air Act to carry out the PM–10 planning responsibilities for the Tribal portion of the nonattainment area.

The Shoshone-Bannock Tribes have expressed a strong interest in seeking authority under the TAR to regulate sources of air pollution on Tribal land under the Clean Air Act. Based on discussions with the Tribes, however, EPA believes that it will be at least several months before the Tribes will be ready to seek authority under the TAR to assume Clean Air Act planning responsibilities and that, even should they do so, the Tribes intend to build their capacity and seek authority for the various Clean Air Act programs over time, rather than all at once. EPA's understanding is that the Tribes continue to support EPA's efforts to promulgate a PM–10 nonattainment FIP for the Tribal portion of the nonattainment area notwithstanding the recent promulgation of the TAR.

In summary, although the State has largely completed its PM–10 planning responsibilities for the portion of the Power-Bannock Counties PM–10 nonattainment area on State lands, the planning responsibilities for the Tribal portion of the nonattainment area, including the FMC facility, are still under development.

3. Issues Raised by the Tribes and FMC to the State

As discussed above, on May 21, 1998, the Shoshone-Bannock Tribes and FMC submitted to the State of Idaho documents opposing Idaho's request to EPA to split the nonattainment area into two nonattainment areas. Although the Tribes and FMC raised these issues in the State proceeding and will have an opportunity to raise the issues in the public comment period on this proposal, EPA has considered the issues raised by the Tribes and FMC prior to this proposal.

The Tribes and FMC assert that the State failed to follow Idaho law (Idaho Administrative Procedures Act (IDAPA) 16.01.01.578.04) by submitting its request to EPA without first providing public notice and opportunity for comment. FMC further asserts that the State's request failed to comply with other provisions of IDAPA 16.01.01.578, as well, such as the requirement to consider certain factors enumerated in IDAPA 16.01.01.578.02 for designating boundaries, and that public notice and comment was also required by Idaho Code sections 67–5221 and 5222, which govern rulemaking proceedings. The Idaho Attorney General's Office has advised EPA that the State's request to EPA to split the nonattainment area into two nonattainment areas is not subject to IDAPA 16.01.01.578, which is entitled "Designation of Attainment, Unclassifiable and Nonattainment Areas." The Attorney General's office has also advised EPA that the State's request to EPA is not a rulemaking under State law and is thus not subject to Idaho Code sections 67–5221 and 67–5222. EPA defers to the Idaho Attorney General's Office on these interpretations of Idaho law.

[7] The State's request to split the nonattainment area states that Bannock Paving is a major stationary source of PM–10. Based on EPA's review of the five State permits for Bannock Paving and conversations with the State, EPA understands that the statement in the State's request was in error and that each of the Bannock Paving facilities is a minor source of PM–10, even when the portable facilities co-locate.

[8] In developing its PM–10 control strategy and SIP, the State did not seek to impose controls on any sources located on Reservation lands, including fee lands within the exterior boundary of the Reservation, or attempt to demonstrate to EPA that it had authority to promulgate and enforce air controls on Reservation lands.

The Tribes and FMC also expressed concern that splitting the area into two PM–10 nonattainment areas at the State-Reservation boundary could result in a less comprehensive approach to air quality planning in the area. EPA was previously aware of the Tribes concern on this issue based on several meetings between the EPA and the Tribes regarding the State's request. EPA has carefully considered this concern, especially the interests of the Shoshone-Bannock Tribes, but continues to believe that the proposed split is in the overall best interest of the area as a whole. The State has largely completed its PM–10 planning requirements for the area. Therefore, EPA does not believe that splitting the nonattainment area will result in a less comprehensive approach to PM–10 planning for the existing Power-Bannock Counties PM–10 nonattainment area as a whole. If some area in or near the City of Pocatello or the Fort Hall Indian Reservation is later identified as a nonattainment area for PM–2.5, EPA will consider at the time of such identification whether, based on air quality data, planning and control considerations, or other air quality-related considerations, the planning requirements for PM–2.5 are best carried out by having a single nonattainment area or having two nonattainment areas divided at the State-Reservation boundary or in some other way.

In addition to its contention that the State failed to comply with State requirements for public notice and opportunity for public comment, FMC further contends that the State failed to comply with the Clean Air Act in making its request to EPA. FMC argues that sections 110(a)(2) and 110(l) of the CAA also require that the State's request to EPA be subject to public notice and comment before submission to EPA. EPA disagrees. Sections 110(a)(2) and 110(l) of the CAA require a State to provide public notice and comment at the State level for State Implementation Plans (SIPs) and SIP revisions. The State's request to EPA to split the Power-Bannock Counties PM–10 nonattainment area is not a SIP or SIP revision, and is therefore not subject to the requirements of section 110 of the CAA. FMC further argues that the State's request is incomplete as a matter of federal law because it does not address the factors enumerated in section 107(d)(3)(E) of the CAA. That section, however, by its terms applies only to requests to redesignation of an area from nonattainment to attainment. The State has not requested that the portion of the Power-Bannock Counties PM–10 nonattainment area located on State lands be redesignated from nonattainment to attainment. As stated above, the proposed Portneuf Valley PM–10 nonattainment area will retain its classification as a moderate PM–10 nonattainment area as a result of this proposed action. Therefore, section 107(d)(3)(E) is inapplicable to the State's request and EPA's proposed action. Finally, FMC asserts that splitting the nonattainment area into two nonattainment areas is inconsistent with section 107(d)(1) of the CAA absent a showing that "other sources in the area are not collectively causing or contributing to a violation of the NAAQS." As stated above, based on information currently available to EPA, EPA believes the State has shown that sources located on State lands are not causing or contributing to the violations of the PM–10 NAAQS that have been recorded on the Tribal monitors. Therefore, EPA believes that splitting the Power-Bannock Counties PM–10 nonattainment areas into two nonattainment areas at the State-Reservation boundary is consistent with section 107(d)(1) of the CAA.

FMC also asserts that a portion of the FMC facility is located on State lands. As discussed above, EPA has considered the impact of this fact on the State's request, and continues to believe it is appropriate to split the nonattainment area at the State-Reservation boundary. Based on the fact that more of the FMC facility is located on State lands than was previously understood by EPA, however, EPA specifically invites comment on whether, as an alternative proposal, it would be appropriate to split the current Power-Bannock Counties PM–10 nonattainment area at the State-Reservation boundary, except to include in the proposed Fort Hall PM–10 nonattainment area that portion of the FMC facility located within State lands.

4. Summary

Based cn the information provided by the State in its request and other information available to EPA, EPA proposes to grant the State's request to split the Power-Bannock Counties PM–10 nonattainment area into two nonattainment areas along the State-Reservation boundary. The monitors located on State lands have not registered a violation or even an exceedence of the PM–10 NAAQS for more than five years. In addition, modeling and monitoring information shows that sources on State lands within the nonattainment area are not contributing to the exceedences of the PM–10 NAAQS that have been recorded on the Tribal monitors. Finally, the State has imposed controls on major sources of PM–10 within the State portion of the nonattainment area and the monitors sited on State lands have shown a general decline in the ambient PM–10 values recorded since the State first imposed these controls. In contrast, the monitors situated on Tribal lands have recorded numerous exceedences of the PM–10 NAAQS since they began operation in 1996, and EPA has not yet completed rulemaking action that would impose controls on the major sources of PM–10 in the Tribal portion of the nonattainment area. EPA therefore believes that air quality data, planning and control considerations, and other air quality-related information support dividing the current Power-Bannock Counties PM–10 nonattainment area into two separate PM–10 nonattainment areas at the State-Reservation boundary, as requested by the State.

III. Implications of this Proposed Action

A. Area Classifications and Designations

If EPA takes final action on this proposal, the current Power-Bannock Counties PM–10 nonattainment area would be split into two nonattainment areas that together cover the identical geographic area of the current nonattainment area. The revised areas would be divided at the boundary between State lands and the Fort Hall Indian Reservation, with one revised area, to be referred to as the "Portneuf Valley PM–10 nonattainment area," comprised of State lands and the other revised area, referred to as the "Fort Hall PM–10 nonattainment area," comprised of lands within the exterior boundary of the Fort Hall Indian Reservation.

The table below indicates how EPA is proposing to revise the PM–10 designation for the current Power-Bannock Counties PM–10 nonattainment area, for both Idaho and the Fort Hall Indian Reservation in 40 CFR section 81.313.

PART 81.313—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	ype
Idaho		Nonattainment		Moderate.
Portneuf Valley Area:				
T.5S, R.34E Sections 25–36.				
T.5S, R.35E Section 31.				
T.6S, R.34E Sections 1–36.				
T.6S, R.35E Sections 5–9, 16–21, 28–33.				
Plus the West ½ of Sections 10,15,22,27,34.				
T.7S, R.34E Sections 1–4, 10–14, and 24.				
T.7S, R.35E Sections 4–9, 16–21, 28–33.				
Plus the West ½ of Sections 3,10,15,22,27,34.				
T.8S, R.35E Section 4.				
Plus the West ½ of Section 3.				
Fort Hall Indian Reservation		Nonattainment		Moderate.
T.5S, R.34E Sections 15–23.				
T.5S, R.33E Sections 13–36.				
T.6S, R.33E Sections 1–36.				
T.7S, R.33E Sections 4,5,6.				
T.7S, R.34E Section 8.				

Both the Portneuf Valley PM–10 nonattainment area and the Fort Hall PM–10 nonattainment area would retain nonattainment designations as PM–10 nonattainment areas as a result of this proposed action. In a concurrent notice of proposed rulemaking published today, however, EPA is proposing to make a finding that the proposed "Fort Hall PM–10 nonattainment area" has failed to attain the PM–10 NAAQS by the applicable attainment date of December 31, 1996. If EPA makes a final determination that the proposed "Fort Hall PM–10 nonattainment area" has failed to attain the standard, that area would be reclassified as a serious PM–10 nonattainment area by operation of law under section 188(b) of the Act, whereas the Portneuf PM–10 nonattainment area would remain classified as a moderate area.

B. New and Revised NAAQS for Particulate Matter

On July 18, 1997, EPA promulgated revisions to both the annual and the 24-hour PM–10 standards and also established two new standards for particulate matter, both of which apply only to particulate matter equal to or less than 2.5 microns in diameter (PM–2.5). See 62 FR 38651. The revised standards became effective on September 16, 1997. Although the revised suite of particulate matter standards reflects an overall strengthening of the regulatory standards for particulate matter, the revised 24-hour PM–10 standard, by itself, reflects a relaxation of that standard. In the preamble to the final rule setting the new and revised particulate matter standards, EPA stated that the pre-existing PM–10 standards would remain in effect for a period of time after the effective date of the new standard to ensure a smooth transition to the new standards. 62 FR 38701.

Based on the transition policy announced by EPA in the preamble to the final rule setting the new and revised particulate standards, if EPA takes final action on its proposal to split the Power-Bannock Counties PM–10 nonattainment area, the existing PM–10 standards will ultimately be revoked in the two resulting nonattainment areas at different times. Because the monitors located on State lands showed attainment of the pre-existing PM–10 standard at the time promulgation of the revised PM–10 standards became effective, the pre-existing PM–10 standard would continue to apply in the proposed Portneuf Valley PM–10 nonattainment area until such time as EPA approves the control measures that have been adopted and implemented at the State level to bring the area into attainment with the pre-existing PM–10 NAAQS, and the State of Idaho has an approved SIP under section 110 of the Act for purposes of implementing the revised particulate matter standards. See 62 FR 38701. The monitors in the Tribal portion of the nonattainment area, however, did not show attainment of the pre-existing PM–10 standard at the time promulgation of the revised PM–10 NAAQS became effective. Therefore, the pre-existing PM–10 NAAQS would continue to apply in the proposed Fort Hall PM–10 nonattainment area until EPA has completed its rulemaking under section 172(e) of the Act to prevent backsliding in those areas that had not attained the pre-existing PM–10 standard as of the date the relaxed PM–10 standard became effective. See 62 FR 39701. The rule promulgated under section 172(e) must require controls in the Fort Hall PM–10 nonattainment area, that are "not less stringent than the controls applicable to areas designated nonattainment before the relaxation of the 24-hour PM–10 standard." EPA is also in the process of drafting a Federal Implementation Plan for the proposed Fort Hall PM–10 nonattainment area and expects that such FIP will meet the requirements promulgated by EPA under section 172(e).

C. Consultation With the Shoshone-Bannock Tribes

As discussed above, EPA consulted with the Shoshone-Bannock Tribes prior to making this proposal. In particular, as discussed above, EPA is aware that the Tribes are concerned that splitting the area into two PM–10 nonattainment areas at the State-Reservation boundary could result in a less comprehensive approach to air quality planning in the area. As also discussed above, EPA has carefully considered the Tribes concerns but believes that the proposed split is in the overall best interest of the area as a whole because the State has largely completed its PM–10 planning requirements for the area. Therefore, EPA does not believe that splitting the nonattainment area will result in a less comprehensive approach to PM–10 planning for the existing Power-Bannock Counties PM–10 nonattainment area as a whole. In this regard, EPA would like to emphasize that until EPA promulgated the TAR in February of 1998, the Tribes did not have authority under the Clean Air Act

to address the PM–10 planning requirements for the Reservation portion of the nonattainment area. EPA will carefully consider any additional comments or concerns raised by the Tribes during the public comment period on this action, including the Tribes preference for the name of the nonattainment area located within the Fort Hall Indian Reservation.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

Under E.O. 12866 (58 FR 51735 (October 4, 1993)), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "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."

The OMB has exempted this action from review under E.O. 12866. In addition, the Agency has determined that EPA's proposal to split the nonattainment area into two nonattainment areas would result in none of the effects identified in section 3(f).

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

A regulatory flexibility screening analysis of this proposed action revealed that it would not have a significant adverse economic impact on a substantial number of small entities. A rule revising the designation of an area by creating two separate nonattainment areas under section 107(d)(3) of the CAA does not impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider rule's impact on entities subject to the requirements of the rule). To the extent that a State, Tribe or EPA must adopt new regulations, based on an area's nonattainment status, EPA will review the effect those actions have on small entities at the time EPA takes action on those regulations. Therefore, pursuant to 5 U.S.C. 605(b), I certify that the approval of the revised designation action proposed today does not have a significant economic impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under the UMRA, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate.

EPA has determined that this proposed action, if promulgated, would 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. A rule revising the designation of an area by creating two separate nonattainment areas under section 107(d)(3) of the CAA does not impose any new requirements on the State, Tribes or the private sector. Redesignation is an action that affects the air quality status of a geographic area or the boundary of the geographic area and does not impose any regulatory requirements on the State, Tribes or private sector. Accordingly, EPA has determined that the proposed 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.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885 (April 23, 1997)) applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

V. Request for Public Comments

EPA is, by this document, proposing that the PM–10 designation for the Power-Bannock Counties PM–10 nonattainment area be revised. The EPA is requesting public comments on all aspects of this proposal, including the appropriateness of the proposed designation and the scope of the proposed boundary. Public comments should be submitted to EPA at the address identified above by July 20, 1998.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: June 10, 1998.

Chuck Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 98–16403 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[ID 22–7002; FRL–6113–3]

Clean Air Act Reclassification; Fort Hall Indian Reservation Particulate Matter (PM–10) Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to determine that a portion of the Fort Hall Indian Reservation has not attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to 10 microns (PM–10) by the applicable attainment date for moderate PM–10 nonattainment areas under the Clean Air Act (CAA). In a concurrent notice of proposed rulemaking published today, EPA has proposed that the existing Power-Bannock Counties PM–10 nonattainment area, which is currently classified as moderate with an attainment date of December 31, 1996,

be separated into two nonattainment areas at the boundary between State lands and the Fort Hall Indian Reservation. If EPA takes final action to revise the Power-Bannock Counties PM–10 nonattainment area into two nonattainment areas, EPA proposes in this action to find that the PM–10 nonattainment area within the exterior boundary of the Fort Hall Indian Reservation (which EPA has proposed be referred to as the "Fort Hall PM–10 nonattainment area") has not attained the PM–10 NAAQS by December 31, 1996.

EPA's proposed finding that the proposed Fort Hall PM–10 nonattainment area has not attained the PM–10 NAAQS by December 31, 1996, is based on EPA's review of monitored air quality data from 1994 through 1996. If EPA takes final action on this proposal, the proposed Fort Hall PM–10 nonattainment area will be reclassified by operation of law as a serious PM–10 nonattainment area.

EPA recently established a new standard for particulate matter with a diameter equal to or less than 2.5 microns and also revised the existing PM–10 standards. Today's proposal, however, does not address these new and revised standards.

COMMENTS: Comments on this proposal must be received in writing by July 20, 1998.

ADDRESSES: Written comments should be addressed to Ms. Montel Livingston, Environmental Protection Agency, Office of Air Quality (OAQ 107), Docket ID 22–7002, 1200 6th Avenue, Seattle, WA 98101. Information supporting this action is available for inspection during normal business hours at the following locations: EPA, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101, and the Shoshone-Bannock Tribes, Land Use Commission, Office of Air Quality, Fort Hall, Idaho.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality, EPA Region 10, at the address above, or telephone (206) 553–0782.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation and Classification

A portion of Power and Bannock Counties in Idaho was designated nonattainment for PM–10 [1] and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act upon enactment of the Clean Air Act Amendments of 1990 (Act or CAA). *See* 40 CFR 81.313 (PM–10 Initial Nonattainment Areas); *see also* 55 FR 45799 (October 31, 1990); 56 FR 11101 (March 15, 1991); 56 FR 37654 (August 8, 1991); 56 FR 56694 (November 6, 1991).[2] For an extensive discussion of the history of the designation of the Power-Bannock Counties PM–10 nonattainment area, please refer to the discussion at 61 FR 29667, 29668–29670 (June 12, 1996).

All initial moderate PM–10 nonattainment areas had the same applicable attainment date of December 31, 1994. See section 188 (a) and (c)(1) of the CAA. States containing initial moderate PM–10 nonattainment areas were required to develop and submit to EPA by November 15, 1991, a state implementation plan (SIP) revision providing for, among other things, implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of attainment of the PM–10 NAAQS by December 31, 1994. See section 189(a) of the CAA.[3]

B. Power-Bannock Counties PM–10 Nonattainment Area

The Power-Bannock Counties PM–10 nonattainment area covers approximately 266 square miles in south central Idaho and comprises both trust and fee lands within the exterior boundary of the Fort Hall Indian Reservation and State lands in portions of Power and Bannock Counties. Approximately 75,000 people live in the nonattainment area, most of whom live in the cities of Pocatello and Chubbuck, which are located near the center of the nonattainment area on State lands. Approximately 15 miles northwest of downtown Pocatello is an area known as the "industrial complex," which includes the two major stationary sources of PM–10 in the nonattainment area. The boundary between the Fort Hall Indian Reservation and State lands runs through the industrial complex. One of the major stationary sources of PM–10, FMC Corporation (FMC), is located primarily on fee lands within the exterior boundary of the Fort Hall Indian Reservation.[4] The second major stationary source of PM–10 in the nonattainment area, J.R. Simplot Corporation (Simplot), is located on State lands immediately adjacent to the Reservation.

The State of Idaho has established and operates four PM–10 State and Local Air Monitoring Stations (SLAMS) in the current Power-Bannock Counties PM–10 nonattainment area, all of which are on State lands (State monitors). All of the State monitors meet EPA network design and siting requirements, set forth at 40 CFR part 58, appendices D and E. There have been no violations of the annual PM–10 standard at any of the State monitors since 1990. There have been no exceedences of the 24-hour PM–10 standard recorded at any of the State monitors since January of 1993.

The Shoshone-Bannock Tribes began operating a PM–10 monitor in February 1995 on the portion of the nonattainment area within the exterior boundary of the Reservation in February 1995. Prior to this time, the Tribes relied on data from the State operated samplers for area designations and classifications because of a lack of resources to establish and operate their own Tribal monitoring stations. In 1994 the Tribes requested and EPA granted the Tribes additional program support grant funds to enable the Tribes to establish their own monitoring stations in order to collect ambient air quality data representative of conditions on the Reservation and to generate data to support Tribal air quality planning

[1] There are two pre-existing PM–10 NAAQS, a 24-hour standard and an annual standard. See 40 CFR 50.6. EPA promulgated these NAAQS on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulate with new standards applying only to particulate matter up to ten microns in diameter (PM–10). The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (μg/m3). Attainment of the 24-hour PM–10 standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 μg/m3. The 24-hour PM–10 standard is attained when the expected number of days with levels above the standard, averaged over a three year period, is less than or equal to one. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

On July 18, 1997, EPA promulgated revisions to both the annual and the 24-hour PM–10 standards and also established two new standards for particulate matter, both of which apply only to particulate matter up to 2.5 microns in diameter (PM–2.5). See 62 FR 38651 (July 18, 1997). The revised standards became effective on September 16, 1997. Although the revised suite of particulate matter standards reflects an overall strengthening of the regulatory standards for particulate matter, the revised 24-hour PM–10 standard, by itself, reflects a relaxation of that standard.

[2] The 1990 Amendments to the CAA made significant changes to the CAA. *See* Public Law No. 101–549, 104 Stat. 2399. References herein are to the CAA as amended in 1990. The Clean Air Act is codified, as amended, in the United States Code at 42 U.S.C. 7401, *et seq.*

[3] The moderate area SIP requirements are set forth in section 189(a) of the CAA.

[4] EPA has learned that a portion of the FMC facility is located on State lands. As discussed in the Federal Register document in which EPA is proposing to split the nonattainment area at the State-Reservation boundary, EPA is specifically requesting comment on whether the proposed Fort Hall PM–10 nonattainment area should include the portion of the FMC facility that is located on State lands.

efforts. This monitor, called the "Sho-Ban site," is located approximately 100 feet north of the FMC facility across a frontage road. Due to operational problems with the sampler and quality assurance problems, valid data was not reported for this monitor until October 1, 1996. Also in October 1996, the Tribes initiated monitoring at two new sites. The "primary site" is located approximately 100 feet north of the FMC facility across the frontage road, approximately 600 feet east of the Sho-Ban site and approximately 600 feet from the boundary between the Fort Hall Indian Reservation and State lands. Both the Sho-Ban and primary sites are located in the area of expected maximum concentration of PM–10 in the ambient air. The "Tribal background site" is located approximately one and one-half miles southwest of the FMC facility upwind of the predominant wind direction from the industrial complex.

All three monitoring sites (Tribal monitors) are owned by the Tribes and operated by a contractor for the Tribes. The Tribal monitors meet EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E. Both the Sho-Ban and primary sites on the Reservation portion of the nonattainment area have recorded numerous PM–10 concentrations above the level of the 24-hour PM–10 NAAQS since October 1996.

Private industry operated a seven station air monitoring network, funded by FMC and Simplot, on and near the industrial complex from October 1, 1993, through September 30, 1994 (EMF monitors). There were no measured PM–10 concentrations above the level of the 24-hour PM–10 NAAQS at any of the EMF stations. EMF Site #2, however, which was on the Fort Hall Indian Reservation less than 300 yards east of where the primary site is now located, reported several 24-hour concentrations of PM–10 at or near the level of the NAAQS. EMF Site #2 also reported an annual concentration of 55.1 μg/m3 for the one year period the network was in operation. This is 10% greater than the 50 μg/m3 level of the annual NAAQS. Because the EMF network did not collect a calendar year's worth of data, EPA has previously concluded that data from EMF Site #2 did not document a violation of the annual PM–10 NAAQS. *See* 61 FR 66602, 66604 (December 18, 1996). EPA also stated, however, that the number of the recorded 24-hour concentrations at or near the level of the standard and the high annual concentration for the one-year period EMF Site #2 was in operation indicated that a serious air quality problem continued in the Power-Bannock Counties PM–10 nonattainment area. *Id.* This conclusion is confirmed by the more recent data from the Tribal monitors.

The current Power-Bannock Counties PM–10 nonattainment area encompasses two different regulatory jurisdictions: the State of Idaho for the State portion of the nonattainment area and the Shoshone-Bannock Tribes and EPA for the Reservation portion of the nonattainment area. Under the Clean Air Act, the State has the primary PM–10 planning responsibilities for the State portion of the nonattainment area. See CAA sections 110 and 189. In furtherance of those planning obligations, the State of Idaho, along with several local agencies, developed and implemented control measures on PM–10 sources located on State lands within the Power-Bannock Counties PM–10 nonattainment area. The State submitted these control measures in 1993 as part of its moderate PM–10 nonattainment State Implementation Plan (SIP) under section 189(a) of the Act. These control measures include a comprehensive residential wood combustion program, including a mandatory woodstove curtailment program; stringent controls on fugitive road dust, including controls on winter road sanding and a limited unpaved road paving program; and a revised operating permit that represents reasonably available control technology (RACT) for the J.R. Simplot facility, the only major stationary source of PM–10 on the portion of the nonattainment area on Sate lands. Although EPA has not yet approved the State's moderate PM–10 SIP for the area, EPA has previously stated (in the context of approving the State's requests for extensions of the attainment date) that these control measures substantially meet EPA's guidance for reasonably available control measures (RACM), including RACT, for sources of primary particulate on the State portion of the nonattainment area. See 61 FR 66602, 66604–66605 (December 18, 1996).

In contrast, the PM–10 requirements for the Tribal portion of the nonattainment area are still under development.[5] Because of long-standing concerns about the air quality in the Power-Bannock County PM–10 nonattainment area, EPA has been developing a Federal Implementation Plan (FIP) for the portion of the nonattainment area within the exterior boundary of the Fort Hall Indian Reservation. The plan is being developed in close consultation with the Tribes and with extensive public participation. EPA intends to propose the FIP by the end of January 1999, and to finalize the FIP in the year 2000.

The Clean Air Act Amendments of 1990 greatly expanded the role of Indian Tribes in implementing the provisions of the Clean Air Act in Indian country. Section 301(d) of the Act authorizes EPA to issue regulations specifying the provisions of the Clean Air Act for which Indian tribes may be treated in the same manner as States. See CAA sections 301(d) (1) and (2). EPA promulgated the final rule under section 301(d) of the Act, entitled "Indian Tribes: Air Quality Planning and Management," on February 12, 1998. 63 FR 7254. The rule is generally referred to as the "Tribal Authority Rule" or "TAR". The TAR implements the provisions of section 301(d) of the Act to authorize eligible Tribes to implement their own Tribal air programs. This includes a delegation of authority, to Tribes which meet certain requirements and request delegation, to develop, adopt and submit PM–10 nonattainment area Tribal Implementation Plans for lands within the exterior boundary of Indian Reservations, including fee lands. Until promulgation of the TAR in February 1998, however, the Shoshone-Bannock Tribes did not have authority under the Clean Air Act to carry out the PM–10 planning responsibilities for the Tribal portion of the nonattainment area.

The Shoshone-Bannock Tribes have expressed a strong interest in seeking authority under the TAR to regulate sources of air pollution on Tribal land under the Clean Air Act. Based on discussions with the Tribes, however, EPA believes that it will be at least several months before the Tribes will be ready to seek authority under the TAR to assume Clean Air Act planning responsibilities and that, even should they do so, the Tribes intend to build their capacity and seek authority for the various Clean Air Act programs over time, rather than all at once. EPA's understanding is that the Tribes continue to support EPA's efforts to promulgate a PM–10 nonattainment FIP for the Tribal portion of the nonattainment area notwithstanding the recent promulgation of the TAR.

C. Attainment Date Extensions

Section 188(d) authorizes the EPA Administrator to grant up to two one-year extensions of the moderate area

[5] In developing its PM–10 control strategy and SIP, the State did not seek to impose controls on any sources located on Reservation lands, including fee lands within the exterior boundary of the Reservation, or attempt to demonstrate to EPA that it had authority to promulgate and enforce air controls on Reservation lands.

attainment date, provided certain requirements are met. The Power-Bannock Counties PM–10 nonattainment area did not attain the PM–10 NAAQS by December 31, 1994. Two monitors on State lands recorded a measured value above the level of the 24-hour PM–10 standard in January 1993, which resulted in six exceedences for each monitor because of a sampling frequency at those sites of once every six days. This, in turn, represented a violation of the NAAQS as of December 31, 1994. EPA granted the State's request for a one-year extension and extended the attainment date to December 31, 1995. See 60 FR 44452 (August 28, 1995) (proposed action); 61 FR 20730 (May 8, 1996) (final action). The area continued to violate the 24-hour PM–10 NAAQS through December 31, 1995 because of the exceedence recorded on the State monitors in January 1993. EPA granted a second one-year extension of the attainment date to December 31, 1996. See 61 FR 66602 (December 18, 1996).

D. Reclassification to Serious

1. Regulatory Requirements

EPA has the responsibility, pursuant to sections 179(c)(1) and 188(b)(2) of the CAA, to determine within six months of the applicable attainment date, whether PM–10 nonattainment areas attained the PM–10 NAAQS by the attainment date. Determinations under section 179(c)(1) of the Act are to be based upon an area's "air quality as of the attainment date." Section 188(b)(2) is consistent with this requirement. Generally, EPA will determine whether an area's air quality is meeting the PM–10 NAAQS for purposes of sections 179(c)(1) and 188(b)(2) based upon data gathered at monitoring sites in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined by EPA to meet federal monitoring requirements (see 40 CFR 50.6 and appendix J, 40 CFR part 53, 40 CFR part 58, appendices A and B). The data are reviewed in accordance with 40 CFR part 50, appendix K, to determine the area's air quality status.

Pursuant to appendix K, the annual PM–10 standard is attained when the expected annual arthimetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (μg/m3). Attainment of the 24-hour PM–10 standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 μg/m3. The 24-hour PM–10 standard is attained when the expected number of days with levels above the standard, averaged over a three year period, is less than or equal to one. A total of three consecutive years of non-violating air quality data is generally necessary to show attainment of the 24-hour and annual standards for PM–10. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

EPA is publishing this proposal pursuant to section 188(b)(2) of the Act. Under subpart (A) of that section, a moderate PM–10 nonattainment area is reclassified as serious by operation of law if EPA finds that the area is not in attainment by the applicable attainment date. Pursuant to section 188(b)(2)(B) of the Act, EPA must publish a **Federal Register** document within six months after the applicable attainment date identifying those areas that have failed to attain the standard and that have been reclassified to serious by operation of law. See section 188(b)(2); see also section 179(c)(1).

2. Ambient Air Monitoring Data

Attainment determinations are based upon an area's "air quality as of the attainment date." See section 179(c) of the CAA. Therefore, EPA determines whether an area's air quality has met the 24-hour PM–10 NAAQS by December 31, 1996, based upon calendar year data from 1994, 1995, and 1996.

As stated above, there are three Tribal PM–10 monitors within the Fort Hall PM–10 nonattainment area which were installed during 1995 and 1996. All three monitors meet EPA's SLAMS network design and siting requirements, which are set forth in 40 CFR Part 58, appendices D and E. A description of the monitoring network and instrument siting relative to the EPA SLAMS siting criteria as specified in 40 CFR Part 58, appendices D and E, can be found in the air quality data report in the Docket for this proposal.

The air quality data for the period from October 8, 1996, to December 31, 1996, was validated by the Shoshone-Bannock Tribes. EPA has reviewed the air quality data collected and reported by the Tribes during this period and quality assured the data for precision and accuracy prior to entering the data into the AIRS data base. In addition, a contractor with extensive experience in operating large state monitoring networks, conducted an independent audit of the Tribal monitoring data. The audit included a review of both the sampling effort and filter analysis, and concluded that the data reported by the Tribes during 1996 and 1997 was valid and reliable data.

Table 1 lists each of the monitoring sites within the proposed Fort Hall PM–10 nonattainment area where the 24-hour PM–10 NAAQS was exceeded during 1994–1997.[6] Table 2 lists the concentration, in micrograms per cubic meter, of each exceedence.

TABLE 1.—FORT HALL PM–10 MONITORING DATA—1994, 1995, 1996

Site	Year	Number of exceedences	Expected exceedences	3 year average of exceedences
Primary	1994	No data	Assume 0	Assume 0.
	1995	No data	Assume 0	Assume 0.
	1996	18	20.96	7.0.
	1997	19	20.1	13.69.
Sho-Ban	1994	No data	Assume 0	Assume 0.
	1995	No data	Assume 0	Assume 0.
	1996	9	11.34	3.78.
	1997	13	14.20	8.5.
Upwind Site	1994	No data	Assume 0	Assume 0.
	1995	No data	Assume 0	Assume 0.
	1996	0	0.00	0.00.
	1997	1	1.05	.35.

[6] Data from 1997 is after the attainment date and is included for informational purposes only.

TABLE 2.—PM–10 EXCEEDENCES AT TRIBAL MONITORS

Date	Primary site (ug/m3)	Sho-ban site (ug/m3)	Background site (ug/m3)
Oct. 10, 1996	165.2	.....	.....
Oct. 16, 1996	198.6	.....	.....
Oct. 18, 1996	184.2	193.3	.....
Oct. 22, 1996	200.4	.....	.....
Oct. 24, 1996	228.5	.....	.....
Nov. 17, 1996	.....	245.3	.....
Nov. 18, 1996	.....	276.8	.....
Nov. 19, 1996	.....	419.7	.....
Nov. 28, 1996	.....	163.2	.....
Dec. 3, 1996	168.4	.....	.....
Dec. 4, 1996	.....	199.1	.....
Dec. 9, 1996	184.3	198.8	.....
Dec. 10, 1996	.....	208.1	.....
Dec. 15, 1996	218.8	.....	.....
Dec. 20, 1996	155.9	156.3	.....
Dec. 24, 1996	173.6	.....	.....
Dec. 25, 1996	174.3	.....	.....
Dec. 26, 1996	316.8	.....	.....
Dec. 27, 1996	236.1	.....	.....
Dec. 29, 1996	290.4	282.1	.....
Dec. 30, 1996	187.1	292.6	.....
Dec. 31, 1996	186.0	441.8	.....
Jan. 1, 1997	267.7	408.5	.....
Jan. 2, 1997	160.8	.....	.....
Jan. 22, 1997	164.8	.....	.....
Jan. 25, 1997	.....	.....	245.5
Feb. 14, 1997	221.7	.....	.....
Feb. 17, 1997	198.0	.....	.....
Feb. 19, 1997	215.0	259.3	.....
Mar. 1, 1997	222.7	220.6	.....
Mar. 2, 1997	195.8	.....	.....
Mar. 9, 1997	239.4	.....	.....
Mar. 10, 1997	336.8	.....	.....
Mar. 11, 1997	205.6	.....	.....
Mar. 18, 1997	.....	173.1	.....
Mar. 26, 1997	165.9	.....	.....
Mar. 30, 1997	.....	234.3	.....
Jun. 3, 1997	.....	167.3	.....
Aug. 26, 1997	.....	183.6	.....
Sept. 13, 1997	.....	229.6	.....
Sept. 14, 1997	.....	345.8	.....
Sept. 15, 1997	166.5	.....	.....
Sept. 26, 1997	222.3	.....	.....
Oct. 3, 1997	186.3	156.4	.....
Oct. 4, 1997	253.7	.....	.....
Oct. 5, 1997	273.1	.....	.....
Oct. 8, 1997	.....	200.0	.....
Oct. 9, 1997	.....	271.4	.....
Dec. 17, 1997	158.1	.....	.....
Dec. 27, 1997	169.2	.....	.....
Dec. 29, 1997	245.3	.....	.....

According to 40 CFR part 50, the 24-hour PM–10 NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m3, averaged over three years, is equal to or less than one. Because the Tribal monitoring sites did not begin full operation until October 1996, the data base is less than the three years of data generally needed for determination of compliance with the PM–10 NAAQS under 60 CFR 50.6. Nevertheless, the number of PM–10 concentrations above the level of the 24-hour PM–10 NAAQS between October 8, 1996, and December 31, 1996 results in the Tribal monitors showing a violation of the 24-hour PM–10 NAAQS as of the December 31, 1996, attainment date for the area. Appendix K of 40 CFR part 50 contains "gapfilling" techniques for situations where less than three complete years of data are available. In brief, that procedure allows a determination of non-compliance with a standard if it can be unambiguously demonstrated that a violation occurred. With respect to the Sho-Ban and primary sites, the expected exceedence rate of the 24-hour standard, averaged over the years 1994, 1995, and 1996, for each site is substantially greater than the 1.1 allowed for the PM–10 NAAQS, even if the days during which the monitors did not operate or collect valid data would have reported zero PM–10 levels. For example, the expected exceedence rate for 1996 was 20.96 at the primary site and 11.34 at the Sho-Ban site. When this rate is averaged with an assumed zero for 1994 and 1995, the three year average expected exceedence rate of 7.0 for the primary site and 3.78 for the Sho-Ban site are above the 1.1 required to show

attainment of the 24-hour PM–10 NAAQS. In other words, even if there were zero exceedences from January 1, 1994, to October 8, 1996, a violation of the standard would occur because of the number of exceedences that occurred from October 8, 1996, to December 31, 1996. EPA therefore believes that there is a violation of the 24-hour NAAQS for PM–10 under 40 CFR 50.6 in the proposed Fort Hall PM–10 nonattainment area using calendar year data from 1994, 1995, and 1996. Based on this data, EPA proposes to find that the proposed Fort Hall PM–10 nonattainment area failed to attain the PM–10 NAAQS by the attainment date of December, 31, 1996.

None of the Tribal monitors collected sufficient data during 1994, 1995 and 1996 to make an attainment determination with respect to the annual PM–10 standard. Generally, three years worth of data must be collected in order to calculate the three year average of each year's annual average, and the gap filling approach does not show a violation in this instance.

EPA notes that it is evident from a review of the data recorded at the Tribal monitors since December 31, 1996, that the values recorded on the Tribal monitors from October through December 1996 are not an aberration. Numerous levels above the 24-hour PM–10 standard have been recorded since December 31, 1996, and these values have been fairly consistent with the values recorded during 1996. Please refer to the air quality data report in the Docket for further analysis of the data from the Tribal monitors and appendix K "gapfilling" techniques.

E. Portneuf Environmental Council Lawsuit

On November 20, 1997, the Portneuf Environmental Council (PEC) filed suit against EPA alleging that EPA had failed to make a finding that the Power-Bannock Counties PM–10 nonattainment area had not attained the PM–10 NAAQS by the December 31, 1996, attainment date, as provided for in CAA section 188(b)(2)(A). EPA is making this proposal in response to that lawsuit.

F. Revision to the Area Designation

In a concurrent notice of proposed rulemaking published in the Federal Register today, EPA is proposing to revise the designation of the Power-Bannock Counties PM–10 nonattainment area by creating two distinct nonattainment areas along the State-Reservation boundary that together cover the identical geographic area of the existing nonattainment area. EPA has proposed that one revised area be comprised of State lands (to be referred to as the "Portneuf Valley PM–10 nonattainment area") and that the other revised area be comprised of lands within the exterior boundary of the Fort Hall Indian Reservation (to be referred to as the "Fort Hall PM–10 nonattainment area"). If EPA finalizes its proposal to split the Power-Bannock Counties PM–10 nonattainment area, the areas will thereafter be considered separately for PM–10 planning purposes and on the basis of the air quality data within each separate nonattainment area.

II. Implications of This Action

A. Reclassification to Serious

By today's action, EPA is proposing to find that the proposed Fort Hall PM–10 nonattainment area did not attain the PM–10 NAAQS by the applicable attainment date of December 31, 1996. As discussed above, this finding is based on air quality data showing exceedences and violations of the PM–10 NAAQS during calendar years 1994, 1995 and 1996. If EPA takes final action on this proposed finding, the Fort Hall PM–10 nonattainment area will be reclassified by operation of law as a serious PM–10 nonattainment area under section 188(b)(2)(A) of the Act.

B. Serious Area Planning Requirements

PM–10 nonattainment areas reclassified as serious under section 188(b)(2) of the Act are required to submit, within 18 months of the area's reclassification, SIP provisions providing for, among other things, the adoption and implementation of best available control measures (BACM), including best available control technology (BACT), for PM–10 no later than four years from the date of reclassification. The SIP must also contain a demonstration that its implementation will provide for attainment of the PM–10 NAAQS. These requirements are in addition to the moderate PM–10 nonattainment requirements of RACT/RACM.

As discussed above, EPA, in consultation with and with the support of the Tribes, has been developing a FIP that will address the PM–10 planning requirements for the proposed Fort Hall PM–10 nonattainment area. EPA intends to propose the FIP for the Fort Hall PM–10 nonattainment area no later than January 31, 1999, and to finalize the FIP no later than July 31, 2001. As also discussed above, the Shoshone-Bannock Tribes have expressed interest in applying for authority within the next few years under EPA's newly promulgated Tribal Authority Rule (TAR) to assume the PM–10 planning requirements for the Fort Hall Indian Reservation, including the Fort Hall PM–10 nonattainment area. Until the Tribes apply for and receive EPA approval under the TAR for the PM–10 planning requirements for the Fort Hall Indian Reservation, however, EPA will carry out, in consultation with the Tribes, the PM–10 planning responsibilities for the Fort Hall Indian Reservation.

Based on discussions with the Tribes, EPA is aware that the Tribes are concerned that the reclassification of the Tribal portion of the nonattainment area to serious will imply that the Tribes have not been diligent in addressing the PM–10 planning requirements for the Tribal portion of the nonattainment area. In this respect, EPA would like to emphasize that until EPA promulgated the TAR in February of 1998, the Tribes did not have authority under the Clean Air Act to address the PM–10 planning requirements for the Reservation portion of the nonattainment area. EPA will carefully consider any additional comments or concerns raised by the Tribes during the public comment period.

C. New Particulate Matter NAAQS

On July 18, 1997, EPA promulgated revisions to both the annual and the 24-hour PM–10 standards and also established two new standards for particulate matter, both of which apply only to particulate matter equal to or less than 2.5 microns in diameter (PM–2.5). See 62 FR 38651. The revised standards became effective on September 16, 1997. Although the revised suite of particulate matter standards reflects an overall strengthening of the regulatory standards for particulate matter, the revised 24-hour standard, by itself, reflects a relaxation of that standard.

EPA notes that, after converting the 1996 and 1997 PM–10 data as reported by the Tribes to local temperature and pressure and calculating the 99th percentile as is done under the revised 24-hour PM–10 NAAQS, there is a strong likelihood that the proposed Fort Hall PM–10 nonattainment area will violate the revised PM–10 NAAQS if the number and extent of exceedences remain constant.

In the preamble to the final rule setting the new and revised particulate matter standards, EPA stated that the pre-existing PM–10 standards would remain in effect for a period of time after the effective date of the new standards to ensure a smooth transition to the new

standards. 62 FR 38701. Given that the revision of the PM–10 NAAQS, by itself, constitutes a relaxation, the proposed Fort Hall PM–10 nonattainment area will be subject to the provisions of section 172(e) of the Act. Section 172(e) applies to prevent backsliding in those areas that have not attained the pre-existing PM–10 standard as of the date the PM–10 NAAQS revision became effective. As a result, the pre-existing PM–10 standards will continue to apply in the proposed Fort Hall PM–10 nonattainment area until EPA has completed the rulemaking required under section 172(e). See 62 FR 38701. The rule promulgated under section 172(e) must require controls in the proposed Fort Hall PM–10 nonattainment area that are "not less stringent than the controls applicable to areas designated nonattainment before the relaxation of the 24-hour PM–10 standard."

III. Administrative Requirements

A. Executive Order (E.O.) 12866

Under E.O. 12866 (58 FR 51735 (October 4, 1993)), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "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." The Agency has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f). Under section 188(b)(2) of the CAA, findings of failure to attain are based upon air quality considerations and the resulting reclassifications must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local or tribal governments or communities.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Findings of failure to attain and reclassification of nonattainment areas under section 188(b)(2) of the CAA do not in and of themselves create any new requirements. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking only proposes to make a factual determination, and does not propose to directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), I certify that today's proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under the UMRA, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate. EPA believes, as discussed above, that the proposed finding of failure to attain and reclassification of the proposed Fort Hall PM–10 nonattainment area are factual determinations based upon air quality considerations and must occur by operation of law. Thus, the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885 (April 23, 1997)) applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

IV. Request for Public Comments

EPA is, by this document, proposing a finding that the proposed Fort Hall PM–10 nonattainment area failed to attain the PM–10 standard by December 31, 1996, the applicable attainment date. EPA solicits public comments on all aspects of this proposal. Public comments should be submitted to EPA at the address identified above by July 20, 1998.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

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

Dated: June 10, 1998.

Chuck Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 98–16404 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–94–1; FHWA–1997–2222]

RIN 2125–AD27

Parts and Accessories Necessary for Safe Operation; Lighting Devices, Reflectors, and Electrical Equipment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is proposing to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers engaged in interstate commerce install retroreflective tape or reflex reflectors on the sides and rear of trailers that were manufactured prior to

December 1, 1993, have an overall width of 2,032 mm (80 inches) or more, and a gross vehicle weight rating (GVWR) of 4,536 kg (10,001 pounds) or more. The FHWA is proposing that motor carriers be required to install retroreflective tape or reflex reflectors within two years of the effective date of the final rule. Motor carriers would be allowed a certain amount of flexibility in terms of the colors or color combinations during a 10-year period beginning on the effective date of the final rule, but would be required to have all older trailers equipped with conspicuity treatments identical to those mandated for new trailers at the end of the 10-year period. The locations at which the retroreflective material would have to be applied to trailers during the phase-in period would be specified. This rulemaking is intended to help motorists detect trailers at night and under other conditions of reduced visibility, thereby reducing the incidence of passenger vehicles colliding with the sides or rear of trailers.

DATES: Comments must be received on or before September 17, 1998.

ADDRESSES: Submit written, signed comments to the docket identified at the beginning of this notice, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., et., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su_docs.

Background

On December 10, 1992, the National Highway Traffic Safety Administration (NHTSA) amended Federal Motor Vehicle Safety Standard (FMVSS) No. 108 (49 CFR 571.108), to require that trailers with an overall width of 2,032 mm (80 inches) or more and a GVWR greater than 4,536 kg (10,000 pounds), except trailers manufactured exclusively for use as offices or dwellings, be equipped on the sides and rear with a means for increasing their conspicuity (57 FR 58406). Trailer manufacturers are given a choice of installing either red and white retroreflective sheeting or reflex reflectors arranged in a red and white pattern. Manufacturers of retroreflective sheeting or reflex reflectors intended for use in satisfying these requirements must certify compliance of their product with FMVSS No. 108, whether the material is used as original or replacement equipment. The effective date for the final rule was December 1, 1993.

Summary of the NHTSA Rulemaking

The NHTSA issued an advance notice of proposed rulemaking (ANPRM) on May 27, 1980, requesting comments on methods to reduce the incidence and severity of collisions between passenger cars and large trailers during conditions of darkness or reduced visibility (45 FR 35405). The use of retroreflective materials was considered a possible solution.

Between 1980 and 1985, the NHTSA conducted a fleet study in which retroreflective material was placed on van-type trailers in a manner designed to increase their conspicuity during conditions of darkness or reduced visibility. The treatment of the trailers consisted of outlining the rear perimeter, and delineating the lower sides with retroreflective tape. The authors of the study concluded that truck-trailer combinations equipped with retroreflective material were involved in 15 percent fewer accidents (in which a trailer was struck in the side or rear by a passenger car at nighttime) than combinations that were not equipped with the material. This research is documented in the following research reports: *Improved Commercial Vehicle Conspicuity and Signaling Systems, Task I—Accident Analysis and Functional Requirements*, March 1981 (DOT HS 806–100); *Improved Commercial Vehicle Conspicuity and Signaling Systems, Task II—Analyses, Experiments and Design Recommendations*, October 1981 (DOT HS 806–098); and, *Improved Commercial Vehicle Conspicuity and Signaling Systems, Task III—Field Test Evaluation of Vehicle Reflectorization Effectiveness*, September 1985 (DOT HS–806–923). A copy of each of the reports is in the docket.

On September 18, 1987, the NHTSA published a notice discussing the results from the fleet study and requesting comments on the research as well as information from motor carriers about their experiences using reflective material to enhance conspicuity (52 FR 35345).

In response to the NHTSA fleet study, Congress included in the Motor Carrier Safety Act of 1990 (Pub. L. 101–500, 104 Stat. 1218), a provision directing the Secretary of Transportation to initiate a rulemaking on the need to adopt methods for making commercial motor vehicles more visible to motorists. The rulemaking was required to begin no later than February 3, 1991, and to be completed no later than November 3, 1992.

Between March 1990 and September 1991 the NHTSA conducted additional research on trailer conspicuity. The purpose of the research program was to define a range of minimally acceptable large truck conspicuity enhancements that could be used as a basis for developing Federal regulations. A number of laboratory and field studies were carried out to assess the value of using a pattern of retroreflective sheeting, the form the pattern should take, the placement of the treatment on the trailer, the effect of retroreflective markings on the detection and identification of stop and turn signals, and the trade-off between the width and retroreflective intensity of the treatment material. In addition, field surveys were conducted to assess the effect of environmental dirt on the performance of the marking systems and the durability of retroreflective materials when used on commercial motor vehicles.

The final report for the research conducted between 1990 and 1991 (*Performance Requirements for Large Truck Conspicuity Enhancements*, March 1992, (DOT HS 807 815)) includes recommendations that the retroreflective tape be at least two inches in width, applied in a red and white pattern (continuous or broken strip) along the bottom of the trailer on the sides, with a continuous strip along the bottom of the rear of the trailer. The

authors also recommend white corner markers at the top of trailers. In addition, the report provides recommendations concerning minimum retroreflectivity levels, taking into account the effects of environmental dirt, aging, and orientation of the marked vehicle. A copy of the final report is in the docket.

On December 4, 1991, the NHTSA published a notice of proposed rulemaking (NPRM) based upon the research conducted between 1990 and 1991 (56 FR 63474). The NHTSA considered its NPRM, which was part of a rulemaking initiated before the enactment of the Motor Carrier Safety Act of 1990, to be responsive to the congressional mandate and its December 10, 1992, final rule as the completion of the rulemaking mandated by Congress.

Current FHWA Requirements for Trailer Conspicuity

The FHWA is responsible for establishing standards for commercial motor vehicles operated in interstate commerce. Commercial motor vehicles subject to the FMCSRs must meet the requirements of 49 CFR parts 393 (Parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair, and Maintenance). The requirements for lamps and reflective devices are contained in §§ 393.11 through 393.26.

Section 393.11 of the FMCSRs requires that all lighting devices on commercial motor vehicles placed in operation after March 7, 1989, meet the requirements of FMVSS No. 108 in effect at the time the vehicle was manufactured. Therefore, trailers manufactured on or after December 1, 1993, the effective date of the NHTSA requirement for retroreflective tape or reflex reflectors, must have retroreflective tape or reflex reflectors of the type and in the locations specified in FMVSS No. 108 in order to comply with the FHWA's requirements.

On April 14, 1997, the FHWA published a notice of proposed rulemaking in which the agency proposed general amendments to part 393 of the Federal Motor Carrier Safety Regulations (FMCSRs), Parts and Accessories Necessary for Safe Operation (62 FR 18170). The proposed amendments covered a wide range of topics, including conspicuity treatments on trailers manufactured on or after December 1, 1993. To make certain that all motor carriers operating trailers subject to the FMCSRs are aware of their responsibility to maintain the conspicuity treatment, the FHWA proposed the addition of detailed language under § 393.11. The FHWA would cross-reference the specific paragraphs of FMVSS No. 108 related to the applicability of NHTSA's trailer conspicuity standards, the required locations for the conspicuity material, and the certification and marking requirements.

FHWA Rulemaking Concerning Retrofitting

On January 19, 1994, the FHWA published an ANPRM requesting comments on issues related to the application of conspicuity treatments to trailers manufactured prior to the effective date of the NHTSA's final rule on trailer conspicuity (59 FR 2811). The agency requested that commenters respond, at a minimum, to several specific questions listed in the notice:

1. Many motor carriers have been using retroreflective sheeting or reflex reflectors which are not of the colors, retroreflective intensity, width, or configuration of the conspicuity treatment in the NHTSA's final rule. The FHWA seeks information on the type of conspicuity treatments in use and quantitative data on the cost and effectiveness of those treatments in preventing and/or mitigating accidents.

2. What types of technical problems (e.g., tape not adhering to the surface of the trailer) have motor carriers encountered when applying conspicuity materials to in-service trailers? Are any problems unique to certain types of trailers, or to certain types of paints, coatings, or surfaces?

3. What is the approximate cost (parts and labor) to apply conspicuity treatments to trailers? Is special training required for employees performing this task? What cost differences may exist between having this task performed by the motor carrier's own maintenance department or by third parties?

4. How long must a trailer be taken out of service to have the conspicuity material applied to its surfaces?

5. With regard to conspicuity treatments that differ from those in the NHTSA final rule, a retrofitting requirement would result in many motor carriers having to replace their current conspicuity treatments with one that is consistent with the requirements of FMVSS No. 108. The FHWA believes that some form of conspicuity treatment (even certain forms which may be less effective than that covered in the NHTSA's final rule) is better than no conspicuity treatment. What different types of conspicuity treatment are currently being used by motor carriers? What results have been experienced by motor carriers using conspicuity treatments?

6. If this rulemaking proceeds, should the FHWA propose requiring the same red/white color combination, retroreflective intensity, width and configuration as the NHTSA's final rule, or should alternative requirements be considered? If alternatives are considered, do commenters foresee problems in the enforcement of a retrofitting requirement?

7. If this rulemaking proceeds, should the FHWA consider an effective date which is several (2, 3, 4, or 5) years after the date of publication of the final rule?

In addition to responding to the preceding questions, the FHWA encouraged commenters to include a discussion of any other issues that the commenters believed were relevant to the rulemaking.

On August 6, 1996, the FHWA published a notice announcing that the agency had completed its review of the comments received in response to the ANPRM and that it would issue a notice of proposed rulemaking (61 FR 40781).

Discussion of Responses to the ANPRM

The FHWA received 955 comments in response to the ANPRM. The strongest voice of support came from concerned private citizens—a total of 828 responses. The FHWA received 321 responses on behalf of Carl Hall, who was killed in a collision with a tractor-semi-trailer that blocked the road as the truck driver backed the vehicle into a driveway. Another 285 responses were on behalf of Guy Crawford, a 16-year old boy who was killed in an underride accident with a coal truck. In addition, the agency received 223 responses from other concerned citizens, many of whom lost family members or friends in accidents involving commercial motor vehicles.

The FHWA has the greatest sympathy for the losses suffered by these respondents. The goal of this rulemaking is to reduce the number of such accidents, but rules must be based on consideration of evidence and data submitted. Since these commenters did not include answers to the questions listed in the ANPRM or provide information concerning technical or economic aspects of retrofitting trailers with conspicuity treatments, the remainder of this preamble will focus on those issues. The agency, however, has not ignored the advice of those whose tragic personal experiences led them to support a conspicuity rule.

The specific concerns or issues raised by the commenters that discussed technical or economic issues are discussed in the following sections.

General Discussion of Comments Opposed to the Rulemaking

The FHWA received 40 comments from motor carriers and industry groups that were either opposed to any type of retrofitting requirements, or supportive of the concept of voluntary use of conspicuity treatments but opposed to requiring the red-and-white color scheme specified by the NHTSA. The commenters were: Allied Van Lines, Inc.; the American Movers Conference (AMC); the American Trucking Associations (ATA); Beaver Express Service, Inc.; Becker Hi-Way Frate; Bestway Systems, Inc.; BTI; Churchill Truck Lines, Inc.; the Colorado/Wyoming Petroleum Marketers Association (CWPMA); Contract Freighters, Inc.; Crowley Maritime Corporation; Dart Transit Company; Fleetline, Inc.; Grote Industries, Inc.; the Institute of International Container Lessors; the Interstate Truckload Carriers Conference; John W. Ritter Trucking Inc.; Metalcore, Ltd.; the Missouri Motor Carriers Association; Mobil Oil Corporation (Mobil); the National Private Truck Council (NPTC); the National-American Wholesale Grocers' Association—International Foodservice Distributors Association (NAWGA/IFDA); the Pacific Merchant Shipping Association; the Petroleum Marketers Association of America (PMAA); Reliance Trailer Manufacturing (Reliance); the Rocky Mountain Oil and Gas Association (RMOGA); San Joaquin Sand and Gravel; Schneider National; the Steamship Operators Intermodal Committee (SOIC); Talley Transportation; United Van Lines, Inc.; United Parcel Service (UPS); USA Truck; Wal*Mart Stores, Inc.; Watkins Motor Lines, Inc.; Werner Enterprises; Western Distributing Transportation Corporation; the Wyoming Trucking Association, Inc.; XTRA Corporation (XTRA); and Yellow Freight System Inc.

Generally, the commenters opposed to the retrofitting rulemaking believe that it is important to improve highway safety. However, many of them do not believe that conspicuity treatments are a cost-effective solution to the problem of passenger cars colliding with trailers. In several cases, the commenters argued that there is not enough data to assess the effectiveness of the NHTSA's requirements for trailers manufactured on or after December 1, 1993. For motor carriers that installed conspicuity treatments on their trailers manufactured before December 1, 1993, the opposition to the retrofitting rulemaking is based upon the belief that the FHWA would require them to remove retroreflective materials that do not conform to the NHTSA standard.

On the subject of data to support the FHWA's rulemaking, the NAWGA/IFDA stated:

> Before [the FHWA] issues proposed rules in this docket, NAWGA/IFDA suggests that accident experience data for [the trailers covered by the NHTSA's conspicuity rule]—perhaps for calendar year 1994—be obtained by FHWA. Indeed, such data would be responsive to FHWA's first issue raised in its [ANPRM]—the existence of data on the effectiveness of various marking treatments in preventing and/or mitigating accidents. With this data in hand, FHWA would then be in a better position to proceed to an informed decision as to whether to extend the NHTSA requirements to pre-December, 1993 trailers.

United Parcel Service (UPS) also expressed concern that there is insufficient accident data to support a retrofitting requirement. The UPS stated:

> A proposed FHWA rulemaking mandating the retroactive installation of reflective sheeting is at the very least premature, and perhaps entirely unwarranted.
>
> The first assumption is that the current DOT regulations for vehicle visibility are inadequate and need to be improved. In fact, FHWA has presented no data to support such a contention. The rule also assumes knowledge of what constitutes adequate conspicuity. Again, no supporting data is offered.
>
> UPS unsuccessfully opposed NHTSA's conspicuity rule, arguing at the time that the data was insufficient to warrant a rule. In our view, FHWA risks compounding NHTSA's mistake, but in an even more expensive and less sensible way. If FHWA is willing to delay its rulemaking long enough, NHTSA's present regulation (FMVSS No. 108) will provide enough reliable data to make a judgement on the safety impact of the reflective sheeting. It should be noted that in reviewing our own considerable highway safety data, UPS has found no evidence to support the creation of a new mandate that would immediately [affect] such a large number of vehicles.

In addition to the NAWGA/IFDA and UPS, the Interstate Truckload Carriers Conference (ITCC) commented that the benefits of conspicuity treatments have not been proven. The ITCC stated:

> As a general observation, retroreflective sheeting or reflex reflectors for trailers manufactured prior to December 1, 1993, should be voluntary, not mandatory, although the Federal Highway Administration ("FHWA") may wish to develop and offer recommended guidelines to assist those carriers wishing to apply retroreflective treatments to their trailer equipment. In spite of the perceived safety benefits of having retroreflective sheeting applied to older trailers, not one of the carriers responding to the ITCC survey, which own and operate more than 34,000 trailers, are able to quantify any correlation between their use of retroreflective materials and a decrease in trailer accidents where conspicuity was a factor. Moreover, operational and cost considerations suggest that any requirement to improve trailer conspicuity would be burdensome. Should the FHWA proceed with this matter and institute a proposed rulemaking, it should propose to accept the conspicuity treatments applied to trailers prior to the effective date of any adopted rule, even though such treatments may not conform to the NHTSA rules prescribing conspicuity treatments for trailers manufactured after December 1, 1993, in type, color, size, placement or configuration, construction, brightness, or other aspect.

The ATA opposes a retrofitting requirement because it believes there is no cost-effective and reasonable method to apply reflective materials to all of the trailers manufactured before December 1, 1993. The ATA also indicated that a large number of trailers are already marked with materials of greater intensity, but different color schemes than those mandated by the NHTSA and that retrofitting to the NHTSA color scheme would cause an unjustified economic hardship on many carriers. The ATA stated:

> FHWA did not evaluate this regulatory action because of a lack of necessary cost information. A federal mandate to retrofit reflective materials on trailers built before December 1, 1993, will have a significant cost impact. With 3.8 million trailers on America's highways, the total cost of a federal mandate will exceed $1 billion. This figure includes costs for conspicuity materials, labor costs for preparing the trailers and applying the materials, and loss of use of trailer productivity while [the trailer is] being prepared/repaired and retrofitted.

In addition the ATA indicated that The Maintenance Council of the ATA has published a recommended practice (*Large Vehicle Conspicuity Markings*, RP 722, Issued March 1993, Revised June 1994) concerning the application of reflective tape or materials to unmarked trailers, and that the Society of Automotive Engineers (SAE) was preparing a Surface Vehicle Information Report, *Large Vehicle Conspicuity Markings*, SAE J2117. The ATA believes that there are already market forces (e.g., potential litigation) pressuring motor carriers to retrofit their trailers with conspicuity materials and that a retrofitting rule is not necessary.

Another commenter expressing concerns about the economic impact of a retrofitting requirement was the American Movers Conference (AMC). The AMC stated:

> It would be a serious mistake for FHWA to mandate specific conspicuity treatments for existing trailers. Such regulatory action is

impractical and would cause unjustified economic burdens for the moving industry. However, the trailers now in service in our industry are already marked with conspicuity materials that, although different in color and composition from that mandated for new trailers by NHTSA, are highly visible and effectively "conspicuous."

The FHWA does not agree with the NAWGA/IFDA and UPS" assertions that there is insufficient data to support a retrofitting requirement. The FHWA acknowledges that no studies or analyses of the impact of the NHTSA's final rule have been completed to date. However, previous research findings concerning trailer conspicuity strongly suggest that significant improvements in safety could be achieved by requiring all trailers to be equipped with retroreflective materials.

As indicated in the background section of this notice, between 1980 and 1985 the NHTSA conducted a fleet study in which retroreflective material was placed on van-type trailer combinations in a manner designed to increase their conspicuity during conditions of darkness or reduced visibility. The study concluded that truck-trailer combinations equipped with certain conspicuity materials were involved in 15 percent fewer accidents (in which the trailer was struck in the side or rear) than combinations lacking the material.

In addition to the research conducted in the 1980's, the NHTSA conducted a study between March 1990 and September 1991 to define a range of minimally acceptable trailer conspicuity enhancements that could be used as a basis for Federal regulations. The report covering the research performed between 1990 and 1991 is entitled *Performance Requirements for Large Truck Conspicuity Enhancements*, March 1992, (DOT HS 807 815). A copy of this report is included in the docket. The NHTSA's 1992 report states:

> Previous research sponsored by NHTSA [a reference to the research documented in *Improved Commercial Vehicle Conspicuity and Signaling Systems*] indicated that the use of retroreflective tape markings systems enhanced the conspicuity of large trucks and, therefore, had the potential to reduce the number and seriousness of car-into-truck crashes. This earlier research specifically examined the effectiveness of enhanced conspicuity on the crash experience of approximately 2,000 van trailers over a period of 23 months and found a significant reduction in conspicuity relevant crashes for the treated vehicles as compared to control vehicles (untreated). The research report also included a discussion of the methodology for the study.

The authors summarized the research methodology as follows:

Both laboratory and field investigations were conducted to address the issues of interest. For example, two laboratory studies were carried out to establish reasonable upper limits for glare from retroreflective surfaces. Field measurements of glare from retroreflective panels positioned at various distances were then taken from different vehicles to relate the laboratory measurements to actual driving conditions.

Minimum reflectivity values were determined from field studies that related material reflectivity values to detection distance. Full scale presentations of various treatment configurations were employed on an actual trailer. The distance at which subjects could detect the trailer were measured on each trial. Final recommendations were based on values corrected for subject expectancy.

The recommendations for pattern and configuration of retroreflective enhancements were based on several field and laboratory studies. The first laboratory investigation involved a paired comparison of various combinations of red and white retroreflective materials viewed at two distances. Two field studies were also carried out in which subjects, who were instructed to look for "potential hazards," detected and identified various retroreflective treatments in a normal driving situation. Finally, using computer presentations of stimuli, two additional laboratory studies were conducted to evaluate the relative importance of different configurations of retroreflective treatments in estimating relative vehicle speed and changes in vehicle spacing.

The tradeoff between treatment width and reflectivity value was assessed in a field study in which subjects drove toward different retroreflective displays and indicated when they could detect them. Measures were taken of detection distance.

Finally, surveys of trucks in use were conducted to assess the effects of environmental dirt and grime as well as degradation due to aging. To measure the effects of dirt, 17 trailers were fitted with retroreflective patches on the sides and rears. The reflective values of these were measured at regular intervals for a period of one year. The effects of aging were assessed by measuring the reflectivity value of retroreflective material that had been in place on trailers for various periods of time. The oldest material measured had been in place for more than 20 years.

The FHWA considers the NHTSA's research results to be reliable indicators of the potential safety benefits of the use of retroreflective materials in preventing passenger cars from crashing into the sides or rear of trailers. None of the commenters identified flaws in the research methodology for the work performed between 1980 and 1985, or the work performed between 1990 and 1991. Furthermore, none of the commenters presented technical data that would call into question the conclusions and recommendations presented in the NHTSA research reports.

Although several motor carriers indicated that they have not experienced any benefits (in terms of preventing passenger cars from crashing into their trailers) from using retroreflective tape, the FHWA believes that negative conclusions are not valid unless based upon detailed information. The information that needs to be evaluated includes: the total number of trailers operated by the fleets in question; the types of trailers operated; the total number of trailers that have conspicuity treatments; daytime and nighttime exposure data (miles traveled with a distinction between urban and rural roads) for the trailers that were treated with conspicuity materials and the trailers that were not treated with conspicuity materials; reflectivity levels for the conspicuity materials used; and, color combinations and patterns for the conspicuity treatments. The before-and-after accident experience of each of the fleets should also be examined carefully. None of the commenters indicated that this type of information was collected and analyzed, or that such information would be made available for review by the FHWA. Therefore, the FHWA does not believe that the commenters have provided enough technical information to warrant terminating the rulemaking.

In response to the commenters who argue that the problem of passenger cars crashing into trailers is not severe enough to warrant a retrofitting requirement, the FHWA believes that the number of these collisions indicates that motorists have a major problem recognizing trailers at night and under other conditions of reduced visibility. The FHWA has reviewed recent accident data and determined that the number of accidents, fatalities and injuries are strong indicators of the need for continuing this rulemaking. The NHTSA's Fatality Analysis Reporting System (FARS) data for 1994 indicates that nighttime collisions in which the passenger vehicle struck the side of a trailer at an angle (as opposed to sideswiping the trailer) accounted for 119 incidents resulting in a total of 140 fatalities. There were 173 nighttime incidents involving a passenger vehicle rear-ending a trailer. The result was 198 fatalities.

The FARS data for 1995 indicates that nighttime collisions in which the passenger vehicle struck the side of a trailer at an angle accounted for 115 incidents resulting in a total of 136 fatalities. There were 200 nighttime incidents involving a passenger vehicle rear-ending a trailer. The result was 224 fatalities. When consideration is given to the NHTSA's estimate (based upon

the research cited earlier in this notice) of the effectiveness of trailer conspicuity treatments at preventing certain types of accidents, and the NHTSA data on the number of accidents, fatalities, injuries, and property damage associated with these accidents, it is reasonable to conclude that significant safety benefits could be achieved if a retrofitting requirement was established.

With regard to the ATA's reference to The Maintenance Council's (TMC) recommended practice, *Large Vehicle Conspicuity Markings*, RP 722, the FHWA does not believe the TMC publication has any relevance to this rulemaking since motor carriers are not required to comply with the recommended practice. This is especially the case given that many trailers have not been retrofitted with any form of conspicuity treatment. The FHWA's observations of trailers currently in use suggest that a large number of motor carriers are either unaware of the ATA's recommended practice, or have chosen to ignore the recommendation. The large number of untreated trailers also suggests that the market forces that the ATA alluded to have not been effective in prompting carriers to voluntarily retrofit their vehicles. Therefore, the FHWA believes that it is necessary to continue this rulemaking and to request public comments on the specific regulatory language that is being proposed in this notice.

The FHWA contacted the SAE to inquire about the status of its efforts to publish a surface vehicle information report concerning conspicuity markings. The SAE advised the FHWA that the project was discontinued.

On the subject of the potential economic impact that this rulemaking would have on the motor carrier industry, the FHWA has prepared a preliminary regulatory evaluation (PRE) to accompany this rulemaking notice. A copy of the PRE is included in the docket. The FHWA estimates that the total cost of this rulemaking would be $339 million. This estimate is based upon the assumption that approximately 1,373,000 trailers would be covered by the rule (if a 2-year phase-in period chosen). The FHWA estimates that the benefits of the rulemaking would be approximately $741 million. A detailed discussion of how the FHWA prepared its estimates is provided later in this notice for commenters that are not able to review the PRE.

In response to commenters concerned about whether their fleets would be required to replace conspicuity treatments that are of a different pattern or color scheme than the NHTSA requirements, it is not the intention of the FHWA that motor carriers remove conspicuity treatments applied to trailers prior to the issuance of this proposal solely because they employ different color schemes than that required by the NHTSA. To accommodate this concern, the FHWA is proposing to allow carriers flexibility in terms of the colors used to satisfy the requirements for a period of 10 years from the effective date of the final rule. This time period was chosen because trailers that were voluntarily equipped with conspicuity treatments will have exceeded their useful service lives and be retired from service. It is, therefore, reasonable to require that at the end of the 10-year period, all motor carriers to use conspicuity treatments that conform to the NHTSA standard (i.e., the use of a red-and-white pattern, and retroreflective sheeting that is certified as meeting the minimum reflectivity levels specified in the NHTSA rule). Although the FHWA would allow the use of alternative colors during a 10-year period, the agency would adopt regulatory language that encourages motor carriers to retrofit their trailers with a conspicuity system that meets all of the requirements applicable to trailers manufactured on or after December 1, 1993, including the use of retroreflective sheeting or reflex reflectors in a red and white pattern. Motor carriers which do not retrofit their trailers to the NHTSA standard (for example by using an alternative color pattern) during the 10-year period, would be required to comply with FHWA's rules concerning the locations and colors. The FHWA would require that the locations at which the conspicuity treatments are installed be consistent with the NHTSA standards under FMVSS No. 108. This preliminary decision is supported by information contained in *Improved Commercial Vehicle Conspicuity and Signaling Systems, Task II, Analyses, Experiments and Design Recommendations.*

The research included studies to determine the relative conspicuity of certain patterns of retroreflective material in a field setting under nighttime and daytime viewing conditions. The color combinations included red and white, blue and white, green and white, and fluorescent red-orange and white. Pairs of conspicuity patterns were installed side-by-side on a truck and viewed at two distances. Subjects were asked to judge which of each pair was the most attention demanding, appeared closer, and showed the most detail. All possible pairs of the 12 test patterns were presented to the subjects. The research showed that the high-reflectivity red and white pattern (using a 3 to 2 ratio of red to white) was the only configuration that received high rankings during both daytime and nighttime conditions. The next best patterns, in terms of the test subjects' reactions, were high-reflectivity blue and white, and green and white (using 3 to 2 ratio of the darker color to the white).

It is very important to note that the researchers acknowledged that an "emphasis was placed on deriving an improved and practical pattern, rather than some optimum pattern." While the findings indicate the red and white pattern was the most effective in terms of hazard recognition, it does not imply that other color schemes or patterns had no value or effect. Therefore, allowing alternative colors for a 10-year period will minimize the economic impact of this rule on motor carriers that have voluntarily retrofitted their trailers with alternate color schemes, while ensuring to the greatest extent practicable, safety benefits during the transition period.

The FHWA fully supports the NHTSA's selection of a standardized red and white pattern for use by trailer manufacturers. However, it is obvious that similar treatments in other colors already applied by safety conscious motor carriers also improve conspicuity and provide potential safety benefits. The FHWA believes it would be inappropriate to immediately prohibit the use of other colors of conspicuity material on trailers manufactured prior to December 1, 1993, because it would have the effect of requiring motor carriers to remove reasonable conspicuity treatments of other colors from older trailers. Such a regulation would penalize motor carriers who had taken steps to retrofit their vehicles prior to the establishment of Federal standards.

The principal reason for NHTSA's requirement of a red and white pattern was to make the reflective image on the side of a trailer recognizable to motorists. Since the side conspicuity treatment consists of a single line of material, a distinct color pattern, less ambiguous than solid white or yellow, was established so that motorists would learn to associate it with trailers. A red and white pattern was chosen for standardization because it was already commonly associated with danger. This color combination is widely recognized and associated with highway hazard warning signs such as stop signs and railroad grade crossing gates. NHTSA also considered outlining the sides of trailers with reflective material to make

them recognizable, but rejected that approach because it was more costly and impractical for trailer configurations other than van-type trailers.

The FHWA does not believe that this proposal will inhibit NHTSA's goal of having the public learn to associate a long red and white line of retroreflective sheeting (or reflex reflectors) with the side of a trailer. On the contrary, the agency expects the majority of conspicuity retrofits to be red and white despite an equitable policy toward existing treatments of other colors during a 10-year transition period. The NHTSA has received numerous inquiries from fleets about voluntary retrofitting since 1993 and none of those fleets expressed an interest in color combinations other than red and white. At the end of the 10-year period, all trailers, irrespective of the date of manufacture, would be required to be equipped with red-and-white retroreflective material which meets the NHTSA's requirements, including certification marking. During the transition period the FHWA's regulations will continue to require red and white treatments be maintained on trailers manufactured on or after December 1, 1993. Therefore there is no financial or aesthetic incentive for motor carriers to retrofit their older trailers in ways that avoid a common fleet appearance with their newest equipment and with future acquisitions.

In addition to the reasons cited in the preceding paragraphs, the FHWA has opted to allow flexibility for trailers that have not been retrofitted with any type of conspicuity treatment because it would be difficult, if not impossible, to enforce a requirement for the use of red and white material. The agency would have to distinguish between older trailers covered by the proposed "grandfathering" clause, and older trailers that were retrofitted on or after the effective date of the final rule. The FHWA is not aware of a practical and effective means of obtaining proof of the date that the reflective material is actually installed on the trailers.

The FHWA requests comments on its preliminary decision to allow, during a 10-year transition period, motor carriers flexibility in the colors or color combinations of retroreflective materials that would be used to satisfy the proposed requirements.

General Discussion of Comments in Support of the Rulemaking

As mentioned previously in this notice, the FHWA received 828 comments from concerned citizens (including individual truck drivers) in support of the rulemaking. In addition to the concerned private citizens the FHWA received 87 comments from companies, organizations, law firms (most of which represented individuals who were killed or injured in accidents involving a commercial motor vehicle), State governments, and municipal governments (including fire and police departments). Commenters included: 3M; Advocates for Highway and Auto Safety (the Advocates); Alterman Transport Lines, Inc.; the American Society of CLU and ChFC; the Denton County Democratic Party; the Eye Care Center; the Insurance Institute for Highway Safety (IIHS); the National Sheriffs' Association; Roberson Corporation; R.R. Crawford Engineering; D.A.S. Roofing Company; Joseph E. Badger Accident Reconstruction Services; the Wellness Center; the Seniors Civil Liberties Association, Inc.; the Maryland State Highway Administration; Merck and Co., Inc.; the Montana chapter of the American Automobile Association; Miller and Bethman, Inc.; Minnesota State Representative Sidney Pauly; Minnesota State Patrol; New Jersey State Senator John J. Matheussen; New York City Department of Transportation, Bureau of Traffic; City of Tampa, Department of Public of Works; Strategic Metro Area Reduction Team, Inc.; Transamerica Leasing, Inc.; U.S. Representative James C. Greenwood; U.S. Representative Paul McHale; former U.S. Representative Marjorie Margolies-Mezvinsky; University of South Florida, Department of Community and Family Health; Montana Office of Public Instruction; Kay E. Konz, Nebraska Volunteer Coordinator for Citizens for Reliable and Safe Highways; Operation Front Line; and the Owner-Operator Independent Drivers Association (OOIDA).

The OOIDA indicated that it supported the NHTSA's rulemaking to require conspicuity treatments on newly manufactured trailers because it agreed with NHTSA's findings that better conspicuity would significantly reduce the likelihood of side and rear collisions. The OOIDA stated:

> It has been the experience of the Association that owner-operators equip their vehicles in such a way that better use is made of reflective devices and additional lighting. OOIDA believes that it would be in the best interests of motor carriers to do all that is necessary to enhance the visual conspicuity of their vehicles, regardless of the age of the tractor or trailer in question. Not only will the safety of the driving public be increased, but insurance costs would likely be reduced. For example, OOIDA works closely with one insurance company that already requires reflective devices on flatbed trailers. However, such requirements should not be left to the uncertainties of voluntary compliance.

The Insurance Institute for Highway Safety (IIHS) indicated that requiring retrofitting of the red and white retroreflective materials is needed to achieve the full safety benefits of the NHTSA requirements in terms of reductions in deaths, injuries, and property damage. The IIHS believes that only a portion of the fleet of trailers will be replaced during a given year and that the retrofitting should be required for all trailers in operation.

The Advocates also supports a requirement to retrofit vehicles with conspicuity treatments that conform to the NHTSA standard. The AHAS stated:

> Given the fact that the current regulation is in effect, Advocates wants to stress early in these comments that, notwithstanding our concern that the NHTSA did not choose an optimal reflectorization design for truck trailers, we think it is crucial that any retrofit of existing heavy truck trailers with reflective materials should adhere strictly to the marking regime established by NHTSA in its amended Final Rule. The importance of [an] unambiguous conspicuity message for other drivers cannot be overestimated and, therefore, any proposal for reflectorization of the sides and rears of trucks by the FHWA should conform in all particulars to the regulation for new trailers. Competition from reflectorized logos and accessory reflectorization of trailers already threatens to overwhelm the sparse conspicuity signature of the NHTSA FMVSS. Any prospective Federal Motor Carrier Safety Regulation (FMCSR) must assist in reducing the wide variety of competing conspicuity cues already present in the existing truck fleet. Without such uniformity, the FHWA may saddle the motor carrier industry with an additional financial burden that does not reap substantial benefits in reducing both crashes and crash severity.

In addition, the AHAS argues that the FHWA should require retrofitting of conspicuity materials on single-unit trucks and apply the conspicuity requirements to vehicles operated in the United States by Canada- and Mexico-based motor carriers.

Several law firms submitted comments in support of a retrofitting requirement. One of the firms was Elliot, Reihner, Siedzikowski, North and Egan which represents the estates of Marion Steward and Carl Hall, both of whom were killed in accidents involving collisions into the side of a trailer. David Narkiewicz, responding on behalf of the law firm, stated:

> There is no question in my mind but that both of the above individuals would still be alive if appropriate retroreflective tape and additional lighting had been installed on both of the tractor trailers which were positioned at 45 degree angles across both lanes of the highway in both accidents.

On the subject of the red and white pattern for conspicuity treatments, Mr. Narkiewicz stated:

> [M]any of the conspicuity experts which I have utilized have told me that the broken pattern of red and white now mandated on new trailers is not as good as solid white, so I would ask that reflective tape be required but leave the colorant pattern up to the owners of the vehicles. There should be minimum standards as to size and location but do not overregulate so that improvements in the future would not be possible because of rigid guidelines that need to be continually amended.

Only one motor carrier submitted a comment in support of a requirement to retrofit vehicles in a red and white pattern. Alterman Transport Lines, Inc. (Alterman), with a fleet of 1,400 trailers, indicated that it had already started retrofitting its older trailers. Alterman stated:

> We think it provides perfect visibility. We have checked conditions a number of times especially during the night in rainy and foggy conditions, indeed it does support that which the program was designed [to accomplish].

The FHWA agrees that older trailers should be retrofitted with red-and-white conspicuity treatments. However, the FHWA believes that motor carriers should not be penalized for voluntarily retrofitting their trailers with conspicuity treatments of alternate colors. The FHWA is proposing to allow these carriers 10 years to continue to use the non-conforming colors. The end of the 10-year period would coincide with the expected end of the useful service life of the vehicles in question.

The NHTSA in its final regulatory evaluation estimated that the average trailer has a useful service life of approximately 14 years. Commenters to both the NHTSA's NPRM and the FHWA's ANPRM generally agreed with this estimate. Tank trailers are both more expensive and more durable than other types of trailers and are believed to have a useful life of approximately 20 years. The NHTSA requirements cover trailers manufactured on or after December 1, 1993, which means that the 14-year useful service life on most trailers manufactured shortly before this date would be reached around the year 2007. The useful service life of most tank trailers would be reached around the year 2013. Therefore, the 10-year period will help to ensure that motor carriers operating trailers equipped with non-conforming conspicuity treatments will not be penalized by the retrofitting rulemaking. However, if these carriers choose to continue operating these trailers at the end of the 10-year period, the vehicles would have to be retrofitted with a conspicuity treatment that conforms to the NHTSA standard. For carriers operating tank trailers equipped with non-conforming conspicuity treatments, the old treatments would have to be replaced with a conforming conspicuity treatment within 10 years of the effective date of the final rule.

As discussed in the preceding section of this notice, the NHTSA's research suggests that there are potential safety benefits from the use of other color combinations. While the FHWA fully supports the NHTSA's decision to require the red and white pattern on newly manufactured trailers, attempting to immediately extend that requirement to trailers that are already equipped with a different conspicuity scheme would not result in a cost effective improvement in safety. The FHWA is not aware of data that would enable the agency to conclude that the level of effectiveness of the alternative color schemes on older trailers is unacceptable for use during the proposed 10-year transition period.

The FHWA does not intend to propose, at this time, conspicuity treatments on single-unit trucks. This rulemaking is not intended to serve as a forum for resolving complaints about the NHTSA's conspicuity rulemaking. The NHTSA provided all interested parties with the opportunity to comment on the amendments to FMVSS No. 108 during its rulemaking on trailer conspicuity.

The Advocates have not provided data to prove that a retrofitting requirement for single-unit trucks would be a cost-effective solution to the problem of passenger vehicles colliding with single-unit trucks. The NHTSA's accident data (Fatality Analysis Reporting System (FARS) and General Estimates System (GES)) indicate that combination vehicles are over represented in collisions involving passenger vehicles striking the sides or rear of commercial motor vehicles. This means that the number of accidents in which a passenger vehicle strikes a combination vehicle (a single-unit truck pulling a trailer(s), or a truck-tractor pulling a trailer(s)) exceeds the amount that one would expect if one looked at the percentage of the registered commercial vehicle fleet that is listed in the combination-vehicle category.

In 1995 there were an estimated 16,674 nighttime accidents in which one commercial motor vehicle and one passenger vehicle were involved. All of these accidents resulted in a fatality, injury, or one of the vehicles incurring damage severe enough to require that the vehicle be towed from the accident scene. In 4,734 of these accidents, a passenger vehicle rear-ended a trailer (2,313 cases) or struck the side of the trailer (2,421 cases). By comparison, in 2,027 of the 16,674 nighttime accidents a passenger vehicle rear-ended a single-unit truck or truck-tractor (1,112 cases) or struck the side of the single-unit vehicle (915 cases).

Looking at the 1995 FARS data, there were 914 fatal nighttime accidents involving one commercial motor vehicle and one passenger vehicle. In 315 of these accidents, a passenger vehicle rear-ended a trailer (200 cases) or struck the side of the trailer (115 cases). By comparison, in 67 of these nighttime accidents a passenger vehicle rear-ended a single-unit truck or truck tractor (50 cases), or struck the side of the single-unit vehicle (17 cases).

The 1995 nighttime accident statistics indicate that the frequency with which passenger vehicles strike the rear of trailers is double the frequency with which passenger vehicles strike the rear of single-unit vehicles. The frequency with which passenger vehicles strike the side of a combination vehicle is approximately 2.6 times the frequency with which passenger vehicles strike the side of a single-unit vehicle. The FARS data for 1995 show that frequency of fatal nighttime accidents involving a passenger vehicle striking the side of a combination vehicle is almost seven times the rate at which passenger vehicles strike the side of a single-unit commercial motor vehicle. The frequency of fatal nighttime accidents involving a passenger vehicle rear-ending a combination vehicle is four times the rate at which passenger vehicles strike the rear of a single-unit commercial motor vehicle.

The difference between the nighttime accident involvement for combination vehicles and single-unit vehicles is especially important because the number of registered single-unit trucks (4,219,920) is 2.63 times the number of combination trucks (1,607,183).[1] Therefore, combination vehicles represent approximately 27 percent of the fleet, but 70 percent (4,734 out of 6,761 cases) of nighttime accidents in which a passenger car struck the side or rear of a commercial motor vehicle. Looking at the fatal nighttime accidents, combination vehicles were involved in 82 percent (315 out of 382 cases) of the incidents in which a passenger vehicle struck the side or rear of a commercial motor vehicle. Based upon this data, the FHWA has decided to limit this rulemaking to semi-trailers and trailers.

[1] *Summary of Medium and Heavy Truck Crashes in 1990*, National Highway Traffic Safety Administration, February 1993 (DOT HS 807 953).

The FHWA agrees with the Advocates' recommendation that the retrofitting requirements apply to Canada- and Mexico-based vehicles. The agency's proposal applies to trailers operated by foreign-based motor carriers. This issue is discussed in greater detail later in this notice.

With regard to commenters who believe that specific accidents would not have occurred, or the severity of the accidents would have been decreased, if the trailers involved had been equipped with conspicuity treatments, the FHWA notes that the commenters offered more conclusions than evidence. While it is possible to estimate, based upon an analysis of accident data and a structured research program, the percentage of certain types of accidents that could be prevented if conspicuity requirements are established for all trailers, it is generally difficult to identify a specific accident and state with certainty that the use of retroreflective tape would have prevented the accident.

Motor Carrier Experiences Applying and Maintaining Conspicuity Treatments

The FHWA received comments from motor carriers, industry groups, and manufacturers of retroreflective sheeting in response to the question concerning motor carrier experiences retrofitting their trailers with conspicuity materials. Both supporters and opponents of the retrofitting rulemaking provided detailed information.

Contract Freighters, Inc. (Contract Freighters) indicated that when attempting to retrofit its trailers in 1986 and 1987, several hours of labor were required to prepare the surface of the trailers for proper adhesion of the conspicuity treatment. Contract Freighters also indicated that most trailers have a line of rivets that sometimes hamper the application of reflective tape. The company stated:

> The other problems with large fleets is the ability to move all the equipment to one location where the treatment can be applied in a cost effective manner. During 1986 and 1987 we were unable to get all 1,500 trailers retrofitted simply due to the logistics problems of getting them to our shop.
>
> The application is very time consuming and while a trailer may pass through our facility for inspecting and routine maintenance, there were consistently occasions that time simply did not permit putting the trailer out of service for conspicuity treatment.

The Interstate Truckload Carriers Conference (ITCC) indicated that the primary difficulty that its members experienced in retrofitting trailers was the preparation of the surface. The ITCC stated:

> Some carriers report an inordinate amount of time consumed with surface preparation so that adhesive-backed conspicuity treatments will properly adhere to the trailer surface. Some older trailers have gouges, scratches, and surface metal deterioration that result in poor application. Other older trailers have poor paint finishes that similarly prevent proper adhesion. On these older trailers, carriers report the need to sand, prepare, and repaint trailers before adhesive-backed conspicuity treatments can be applied. Ironically, some newer trailers manufactured before December 1, 1993, are treated with a paint finish, designed to reject moisture and dirt, that makes it difficult for adhesive tape to adhere to the trailer surface.

On the subject of maintaining the conspicuity treatments that had been retrofitted on the older trailers, the ITCC stated:

> Maintenance of adhesive tape poses a problem for carriers. Many carriers simply do not apply adhesive tape—or any other reflective markers—on the trailer underride bar because of the abuse that area of the trailer experiences, at loading docks and when used as a step for trailer entry, and because of the almost immediate corresponding reduction in retroreflective benefit. Carriers operating flatbed trailers report a harsh environment for retroreflective applications generally, as a result of chains and bindings that are often used with such equipment and which scrape against reflective treatments. On some applications, dirt was found to be obscuring the edge of the reflective material, so the material is now being edge-coated to prevent this problem.

The NAWGA/IFDA indicated that its members generally have not experienced problems applying reflective materials to their trailers. However, members of NAWG/IFDA did encounter adhesion problems on some of the older trailers because of rust and the condition of the trailer surfaces. The NAWGA/IFDA stated:

> For those members that have experienced problems, the biggest is not so much a "technical" problem as a matter of preparing the surface of the trailer before installation of the material. Cleaning the surface before application of the material can be a labor-intensive and costly process. In addition, certain types of conspicuity materials cannot be properly installed over or around rivets and welds.

Grote Industries, Inc., a manufacturer of lighting devices, mirrors, wiring systems, emergency warning equipment, and switches stated:

> As a manufacturer of painted, plated, and decorated parts, many of which require adhesive labels, the importance of good surface preparation is well [known] to us. There is a wide range of surfaces found on both new and in-service trailers (e.g., steel, aluminum, wood, fiberboard, various types and grades of paint, etc.) and they will or have been exposed to a wide range of contaminants and environmental effects (e.g., salt, water, oil, gas, dirt, dust, wind abrasion, diesel fuel, etc.). The net effect is a huge variety of possible barriers to good adherence of conspicuity tape. It is clear that many if [not] all in-service trailers will have surfaces that are chipped, oxidized, rusted, dirty, oily, dented, scratched, and contaminated in numerous ways and combinations of ways. The only way to provide even a chance for adherence of conspicuity tape would be to restore the trailer's finish to its original condition; a process that will be both costly and time consuming.

XTRA also expressed concerns about getting conspicuity materials to adhere to the surface of older trailers. XTRA stated:

> Any retrofitting requires the application of materials to trailers in varying conditions and produces less than optimal results. Trailer surfaces must be cleaned to achieve satisfactory adhesion. Conspicuity treatments cannot be applied satisfactorily in cold and adverse weather conditions. Because of the lack of indoor facilities, this limits the time of year in which conspicuity treatments could be applied in many areas of the country. Retrofitting of trailers may have to be repeated to maintain the conspicuity to the standard because of durability problems in applying materials to existing trailers.

The SOIC indicated that it is not aware of any intermodal chassis fleets which utilize conspicuity treatments other than required lights and reflectors. The SOIC stated:

> Many, if not most, intermodal chassis in service today have been coated with wax-based coatings. Tape materials will not adhere to these coatings and it would be necessary to apply the retroreflective tape to metal plates which must then be riveted or welded to the chassis structure.
>
> In addition, because intermodal chassis have very narrow profiles at the front and rear, it will be necessary for most chassis fleet operators to purchase new identification markings and reapply them in new locations in order to comply with the rules being contemplated hereunder. A third technical problem, not encountered in the manufacture of new equipment, is that adhesive films cannot generally be applied under very low temperature or high humidity conditions, thus affecting the ease of application of many field locations.

Schneider explained that in the case of polyurethane paints and other high gloss enamel surfaces, all road grime must be removed from the surface prior to applying the conspicuity treatment. Schneider indicated that normally an ordinary solvent is sufficient to properly clean the surface. It was emphasized that surface temperature is critical. The surface of the trailer must be greater than 4.4°C (40°F) for proper adhesion of the conspicuity treatment.

Schneider also indicated that it had experienced difficulty applying retroreflective sheeting to rear underride devices. Schneider stated:

The application of reflective sheeting to the rear underride protection of semi-trailers is best done when the underride protection is brand new. When applying to an old surface that has the normal wear and tear type abrasions and nicks in the painted surface that has resulted in a certain amount of surface rust, the surface must be buffed clean, painted, allowed to dry and then have the reflective sheeting applied in a retrofit operation. This is one of the more costly aspects of applying reflective sheeting to the rear of the trailer during retrofit and it is also an area of high maintenance because of the abrasion and scuffing of the reflective sheeting caused by locking devices which attach to the bumper at the dock areas during loading and unloading of the semi-trailer.

By contrast, the OOIDA indicated that none of its members had submitted complaints concerning technical problems applying conspicuity treatments to trailers.

The 3M Corporation stated that "Proper surface preparation protocols, tests for surface evaluation and application techniques have been developed which, when followed and used with properly manufactured adhesive systems, ensure optimal conditions for the formation of adhesive bonds." The 3M Corporation also stated:

> There are some surface coatings, such as "non-hardening" paint, which are formulated to have very low surface energy. An alternate (non-adhesive) system is required to affix conspicuity treatments to these substrates.

The FHWA recognizes the difficulties that motor carriers have had retrofitting conspicuity treatments to older trailers. The agency has considered the technical problems associated with installing conspicuity treatments as part of the process for preparing the preliminary regulatory evaluation (PRE) to accompany this notice. The agency has also considered the scheduling problems cited by the commenters and used this information as one of the factors for deciding to propose a two-year phase-in period for installing retroreflective materials on trailers that are not equipped with any form of conspicuity treatment, and a 10-year transition period to replace non-conforming treatments with retroreflective material that conforms to the NHTSA requirement.

The agency believes that, in most cases, retrofitting an older trailer would not require major repairs of the trailer. Generally, thorough cleaning and proper preparation of the surfaces on which the retroreflective materials would be applied should be adequate to ensure that the tape sticks to the trailer for the remainder of the trailer's service life. The FHWA encourages commenters to this NPRM to provide additional information, including color photographs, concerning surface conditions of in-service trailers that require extensive repairs prior to applying conspicuity materials.

In response to comments concerning the difficulty of retrofitting conspicuity treatments to the rear underride guard, the FHWA is not proposing that carriers be required to apply retroreflective material at that location. The FHWA believes that requiring conspicuity treatments on the rear underride guard would, in many cases, also require the complete refurbishment of the underride device and significantly increase the economic burden of a retrofitting rule. Extensive work on the underride device would increase the amount of time the trailer would be out of revenue service, and the labor, supplies and materials needed to complete the retrofitting process. While there are potential safety benefits to having conspicuity treatments on the rear underride, the agency does not have enough information to ensure that safety benefits that would be gained by requiring the retrofitting of conspicuity treatments on the underride guard exceed the costs for installing and maintaining the reflective material in that location. The FHWA requests comments from all interested parties on this issue.

Color Combinations Currently Used by Motor Carriers

The FHWA received numerous comments from industry groups, motor carriers, and manufacturers of retroreflective sheeting in response to the request for information about current conspicuity schemes. Both supporters and opponents of the retrofitting rulemaking provided detailed descriptions of the types of reflective tape/material in use on trailers manufactured before December 1, 1993.

Gra-Gar, Inc. (Gra-Gar), which operates approximately 8,000 trailers manufactured before December 1, 1993, indicated that all of its older trailers are marked with a "light blue diamond grade reflective tape" which is compatible with the color scheme on its trailers. Gra-Gar believes that this color scheme is adequate and provides high visibility during nighttime hours.

Mobil Oil Corporation (Mobil), with a domestic fleet of more than 200 trailers (primarily MC–306 specification cargo tanks), is concerned that the FHWA's rulemaking does not acknowledge additional trailer visibility enhancement associated with the use of retroreflective corporate logos. Mobil stated:

> Mobil's conspicuity enhancements to trailer sides include application of two 2-inch-wide strips of white retroreflective tape: one delineating the trailer overturn rail and one delineating the trailer lower-side rails; two retroreflective corporate logos: one 27-inch diameter "Pegasus" medallion and one 23-inch high by 77-inch "Mobil" trademark on each side of cargo tank equipment. Mobil's conspicuity enhancements to the trailer rear include application of one 19-inch high by 66-inch length retroreflective "Mobil" trademark and an eight-inch high by 108-inch length retroreflective bumper strip. Retroreflective DOT placards have also been applied to both sides and the front and rear heads of cargo tank equipment.

The 3M Corporation stated:

> In addition to the NHTSA standard Red & White sheeting, we have supplied prismatic material for conspicuity in Blue & White, Red, Orange, White and other colors. These colors were chosen for their compatibility with existing graphics or corporate identity systems, as well as for their conspicuity.

The 3M Corporation indicated that its own vehicles have been marked with conspicuity materials since 1979. Red and white markings are used on the rear of the trailer and white markings are used on the sides.

The American Movers Conference stated:

> The use of reflective treatment for trailers is not new in the moving industry. Movers have been installing reflective markings on trailers for a number of years. As an example, North American Van Lines began installing reflective logos and "barricades" on the rear doors of their trailers in 1969, and since 1988 have been using "jumbo" reflective logos and sheeting on the sides of trailers. In addition, some of their more recently acquired trailers are also equipped with [1½ inch] reflective silver striping along the side rails. Mayflower, Allied and United have likewise been using reflective enhancements to highlight their corporate logos on the sides and rear of trailers.

Schneider National (Schneider) indicated that it has approximately 21,000 trailers that have reflective sheeting applied in a pattern established by the company to meet its internal requirements established in 1987. Schneider uses orange reflective sheeting (2-inch by 12-inch segments) in an alternating pattern to outline the perimeter of the rear of its van-type trailers. Both of the vertical supports of the rear underride device as well as the horizontal member have white reflective sheeting applied (one 12-inch segment for the vertical components, and one 36-inch segment for the horizontal component). The sides of the trailers are outlined in a pattern of 36-inch long, 2-inch wide orange reflective sheeting.

The ATA indicated that a number of motor carrier fleets are already using reflective materials that meet or exceed the NHTSA requirements for reflectance and that the prevailing 33621opinion among

these fleets is that the color red should be used only on the rear of all trailers. The ATA stated:

> Current fleet applications of reflective materials follow the NHTSA rule in the scheme of application, with a few basic deviations. Most fleets use a broken line on the side of trailers. The rears of the trailers have, for the most part, a broken outline and/or a barricade pattern. The deviations from the NHTSA rule are the use of other colors than red, e.g., blue, orange or green and leaving tape off underride devices and the top of headerboards.

In response to the comments, the FHWA is proposing to allow, during a 10-year transition period, motor carriers to use color combinations other than red and white to satisfy the proposed retrofitting requirements. At the end of this transition period, however, motor carriers would be required to use conspicuity treatments that conform to the NHTSA requirements for trailers manufactured on or after December 1, 1993. As indicated earlier in this notice, the FHWA believes that there are safety benefits associated with the use of other color combinations. There is insufficient data to require motor carriers to immediately remove conspicuity treatments that have been applied to trailers manufactured before December 1, 1993. The effectiveness of these alternate approaches, in terms of getting the attention of motorists, may be close enough to the NHTSA standard that a requirement to replace existing treatments prior to the end of the useful service life of the trailers would not be cost effective. Therefore, the agency is proposing to allow, during a 10-year transition period, alternate colors or color combinations, with the stipulation that red retroreflective sheeting or reflex reflectors cannot be used along the sides of the trailer unless it is part of a red and white pattern.

With regard to commenters requesting that the FHWA consider allowing the use of reflective logos as a substitute for the more conventional forms of conspicuity treatments, the FHWA is not aware of any research data or other information that would support such a decision. Therefore, the FHWA is not proposing to allow the use of logos in lieu of retroreflective material in the locations specified in FMVSS No. 108. However, logos may be used in addition to the retroreflective material.

Costs To Install Conspicuity Treatments

The FHWA received numerous comments from private citizens, motor carriers, industry groups and manufacturers concerning the costs of installing conspicuity treatments.

Generally, the private citizens estimated that retrofitting a trailer costs less than $200. Most of the commenters stated that Landstar System retrofitted its trailers at a cost of $125 to $135 per trailer for a total cost of approximately $1 million. However, none of the commenters provided documentation of these estimates, and Landstar System did not submit comments.

As far as comments from the industry, Ryder Commercial Leasing & Services (Ryder) indicated that when a trailer is "almost new" it typically costs $250 (material, labor and adequate attention/skill in cleaning) for a 48-foot trailer, if the NHTSA requirement for reflective material on the rear underride is excluded.

Contract Freighters, Inc. stated that "A recent quote from a current vendor to supply reflective material came to approximately $50.00 per trailer. This estimate included material for the sides and rear of the trailer." The labor involved would include approximately "one-hour per trailer at an average labor rate of $30.00 per hour."

Bestway Systems, Inc. estimates that the cost of conspicuity markings would be approximately $90 per trailer for the tape plus a minimum of 2 hours labor at $35 per hour for a total of $160.

The Interstate Truckload Carriers Conference (ITCC) commented that its members reported costs ranging from $65 for 1,248 square inches of reflective material to $150 for 2,424 square inches of material. The ITCC also stated:

> There is a variance of up to 30 percent in the cost of materials for those carriers using a similar number of square-inch treatments. Thus, one carrier with 2,500 square inches of conspicuity treatments reports a cost of $100.00 per trailer for materials, which generally consist of the retroreflective treatment, tape, screws, and other required materials. Other carriers experience a much greater materials cost, such as $580.00 for 3,456 square inches of treatment.
>
> Labor costs vary as well, and reflect the amount of time needed to adequately prepare the trailer surface for adhesive application, to trim the material, and the like. Some carriers have not directly figured the labor cost of applying conspicuity treatments, as it is performed within the general duties of shop personnel. Other carriers report labor costs per trailer of as much as $300.00, again depending upon the amount of treatments per trailer. Only a few carriers reported seeking bids from outside vendors for conspicuity application, and reported quotes of about $185.00 per trailer for labor costs only.

The ATA believes that the labor costs for retrofitting tape cannot be accurately determined due to extreme variations in serviceable trailer conditions. However, the ATA estimates that the total cost per trailer could reach $1,400. The ATA derived its estimate as follows:

ATA ESTIMATE FOR RETROFITTING A TRAILER WITH CONSPICUITY MATERIAL

MATERIALS:	
Tape	$75–100
Chemicals	25–150
Repair parts (rubrails)	200
LABOR:	
Cleaning/grease	175–200
Cleaning/oxide	300
Vehicle repairs (replace rubrails).	500
Total Cost	1,400

The National Private Truck Council stated that some of its members reported an approximate cost of $250 for parts and labor with a high-end of $740 per trailer.

The Steamship Operators Intermodal Committee (SOIC) stated:

> The costs to apply conspicuity treatment to existing intermodal chassis vary widely, depending on the fleet operator's labor arrangements and the location at which the work is accomplished. Material expenses range from a low of $40.00 per chassis to a high of $75.00. Labor costs range from $25.00 per hour at some non-union locations to $48.00 at some unionized facilities. Two to four man-hours would be required to apply the material.
>
> Thus, the direct costs for applying retroreflective materials to a container chassis can vary from a low of $90.00 to a high of $267.00. It is SOIC's view that the mean is probably in the $210.00 range. This does not include transportation to and from repair shops nor out-of-service time.

The Pacific Merchant Shipping Association estimates that the cost for a conspicuity retrofit would be approximately $470 per chassis. This includes the cost of a new "stepguard," labor, plates and tape. The estimate does not include the cost of down time for the chassis or for drayage to and from the retrofit site.

The AMC indicated that its members reported costs from $250 to $500 for reflective tape with labor costs between $150 on a relatively new trailer and $300 for a trailer that required surface preparation.

The PMAA surveyed its members and determined that the cost of installing reflective material is estimated to be approximately $500 per vehicle. The association believes that when vehicle down time and administrative expenses are considered, the total cost per trailer would rise to more than $1,000.

Schneider National indicated that the cost of retrofitting an individual trailer is approximately $180 for materials and labor. Schneider National also indicated that there is a cost associated with

pulling a trailer out of the fleet for the retrofitting process. The cost for pulling the trailer out of revenue service is $75 per day. The company believes a trailer can be retrofitted with only one day of lost productivity.

Yellow Freight Systems, Inc. (Yellow) estimates the cost of retrofitting the trailers in its fleet to be between $168.11 and $183.94 depending on the type of trailer.

In addition to motor carriers and leasing companies, the FHWA received one comment from a trailer manufacturer, Reliance Trailer Manufacturing (Reliance). Reliance reported that its costs to install conspicuity treatments on new trailers is between $125 and $175. Reliance also stated:

> On a used trailer, the cost to install the reflective tape would be significantly higher. This additional cost is due to the preparation required [for the] contact surface of the trailer prior to application of retroreflective sheeting. The additional time required to sand, prime, and paint throughout the installation process could range from $200–$1,000 per trailer. (In addition to the regular conspicuity cost.)

The FHWA estimates that the total costs of retrofitting a 45–53 foot van-type trailer would be approximately $316. This estimate includes the cost for the retroreflective tape ($97), labor ($75), and the loss in revenues while the trailer is being retrofitted ($144). Details about how the agency developed its estimates for the costs of retrofitting are presented later in this notice as well as in the FHWA's preliminary regulatory evaluation (PRE). The FHWA notes that it is reasonable to expect that some motor carriers may be able to retrofit their trailers for less than the FHWA's estimates while others may end up spending more. However, the FHWA believes it is very unlikely that motor carriers would have to spend $1,400, as the ATA estimates.

Based upon the information presented by the commenters, the FHWA does not believe that the amount of cleaning and repairs required to comply with the proposed requirements would reach the levels estimated by the ATA (i.e., approximately $700 for rubrail repair/replacement, and approximately $400 for cleaning grease and oxidation off the surfaces of the trailer). The ATA's estimate, when compared to the estimates of other commenters, appears to be a worst case scenario for a vehicle that has not been cleaned on a regular basis, or the physical appearance of which has not been maintained. The agency believes this worst case scenario would only be applicable to a small fraction of the flatbed and heavy hauler trailers that would be subject to this rulemaking. The FHWA believes that most motor carriers have adequately maintained their vehicles and that $1,100 in repairs would not be necessary to comply with the proposed requirements.

The FHWA requests additional comments from motor carriers that believe their costs for retrofitting a trailer would greatly exceed the agency's estimates. Commenters are encouraged to provide detailed information on how their estimates were prepared, especially if the estimates are based upon first-hand experience retrofitting vehicles in their fleet.

Summary of the FHWA's Rationale for Issuing the NPRM

The FHWA recognizes the technical and economic concerns of commenters opposed to a retrofitting requirement. However, based upon the information currently available, the agency believes that retrofitting of trailers with conspicuity treatments will provide significant safety benefits. Retrofitting appears to be cost-effective and technically feasible.

The FHWA has completed a preliminary regulatory evaluation (PRE) for this rulemaking. A copy of the PRE is included in the docket. Three key issues were considered in determining whether to issue a notice of proposed rulemaking.

The first issue is the cost of installing retroreflective material on older vehicles. The surfaces of many of the older trailers will require preparation (e.g., removal of oxidation, pre-treating, etc.) to ensure that the retroreflective tape adheres. In many cases the trailer will have to be removed from revenue service to complete the retrofit. Therefore, the FHWA is proposing a two-year phase-in period to allow motor carriers to complete the retrofitting at routine maintenance intervals. The FHWA estimates that the total cost (conspicuity material, labor, and the loss in revenues) for retrofitting a 45–53 foot trailer would be approximately $316, with the cost for shorter trailers being less.

The second issue is the voluntary use of retroreflective material on older trailers by certain fleets. A large number of fleets have been using conspicuity treatments on their trailers since the mid-1980's. However, many of the color schemes as well as the levels of reflectivity of the tape used on the older trailers differ from the NHTSA requirements for trailers manufactured on or after December 1, 1993. If these motor carriers are required to replace the retroreflective materials that they voluntarily installed to improve safety, it would have the effect of penalizing motor carriers that demonstrated an extra level of safety consciousness. This would have the unintended effect of discouraging motor carriers from exploring innovative approaches to improving safety. With this in mind, the FHWA is proposing to allow these motor carriers 10 years to remove alternative conspicuity treatments applied to trailers manufactured before December 1, 1993.

The third issue concerns the projected safety benefits of trailer conspicuity material that meets the NHTSA requirement. The NHTSA estimates that retroreflective tape could lead to a 25 percent reduction in rear end collisions and a 15 percent reduction in side impact collisions. From data available at the time of the NHTSA's final rule implementing conspicuity enhancements, tractor-trailer combinations were involved annually in about 11,000 accidents in which they were struck in the side or rear at night. Within this group of accidents, about 8,700 injuries and about 540 fatalities occurred. The NHTSA indicated that the conspicuity requirements, when fully implemented, are expected to prevent, annually, 2,113 of these accidents. The NHTSA estimated 1,315 fewer injuries and about 80 fewer fatalities would occur.

In 1995 there were an estimated 16,674 nighttime accidents in which one commercial motor vehicle and one passenger vehicle were involved. All of these accidents resulted in a fatality, injury, or one of the vehicles incurring damage severe enough to require that the vehicle be towed from the accident scene. In 4,734 of these accidents, a passenger vehicle rear-ended or struck the side of a combination vehicle—a truck or truck-tractor, towing one or more trailers. It is estimated that more than 4,200 injuries occurred in these nighttime accidents.

Looking specifically at fatal accidents, the NHTSA's Fatality Analysis Reporting System (FARS) data for 1995 indicate there were 2,587 fatal accidents involving one commercial motor vehicle and one passenger vehicle. In 1,819 of these fatal accidents, the commercial motor vehicle was a combination vehicle. Of the 1,819 fatal accidents between a passenger vehicle and a combination vehicle, 200 cases were nighttime accidents in which the passenger vehicle rear-ended the trailer. The result was 224 fatalities (compared to 54 fatalities for 50 nighttime accidents in which a passenger vehicle rear-ended a single-unit commercial motor vehicle). Nighttime accidents in

which the passenger vehicle struck the side of a trailer at an angle accounted for 115 incidents resulting in a total of 136 fatalities.

FHWA Estimates of the Costs and Benefits

The FHWA has completed a preliminary regulatory evaluation comparing the projected safety benefits of a retrofitting requirement to the potential economic impact on the motor carrier industry. The following discussion summarizes the FHWA's analysis. A copy of the complete PRE is available for review in the docket.

Based upon an analysis and comparison of the estimated costs and benefits of two-, three-, and five-year phase-in period options for a retrofitting requirement, the FHWA is proposing a two-year phase-in period for trailers that are not currently equipped with retroreflective sheeting. The FHWA estimates that the total costs for motor carriers to comply with the proposed requirements within a two-year period would be $339 million, with the safety benefits (fatalities and injuries prevented) and economic benefits (property damage prevented) totaling $741 million. The FHWA estimates that this rulemaking would apply to approximately 1.4 million trailers if a 2-year phase-in period were allowed (fewer trailers would be subject to the rulemaking if the 3-or 5-year phase-in periods were chosen). It is estimated that the rulemaking would, over a ten year period, prevent 258 fatalities and 4,224 injuries associated with passenger cars colliding with trailers. In addition, this rule would prevent approximately 5,300 property damage only (PDO) accidents. The FHWA believes the projected safety benefits (in terms of accidents prevented and lives saved) outweigh the economic burden on the motor carrier industry. The following section provides a detailed discussion of how the FHWA prepared its estimates of the costs and benefits.

The costs are considered one-time costs in that the conspicuity treatments will not need to be replaced during the remaining years of the useful service lives of the trailers that would be subject to the retrofitting requirement. The estimates for the benefits are the total expected benefits over the remaining years of the useful service lives of the trailers that would be retrofitted.

Generally, there are three types of costs associated with retrofitting: the tape or reflex reflectors; the labor required to apply it; and, the opportunity cost of withdrawing the trailer from revenue-producing service. The following describes how the FHWA arrived at its estimates for the different types of costs and benefits.

Costs for Retroreflective Sheeting

The NHTSA's preliminary regulatory evaluation used a tape cost of $.675 per linear foot for 50 mm (2-inch) wide tape. Based upon comments to the NHTSA rulemaking and further analysis, the NHTSA adjusted this figure to $1.29 in its final regulatory evaluation.

The amount of tape required to retrofit a trailer varies with its size. For example, a 28-foot trailer would need 47 feet of tape: 14 feet of material per side (because the rule would require that at least 50 percent of the length of the trailer must be covered); an 8-foot strip along the bottom of the rear; 2 pairs of one foot strips for the outline of the upper rear, and approximately seven feet of material for the underride guard. (The FHWA notes that the estimated cost for retrofitting a rear underride guard that does not require complete refurbishment was included in the PRE although the FHWA is not proposing that carriers be required to install conspicuity materials on the underride guard.) By contrast a 48-foot trailer would require the use of an additional 10 feet of material for each side of the trailer or a total of 67 feet of tape.

The NHTSA estimated that the total cost for the tape would be $60.84 for 28-foot trailers, $77.67 for 40–42 foot trailers, and $86.73 for 45–53 foot trailers. The FHWA adjusted these figures to account for inflation between 1992, when the NHTSA's final regulatory evaluation was completed, and 1995. This adjustment, based upon the producer price index for industrial commodities (See Table b63 from the *Economic Report of the President*, 1996, ISBN 0–16–048501–0), increased the costs to $65.04 for 28-foot trailers, $83.03 for 40–42 foot trailers, and $92.71 for 45–53 foot trailers.

The FHWA made an additional adjustment to take into consideration the comments to the ANPRM. The additional adjustment increased the cost by approximately $4.50 per trailer. The total estimated tape cost is $69.54 for 28-foot trailers, $87.53 for 40–42 foot trailers, and $97.21 for 45–53 foot trailers.

Cost for Labor To Apply the Retroreflective Sheeting to the Trailers

The FHWA used an average wage of $25 per hour, including fringe benefits, for calculating labor costs. The NHTSA estimated that it takes 30 minutes to install tape on a trailer. While this is a reasonable estimate for factory installed tape, the FHWA recognizes that it would take longer to retrofit a trailer. This assumption is supported by the docket comments. Trailers will generally have to be prepared and cleaned for the conspicuity treatment. Trailers which have holes and other damage may require more extensive repairs.

The comments to the docket, as well as observations by FHWA staff during a 1994 site visit to a Roadway terminal (documentation of the visit is included in the docket file), indicate that the amount of time required to retrofit a trailer will vary significantly with trailer type and condition. For example, trailers with outer posts may require more extensive work than trailers with smooth exterior surfaces.

Taking into account these considerations, the FHWA estimates that the retrofitting process for the average 28-foot trailer would take 2 hours to complete. The agency estimates that the time required to retrofit 40–42 foot and 45–53 foot trailers would be 2.5 and 3 hours, respectively. The FHWA's preliminary estimates of labor costs are $50, $62.50, and $75 for the 28-, 40–42, and 45–53 foot trailers, respectively.

Opportunity Costs

Estimating the value of revenue that cannot be generated while the trailer is being retrofitted is difficult because of the variety of trailer types, the variety of motor carrier operations and the rates that are charged, and the overall manner in which some trailers are used—being left idle at the motor carrier's terminals for periods of time that may be as short as a few hours to several days.

The FHWA believes that it is more likely than not that a large percentage of trailers would have to undergo routine repair and/or maintenance at some point during the two-year phase-in period. Retrofitting trailers at the same time that repairs or maintenance are performed would result in negligible opportunity cost since the trailers would not be generating revenue in any case. Even the trailers that do not require routine repairs may be idle at some point during the phase-in period and could be retrofitted at minimal opportunity cost. However, the less time motor carriers have to comply with the retrofitting requirement, the less likely it is that they could take advantage of the routine repair or maintenance cycles or periods when the vehicle would be idle. This means that the opportunity cost increases as the phase-in period decreases.

The FHWA does not have the detailed information required to develop a comprehensive model of opportunity costs. Therefore, the agency constructed a simple model which relates the costs

to the logarithm of the phase-in period. With a five-year period, the estimated opportunity cost per trailer would be $62, while the cost for a three-year phase-in period would be $91. The opportunity costs for two-year phase-in period would be $144.

Number of Trailers

The FHWA estimates that there are 2.1 million trailers and semi-trailers in operation as of January 1994. This estimate is based largely upon the U.S. Bureau of the Census trailer production data.

The NHTSA in its final regulatory evaluation estimated that the average trailer has a usable service life of approximately 14 years. Commenters to both the NHTSA's NPRM and the FHWA's ANPRM generally agreed with this estimate. Tank trailers are both more expensive and more durable than other types of trailers and are believed to have a useful life of approximately 20 years.

The FHWA used data from the Truck Trailer Manufacturers Association (TTMA) and the U.S. Bureau of the Census concerning the number of trailers sold in the United States. This data was compiled by trailer type and year for the previous 25 years. The TTMA data was available through 1993. The NHTSA estimated that 170,000 new trailers would be sold annually. The FHWA used the NHTSA estimate for 1994 and 1995.

Given the trailer sales data and the average trailer useful service life estimates, the FHWA determined that the number of trailers in use at the end of 1995 was approximately 2.12 million. However, not all of these trailers would be affected by this regulation since some of the vehicles would reach the end of their service life before the end of the two-year phase-in period for compliance with the final rule. In addition, some of these trailers already have conspicuity markings (although the markings may not be in conformance with the NHTSA specifications) which would enable motor carriers to continue operating these vehicles during the proposed 10-year transition period for replacing non-conforming conspicuity treatments. The 10-year transition period coincides with the end of the useful service life of most of the older trailers currently in use, with the exception of tank trailers. The FHWA believes that the number of trailers that will have to be retrofitted under the two-year option would be 1,373,000. The number of trailers that would be retrofitted if the three-year option was chosen would be 1,202,000 while the number that would be covered under the five-year option would be 834,000.

With regard to the number of trailers that would have to have non-conforming conspicuity treatments replaced at the end of the 10-year transition period, the FHWA estimates most of these vehicles will be tank trailers since the useful service life of this type of trailer is approximately 20 years. Tank/dry bulk trailers are approximately 2 percent of the fleet population and tank/liquids or gas trailers represent 7.4 percent of the population of trailers (*1992 Truck Inventory and Use Survey,* U.S. Census Bureau). Applying these estimates to the 1995 data, there are approximately 199,280 tank trailers (all types). It is believed that only a fraction of these trailers have been voluntarily retrofitted with non-conforming conspicuity treatments. If 20 percent of these trailers would be covered by a requirement to replace non-conforming treatments, the agency estimates less than 40,000 tank trailers would have to have non-conforming conspicuity treatments replaced before they reach the end of their useful service life.

Total Costs for Retrofitting Trailers

Based upon the information currently available concerning the costs for retroreflective sheeting, labor, and opportunity costs, and the estimates of the number of trailers for which motor carriers would be required to take some type of actions to comply with the proposed requirements, the FHWA believes the total costs for retrofitting under the 2-year option would be $339 million. The costs for the 3-year option would be $238 million while the costs for the 5-year option would be $138 million. It should be noted that opportunity cost makes up 45 percent of the total cost for the 2-year option, and decreases to only 27 percent of the costs for the 5-year phase in period. These estimates are for a 10-year period discounted at a 7-percent rate.

Benefits of a Retrofitting Requirement

The estimated benefits of this rulemaking are a reduction in the number of fatalities, injuries, and property damage only (PDO) accidents caused by nighttime accidents in which a passenger car collides with the rear or side of a trailer. The FHWA estimates that over a 10-year period, a total of 258 fatalities and 4,224 injuries would be prevented because of this rule. The following table shows the number of accidents and injuries prevented. The net present value of this level of accident reduction is $741 million.

The reduction in fatalities comprises the largest component of benefits, at over 65 percent of the total. The second largest component is maximum adjusted injury scale (MAIS) 3 accidents, which constitute 10.5 percent of the total benefits.[2]

DISTRIBUTION OF DOLLAR AMOUNTS OF BENEFITS

Severity	Number	Percent total benefits
PDO	5,379	5.2
MAIS 1	3,282	3
MAIS 2	615	6.6
MAIS 3	265	10.5
MAIS 4	40	4.1
MAIS 5	22	4.6
Fatality	258	66

Benefits are spread unevenly over the 10-year analysis period. Benefits are expected to peak two years after the effective date of the final rule, after which there is a slow decline. Two years after the effective date of the final rule, all trailers covered by the retrofitting requirement would have conspicuity treatments. As the population of pre-1993 trailers decreases, the benefits of the retrofitting rule would decline. This pattern holds for both discounted and non-discounted dollars as well as for accidents. By the year 2000, all trailers would be required to be equipped with conspicuity treatments, and nighttime accidents would fall by 15 percent (for retrofitted trailers still in use).

[2] The Abbreviated Injury Scale (AIS) was developed by the American Medical Association and the American Association for Automotive Medicine to measure the threat to life of an accident. The MAIS refers to the maximum (most severe) injury sustained in a crash. The scale ranges from 0 for no injury to 6 for a fatality. A more detailed discussion of MAIS, including examples of the types of injuries that are included in each of the levels, is included in the FHWA's preliminary regulatory evaluation (PRE) for this rulemaking. A copy of the PRE is contained in FHWA Docket No. MC–94–1.

SUMMARY OF COSTS AND BENEFITS OF CONSPICUITY RETROFIT OPTIONS

Options for retrofitting phase-in period	2 years	3 years	5 years
Estimated number of trailers that would have to be retrofitted	1,373,000	1,202,000	834,000
Estimated benefits ($millions)	741	634	425
Estimated costs ($millions)	339	238	138
Estimated Net Benefit ($millions)	402	396	288
Benefit-to-cost ratio	2.2	2.7	3.1
Fatalities prevented (during a 10-year period)	258	226	160
Injuries prevented (during a 10-year period)	4,224	3,701	2,615

The benefit of this regulation results from an expected 15 percent reduction in nighttime side and rear crashes into trailers, and an expected 19 percent reduction in the severity of certain property damage only accidents. These estimates come from the NHTSA, which performed extensive fleet evaluations in the 1980's. According to the NHTSA, these kinds of accidents result in an average of 536 fatalities annually, and almost 8,800 injuries, most of which are minor. This proposal would prevent between 258 fatalities over a 10-year period.

The monetary value of these benefits range from over $741 million for the 2-year phase in to $425 for the 5 year phase in. Under all of the phase-in options the ratio of the benefits to costs exceeds two, with the ratio increasing as the phase-in period is extended. More importantly, all three scenarios yield net benefits (benefits minus costs) in excess of $280 million, with net benefits increasing as the phase-in period is shortened.

Two issues which could affect these results are the number of trailers already equipped with conspicuity marking, and the safety impact of existing markings which are not in compliance with the NHTSA specifications. The FHWA estimates, based on non-random observation and anecdotal information, that approximately 20 percent of trailers manufactured prior to December 1, 1993, have some form of conspicuity treatment. Although the FHWA does not have data concerning the effectiveness of the alternate conspicuity treatments that are currently in use on trailers manufactured prior to December 1, 1993, the agency believes, based upon the NHTSA's research, that many of the alternate retroreflective sheeting treatments improve conspicuity and provide potential safety benefits. Some form of conspicuity treatment is better than no conspicuity treatment, with the most effective form of conspicuity treatment being a system that conforms to the NHTSA standard. The FHWA requests comments from motor carriers using conspicuity treatments that differ from that required by the NHTSA. Specifically, the FHWA requests information concerning a reduction in the number of accidents in which passenger cars collide with the sides of rear of trailers.

Discussion of the Proposed Regulatory Language

The FHWA proposes to amend the FMCSRs by adding a new § 393.13, Retroreflective sheeting and reflex reflectors, requirements for semi-trailers and trailers manufactured before December 1, 1993. This section would be added to subpart B of part 393, Lighting Devices, Reflectors, and Electrical Equipment. Paragraph (a) would provide the applicability for § 393.13. The proposed requirements would not apply to trailers that are manufactured exclusively for use as offices or dwellings because these types of trailers are rarely transported at night. In addition, the NHTSA conspicuity requirements do not apply to this type of trailer. The FHWA is proposing to exclude pole trailers (as defined in § 390.5) from the conspicuity requirements because these trailers generally do not have side and rear surfaces to which conspicuity treatments could be applied in a cost-effective manner. The agency notes that § 393.11 does require lamps and reflectors on pole trailers and requests comments on whether retrofitting of conspicuity materials should be required on all pole trailers, including those that are currently manufactured without any type of conspicuity treatment.

In addition, the FHWA is proposing to exclude trailers that are being towed in a driveaway-towaway operation (as defined in § 390.5). This would not be a blanket exception for certain types of trailers, but an exception that would cover certain movements of trailers. Examples of the types of transportation that would be covered include movements between a dealership or other entity selling or leasing the trailer and a purchaser or lessee, to a maintenance/repair facility for the repair of disabling damage (as defined in § 390.5).

Paragraph (b) would encourage motor carriers to retrofit their trailers with a conspicuity system that meets all of the requirements applicable to trailers manufactured on or after December 1, 1993, but allow the use of alternate color or color combination of retroreflective sheeting or reflex reflectors during a 10-year transition period. At the end of the 10-year period, all trailers would be required to have conspicuity treatments identical to the NHTSA requirements. Although the FHWA is proposing to allow motor carriers a certain amount of flexibility with regard to the colors of retroreflective tape or reflex reflectors, the locations for the conspicuity treatments would be required to conform to those specified in the NHTSA regulations.

Paragraph (c) would cover the locations for retroreflective sheeting, excluding the use of the reflective material on the rear underride device. Paragraph (d) would specify the locations for the arrays of reflex reflectors, excluding the use of reflectors on the rear underride device. The FHWA recognizes the concerns that motor carriers have about conspicuity treatments on the rear impact guards or rear underride devices. Consequently, the agency has tentatively determined that motor carriers should not be required to apply conspicuity material to the rear underride device. However, the FHWA specifically requests comments from motor carriers as to whether the underride device should be excluded as a required location for reflective material.

With regard to the effective date for the retrofitting requirements, the FHWA is proposing that motor carriers be allowed 2 years from the effective date of the final rule, to retrofit trailers operated in interstate commerce. Motor carriers would be allowed 10 years from the effective date of the final rule to replace non-conforming conspicuity treatments with ones that meet the NHTSA requirements for newly manufactured trailers.

Applicability to Canadian and Mexican Vehicles

The FHWA is not proposing an exemption for trailers operated in the United States by Canada- and Mexico-based motor carriers. Although the Federal governments of Canada and Mexico have not indicated whether they intend to require retrofitting of the trailers operating in their countries, the FHWA believes that it is appropriate to require retrofitting of conspicuity treatments on foreign-based trailers manufactured prior to the December 1, 1993, if those vehicles are operated within the United States. This preliminary decision is consistent with the applicability of the requirements of parts 393 and 396 of the FMCSRs and ensures that all commercial motor vehicles operating in interstate or foreign commerce within the United States are required to meet the same safety standards. The FHWA specifically requests comments from Canada- and Mexico-based motor carriers.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may adopt a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and significant within the meaning of Department of Transportation regulatory policies and procedures. The FHWA has prepared a preliminary evaluation of the economic impact the proposed regulatory changes would have on the motor carrier industry. A copy of the preliminary regulatory evaluation is included in the docket file.

The FHWA estimates that the total costs for motor carriers to comply with the proposed requirements within a 2-year period would be $339 million, with the safety and economic benefits totaling $741 million. The FHWA estimates that this rulemaking would apply to approximately 1.4 million trailers. It is estimated that the rulemaking would, over a ten year period, prevent 258 fatalities and 4,224 injuries associated with passenger cars colliding with trailers. In addition, this rule would prevent approximately 5,300 property damage only (PDO) accidents.

The costs are considered one-time costs in that the conspicuity treatments will not need to be replaced during the remaining years of the useful service lives of the trailers that would be subject to the retrofitting requirement. The estimates for the benefits are the total expected benefits over the remaining years of useful service lives of the trailers that would be retrofitted. A copy of the FHWA's preliminary regulatory evaluation has been placed in the docket.

Based upon the information received in response to this NPRM, the FHWA will carefully consider the costs and benefits associated with establishing a conspicuity retrofitting requirement. The FHWA requests comments, information, and data concerning the economic impact of establishing retrofitting requirements.

Regulatory Flexibility Act

The FHWA has evaluated the effects of the proposed regulatory changes on small entities. A copy of the Regulatory Flexibility Analysis is provided in the docket file. Generally, the costs per trailer for retrofitting should be comparable, but not necessarily identical, for both large motor carriers and small motor carriers. For example, large carriers will be able to obtain discounts when ordering conspicuity materials in bulk. The costs for the retroreflective tape needed to comply with the proposed requirement is $69.54 for 28 foot trailers, $87.53 for 40–42 foot trailers, and $97.21 for 45–53 foot trailers. The FHWA's preliminary estimates of labor costs are $50, $62.50, and $75 for the 28–, 40–42, and 45–53 foot trailers, respectively. The FHWA believes the opportunity cost would be approximately $144 per trailer. Therefore, the costs per trailer for small entities would be $263 for 28-foot trailers, $293 for 40–42 foot trailers, $316 for 45–53 foot trailers. The costs would only apply to small entities that have trailers that were manufactured before December 1, 1993, and have not already been retrofitted with a conspicuity system that would satisfy the proposed requirements. Furthermore, the costs would only be applicable if the small entities intend to continue to operate these older trailers after the proposed 2-year phase-in period.

As of September 1996, the FHWA estimates that there were approximately 382,128 interstate motor carriers. Of these carriers, 136,360 own, term-lease or trip-lease 6 or fewer trailers (68,405 have 1 trailer, 45,770 have 2–3 trailers, and 22,185 have 4–6 trailers). The number of motor carriers that own, term-lease or trip-lease more than 6 trailers but fewer than 21 is 21,793 (6,658 carriers have 7–8 trailers, 6,197 have 9–11 trailers, 3,887 carriers have 12–14 trailers, 2,779 carriers have 15–17 trailers, and 2,272 carriers have 18–20 trailers). If only those motor carriers that own, term-lease, or trip-lease 20 or fewer trailers are considered small entities, this rulemaking could have an economic impact on up to 158,153 small entities.

The economic impact on each of the motor carriers would vary depending on the number of trailers that the carrier would be responsible for retrofitting by the end of the 2-year phase-in period, and the size of those trailers. If, for example, the carrier only operates one 45–53 foot trailer, the total economic impact would be $316. If the carrier operates 20 such trailers that have to be retrofitted, the total economic impact would be $ 6,320.

The Small Business Administration (SBA), which oversees agencies' compliance with the Regulatory Flexibility Act, has published guidelines to classify small business. The SBA has indicated that for entities engaged in motor freight transportation and warehousing, small businesses are those with $18.5 million or fewer dollars in annual receipts. Therefore, if the motor carrier described in the preceding example is a private motor carrier with its principal business being something other than transportation, and operates 20, 45–53 foot trailers and has annual receipts of $18.5 million, the total economic impact would be less than one-tenth of one percent of the private motor carrier's annual receipts ($6,320/$18.5 million). If this carrier operated 100 trailers and had annual receipts of $18.5 million, the economic impact would be approximately two-tenths of one percent of the carrier's annual receipts ($31,600/$18.5 million).

Based on its preliminary regulatory flexibility analysis summarized above, the FHWA believes that this proposed rule, if adopted, would affect a substantial number of small entities, but would not have a significant impact on these entities. Based upon the information received in response to the NPRM, the FHWA, in compliance with

the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), will further consider the economic impacts of these potential changes on small entities. The FHWA requests comments, information, and data on these impacts.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Unfunded Mandates Reform Act

This rule does not impose any unfunded mandates on State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532–1538). However, this rule would likely result in a Federal mandate requiring expenditure by the private sector of $100 million or more in any one year. Therefore, the FHWA has prepared a separate written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. A copy of the FHWA's Regulatory Accountability and Reform Analyses is included in the docket.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

Issued on: June 8, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, chapter III, as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

2. Section 393.13 is added to read as follows:

§ 393.13. Retroreflective sheeting and reflex reflectors, requirements for semi-trailers and trailers manufactured before December 1, 1993.

(a) *Applicability.* All trailers and semi-trailers manufactured prior to December 1, 1993, which have an overall width of 2,032 mm (80 inches) or more and a gross vehicle weight rating of 4,536 kg (10,001 pounds) or more, except trailers that are manufactured exclusively for use as offices or dwellings and pole trailers (as defined in § 390.5) and trailers transported in a driveaway-towaway operation, must be equipped with retroreflective sheeting or an array of reflex reflectors that meet the requirements of this section. Motor carriers have until [two years from the effective date of the final rule] to comply with the requirements of this section.

(b) *Retroreflective sheeting and reflex reflectors.* Motor carriers are encouraged to retrofit their trailers with a conspicuity system that meets all of the requirements applicable to trailers manufactured on or after December 1, 1993, including the use of retroreflective sheeting or reflex reflectors in a red and white pattern (see Federal Motor Vehicle Safety Standard No. 108 (49 CFR 571.108), S5.7, *Conspicuity systems*). Motor carriers which do not retrofit their trailers to meet the requirements of FMVSS No. 108, for example by using an alternative color pattern, must comply with the remainder of this paragraph and with paragraph (c) or (d) of this section. Retroreflective sheeting or reflex reflectors in colors or color combinations other than red and white may be used on the sides or lower rear area of the semi-trailer or trailer until [ten years from the effective date of the final rule]. The alternate color or color combination must be uniform along the sides and lower rear area of the trailer. The retroreflective sheeting or reflex reflectors on the upper rear area of the trailer must be white and conform to the requirements of FMVSS No. 108 (S5.7). Red retroreflective sheeting or reflex reflectors shall not be used along the sides of the trailer unless it is used as part of a red and white pattern. Retroreflective sheeting shall have a width of at least 50 mm (2 inches).

(c) *Locations for retroreflective sheeting.*—(1) *Sides.* Retroreflective sheeting shall be applied to each side of the trailer or semi-trailer. Each strip of retroreflective sheeting shall be positioned as horizontally as practicable, beginning and ending as close to the front and rear as practicable. The strip need not be continuous but the sum of the length of all of the segments shall be at least half of the length of the trailer and the spaces between the segments of the strip shall be distributed as evenly as practicable. The centerline for each array of reflex reflectors shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area. If necessary to clear rivet heads or other similar obstructions, 50 mm (2 inches) wide retroreflective sheeting may be separated into two 25 mm (1 inch) wide strips of the same length and color, separated by a space of not more than 25 mm (1 inch).

(2) *Lower rear area.* The rear of each trailer and semi-trailer must be equipped with retroreflective sheeting. Each strip of retroreflective sheeting shall be positioned as horizontally as practicable, extending across the full width of the trailer, beginning and ending as close to the extreme edges as practicable. The centerline for each of the strips of retroreflective sheeting shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area.

(3) *Upper rear area.* Two pairs of white strips of retroreflective sheeting, each pair consisting of strips 300 mm (12 inches) long, must be positioned horizontally and vertically on the right and left upper corners of the rear of the body of each trailer and semi-trailer, as close as practicable to the top of the

trailer and as far apart as practicable. If the perimeter of the body, as viewed from the rear, is not square or rectangular, the strips may be applied along the perimeter, as close as practicable to the uppermost and outermost areas of the rear of the body on the left and right sides.

(d) *Locations for reflex reflectors.*—(1) *Sides.* Reflex reflectors shall be applied to each side of the trailer or semi-trailer. Each array of reflex reflectors shall be positioned as horizontally as practicable, beginning and ending as close to the front and rear as practicable. The array need not be continuous but the sum of the length of all of the array segments shall be at least half of the length of the trailer and the spaces between the segments of the strip shall be distributed as evenly as practicable. The centerline for each array of reflex reflectors shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area. The center of each reflector shall not be more than 100 mm (4 inches) from the center of each adjacent reflector in the segment of the array. If reflex reflectors are arranged in an alternating color pattern, the length of reflectors of the first color shall be as close as practicable to the length of the reflectors of the second color.

(2) *Lower rear area.* The rear of each trailer and semi-trailer must be equipped with reflex reflectors. Each array of reflex reflectors shall be positioned as horizontally as practicable, extending across the full width of the trailer, beginning and ending as close to the extreme edges as practicable. The centerline for each array of reflex reflectors shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area. The center of each reflector shall not be more than 100 mm (4 inches) from the center of each adjacent reflector in the segment of the array.

(3) *Upper rear area.* Two pairs of white reflex reflector arrays, each pair at least 300 mm (12 inches) long, must be positioned horizontally and vertically on the right and left upper corners of the rear of the body of each trailer and semi-trailer, as close as practicable to the top of the trailer and as far apart as practicable. If the perimeter of the body, as viewed from the rear, is not square or rectangular, the arrays may be applied along the perimeter, as close as practicable to the uppermost and outermost areas of the rear of the body on the left and right sides. The center of each reflector shall not be more than 100 mm (4 inches) from the center of each adjacent reflector in the segment of the array.

[FR Doc. 98–15622 Filed 6–18–98; 8:45 am]
BILLING CODE 4910–22–P

Notices

Federal Register
Vol. 63, No. 118
Friday, June 19, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–049–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Cooperative State-Federal Bovine Tuberculosis Eradication Program.

DATES: Comments on this notice must be received by August 18, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 98–049–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket No. 98–049–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information regarding the Cooperative State-Federal Bovine Tuberculosis Eradication Program, contact Dr. James P. Davis, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–5970. For copies of more detailed information on the information collection, contact Mr. Gregg Ramsey, APHIS' Information Collection Coordinator, at (301) 734–5682.

SUPPLEMENTARY INFORMATION:

Title: Tuberculosis.

OMB Number: 0579–0084.

Expiration Date of Approval: September 30, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture is responsible for preventing the spread of serious communicable animal diseases from one State to another, and for eradicating such diseases from the United States when feasible.

In connection with this mission, the Animal and Plant Health Inspection Service participates in the Cooperative State-Federal Bovine Tuberculosis Eradication Program, which is a national program to eliminate bovine tuberculosis (a serious disease of livestock) from the United States.

The disease also affects man through contact with infected animals or their byproducts. Our program is conducted under the various States' authorities supplemented by Federal regulations on the interstate movement of animals.

Implementing our Bovine Tuberculosis Eradication Program necessitates the use of a number of information-gathering documents, including various forms needed to properly identify, test, and transport animals. Other information gathering documents are used to report and review epidemiological data collected during investigations necessary to locate the disease and ensure adequate controls are in place to prevent its spread. Still other documents provide information we need to pay indemnity to owners of animals that are destroyed because of tuberculosis.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.32444 hours per response.

Respondents: State Veterinarians, livestock inspectors, herd owners.

Estimated annual number of respondents: 5,031.

Estimated annual number of responses per respondent: 10.642.

Estimated annual number of responses: 53,540.

Estimated total annual burden on respondents: 17,371 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

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.

Done in Washington, DC, this 12th day of June 1998.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–16279 Filed 6–18–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–048–1]

Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the proposed release into the environment of nonindigenous weevils for use as biological control agents to suppress hound's-tongue (*Cynoglossum officinale*), an introduced weed. The environmental assessment has been prepared to provide the public with documentation of APHIS' review and analysis of the environmental impact and plant pest risk associated with releasing these biological control agents into the environment.

ADDRESSES: Copies of the environmental assessment are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald D. Hennessey, Entomologist, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737, (301) 734–7839; or E-mail: rhenness@aphis.usda.gov. For copies of the environmental assessment, write to Dr. Ronald D. Hennessey at the same address. Please refer to the title of the environmental assessment when ordering copies.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has received an application from Montana State University for a permit to release a nonindigenous root-feeding weevil, *Mogulones cruciger* (Coleoptera: Curculionidae), for biological control of hound's-tongue, *Cynoglossum officinale* (Boraginaceae). Hound's-tongue is an introduced weed that has been reported in 36 of the 48 contiguous States. The purpose of the proposed action is to reduce the severity of infestations of hound's-tongue in the United States through the introduction of *M. cruciger*.

Hound's-tongue is an invasive weed that significantly reduces forage and whose barbed seeds stick to sheep, reducing the value of wool, and stick to cattle, causing skin irritation and behavioral problems. Hound's-tongue also contains large quantities of pyrrolizidine alkaloids, which are toxic to cattle and horses. Distribution of hound's-tongue is currently increasing in Montana and British Columbia.

The applicant is proposing to collect the *M. cruciger* adults from Hungary and Serbia and import them to the Insect Quarantine Laboratory at Montana State University in Boseman, MT, where their species identity would be confirmed, and examinations for diseases, parasitoids, and other contaminants would be made. The weevil would then be released in infestations of hound's-tongue at several selected sites in western and central Montana.

After substantial weevil populations are established, insects would be collected and distributed to other sites in Montana. Distribution would follow in other affected States as soon as possible. Eventually, the weevil is expected to spread throughout many or all of the 36 States in which hound's-tongue occurs.

If a permit to release *M. cruciger* is issued, this weevil will be the first exotic biological control agent approved for release against Hound's-tongue in the United States.

To provide the public with documentation of APHIS' review and analysis of the environmental impact and plant pest risk associated with releasing these biological control agents into the environment, we have prepared an environmental assessment relative to the release into the environment of *M. cruciger* entitled "Field Release of *Mogulones cruciger* (Coleoptera: Curculionidae), a Nonindigenous Weevil Proposed for Biological Control of Hound's-Tongue, *Cynoglossum officinale* (Boraginaceae)" (May 1998).

The environmental assessment has been prepared in accordance with: (1) the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1509), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 12th day of June 1998.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–16280 Filed 6–18–98; 8:45 am]

BILLING CODE 3410–34–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be received on or before: July 20, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed.

Administrative Services

General Services Administration, Federal Protective Service Division, 450 Golden Gate Avenue, San Francisco, California
NPA: Jewish Vocational and Career Counseling Service, Inc., San Francisco, California

Facilities Services Support

White Sands Missile Range, White Sands, New Mexico
NPA: Tresco, Inc., Las Cruces, New Mexico

Food Service

U.S. Marine Corps Base Dining Facilities, Quantico, Virginia
NPA: Fairfax Opportunities Unlimited, Inc., Alexandria, Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–16393 Filed 6–18–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 20, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 1, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (63 FR 24153) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.
2. The action will not have a severe economic impact on current contractors for the service.
3. The action will result in authorizing small entities to furnish the service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List.

Janitorial/Custodial

Federal Building and Courthouse, 1 North Palafox Street, Pensacola, Florida

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–16394 Filed 6–19–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Under Secretary David Aaron's High-Technology Trade Mission to Southeast Asia

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice serves to inform the public that Ambassador David L. Aaron, Under Secretary for International Trade, will lead a High-Technology Trade Mission to Malaysia, Singapore, Thailand and the Philippines, September 7–19, 1998. This notice also sets forth mission objectives, application procedures, and participation criteria.

DATES: Applications should be submitted to Alain de Sarran by Friday, July 31, 1998, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit.

ADDRESSES: Request for and submission of applications—Applications are available from Alain de Sarran, Deputy Director, Office of International Operations, East Asia and the Pacific, at (202) 482–2422 or via facsimile at (202) 501–6165. Numbers listed in this notice are not toll-free. An original and two copies of the required application materials should be sent to the project officer noted above. Applications sent by facsimile must be immediately followed by submission of the original application to Mr. de Sarran at the following address: Office of International Operations, East Asia and the Pacific, Room 1223, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Alain de Sarran or Paul Kullman at (202) 482–2422. Information is also available via the International Trade Administration's (ITA) Internet home page at "http://www.ita.doc.gov"

Trade Mission Description

This trade mission is designed to lend high-profile U.S. Government advocacy to American companies, particularly small and medium-sized firms, seeking business opportunities in high-technology sectors in Southeast Asia, and to demonstrate U.S. support of countries in the region recovering from the financial crisis. The current financial problems affecting Southeast Asia are slowing growth in the short term. However, as these economies implement financial reforms, their rates of economic growth can be expected to resume a more dynamic pace, thereby providing U.S. companies with exceptional high-tech export opportunities.

Government leaders of Malaysia, Singapore, Thailand and the Philippines place many of their hopes for industrial modernization, increased competitiveness, and economic recovery in their high-tech sectors, and they often look to the United States first to help fulfill these hopes because U.S. companies possess cutting-edge technology and know-how. Guided by reporting on best export prospects from the Department's overseas offices, this mission endeavors to meet foreign demand for information technology, telecommunications and environmental technology.

The mission will visit Kuala Lumpur and Penang, September 7–10 ;

Singapore, September 11; Manila, September 12–16; and Bangkok, September 16–19. The program for the mission includes embassy briefings on the commercial/economic environment, meetings with potential buyers, agents, distributors and strategic alliance partners, and engagements with Asian ministers and business leaders as well as American business executives based in Southeast Asia.

Trade Mission Goals

The goals of the trade mission are to:

(1) Boost U.S. high-technology exports and market share in Southeast Asia;

(2) Establish and expand business relations between U.S. executives and host-country government and industry leaders;

(3) Highlight U.S. leadership and competitiveness in high-technology sectors;

(4) Identify new and upcoming commercial high-technology opportunities in the region;

(5) Achieve greater transparency and fairness in host-country procurement and purchasing decisions; and

(6) Demonstrate high-visibility U.S. support for the Southeast Asian economies recovering from the recent economic downturn.

Criteria for Participation

The recruitment and selection of private sector participants in this mission will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary William Daley on March 3, 1997. Company participation will be determined on the basis of:

(1) Relevance of the company's business line to the trade mission's goals;

(2) Potential for sales to the selected high-technology sectors in the target countries;

(3) Timeliness of company's completed application and payment of the participation fee;

(4) Certification that the company's product or service is manufactured or produced in the United States, or, if manufactured/produced outside the United States, the product/service is marketed under the name of a U.S. firm and has U.S. content representing at least 51 percent of the value of the finished product or service.

Any partisan political activities of an applicant, including political contributions, will be entirely irrelevant to the selection process. Third parties may nominate or endorse potential applicants, but companies that are nominated or endorsed must themselves submit an application to be eligible for consideration. Referrals from political organizations will not be considered.

Costs

The fee to participate in the trade mission is $5,500 per person. Each additional person from the same company costs $500. This fee does not cover travel or lodging expenses.

Authority: 15 U.S.C. 1512.

Dated: June 15, 1998.

Alice Davenport,

Regional Director, Office of East Asia and the Pacific, International Trade Administration, Department of Commerce.

[FR Doc. 98–16333 Filed 6–18–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061598A]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of a subgroup of the Ad Hoc Crustacean Stock Assessment Panel (SAP).

DATES: The meeting of the Crustacean SAP held June 1–4, 1998, will be continued on June 30, 1998 with the subgroup meeting beginning at 9:00 a.m. and concluding by 12:00 noon.

ADDRESSES: The Crustacean SAP subgroup meeting will be held at the Florida Department of Environmental Protection, Florida Marine Research Institute, 100 Eighth Avenue, Southeast, St. Petersburg, FL.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: A subgroup of the SAP will convene to review stock assessment information on spiny lobster and to develop alternatives for determining the overfishing criteria as required by the Sustainable Fisheries Act in accordance with the original **Federal Register** Notice published May 8, 1998.

Although other issues not contained in this agenda may come before the subgroup for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed in this notice.

A copy of the agenda can be obtained by contacting the Gulf Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 16, 1998.

Dated: June 15, 1998.

Bruce Morehead,

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

[FR Doc. 98–16374 Filed 6–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061598D]

Endangered Species; Permits

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

ACTION: Receipt of applications for scientific research permits (1156, 1159); Issuance of scientific research permits (1095, 1120, 1140) and a modification to a scientific research permit (994).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of listed species for the purposes of scientific research and/or enhancement: NMFS has received permit applications from: U.S. Environmental Protection Agency at Corvallis, OR (EPA) (1156) and Robert L. Brownell, Jr., Southwest Fisheries Science Center, National Marine Fisheries Service, La Jolla, CA (SWFSC) (1159); NMFS has issued permits to: U.S. Bureau of Reclamation at Denver, CO (USBR) (1095); Idaho Department of Fish and Game at Boise, ID (IDFG) (1120); and the Environmental Conservation Division, Northwest Fisheries Science Center, National Marine Fisheries Service, Seattle, WA (NWFSC-ECD) (1140); and NMFS has issued a modification to a scientific research permit to the Idaho

Cooperative Fish and Wildlife Research Unit at Moscow, ID (ICFWRU) (994).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before July 20, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 994, 1095, 1120, 1140, 1156: Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

For permit 1159: Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 994 and 1120: Robert Koch, Portland, OR (503–230–5424).

For permits 1095, 1140, and 1156: Tom Lichatowich, Portland, OR (503–230–5438).

For permit 1159: Michelle Rogers, Endangered Species Division, Silver Spring, MD (301–713–1401).

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**]). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the below application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Issuance of the permits and modifications, as required by the ESA, was based on a finding that such permits and modifications: (1) Were applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. These permits and modifications were also issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in this Notice

The following species are covered in this notice: Chinook salmon (*Oncorhynchus tshawytscha*), Coho salmon (*Oncorhynchus kisutch*), Cutthroat trout (*Oncorhynchus clarki clarki*), Green sea turtle (*Chelonia mydas*), Hawksbill sea turtle (*Eretmochelys imbricata*), Leatherback sea turtle (*Dermochelys coriacea*), Loggerhead sea turtle (*Caretta caretta*), Olive ridley sea turtle (*Lepidochelys olivacea*), and Sockeye salmon (*Oncorhynchus nerka*).

New Applications Received

EPA (1156) requests a 5-year permit for direct takes of juvenile, threatened, southern Oregon/northern California coast coho salmon; adult and juvenile, endangered, Umpqua River cutthroat trout; juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; and juvenile, threatened, Snake River fall chinook salmon associated with research designed to collect data in the South Upmqua, Rogue, and Snake Rivers. ESA-listed fish are proposed to be captured using electrofishing, examined, and released. The data will be used to enforce the Clean Water Act which will increase the recovery potential of listed species. ESA-listed juvenile fish indirect mortalities associated with the research are also requested.

SWFSC (1159) has requested a 3-year scientific research permit to take listed sea turtles opportunistically during marine mammal research surveys in the eastern tropical Pacific. Authorization has been requested to take up to 400 turtles over the 3-year period to include the following species: olive ridley, green, leatherback, hawksbill, and loggerhead. The turtles would be weighed, photographed, flipper tagged, blood sampled, and tissue sampled. Additionally, stomach lavage would be performed on captured turtles to identify prey items and up to 30 turtles would be outfitted with satellite transmitters. The purposes of the proposed research are to obtain data on the geographic distribution and stock assessment, migratory and dive behavior, and habitat needs and primary foraging areas of turtles at sea.

Permits and Modifications Issued

Notice was published on March 6, 1998 (63 FR 11220) that an application had been filed by ICFWRU for modification 3 to scientific research permit 994. Modification 3 to permit 994 was issued to ICFWRU on June 12, 1998. Permit 994 authorizes ICFWRU annual takes of adult, threatened, Snake River spring/summer and fall chinook salmon and adult, endangered, Snake River sockeye salmon associated with a study designed to assess the passage success of migrating adult salmonids at the four dams and reservoirs in the lower Columbia River, evaluate specific flow and spill conditions, and evaluate measures to improve adult anadromous fish passage. For modification 3, ICFWRU is authorized an increase in the annual take of adult, threatened, Snake River spring/summer and fall chinook salmon associated the study. Also for modification 3, ICFWRU is authorized an annual take of adult, threatened, Snake River spring/summer chinook salmon associated with a new study designed to determine if adult salmon successfully return to natal streams or hatcheries after passing Lower Granite Dam on the Snake River and if homing is affected by mode of seaward migration (in-river versus transport). Modification 3 is valid for the duration of the permit which expires on December 31, 2000.

Notice was published on 24 October, 1997 (62 FR 55394) that an application had been filed by USBR for a 1-year scientific research permit. Permit 1095 was issued to USBR on June 11, 1998. The permit authorizes USBR to capture, handle, and release juvenile, threatened, SONCC coho salmon associated with research designed to collect data on seasonal fish distribution and abundance, particularly during spring and late summer, in Bear Creek and its principal tributaries, Little Butte Creek and its tributaries, and Big Butte Creek in southwest Oregon. The purpose of the study is to support a proposal to implement habitat enhancement activities designed in part to increase instream flows, improve the reliability and efficiency of existing water supplies, improve water quality and environmental values, and conserve water. Permit 1095 expires on September 30, 1998.

Notice was published on February 19, 1998 (63 FR 8435) that an application had been filed by IDFG for a scientific research/enhancement permit. Permit 1120 was issued to IDFG on June 11, 1998. Permit 1120 authorizes IDFG annual direct takes of adult and juvenile, endangered, Snake River sockeye salmon associated with the continuation of a captive broodstock program. The program will help to preserve and perpetuate the species and provide Snake River sockeye salmon for future recovery actions. The captive broodstock program is a cooperative

effort among IDFG, NMFS, the Shoshone-Bannock Tribes, the University of Idaho at Moscow, the Idaho Department of Environmental Quality, and the Bonneville Power Administration (BPA). Funding is provided by BPA. Incidental takes of ESA-listed anadromous fish species as a result of releases from the captive broodstock program are also authorized. Permit 1120 expires on December 31, 2002.

Notice was published on 16 April, 1998 (63 FR 73) that an application had been filed by NWFSC-ECD for a 5-year scientific research permit. Permit 1140 was issued on June 12, 1998. Permit 1140 authorizes direct takes of juvenile, endangered, Snake River fall chinook salmon and juvenile, threatened, SONCC coho salmon associated with a research study designed to assess the relationship between environmental variables, selected anthropogenic stresses, and bacterial and parasitic pathogens on disease-induced mortality in juvenile salmon in selected coastal estuaries in Oregon and Washington. The results of the study will benefit listed species by providing a better understanding of how environmental factors influence disease. Permit 1140 expires on December 31, 2002.

Dated: June 15, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–16373 Filed 6–18–98; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Recordkeeping Requirements Under the Safety Regulations for Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the April 7, 1998 **Federal Register** (63 FR 16988), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval through September 30, 2001, of information collection requirements in the safety regulations for full-size cribs (16 CFR 1500.18(a)(13) and Part 1508). The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration, and other injuries associated with full-size cribs. (A full-size crib is a crib having an interior length ranging from 49¾ inches to 55 inches and an interior width ranging from 25⅝ to 30⅝ inches.) The regulations prescribe performance, design, and labeling requirements for full-size cribs. They also require manufacturers and importers of those products to maintain sales records for a period of three years after the manufacture or importation of full-size cribs. If any full-size cribs subject to provisions of 16 CFR 1500.18(a)(13) and Part 1508 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, D.C. 20207.

Title of information collection: Recordkeeping Requirements for Full-Size Baby Cribs, 16 CFR 1508.10.

Type of request: Extension of approval.

Frequency of collection: Varies, depending upon volume of products manufactured, imported, or sold.

General description of respondents: Manufacturers and importers of full-size cribs.

Estimated Number of respondents: 49.

Estimated average number of responses per respondent: 1 per year.

Estimated number of responses for all respondents: 49 per year.

Estimated number of hours per response: 5.

Estimated number of hours for all respondents: 245 per year.

Estimated cost of collection for all respondents: Unknown.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by July 20, 1998 to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Copies of this request for an extension of an information collection requirement are available from Robert Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: June 15, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–16320 Filed 6–18–98; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Recordkeeping Requirements Under the Safety Regulations for Non-Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the April 7, 1998 **Federal Register** (63 FR 16989), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval through September 30, 2001, of information collection requirements in the safety regulations for non-full-size cribs (16 CFR 1500.18(a)(14) and Part 1509). The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration, and other injuries associated with non-full-size cribs. (A non-full-size crib is a crib having an interior length greater than 55 inches or smaller than 49¾ inches; or an interior width greater than 30⅝ inches or smaller than 25⅝ inches; or both.) The regulations prescribe performance, design, and labeling requirements for non-full-size cribs. They also require manufacturers and importers of those products to maintain sales records for a period of three years after the manufacture or importation of non-full-size cribs. If any non-full-size cribs subject to provisions of 16 CFR 1500.18(a)(14) and Part 1509 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, D.C. 20207.

Title of information collection: Recordkeeping Requirements Under the Safety Regulations for Non-Full-Size Baby Cribs, 16 CFR 1509.12.

Type of request: Extension of approval.

Frequency of collection: Varies, depending upon volume of products manufactured, imported, or sold.

General description of respondents: Manufacturers and importers of non-full-size cribs.

Estimated Number of respondents: 49.

Estimated average number of responses per respondent: 1 per year.

Estimated number of responses for all respondents: 49 per year.

Estimated number of hours per response: 5.

Estimated number of hours for all respondents: 245 per year.

Estimated cost of collection for all respondents: Unknown.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by July 20, 1998 to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Copies of this request for an extension of an information collection requirement are available from Robert Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: June 15, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–16321 Filed 6–18–98; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Testing and Recordkeeping Requirements Under the Standard for the Flammability of Mattresses and Mattress Pads

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the April 7, 1998 **Federal Register** (63 FR 16989), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval through September 30, 2001, of information collection requirements in the Standard for the Flammability of Mattresses and Mattress Pads (16 CFR Part 1632).

In response to the **Federal Register** notice, one comment was received, from the American Textile Manufacturers Institute (ATMI). In its comment, ATMI supported the extension of approval of the collection of information, adding that "the costs incurred with this data collection are minimal and are now part of business practices for these two industry sectors." The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

The standard is intended to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses and mattress pads. The standard prescribes a test to assure that a mattress or mattress pad will resist ignition from a smoldering cigarette. The standard requires manufacturers to perform prototype tests of each combination of materials and construction methods used to produce mattresses or mattress pads and to obtain acceptable results from such testing. Sale or distribution of mattresses without successful completion of the testing required by the standard violates section 3 of the Flammable Fabrics Act (15 USC 1192). An enforcement rule implementing the standard requires manufacturers to maintain records of testing performed in accordance with the standard and other information about the mattress or mattress pads which they produce.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, D.C. 20207.

Title of information collection: Testing and Recordkeeping Requirements Under the Standard for the Flammability of Mattresses and Mattress Pads, 16 CFR Part 1632.

Type of request: Extension of approval.

Frequency of collection: Varies, depending upon the number of individual combinations of materials and methods of construction used to produce mattresses.

General description of respondents: Manufacturers and importers of mattresses and mattress pads.

Estimated Number of respondents: 850.

Estimated average number of responses per respondent: 8 per year.

Estimated number of responses for all respondents: 6,800 per year.

Estimated number of hours per response: 3.25.

Estimated number of hours for all respondents: 22,100 per year.

Estimated cost of collection for all respondents: Unknown.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by July 20, 1998 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Copies of this request for an extension of an information collection requirement are available from Robert Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: June 15, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–16322 Filed 6–18–98; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Procedures for Export of Noncomplying Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the April 7, 1998 **Federal Register** (63 FR 16990), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval through September 30, 2001, of information collection requirements in regulations codified at 16 CFR Part 1019, which establish procedures for export of noncomplying

products. The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

These regulations implement provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act that require persons and firms to notify the Commission before exporting any product that fails to comply with an applicable standard or regulation enforced under provisions of those laws. The Commission is required by law to transmit the information relating to the proposed exportation to the government of the country of intended destination.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, D.C. 20207.

Title of information collection: Procedures for export of noncomplying products, 16 CFR Part 1019.

Type of request: Extension of approval.

Frequency of collection: Varies depending upon volume of noncomplying goods exported.

General description of respondents: Exporters of products that fail to comply with standards or regulations enforced under provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, or the Flammable Fabrics Act.

Estimated Number of respondents: 160 per year.

Estimated average number of responses per respondent: 1.125 per year.

Estimated number of responses for all respondents: 180 per year.

Estimated number of hours per response: 1.

Estimated number of hours for all respondents: 180 per year.

Estimated cost of collection for all respondents: Unknown.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by July 20, 1998 to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington D.C. 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Copies of this request for an extension of an information collection requirement are available from Robert Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: June 15, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–16323 Filed 6–18–98; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, June 25, 1998 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 16, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–16577 Filed 6–17–98; 3:03 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by June 25, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–8196.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used

in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 15, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Year 2000 Survey of the Direct Loan Schools.

Abstract: In order to facilitate decison making, the Department will survey Direct Loan Institutions to learn their Year 2000 compliance situations.

Additional Information: Direct Loan Schools or their third party servicers will be asked five survey questions.

Frequency: One time.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,739.

Burden Hours: 290.

[FR Doc. 98–16324 Filed 6–18–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

AGENCY: Department of Education.

ACTION: Request for comments on agencies applying to the Secretary for initial or renewed recognition.

DATES: Commenters should submit their written comments by August 3, 1998 to the address below.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and Eligibility Determination Division, U.S. Department of Education, 600 Independence Avenue, SW., Room 3915 ROB–3, Washington, DC 20202–5244, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8399 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions or programs within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. The purpose of this notice is to invite interested third parties to present written comments on the agencies listed in this notice that have applied for initial or continued recognition. A subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests for oral presentation before the National Advisory Committee on Institutional Quality and Integrity (the "Advisory Committee") on the agencies being reviewed. That notice, however, does not constitute another call for written comment. This notice is the only call for written comment.

All comments received in response to this notice will be reviewed by Department staff as part of its evaluation of the agencies' compliance with the Secretary's Criteria for Recognition. In order for Department staff to give full consideration to the comments received and to address them in the staff analyses that will be presented to the Advisory Committee at its December 1998 meeting, the comments must arrive at the address listed above not later than August 3, 1998. Comments received after the deadline will be reviewed by Department staff, which will take action, as appropriate, either before or after the meeting, should the comments suggest that an accrediting agency is not acting in accordance with the Secretary's Criteria for Recognition.

All comments must related to the Secretary's Criteria for the Recognition of Accrediting Agencies. Comments pertaining to the agencies whose interim reports will be reviewed must be restricted to the concerns raised in the Secretary's letter for which the report is requested.

The Advisory Committee advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet December 7–9, 1998 in Washington, DC. All written comments in response to this notice that are received by the Department by the deadline will be considered by both the Advisory Committee and the Secretary. Comments received after the deadline, as indicated previously, will be reviewed by Department staff, which will take follow-up action, as appropriate, either before or after the meeting. Commenters whose comments are received after the deadline will be notified by staff of the disposition of those comments.

The following agencies will be reviewed during the December 1998 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies

Petition for Initial Recognition

1. Northwestern Association of Schools and Colleges, Commission on Schools (requested scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of schools offering non-degree, postsecondary education in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington)

Petitions for Renewal of Recognition

1. Accrediting Bureau of Health Education Schools (Current scope of recognition: The accreditation of private, postsecondary allied health education institutions, private medical assistant programs, public and private medical laboratory technician programs, and allied health programs leading to the Associate of Applied Science and the Associate of Occupational Science degree. Requested expansion of scope: The accreditation of institutions offering predominantly allied health education programs. "Predominantly" is defined by the agency as follows: At least 70 percent of the number of active programs offered are in the allied health area, and the number of students enrolled in those programs exceeds 50 percent of the institution's full-time equivalent (FTE) students, or at least 70 percent of the FTE students enrolled at the institution are in allied health programs)

2. National Environmental Health Science and Protection Accreditation Council (requested scope of recognition: the accreditation and preaccreditation ("Preaccreditation") of baccalaureate programs in environmental health science and protection)

3. National League for Nursing Accrediting Commission (requested scope of recognition: The accreditation of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs)

4. New York State Board of Regents (requested scope of recognition: The accreditation (registration) of collegiate degree-granting programs or curricula offered by institutions of higher education in the state of New York and of credit-bearing certificate and diploma programs offered by degree-granting institutions of higher education in the state of New York)

Interim Reports

(An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted initial or renewed recognition to the agency)—

1. Accrediting Commission of Career Schools and Colleges of Technology
2. American Academy for Liberal Education
3. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar
4. American Board of Funeral Service Education, Committee on Accreditation
5. American Dental Association, Commission on Dental Accreditation
6. American Psychological Association, Committee on Accreditation
7. American Veterinary Medical Association, Council on Education
8. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission
9. The Council on Chiropractic Education, Commission on Accreditation
10. Council on Education or Public Health
11. Liaison Committee on Medical Education
12. Montessori Accreditation Council for Teacher Education, Commission on Accreditation
13. Western Association of Schools and Colleges, Accrediting Commission for Schools

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petitions for Renewal of Recognition

1. Oklahoma State Board of Vocational and Technical Education
2. Utah State Board for Vocational Education

State Agency Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. Iowa Board of Nursing
2. Maryland Board of Nursing

Federal Agencies Seeking Degree-Granting Authority

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that maybe proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for his purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Master's Degree-Granting Authority

1. Air University Montgomery, AL; Air War College (request to award the master's degree in Strategic Studies) and Air Command and Staff College (request to award the master's degree in Operational Military Arts and Science)
2. Department of Defense Polygraph Institute, Anniston AL (request to award the master's of science in Forensic Psychophysiology)

Public Inspection of Petitions and Third-Party Comments

All petitions and interim reports, and those third-party comments received in advance of the meeting, will be available for public inspection and copy at the U.S. Department of Education, ROB–3, Room 3915, 7th and D Streets, SW., Washington, DC 20202–5244, telephone (202) 708–7417 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, until November 15, 1998. They will be available again after the December 7–9 Advisory Committee meeting. It is preferred that an appointment be made in advance of such inspection or copying.

Dated: June 16, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–16395 Filed 6–18–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed revision, and extension of the Office of Management and Budget (OMB) expiration date of the form RW–859, "Nuclear Fuel Data Survey", and the termination of RW–859S "Nuclear Fuel Data Supplement".

DATES: Written comments must be submitted on or before August 18, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Jim Finucane, Office of Coal, Nuclear, Electric and Alternate Fuels, EI–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0650, telephone: (202) 426–1960, e-mail: *jim.finucane@eia.doe.gov*, and fax (202)–426–1280.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Jim Finucane at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA, as part of its continuing effort to reduce paperwork and respondent burden required by section 3506(c)(2)(A)g of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to prepare data requests in the desired format, minimize reporting burden, develop clearly

understandable reporting forms, and assess the impact of collection requirements on respondents. Also, EIA will later seek approval by OMB for the collections under sections 3507(g) and (h) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, title 44, U.S.C. Chapter 35).

This data collection will provide the Office of Civilian Radioactive Waste Management of the Department of Energy (DOE) with detailed information concerning the spent nuclear fuel generated by the respondents (commercial generators of spent nuclear fuel within the U.S. are respondents to this survey). The DOE will take possession of this spent fuel and needs this data to properly design the spent fuel repository (spent fuel receiving systems, spent fuel handling systems, etc.) which will be the final storage/disposal site for all of the spent fuel and high level radioactive waste materials.

II. Current Actions

The current proposed actions are: (1) An extension of an existing data collection, RW–859, and (2) the termination of a second data collection, RW–859S. A three-year extension of the data collection, RW–859, is proposed. The RW–859S, which was collected every five years, will be terminated and four data items from that form will be collected by RW–859. Such data items include information on each discharged assembly, canistered materials, uncanistered materials, and non-fuel components. As before, all data will be collected once; only changes in the specific data element will require updating.

This revision will also permit the data elements to be collected to be streamlined. Specifically, all of the data which is needed on an assembly specific basis will be collected at one time; thereafter referring this data by reference to the assembly serial number. In addition, the certification statement, the crane data, the site data, the transportation data, and the request for data on fresh fuel in core will be eliminated.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted by the due date?

C. Public reporting burden for Form RW–859 is estimated to average 40 hours per response. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of information technology.

D. EIA estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) Total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

F. Would you be interested in receiving and submitting the new RW–859 form and related materials by e-mail in electronic format?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) title 44, U.S.C. Chapter 35).

Issued in Washington, DC, June 12, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–16342 Filed 6–18–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2498–000]

Cobisa-Person Limited Partnership; Notice of Issuance of Order

June 15, 1998.

Cobisa-Person Limited Partnership (Cobisa-Person), is an exempt wholesale generator comprised of a single general partner, Cobisa-Person Power Company, Inc., and a single limited partner, Cobisa-Person Corporation. Cobisa-Person filed an application requesting that the Commission accept a power purchase agreement and amendment and authorize it to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Cobisa-Person requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Cobisa-Person. On June 12, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates And Interconnection Agreement And Amendment (Order), in the above-docketed proceeding.

The Commission's June 12, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days after the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Cobisa-Person should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Cobisa-Person is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Cobisa-Person, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of

Cobisa-Person's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 13, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16300 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2491–000]

Consolidated Edison Energy, Inc.; Notice of Issuance of Order

June 15, 1998.

Consolidated Edison Energy, Inc. (ConEd Energy), a power marketing affiliate of Consolidated Edison Company of New York, Inc., filed an application for authorization to engage in wholesale sales of electric energy and capacity at market-based rates, and for certain waivers and authorizations. In particular, ConEd Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by ConEd Energy. On June 1, 1998, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates And Directing Revisions To Tariffs And Codes Of Conduct (Order), in the above docketed proceeding.

The Commission's June 1, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by ConEd Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, ConEd Energy is hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of ConEd Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of ConEd Energy's issuances of securities or assumptions of liabilities.* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 1, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16299 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

[Docket No. ER98–2020–000]

Federal Energy Regulatory Commission

Energy Clearinghouse Corporation; Notice of Issuance of Order

June 15, 1998.

Energy Clearinghouse Corporation (ECC) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, ECC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by ECC. On June 1, 1998, the Commission issued an Order Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's June 1, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by ECC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, ECC is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of ECC, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of ECC's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 1, 1998. Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16297 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2494–000]

ESI Vansycle Partners, L.P.; Notice of Issuance of Order

June 15, 1998.

ESI Vansycle Partners. L.P. (ESI), an affiliate of Florida Power & Light Company, filed an application for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, ESI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by ESI. On June 2, 1998, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's June 2, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (F), (G), and (I):

(F) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by ESI should file a motion to intervene or protest with

the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(g) Absent a request to be herd within the period set forth in Ordering Paragraph (F) above, ESI is hereby authorized, pursuant to Section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of ESI, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of ESI's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is July 2, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16298 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–4345–004 and ER98–2296–000]

Origen Power Corporation, OGE Energy Resources, Inc. and Oklahoma Gas and Electric Company; Notice of Issuance of Order

June 15, 1998.

Origen Power Corporation (Origen) and OGE Energy Resources, Inc. (OGE Energy) filed a request for authorization for Origen to engage in wholesale sales of electric capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, Origen requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Origen. On June 2, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates, Amendment To Market-Based Rate Schedule, And Authorizing Power Sales To Affiliate (Order), in the above-docketed proceedings.

The Commission's June 2, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Origen should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Origen is hereby authorizied to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Origen, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Origen's issuances of securities or assumptions of liabilities * * * .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 2, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16296 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2603–000]

Southwood 2000, Inc.; Notice of Issuance of Order

June 15, 1998.

Southwood 2000, Inc. (Southwood), is a power marketing affiliate of Redwood Electric Cooperative and South Central Electric Cooperative, rural electric cooperatives engaged in the distribution and sale of electric cooperatives engaged in the distribution and sale of electric power at retail. Southwood filed an application requesting that the Commission authorize it to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Southwood requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Southwood. On June 12, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's June 12, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days after the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Southwood should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Southwood is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Southwood, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Southwood's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 13, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16301 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–85–000, et al.]

InnCOGEN, Limited, et al. Electric Rate and Corporate Regulation Filings

June 12, 1998.

Take notice that the following filings have been made with the Commission:

1. InnCOGEN, Limited

[Docket No. EG98–85–000]

Take notice that on June 5, 1998, InnCOGEN, Limited, a limited liability company under the laws of the Republic of Trinidad and Tobago, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status. InnCOGEN will be engaged directly and exclusively in the business of owning and operating a 215 MW generating facility (the Project) on the Island of Trinidad in the Republic of Trinidad and Tobago which will be an eligible facility. All of the electricity produced by the Project will be sold at wholesale to the Trinidad and Tobago Electricity Commission pursuant to a long-term contract or to retail customers outside the United States.

Comment date: July 2, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. North American Electric Reliability Council

[Docket No. EL98–52–000]

Take notice that on June 5, 1998, the North American Electric Reliability Council (NERC) filed a petition for a declaratory order asking the Commission to address the interrelationship between NERC's transmission loading relief (TLR) procedure for public utilities within the Eastern Interconnection and the Commission's *pro forma* open access transmission tariff. NERC asks in its petition that the Commission find that the TLR procedures are consistent with the *pro forma* tariff curtailment provisions and can be implemented by public utility transmission providers without filings to incorporate them into the public utilities' transmission tariffs. However, if the Commission determines that NERC's TLR procedures should be incorporated as an amendment to the transmission tariffs, NERC attaches to its petition two alternative proposed amendments to implement such changes. NERC states that a copy of its petition is available on NERC's website (www.nerc.com).

NERC states that it anticipates that the TLR procedures will play a critically important role in maintaining the reliability of the transmission system over this summer's peak season. NERC states that the TLR procedures are currently in effect on an interim basis. NERC requests that the Commission give an abbreviated notice period and act as expeditiously as reasonably possible on its petition.

The NERC filing raises important questions about subjects that have, under the Commission's "rule of reason" approach, not traditionally been considered in public utility tariffs. Therefore, the Commission does not believe it appropriate to abbreviate its consideration of the matter. Rather, because the summer season has already begun and in order to avoid any uncertainties that may jeopardize system reliability, the Commission hereby gives notice that it is acceptable for public utilities within the Eastern Interconnection to continue to utilize the NERC TLR procedures without amending their transmission tariffs while the Commission considers the merits of the petition filed by NERC. Actions taken by the Commission on the merits of the NERC petition shall be given prospective effect from the date of a Commission order.

Comment date: July 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. WKE Station Two Inc., Western Kentucky Energy Corp., LG&E Energy Marketing Inc.

[Docket Nos. ER98–2568–000 and ER98–2569–000 and ER98–2684–000 not consolidated]

Take notice that on June 9, 1998, WKE Station Two Inc. (Station Two Subsidiary), Western Kentucky Energy Corp. (WKEC), and LG&E Energy Marketing Inc. (LEM)(collectively Petitioners), tendered for filing a Second Amendment to the New Participation Agreement which in part amends certain rate schedules and service agreements previously submitted for approval in each of the above-referenced dockets.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. American Electric Power Service Corporation

[Docket No. ER98–2766–000]

Take notice that on June 9, 1998, American Electric Power Service Corporation, as agent for the AEP Operating Companies (AEP), tendered for filing with the Commission an amendment to its filing in the above-referenced case to show unbundled rates under the Service Agreement between AEP and the City of Radford, Virginia (Radford), under the Wholesale Market Tariff of the AEP Companies.

AEP states that a copy of its filing was served upon Radford, the Indiana Utility Regulatory Commission, the Public Service Commission of Kentucky, the Michigan Public Service Commission, the Public Utilities Commission of Ohio, the Tennessee Regulatory Authority, the Virginia State Corporation Commission, and the Public Service Commission of West Virginia.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER98–3163–000]

Take notice that on May 29, 1998, Illinois Power Company tendered for filing a summary of its activity for the first quarter of 1998, under its Market Power Sales Tariff, FERC Electric Tariff, Original Volume No. 7.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Minnesota Power, Inc.

[Docket No. ER98–3192–000]

Take notice that on June 9, 1998, Minnesota Power, Inc., tendered for filing signed Non-Firm and Short-term Firm Point-to-Point Transmission Service Agreements with Powerex (British Columbia Power Exchange Corporation) under its Non-Firm Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Minnesota Power, Inc.

[Docket No. ER98–3198–000]

Take notice that on June 9, 1998, Minnesota Power, Inc., tendered for filing a signed Non-Firm Point-to-Point Transmission Service Agreement with Entergy Power Marketing Corp., under its Non-Firm Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Idaho Power Company

[Docket No. ER98–3210–000]

Take notice that on June 3, 1998, Idaho Power Company tendered for filing with a Quarterly Transaction Summary Report under Idaho Power

Company's Market Rate Power Sale Tariff.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. The Empire District Electric Company

[Docket No. ER98–3232–000]

Take notice that on June 9, 1998, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and OGE Energy Resources, Inc., providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon OGE Energy Resources, Inc.; P O Box 24300, Oklahoma City, OK 73124.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Valley Electric Association, Inc.

[Docket No. ER98–3262–000]

Take notice that on June 9, 1998, Valley Electric Association, Inc., tendered for filing an agreement extending the term of a transmission service contract with the United States Department of Energy.

A copy of the filing was served upon the Department of Energy.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service Corporation

[Docket No. ER98–3265–000]

Take notice that on June 9, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Wisconsin Electric Power Co., under its Market-Based Rate Tariff.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. PSI Energy, Inc.

[Docket No. ER98–3267–000]

Take notice that on June 9, 1998, PSI Energy, Inc. (PSI), tendered for filing Notice Of Cancellation of its Interim Scheduled Power Agreement, Rate Schedule FERC No. 241, between itself and Wabash Valley Power Association, Inc., with the request that it be canceled and terminated effective year end December 31, 1997.

The service being canceled is to be succeeded by a long term Power Supply Agreement.

Copies of this filing were served upon Wabash Valley Power Association, Inc., the Indiana Utility Regulatory Commission and the Indiana Office of the Consumer Counsel.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Electric and Gas Company

[Docket No. ER98–3268–000]

Take notice that on June 9, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to VTEC Energy, Inc. (VTEC), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of May 11, 1998.

Copies of the filing have been served upon VTEC and the New Jersey Board of Public Utilities.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Electric and Gas Company

[Docket No. ER98–3269–000]

Take notice that on June 9, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Electric Clearinghouse, Inc. (ECI), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of May 11, 1998.

Copies of the filing have been served upon ECI and the New Jersey Board of Public Utilities.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER98–3271–000]

Take notice that on June 9, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Energy Transfer Group LLC under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Energy Transfer Group LLC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Midwest Energy, Inc.

[Docket No. ER98–3273–000]

Take notice that on June 9, 1998, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission a Transaction Service Agreement entered into between Midwest and Tenaska Power Services Co.

Midwest states that it is serving copies of this filing to its customers, State Commissions and other interested parties.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma , Southwestern Electric Power Co.

[Docket No. ER98–3274–000]

Take notice that on June 9, 1998, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies), submitted for filing a Transmission Coordination Agreement.

The CSW Operating Companies state that a copy of the filing has been served on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Services, Inc.

[Docket No. ER98–3275–000]

Take notice that on June 9, 1998, Entergy Services, Inc. (Entergy Services), 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 between Entergy Services, as agent for the Entergy Operating Companies and Merchant Energy Group of the Americas, Inc.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Services, Inc.

[Docket No. ER98–3276–000]

Take notice that on June 9, 1998, Entergy Services, Inc. (Entergy Services), 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 Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Merchant Energy Group of the Americas, Inc.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Alliant Service, Inc.

[Docket No. ER98–3277–000]

Take notice that on June 9, 1998, Alliant Services, Inc., tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement, establishing St. Charles Light and Water Department as a Network Customer under the terms of the Alliant Services, Inc., transmission tariff.

Alliant Services, Inc., requests an effective date of May 1, 1998, for Network Load of this Network Customer. Alliant Services, Inc., accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Alliant Service, Inc.

[Docket No. ER98–3278–000]

Take notice that on June 9, 1998, Alliant Services, Inc., tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement, establishing Rushford Electric Utility as a Network Customer under the terms of the Alliant Services, Inc., transmission tariff.

Alliant Services, Inc., requests an effective date of May 1, 1998, for Network Load of this Network Customer. Alliant Services, Inc., accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Nantahala Power and Light Company

[Docket No. ER98–3280–000]

Take notice that on June 9, 1998, Nantahala Power and Light Company tendered for filing Notice of Cancellation of service under Rate Schedule FERC No. 6, and Supplement Nos. 1 through 9 to Rate Schedule No. 6, by Nantahala Power and Light Company only to the extent that it relates to service to North Carolina Electric Membership Corporation (NCEMC), on behalf of Haywood Electric Membership Corporation is to be canceled.

Notice of the proposed cancellation has been served upon the Town of Highlands, North Carolina Electric Membership Corporation, Western Carolina University, and Spiegel & McDiarmid.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16284 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1090–001, et al.]

Montaup Electric Company, et al.; Electric Rate and Corporate Regulation Filings

June 11, 1998.

Take notice that the following filings have been made with the Commission:

1. Montaup Electric Company

[Docket No. ER96–1090–001]

Take notice that on June 8, 1998, Montaup Electric Company (Montaup), filed a compliance refund report.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. AES Alamitos, L.L.C., AES Huntington Beach, L.L.C., AES Redondo Beach, L.L.C.

[Docket No. EC98–43–000]

Take notice that on June 8, 1998, AES Alamitos, L.L.C., AES Huntington Beach, L.L.C. and AES Redondo Beach, L.L.C., filed a supplemental to their application to assign their must run electric service agreements with the California Independent System Operator (ISO). The supplemental filing is intended to clarify the distinction between must-run service and emergency service provided pursuant to the ISO Tariff.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. West Texas Wind Energy Partners, LLC

[Docket No. ER98–1965–001]

Take notice that on June 5, 1998, West Texas Wind Energy Partners, LLC (WTWEP), in compliance with the Commission's order issued on April 23, 1998, submitted a revised Code of Conduct with Respect to the Relationship between West Texas Wind Energy Partners, LLC and its affiliates.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER98–3242–000]

Take notice that on June 8, 1998, the New England Power Pool (NEPOOL or Pool), Executive Committee filed a request for termination of membership in NEPOOL, with a retroactive date of June 1, 1998, of Merrimac Municipal Light Department (Merrimac). Such termination is pursuant to the terms of

the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by Merrimac. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of Merrimac with a retroactive date of June 1, 1998, would relieve this entity, at its request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove Merrimac from membership in the Pool. Merrimac has not received any energy related services (such as scheduling, transmission, capacity or energy services) under the NEPOOL Agreement.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Tucson Electric Power Company

[Docket No. ER98–3245–000]

Take notice that on June 8, 1998, Tucson Electric Power Company (TEP), tendered for filing one (1) non-firm umbrella transmission service agreement pursuant to Part II of TEP's Open Access Transmission Tariff, which was filed in Docket No. OA96-140–000.

The details of the service agreement are as follows:

1. Service Agreement for Non-Firm Point-to-Point Transmission Service with ConAgra Energy Services, Inc. dated May 29, 1998. TEP has not yet provided transmission service under this service agreement.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER98–3254–000]

Take notice that on June 8, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and Dayton Power and Light Company.

NSP requests that the Commission accept the agreement effective June 2, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Western Resources, Inc.

[Docket No. ER98–3255–000]

Take notice that on June 8, 1998, Western Resources, Inc., (Western Resources), tendered for filing a proposed change to its Rate Schedule FERC No. 218. Western Resources states that the change is to add a new delivery point under its electric power supply contract with Kaw Valley Electric Cooperative Association, Inc., (Cooperative). The change is proposed to become effective July 1, 1998.

Copies of the filing were served upon the Cooperative and the Kansas Corporation Commission.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. New Century Services, Inc.

[Docket No. ER98–3256–000]

Take notice that on June 8, 1998, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing an Umbrella Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and PG&E Energy Trading—Power, L.P.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Rochester Gas and Electric Corporation

[Docket No. ER98–3257–000]

Take notice that on June 8, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Market Based Service Agreement between RG&E and Aquila Power (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of June 4th, Aquila Power's Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER98–3258–000]

Take notice that on June 8, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the New York Power Authority to serve 0.2 MW of New York Power Authority power to Norampac Industries, Inc. This Transmission Service Agreement specifies that the New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of June 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER98–3259–000]

Take notice that on June 8, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and (WRI). The Transmission Service Agreement allows WRI to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission consideration in Docket No. OA97-578.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on WRI, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER98–3260–000]

Take notice that on June 8, 1998, PECO Energy Company (PECO), filed a

Service Agreement dated June 2, 1998, with North Carolina Electric Membership Corporation (NCEMC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NCEMC as a customer under the Tariff.

PECO requests an effective date of June 2, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to NCEMC and to the Pennsylvania Public Utility Commission.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Reliable Energy, Inc.

[Docket No. ER98–3261–000]

Take notice that on June 8, 1998, Reliable Energy, Inc., petitioned the Commission for acceptance of Reliable Energy, Inc's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and the waiver of certain Commission Regulations.

Reliable Energy, Inc., intends to engage in wholesale electric power and energy purchases and sales as a marketer. Reliable Energy is not in the business of generating or transmitting electric power. Reliable Energy is a New Jersey corporation. It will act as power marketer and will also engage in other non-jurisdictional activities to facilitate efficient trade in the bulk power market such as power brokering, load aggregation, metering, energy management and consulting.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Western Resources, Inc.

[Docket No. ER98–3263–000]

Take notice that on June 8, 1998, Western Resources, Inc., tendered for filing a revised summary of activity for the quarter ending March 31, 1998.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER98–3264–000]

Take notice that on June 8, 1998, Entergy Services, Inc. (Entergy Services), 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 Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Central Power & Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Rochester Gas and Electric Corporation

[Docket No. ER98–3266–000]

Take notice that on June 8, 1998, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed copy of a service agreement between RG&E and Energetix that was accepted as a form of service agreement in an order issued March 28, 1998.

A copy of the service agreement was served on the New York Public Service Commission and on each party listed on the official service list for Docket No. ER98–1605.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Long Island Lighting Company

[Docket No. ER98–3272–000]

Take notice that on June 8, 1998, MarketSpan Generation LLC, tendered for filing a Notice of Succession pursuant to a transaction between Long Island Lighting Company (LILCO) and Long Island Power Authority (LIPA) which took place on May 28, 1998, GENCO the subsidiary of LILCO which was to sell energy and capacity at the rate proposed is now MarketSpan Generation, LLC a subsidiary of MarketSpan Corporation. As stated in the Notice of Succession, effective May 28, 1998, MarketSpan Generation LLC is the successor entity to Long Island Lighting Company.

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Long Island Power Authority

[Docket No. NJ98–4–000]

Take notice that on May 21, 1998, the Long Island Power Authority (LIPA), tendered for filing its compliance filing in the above referenced docket. LIPA requests that the Commission issue an order finding that its open access transmission tariff is an acceptable reciprocity tariff.

The Authority also states that a paper copy of its filing is available for inspection at its principal place of business at 333 Earle Ovington Boulevard, Suite 403, Uniondale, NY 11553.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16361 Filed 6–18–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–84–000, et al.]

Scrubgrass Generating Company, L.P., et al.; Electric Rate and Corporate Regulation Filings

June 10, 1998.

Take notice that the following filings have been made with the Commission:

1. Scrubgrass Generating Company, L.P.

[Docket No. EG98–84–000]

On June 5, 1998, Scrubgrass Generating Company, L.P. (Applicant), with its principal office at 7500 Old Georgetown Road, Bethesda, Maryland 20814–6161, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and Part 365 of the Commission's Regulations.

Applicant states that it is and will be engaged in owning the Scrubgrass project consisting of an approximately 87 megawatt (net), small power production facility and related transmission interconnection facilities located in Kennerdell, Pennsylvania (the Eligible Facility) and selling electric energy exclusively at wholesale. Electric

energy produced by the Eligible Facility is sold exclusively at wholesale.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. California Independent System Operator Corporation

[Docket No. ER98–1309–000]

Take notice that on June 5, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Participating Generator Agreement between Texaco Exploration and Production Inc., and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Participating Generator Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket No. ER98–1310–000]

Take notice that on June 5, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Participating Generator Agreement between El Segundo Power, LLC and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Participating Generator Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket, including the California Public Utilities Commission.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER98–1503–000]

Take notice that on June 5, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Meter Service Agreement for ISO Metered Entities between Texaco Exploration and Production Inc., and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1, modifies the Meter Service Agreement for ISO Metered Entities, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in Pacific Gas and Electric Co., 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Hawkeye Power Partners, L.L.C.

[Docket No. ER98–2076–001]

Take notice that on June 5, 1998, Hawkeye Power Partners, L.L.C. (Hawkeye), in compliance with the Commission's order issued on April 30, 1998, submitted a revised Code of Conduct with Respect to the Relationship between Hawkeye Power Partners, L.L.C. and its affiliates.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER98–3235–000]

Take notice that on June 5, 1998, Southern California Edison Company (SCE), tendered for filing a revised Radial Lines Agreement (Revised Agreement) for Ormond Generating Station to be executed by SCE and Houston Industries Power Generation, Inc.

SCE requests waiver of the Commission's 60-day notice requirements and that the Commission accept the Revised Agreement for filing, unexecuted.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER98–3236–000]

Take notice that on June 5, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing an Interchange Agreement among the Cinergy Operating Companies and Avista Energy, Inc., in the above-referenced docket. The Interchange Agreement provides for voluntary sales transactions between the parties.

Copies of the filing have been served upon Avista Energy, Inc., the Texas Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, and the Indiana Utility Regulatory Commission.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER98–3237–000]

Take notice that on June 5, 1998, Cinergy Services, Inc., (Cinergy) on behalf of the Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), filed, pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, Notices of Cancellation for Cinergy and Industrial Energy Applications, Inc. (IEA), to cancel the Interconnection Agreement, dated November 1, 1995, as amended, between Cinergy and IEA.

Cinergy has requested an effective date of June 15, 1998.

Copies of the filing have been served upon Industrial Energy Applications, Inc., Iowa Utilities Board, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, and the Indiana Utility Regulatory Commission.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER98–3238–000]

Take notice that on June 5, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Letter Agreement among Pacific Gas and Electric Company (PG&E), Western Area Power Administration (WAPA), the City of Redding (Redding) and the ISO for acceptance by the Commission. The ISO states that the Letter Agreement is intended to enable PG&E to act on an interim basis as proxy scheduling coordinator for Redding's interest in certain transmission rights held by the Transmission Agency of Northern California, pending the conclusion of negotiations for a long-term arrangement for WAPA to act as scheduling coordinator for Redding's interest.

The ISO states that this filing has been served on PG&E, Western, Redding and the California Public Utilities Commission.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Maine Public Service Company

[Docket No. ER98–3239–000]

Take notice that on June 5, 1998, Maine Public Service Company (Maine

Public), filed an executed Service Agreement with Enserch Energy Services, Inc.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Maine Public Service Company

[Docket No. ER98–3240–000]

Take notice that on June 5, 1998, Maine Public Service Company (Maine Public), filed an executed Service Agreement with Great Bay Power Corporation.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Nevada Power Company

[Docket No. ER98–3241–000]

Take notice that on June 5, 1998, Nevada Power Company (Nevada Power), tendered for filing an executed Amendment No. 3, to the Purchased Power Agreement between the Colorado River Commission (CRC) and Nevada Power. This filing supplements Nevada Power's filing tendered on May 28, 1998, which contained an unexecuted agreement.

Copies of this filing have been served on the CRC and the Nevada Public Utilities Commission.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER98–3243–000]

Take notice that on June 5, 1998, Commonwealth Edison Company (ComEd), submitted for filing two Service Agreements, establishing Southern Illinois Power Cooperative (SIPC), and Merchant Energy Group of the Americas, Inc. (MEGA), as customers under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of June 1, 1998, and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served on MEGA, SIPC, and the Illinois Commerce Commission.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Energy Corporation

[Docket No. ER98–3244–000]

Take notice that on June 5, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke and Morgan Stanley Capital Group, Inc.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Energy Corporation

[Docket No. ER98–3246–000]

Take notice that on June 5, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke and Vitol Gas & Electric LLC.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Energy Corporation

[Docket No. ER98–3247–000]

Take notice that on June 5, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke and PP&L, Inc.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Duke Energy Corporation

[Docket No. ER98–3248–000]

Take notice that on June 5, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke and Merchant Energy Group of the Americas, Inc.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Energy Corporation

[Docket No. ER98–3249–000]

Take notice that on June 5, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke and Engage Energy US, L.P.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company

[Docket No. ER98–3250–000]

Take notice that on June 5, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an unexecuted Service Agreement between LG&E and Public Service Electric and Gas Company under LG&E's Rate Schedule GSS.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company

[Docket No. ER98–3251–000]

Take notice that on June 5, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an unexecuted Purchase and Sales Agreement between LG&E and Tractebel Energy Marketing, Inc., under LG&E's Rate Schedule GSS.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company

[Docket No. ER98–3252–000]

Take notice that on June 5, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an unexecuted Purchase and Sales Agreement between LG&E and DTE Energy Trading, Inc., under LG&E's Rate Schedule GSS.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Louisville Gas and Electric Company

[Docket No. ER98–3253–000]

Take notice that on June 5, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an unexecuted Purchase and Sales Agreement between LG&E and The Power Company of America, LP under LG&E's Rate Schedule GSS.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. David Bing

[Docket No. ID–3191–000]

Take notice that on April 28, 1998, David Bing, Applicant, tendered for filing an application under Section 305(b) to hold the following positions:

Director—The Detroit Edison Company
Director— Standard Federal Bank

Comment date: June 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Maine Electric Power Company, Inc.

[Docket No. OA96–189–004]

Take notice that on May 29, 1998, the Maine Electric Power Company, Inc., tendered for filing a compliance report showing monthly billing determinants, revenue receipt dates, revenues under the prior, present, and settlement rates, the monthly revenue refund, and the monthly interest computed, together with a summary of such information for the total refund period.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16283 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Rate Formulas for Desert Southwest Customer Service Region Transmission and Ancillary Services

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rate adjustments.

SUMMARY: The Western Area Power Administration's (Western) Desert Southwest Region (DSW) is initiating a rate adjustment process for network integration transmission service for both the Parker-Davis Project (P–DP) and the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) and for ancillary services from the P–DP, Boulder Canyon Project (BCP), and part of the Colorado River Storage Project (CRSP) located in DSW's Control Area. This action is necessary to bring DSW into compliance with the intent of Federal Energy Regulatory Commission (FERC) Order Nos. 888 and 888–A. To date, DSW has not developed charges for the long term sales of the six ancillary services defined by FERC, or for network integration transmission service.

The proposed rate and its impact are explained in greater detail in a rate brochure which will be made available to all interested parties.

The proposed rate is scheduled to go into effect on November 1, 1998. This **Federal Register** notice initiates the formal process for the proposed rate.

DATES: Submit comments on or before September 17, 1998.

The forum dates are:

1. Public Information Forum, June 30, 1998, 10 a.m. MST, Phoenix, Arizona.

2. Public Comment Forum, July 30, 1998, 10 a.m. MST, Phoenix, Arizona.

ADDRESSES: Written comments should be sent to Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457. Western should receive written comments by the end of the consultation and comment period to be assured consideration. The public forums will be held at the Desert Southwest Regional Office, 615 South 43rd Avenue, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Maher A. Nasir, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457; telephone (602) 352–2768.

SUPPLEMENTARY INFORMATION:

Proposed Rate for Network Integration Transmission Service

The DSW will offer, subject to provisions in its Open Access Transmission Service Tariff (OAT), Network Integration Transmission Service (NTS) to eligible transmission customers. The customer must obtain ancillary services for NTS pursuant to Western's OAT. The NTS charge for Intertie and P–DP will be calculated independently. The monthly charge for NTS is the product of the network transmission customer's load-ratio share times one-twelfth of the annual revenue requirement allocated to transmission. The customer's load-ratio share is calculated on a rolling 12-month basis (12 CP). It is equal to the network transmission customer's hourly load coincident with DSW's monthly transmission system peak divided by the resultant value of DSW's monthly transmission system peak minus the coincident peak (CP) for all firm point-to-point transmission service plus firm point-to-point reservations. Service for point-to-point transmission service can be obtained through rate schedules PD-FT6 and INT–FT2.

The projected annual revenue requirement allocated to transmission for Fiscal Year (FY) 1999 for P–DP is $23,001,589, and for Intertie the projected annual revenue requirement is $21,943,150. The annual power repayment study derives the revenue requirement to be recovered from network and firm point-to-point transmission service. The annual transmission costs included in the revenue requirement are operation and maintenance expenses, administrative and general expenses, interest expense, and principal expenses associated with transmission.

Proposed Rates For Ancillary Services

Western will provide ancillary services subject to provisions in the OAT. The proposed rates are designed to recover only the costs incurred for the service(s). The annual generation costs included in the revenue requirement for Reactive Supply and Voltage Control, Regulation and Frequency Response, and Spinning and Supplemental Reserves are operation and maintenance expenses, administrative and general expenses, interest expense, and principal expense associated with providing ancillary services.

On April 1, 1998, the Western Area Upper Colorado Control Area, which includes the Salt Lake City Area Integrated Projects (SLCA/IP) generation and most of the CRSP transmission system, was merged with two other Control Areas: The Western Area Colorado Missouri, operated by Western's Rocky Mountain Region, and the Western Area Lower Colorado (WALC) Control Area, operated by DSW. As a result, regulation and frequency response and reactive supply and voltage control ancillary services will include certain SLCA/IP generation costs as well as DSW generation costs.

Proposed Rate for Scheduling, System Control, and Dispatch Service

Scheduling, System Control and Dispatch ancillary service is required to schedule the movement of power through, out of, within, or into a Control Area. This ancillary service can be provided only by the Control Area operator or transmission provider.

Scheduling, System Control and Dispatch ancillary service costs are calculated as an annual cost of all personnel, capital costs (such as the dispatch center building), and other related costs involved in providing the service. The cost is divided by the number of schedules per year to derive a rate per schedule per day. Up to five schedule changes per transaction, per day will be allowed at no additional charge.

The rates charged for the Scheduling, System Control and Dispatch ancillary service are contingent on the type of service required. The range of the service on a cost per schedule per day

is up to $34.10 for an existing schedule, which requires no Supervisory Control and Data Acquisition (SCADA) programming or intra-bus transfer, and up to $56.20 for a new schedule which requires both SCADA programming and intra-bus transfer. Intermediate rates are available for schedules requiring combinations of the two. This ancillary service is included in the transmission customer's rate.

Proposed Rate for Reactive Supply and Voltage Control from Generation Sources

In order to maintain transmission voltages on the transmission provider's transmission facilities within acceptable limits, generation facilities under the control of the Control Area operator are operated to produce or absorb reactive power. Thus, Reactive Supply and Voltage Control from generation sources service must be provided for each transaction on the transmission provider's transmission facilities. This ancillary service is required to be offered to the transmission customer by the transmission provider in order to maintain transmission voltages on the transmission provider's transmission facilities within acceptable limits.

The rate for Reactive Supply and Voltage Control ancillary service is calculated by combining the revenue requirements of P–DP, BCP, and SLCA/IP. This total revenue requirement is then divided by the sum of the long-term firm transmission reservations, yielding a rate of $0.08/kilowattmonth (kWmo). The transmission customer is required to maintain a power factor between 95 percent leading and 95 percent lagging. The rate of $0.08/kWmo will be applied to all transmission customers taking service under Western's OAT.

Proposed Rate for Regulation and Frequency Response Service

Regulation and Frequency Response service is necessary to provide for the continuous balancing of resources, generation and interchange, with load and for maintaining scheduled interconnection frequency at 60 cycles per second (60 Hz). The transmission provider must offer this service when the transmission service is used to serve load within its Control Area. The transmission customer must either purchase this service from the transmission provider or make alternative comparable arrangements to satisfy its regulation and frequency response service obligation.

DSW will offer regulation from its own resources, if available. The charge for this service from DSW resources is calculated based on P–DP, BCP, and SLCA/IP data. The total annual revenue requirement of P–DP, BCP, and SLCA/IP is divided by the nameplate plant capacities to derive an average revenue requirement per kilowatt (kW) result. The resultant average revenue requirement per kW is multiplied by the capacity used to provide regulation service and then divided by the CP of the Control Area load. This result is divided by 12 to derive a monthly rate of $0.20/kWmo. If DSW cannot supply this service from its resources, it will purchase the service on the market adding a 10 percent administrative charge.

Proposed Rate for Energy Imbalance Service

Energy Imbalance service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within a Control Area over a single hour. The transmission provider must offer this service when the transmission service is used to serve load within its Control Area. The transmission customer must either purchase this service from the transmission provider or make alternative comparable arrangements to satisfy its Energy Imbalance service obligation.

The Energy Imbalance Service rate will be a penalty-type rate which DSW reserves the right to apply against deviations outside a 3 percent bandwidth (± 1.5 percent deviations), with a 2 MW deviation minimum. Negative excursions (under deliveries) greater than 1.5 percent and occurring more than five times per month will be assessed a penalty charge of 100 mills/kilowatthour (kWh); e.g., the sixth time an under delivery occurs within a month, the 100 mills/kWh charge will be applied to the difference between the total excursion and 1.5 percent.

Any positive excursion (over delivery) will be credited to the customer within thirty days for 50 percent of the market value of the over delivery, provided the over deliveries do not impinge upon WALC Control Area operations. For example, during times of high water or operating constraints, DSW reserves the right to eliminate credits for over deliveries. The market value determinant will be the average monthly non-firm price from Western merchants operating within the WALC Control Area.

Proposed Rate for Operating Reserves: Spinning Reserve Service

Spinning Reserve service is needed to serve load immediately in the event of a system contingency. Spinning Reserve service may be provided by generating units that are on-line and loaded at less than maximum output. The transmission provider must offer this service when the transmission service is used to serve load within its Control Area. The transmission customer must purchase this ancillary service either from DSW or make alternative comparable arrangements to satisfy its Spinning Reserve service obligation. The transmission customer will be responsible for the transmission service to get these reserves to their destination.

These reserves will not be available from DSW resources on a long-term basis. If Spinning Reserves are unavailable from WALC resources, Western may obtain the reserves on the open market for the customer and pass through the cost, with an added 10 percent administrative charge.

Proposed Rate for Operating Reserves: Supplemental Reserve Service

Supplemental Reserve service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load, but rather within a short period of time. Supplemental Reserve service may be provided by generating units that are on-line and unloaded, by quick-start generation or by interruptible load. The transmission provider must offer this service when the transmission service is used to serve load within its Control Area. The transmission customer must purchase this ancillary service either from DSW or make alternative comparable arrangements to satisfy its Supplemental Reserve service obligation. The transmission customer will be responsible for the transmission service to get these reserves to their destination.

These reserves will not be available from DSW resources on a long-term basis. If Supplemental Reserves are unavailable from WALC resources, Western may obtain the reserves on the open market for the customer and pass through the cost, with an added 10 percent administrative charge.

Authorities

Since the proposed rates constitute a major rate adjustment as defined in 10 CFR 903.2, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend the proposed rates or revised proposed rates for approval on an interim basis by the Deputy Secretary of Department of Energy (DOE).

The proposed Project transmission and ancillary service rates are being established pursuant to the Department

of Energy Organization Act (42 U.S.C. 7101, *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 371, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 8 of the Act of August 31, 1964, (16 U.S.C. 837g).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated: (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires Federal agencies to perform a regulatory flexibility analysis if a proposed rule is likely to have a significant economic impact on a substantial number of small entities. Western has determined that this action relates to rates or services offered by Western, and therefore is not a rule within the purview of the act.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*; Council On Environmental Quality Regulations, 40 CFR Parts 1500–1508; and DOE NEPA Regulations, 10 CFR Part 1021, Western conducts environmental evaluations of the proposed rates and develops the appropriate level of documentation.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rates will be made available for inspection and copying at Western's Desert Southwest Regional Office at 615 South 43rd Avenue in Phoenix, Arizona.

Dated: June 8, 1998.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 98–16341 Filed 6–18–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5492–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 or (202) 564–7153.

Weekly Receipt of Environmental Impact Statements

Filed June 8, 1998 Through June 12, 1998

Pursuant to 40 CFR 1506.9.

EIS No. 980225, Draft EIS, EPA, FL, Tampa Water Resource Recovery Project, (TWRRP), Design and Construction, Funding and COE Section 404 Permit, City of Tampa, FL, *Due:* August 3, 1998, *Contact:* Robert B. Howard (404) 562–9370.

EIS No. 980226, Final EIS, COE, FL, C–51 West End Flood Control Project, Implementation To Improve the Level of Flood Control, Central and Southern Florida Project, Palm Beach County, FL, *Due:* July 20, 1998, *Contact:* Rudy Nyc (404) 331–4619.

EIS No. 980227, Final EIS, BLM, AK, Northern Intertie Project, Construction of 230 kV Transmission Line from Healy to Fairbanks, AK, Application for Right-of-Way Grant, Gold Valley Electric Association, AK, *Due:* July 20, 1998, *Contact:* Gary Foreman (907) 474–2339.

EIS No. 980228, Final Supplement, COE, OR, WA, Columbia and Lower Willamette River Federal Navigation Channel, Integrated Dredge Material Management Study, OR and WA, *Due:* July 20, 1998, *Contact:* Steven J. Stevens (503) 808–4768.

EIS No. 980229, Draft Supplement, AFS, ID, Thompson Creek Mine (TCM), Updated Information, Prevent and/or Control Potential Acid-Rock Drainage, Plan of Operations, Custer County, ID, *Due:* August 3, 1998, *Contact:* Leon Jadlowski (208) 838–3300.

EIS No. 980230, Draft, EIS, AFS, MT, Hemlock Point Access Project, Construction of 860 feet of Low Standard Road, Plum Creek, Swan Valley, Flathead National Forest, Missoula County, MT *Due:* August 3, 1998, *Contact:* Earl Sutton (405) 758–5326.

EIS No. 980231, Final EIS, NPS, MI, Keweenaw National Historical Park General Management Plan, Implementation, Houghton County, MI, *Due:* July 20, 1998, *Contact:* Michael Madell (402) 221–3493.

EIS No. 980232, Final EIS, BLM, OR, Beaty Butte Allotment Management Plan, Implementation, Lakeview District, Hart Mountain National Antelope Refuge, Lake and Harney Counties, OR, *Due:* July 20, 1998, *Contact:* Paul Whitman (541) 947–2177.

EIS No. 980233, Draft EIS, COE, FL, Jacksonville Harbor Navigation Channel Deepening Improvements, Construction, St. Johns River, Duval County, FL, *Due:* August 3, 1998, *Contact:* Kenneth Dugger (907) 232–1686.

EIS No. 980234, Final EIS, AFS, MI, Porter Creek Recreational Lake and Complex, Implementation, Homochitto National Forest, Homochitto Ranger District, Franklin County, MI, *Due:* July 20, 1998, *Contact:* Gary W. Bennett (601) 384–5876.

EIS No. 980235, Draft Supplement, BLM, CO, Glenwood Springs Resource Area, Updated Information, Oil & Gas Leasing and Development, Leasing Lands in the Naval Oil Shale Reserves, Resource Management Plan Amendment, Garfield County, CO, *Due:* September 17, 1998, *Contact:* Steve Moore (970) 947–2824.

Amended Notices

EIS No. 980191, Final EIS, NPS, OR, Crater Lake National Park, Visitor Services Plan, Implementation, OR, *Due:* June 29, 1998, *Contact:* Al Hendricks (541) 594–2211.

Published FR–05–29–98–Correction to Title, Due Date and Contact Person.

Dated: June 16, 1998.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–16396 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5492–9]

Environmental Impact Statements and Regulations: Availability of EPA Comments

Availability of EPA comments prepared June 1, 1998 Through June 5, 1998 pursuant to the Environmental Review Process (ERP), Under Section 309 of the Clean Air Act and Section

102(2)(c) of the National Environmental Policy Act as amended.

Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (63 FR 17856).

Final EISs

ERP No. F–MMS–L02026–AK, Beaufort Sea Planning Area Outer Continental Shelf Oil and Gas Lease Sale 170 (1997) Lease Offering, Offshore Marine, Beaufort Sea Coastal Plain, North Slope Borough of Alaska.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–UAF–A11074–00, Evolved Expendable Launch Vehicle (EELV) Program, Development, Operation and Deployment, Proposed Launch Locations are Cape Canaveral Air Station (AS), Florida and Vandenberg Air Force Base (AFB), California, Federal Permits and Licenses, FL and CA.

Summary: EPA stated that the Air Force adequately addressed earlier concerns and has no further comment.

ERP No. F–UAF–L11013–ID, Idaho Enhanced Training Project, Training for the 366th Wing at Mountain Home Air Force Base (AFB), Approval for Rights-of-Way Permit by (BLM) and Airspace Modifications by (FAA), Owyhee County, ID.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS–APH–A82124–00, Logs, Lumber and Other Unmanufactured Wood Articles Importation, Improvements to the existing system to Prohibit Introduction of Plant Pests into the United States.

Summary: EPA continued to have environmental objections to the proposed project. Issues of concern included the efficacy of combinations of control methods, compliance by exporting countries, human health effects of eradication and control efforts, comparison of the alternatives, and the use of methyl bromide.

Dated: June 16, 1998.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–16397 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00540; FRL–5798–2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with the FQPA 10x Safety Factor, Linear Low Dose Extrapolation for Cancer Risk Decisions, Proposed Methods for Basin-Scale Estimation of Pesticide Concentrations in Flowing Water and Reservoirs for Tolerance Reassessment, DDVP (Dichlorvos)and Chlorothalonil. The Agency will present a status report of the FQPA 10x Safety Factor, as requested by the SAP at the March 25, 1998, SAP meeting. For the cancer risk assessment session, the Agency will discuss the issue that due to uncertainties and variabilities surrounding input measures, estimates of carcinogenic risk using linear low dose extrapolation should be presented in a manner that reflects the precision of the estimated risk. The precision of the risk estimate can be no better than that for the least certain input parameter into the model. Representation of additional significant figures in risk estimates may introduce false precision into risk management decisions. The Agency will also present a session evaluating and developing improved methods to allow for basin-scale estimation of pesticide concentrations in surface waters used as drinking water. As an interim approach, the Agency is developing a reservoir scenario as a replacement water body for the standard small water body currently used in ecological exposure assessments and drinking water exposure assessments. The reservoir scenario is being developed to be representative of an actual reservoir which serves as a drinking water supply for a rural community. Additionally, the Agency is critically evaluating basin scale models and developing linkages of field scale models to estimate pesticide concentrations in flowing surface waters and reservoirs. Two sessions are scheduled for pesticide specific discussions. The first session will focus on two issues concerning the chlorothalonil human health risk assessment: (1) mechanism for the formation of renal and forestomach tumors and; (2) calculations for acceptable margins of exposure. The second pesticide for discussion is DDVP (dichlorvos). For this session, the Agency will present the DDVP risk assessment.

DATES: The meeting will be held on Wednesday and Thursday, July 29 and July 30, 1998, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at: Embassy Suites Hotel, 1300 Jefferson Davis Highway, Arlington, Virginia. The telephone number for the hotel is: (703) 979–9799.

By mail, submit written comments (one original and 20 copies) to: Larry C. Dorsey, Designated Federal Official for the FIFRA/Scientific Advisory Panel, (7509C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Rm. 819–B, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

Comments and data also may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–00540." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: By mail: Larry C. Dorsey, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; Office location: Rm. 819B, CM2, 1921 Jefferson Davis Highway, Arlington, VA; telephone: (703) 305–5369; e-mail: Dorsey.Larry@epamail.epa.gov.

A meeting agenda is currently available and copies of EPA primary background documents for the meeting will be available no later than July 6, 1998, and may be obtained by contacting: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460;

Office location: Rm. 119, CM2, 1921 Jefferson Davis Highway, Arlington, VA; telephone: (703) 305–5805.

SUPPLEMENTARY INFORMATION: Any member of the public wishing to submit written comments should contact Larry C. Dorsey at the address or the phone number given above to confirm that the meeting is still scheduled and that the agenda has not been modified or changed. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to the Designated Federal Official, interested persons may be permitted by the Chair of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately five minutes. As oral statements only will be permitted as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit twenty copies of the summary information. Please note that comments should be received by July 20, 1998, to ensure that the Panel Members will have the time necessary to consider and review the comments.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

A public record has been established for this notice under docket number "OPP–00540" (including comments and data submitted electronically). A public version of this record, including printed versions of electronic comments, which does not include information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Copies of the Panel's report of their recommendations will be available approximately 30 working days after the meeting and may be obtained by contacting the Public Information and Records Integrity Branch, at the address or telephone number given above.

List of Subjects

Environmental protection.

Dated: June 11, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs

[FR Doc. 98–16248 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6113–7]

Science Advisory Board; Notification of Public Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

1. Executive Committee

The Science Advisory Board's (SAB) Executive Committee (EC) will conduct a public meeting on Wednesday, July 8, 1998, and Thursday, July 9, 1998. The meeting will convene each day at 8:30 a.m., in the Administrator's Conference Room 1103 West Tower of the U.S. Environmental Protection Agency Headquarters Building at 401 M Street, SW, Washington, DC 20460, and adjourn no later than 5:30 p.m. on each day (Eastern Time). The meeting is open to the public, however, seating is limited and available on a first-come basis.

At this meeting, the Executive Committee will receive updates from its committees and subcommittees concerning their recent and planned activities. As part of these updates, some committees will present draft reports for Executive Committee review and approval. Anticipated drafts include the following:

(a) Ecological Processes and Effects Committee Review of the Blackstone River Initiative in Region I;

(b) Environmental Economics Advisory Committee Advisory on Economic Research Topics;

(c) Radiation Advisory Committee

(1) Commentary on the Radiation Quality Assurance Program

(2) Report on the Environmental Radiation Ambient Monitoring System (ERAMS).

Other items on the agenda tentatively include, but are not limited to, the following:

(a) Discussion of the Agency's new Urban Environment program and the role of science in the program;

(b) Discussion of the Agency's American Indian Program and the associated scientific issues;

(c) Discussion of Agency requests for SAB reviews in FY99.

For Further Information—Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer for the Executive Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202)–260–4126; fax (202)–260–9232; or via Email at: barnes.don@epa.gov. Copies of the draft meeting agenda and the draft reports will be available on the SAB Website (/ /http:www.epa.gov/sab) by July. Alternatively, these materials can be obtained from Ms. Priscilla Tillery-Gadson at the above phone and fax numbers or via Email: tillery.priscilla@epa.gov.

2. Ecological Processes and Effects Committee

The Ecological Processes and Effects Committee (EPEC) of the Science

Advisory Board will meet on July 9–10, 1998 in Room 3709 Mall, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The meeting will convene at 8:30 am and end no later than 5:30 pm on both days. The meeting is open to the public, with seating available on a first-come basis. The purpose of the meeting is to: (a) engage in a consultation with Agency staff on a framework for the application of Toxicity Equivalency Factors in ecological risk assessments; (b) engage in a consultation with Agency staff on the development of further guidance on four ecological risk assessment topics; and (c) develop a Committee strategic project on ecological report cards.

An SAB Consultation in an interaction between SAB members and Agency staff where the advice of individual members is offered, rather than a consensus Committee opinion, and no formal report results from the discussions. The purpose of a Consultation is for SAB members to assist the Agency during the early phases of project scoping and planning. This is in contrast to a formal written review of an Agency work product.

Background

(a) Ecological Toxicity Equivalency Factors

In January 1998, EPA's Risk Assessment Forum and the Department of the Interior sponsored a workshop on the application of recently developed World Health Organization toxicity equivalency factors (TEFs) for assessing risks to mammals, fish, and birds from chemicals that elicit toxicity through an aryl-hydrocarbon mediated mechanism. The participants at the workshop concluded that the TEF methodology is technically appropriate for ecological risk assessments, and proposed to develop a framework for the application of TEFs in Agency ecological risk assessments. The advice of individul Committee members is sought on the scope and content of such a framework document.

(b) Ecological Risk Assessment Topics

EPA's first Agency-wide guidelines for ecological risk assessment were published in the **Federal Register** on May 14, 1998. As part of the review process for the draft guidelines, EPA solicited recommendations for specific ecological risk-related topics requiring further development, considering the state of the science and Agency needs and priorities. The Committee's suggestions for future guidance topics are contained in its report on the draft guidelines (EPA–SAB–EPEC–97–002). The Risk Assessment Forum, after considering all of the recommendations received, is initiating follow-on projects in FY98 on four topics. Three of these are risk assessment process topics: (a) assessment endpoints and measures of effect; (b) effects at higher levels of biological organization, including landscape-level effects; and (c) risk characterization techniques. The fourth topic, objectives for ecological risk assessment, follows from both the Guidelines and a January 1997 EPA document, Priorities for Ecological Protection: An Initial List and Discussion Document ("Priorities"). In a September 1997 Advisory (EPA–SAB–EPEC–ADV–97–002), EPEC urged the Agency to develop additional guidance on ecological risk assessment for risk managers. This Forum project will revisit the list proposed in Priorities of ecological entities to consider during the Planning and Formulation steps of ecological risk assessments.

For the consultation on the four risk assessment topics, Committee members have been asked to provide individual feedback in the following areas: (a) How should the content of these broad issues be targeted most effectively to improve ecological risk assessments at the Agency? (b) What aspects of these topics are best suited for guidance in the short-term, and which require long-term emphasis? and (c) What types of products should be considered for short-term and long-term efforts to assist Agency risk assessors with each issue (for example, workshops and reports, white papers, guidance documents, other)?

(c) Ecological Report Cards

The Committee is interested in developing a strategic project to offer advice to the Agency on the content and design of an ecological report card, including the definition of baseline ecological data and benchmarks that can be measured to demonstrate improvements in ecological integrity as a result of management or restoration programs. The Committee will hear briefings from various Agency staff involved in efforts to develop indicators and progress measures, and will develop a proposal for conducting the strategic project.

For Further Information—Copies of the background materials for the consultations on TEFs and Ecological Risk Assessment Topics can be obtained from Ms. Christine Boivin, Risk Assessment Forum, U.S. Environmental Protection Agency, 401 M Street, SW (8601–D), Washington, DC, telephone (202) 564–3362. Copies of the agenda are available from Ms. Wanda Fields, Committee Operations Staff, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington DC 20460, telephone (202) 260–5510, fax (202) 260–7118, or via Email at fields.wanda@epa.gov.

Any member of the public wishing to submit comments must contact Ms. Stephanie Sanzone, Designated Federal Officer (DFO) for the Committee, *in writing* no later than noon on July 2nd at: Science Advisory Board (1400), Room 3702, U.S. Environmental Protection Agency, Washington DC 20460; FAX (202) 260–7118; or Email at sanzone.stephanie@epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to the DFO no later than the time of the presentation; these will be distributed to the Committee and the interested public.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not repeat previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. This time may be reduced at the discretion of the SAB, depending on meeting circumstances. Oral presentations at teleconferences will normally be limited to three minutes per speaker or organization. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments, which may of any length, may be provided to the relevant committee or subcommittee up until the time of the meeting.

Copies of SAB prepared reports mentioned in this FR Notice may be obtained from the SAB's Committee Evaluation and Support Staff at (202) 260–4126, or via fax at (202) 260–1889. Please provide the SAB report number when making a request.

Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 15, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–16407 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00544; FRL–5798–9]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, June 29 and 30, 1998. This notice announces the location and times for the meeting and sets forth the tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG will meet on Monday, June 29, 1998, from 8:30 a.m. to 5 p.m. and Tuesday, June 30, 1998, from 8:30 a.m. to 12 noon.

ADDRESSES: The meeting will be held at: The Ronald Reagan National Airport Doubletree Hotel, 300 Army Navy Drive, Arlington-Crystal City, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Elaine Y. Lyon, Field and External Affairs Division, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, Arlington-Crystal City, VA, CM–II, (703) 305–5306, (703) 308–1850 (fax); e-mail: lyon.elaine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the State FIFRA Issues Research and Evaluation Group includes the following:

1. Outcome of the Second Annual Antimicrobial National Workshop.
2. Consumer Information Sheets for Treated Wood.
3. Pesticide Use/Usage Data.
4. Pesticide Residue Data.
5. Update on Biotechnology.
6. OPP Updates on the following:
   - Quality Assurance Project Plan (QAPP)
   - Food Quality Protection Act
     - (i) Section 18 Rule
     - (ii) Tolerance Reassessment Advisory Committee
     - (iii) Impact on 24c
   - Worker Protection Standard
   - Certification and Training Advisory Group
   - International Activities - (NAFTA)
   - Bee Labeling
   - Chlorine Gas RED
   - PR Notice for Pesticide Products Used in Greenhouses
   - Label Language - mandatory vs. advisory
7. Update on the Office of Enforcement and Compliance Assurance activities.
8. Regional and Committee Reports - Presentation of Issue Papers.
9. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: June 15, 1998.

Jay Ellenberger,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 98–16573 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6108–9]

Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); In the Matter of Spiegelberg Superfund Site, Green Oak Township, MI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Settlement of CERCLA section 107 Cost Recovery Matter.

SUMMARY: EPA is proposing to settle a cost recovery claim with a potentially responsible party (PRP) with regard to past costs at the Spiegelberg site (the Site) in Green Oak Township, Michigan. EPA is authorized under section 122(h) of the CERCLA to enter into this administrative settlement.

Response costs totaling $200,873.35 were incurred by EPA, between December 30, 1993 and September 30, 1997, in connection with the remedial action at the Site. On September 25, 1997 and October 22, 1997, EPA sent the PRP demands for reimbursement of the EPA's past costs. The Settling Party has agreed to pay $194,000 to settle EPA's claim for reimbursement of response costs related to the Site. The U.S. Department of Justice has approved this settlement, consistent with section 122(h)(1) of CERCLA.

The EPA is proposing to approve this administrative settlement because it reimburses EPA, in part, for costs incurred during its response activities at this Site.

DATES: Comments on this administrative settlement must be received by no later than July 20, 1998.

ADDRESSES: Written comments relating to this settlement, Docket Number V–W–98–C–461, should be sent to Cynthia N. Kawakami, Associate Regional Counsel, U.S. Environmental Protection Agency, Region 5, Mail Code: C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Copies of the Agreement and the Administrative Record for this Site are available at U.S. Environmental Protection Agency, Region 5, Superfund Division, Emergency Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. It is strongly recommended that you telephone Ms. Denise Williams at (312) 886–9481 before visiting the Region 5 Office.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

Dated: May 22, 1998.

William E. Muno,

Director, Superfund Division.

[FR Doc. 98–16405 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6111–6]

State Program Requirements; Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Application for approval of Texas Pollutant Discharge Elimination System.

SUMMARY: The State of Texas has submitted a request for approval of the Texas Pollutant Discharge Elimination System (TPDES) program pursuant to section 402(b) of the Clean Water Act (CWA or "the Act"). With this request, the Texas Natural Resource Conservation Commission (TNRCC) seeks approval to administer a major category partial permit program for all discharges of pollutants into waters of the United States under its jurisdiction. Today, EPA Region 6 is providing public notice of Texas' request for TPDES program approval and of both a public hearing and public comment period on the State's program approval submission. EPA will either approve or disapprove the State's request after considering all comments it receives.

ADDRESSES FOR VIEWING/OBTAINING COPIES OF DOCUMENTS: Copies of Texas' TPDES program approval submission

(referred to throughout this notice as Texas' "application") and all other documents in the official record (Docket No. 6WQ–98–1) are available for inspection from 9 am to 4 pm, Monday through Friday, excluding legal holidays, at EPA Region 6, 12th Floor Library, 1445 Ross Ave., Dallas, Texas 75202.

A copy of Texas' TPDES application is also available for inspection from 8 am to 5 pm, Monday through Friday, excluding State holidays, at Record Services, Room 1301, Building F, TNRCC, 12100 Park 35 Circle, Austin, Texas 78753. You may contact Records Services at (512) 239–0966.

Chapters 1–8 of Texas' TPDES application are available for review, but not copying, at the following TNRCC Regional Offices:

Region 1 (Amarillo): 3918 Canyon Dr., Amarillo, TX 79109–4996, (806) 353-9251, FAX (806) 358–9545

Region 2 (Lubbock): 4630 50th St., Suite 600, Lubbock, TX 79414–3509, (806) 796–7092, FAX (806) 796–7107

Region 3 (Abilene): 209 S. Danville, Suite B200, Abilene, TX 79605–1451, (915) 698–9674, FAX (915) 692–5869

Region 4 (Arlington): 1101 E. Arkansas Ln., Arlington, TX 76010–6499, (817) 469–6750, FAX (817) 795–2519

Region 5 (Tyler): 2916 Teague Dr., Tyler, TX 75701–3756, (903) 535–5100, FAX (903) 595–1562

Region 6 (El Paso): 7500 Viscount Blvd., Suite 147, El Paso, TX 79925–5633, (915) 778–9634, FAX (915) 778–4576

Region 7 (Midland): 3300 North A St., Bldg. 4, Suite 107, Midland, TX 79705–5421, (915) 570–1359, FAX (915) 570–4795

Region 8 (San Angelo): 301 W. Beauregard Ave., Suite 202, San Angelo, TX 76903–6326, (915) 655–9479, FAX (915) 658–5431

Region 9 (Waco): 6801 Sanger Ave., Suite 2500, Waco, TX 76710–7807, (254) 751–0335, FAX (254) 772–9241

Region 10 (Beaumont): 3870 Eastex Fwy., Suite 110, Beaumont, TX 77703–1892, (409) 898–3838, FAX (409) 892–2119

Region 11 (Austin): 1921 Cedar Bend, Suite 150, Austin, TX 78758–5336, (512) 339–2929, FAX (512) 339–3795

Region 12 (Houston): 5425 Polk Ave., Suite H, Houston, TX 77023–1486, (713) 767–3500, FAX (713) 767–3520

Region 13 (San Antonio): 140 Heimer Rd., Suite 360, San Antonio, TX 78232–5042, (210) 490–3096, FAX (210) 545–4329

Region 14 (Corpus Christi): 6300 Ocean Dr., Suite 1200, Corpus Christi, TX 78412–5503, (512) 980–3100, FAX (512) 980–3101

Region 15 (Harlingen): 134 E. Van Buren, Suite 301, Harlingen, TX 78550–6807, (956) 425–6010, FAX (956) 412–5059

Copies of the entire State TPDES application are available in paper format. Copies of most documents are also available in electronic format.

Part or all of the State's application (which comprises approximately 4106 pages) may be copied at the TNRCC office in Austin, or EPA's office in Dallas, at a minimal cost per page. A paper copy of the entire application may be obtained from the TNRCC office in Austin for a $510.00 fee. The cost of the principal documents, i.e the Attorney General's Statement, Memorandum of Agreement, Program Description, water quality Continuing Planning Process (Continuing Planning Process + Implementation Procedures) and the Enforcement Management System (Enforcement Guidelines + Compliance Procedures Manual) all *without* their other associated appendices is $152.00.

Copies of the following portions of the TPDES application are available in both paper and electronic format:

Chapter 1—Memorandum of Agreement Between TNRCC and EPA
Chapter 2—Overview of the TNRCC
Chapter 3—Permitting Program Description
Chapter 4—Pretreatment Program Description
Chapter 5—Sewage Sludge Program Description
Chapter 6—Enforcement Program Description
Chapter 7—Program Cost and Funding Description
Chapter 8—Attorney General's Statement of Legal Authority
Table 1 TPDES Estimated Program Costs (Existing Employees)
Table 2 TPDES Estimated Program Costs (New Employees)
Appendix 2–A Facilities Permitted by the TNRCC Having Oil & Gas Related Activities
Appendix 3–C TNRCC Continuing Planning Process
Appendix 3–D Implementation of the TNRCC Standards Via Permitting
Appendix 3–E TNRCC Playa Policy
Appendix 3–I Standard Permit Provisions
Appendix 3–J Sewage Sludge Provisions
Appendix 6–A Enforcement Guidelines
Appendix 6–B Water Quality Inspection Procedures
Appendix 6–C Water Quality Inspection/Audit Forms
Appendix 6–D Water Quality Inspection Letters
Appendix 6–G Compliance Procedures Manual

The following portions of the TPDES application are only available in paper format:

Figure 2–1 TNRCC Organization
Figure 2–2 Organization of Office of Chief Clerk
Figure 2–3 Organization of Legal Division
Figure 2–4 Organization of Field Operations Division
Figure 2–5 Organization of Enforcement Division
Figure 2–6 Organization of Water Quality Division
Figure 3–1 Wastewater Permitting Process Flow Chart
Figure 5–1 Sewage Sludge Application Registration Procedure
Figure 5–2 Sewage Sludge Application Permitting Procedure
Table 3 Organizational Structure and Resources for the TPDES Program
Appendix 3–A Industrial and Municipal Wastewater Permit Application Forms
Appendix 3–B Miscellaneous Permit Application Forms
Appendix 3–F Designation of Major and Minor Discharges
Appendix 3–G Temporary and Emergency Order Application Forms/ Shell Documents
Appendix 3–H Implementation of the Basin Permitting Rule
Appendix 3–K CAFO Permit Application Form
Appendix 5–A Sewage Sludge Permit and Beneficial Land Use Registration Applications
Appendix 5–B Sewage Sludge Annual Reporting Form
Appendix 5–C SSI: Beneficial Land Use Registrants and Sludge Only Permittees
Appendix 5–D SSI: POTWs and Other Treatment Works Treating Sewage Sludge in Texas
Appendix 6–E Complaints Handling
Appendix 6–F Noncompliance Reports
Appendix 7–A Position Descriptions for TPDES Functions
Appendix 7–B State Job Classifications for all TPDES Positions
Texas Rules (30 TAC)
Memorandums of Understanding
Texas Statutes

Copies of the documents available in electronic format are accessible on the Internet at the EPA Region 6 web page *http://www.epa.gov/region6/6wq/npdes/publicnotice.htm* and the TNRCC web page *http://www.tnrcc.state.tx.us.*

Every effort has been made to include each document relevant to EPA's decision on this matter in the official record for Docket No. 6WQ–98–1. However, because the documents associated with Texas' request for

TPDES program approval are voluminous and have come from many sources, EPA invites input from the public on any document that the public feels should have been included in the official record, but has not been.

DATES FOR THE PUBLIC COMMENT PERIOD AND PUBLIC HEARING: The public comment period on the State's request for approval to administer the proposed TPDES program will be from the date of publication until August 3, 1998. Comments must be received or post-marked by no later than midnight on August 3, 1998.

Both an informal public meeting and a public hearing will be held in Austin, Texas on July 27, 1998. The public meeting will include a presentation on the TPDES program approval request, a brief update on the status of the ongoing Endangered Species Act § 7 consultation, and a question and answer session. Written, but not oral, comments for the official record will be accepted at the public meeting. The public hearing will be conducted in accordance with 40 CFR 124.12, and will provide interested parties with the opportunity to provide written and/or oral comments for the official record. The public meeting will begin at 1:00 pm. The public hearing will begin at 7:00 pm. Both the public meeting and the public hearing will be held at the Holiday Inn-South, 3401 South IH 35, Austin, Texas 78741 (IH–35 and Woodward Dr.).

All public comments should reference Docket No. 6WQ–98–1 and may be in either paper or electronic format. If submitting comments in paper format, please submit the original and three copies of your comments and enclosures (including references). To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that comments be typed or legibly written and that commentors cite the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commentors who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope.

Send all paper copy comments to: Ms. Wilma Turner (6WQ–O), Water Quality Protection Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. Comments may also be submitted electronically to the following e-mail address: "tpdescomment@epa.gov".

Electronic comments must be submitted as an ASCII file or in WordPerfect 6.0 format, avoiding the use of special characters and forms of encryption. Electronic comments should be identified by the docket number 6WQ–98–1. EPA requests that electronic comments also include the commentor's postal mailing address. No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in WordPerfect 6.0 format or ASCII file format. For those without regular access to an e-mail system, electronic comments on this notice may be filed online at many Federal Depository Libraries.

A copy of each comment should be submitted to: Mr. Thomas W. Weber, Water Quality Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Ms. Wilma Turner at the EPA address listed above or by calling (214) 665–7516, FAX (214) 665–6490, e-mail: tpdescomment@epa.gov or Mr. Tom Weber at the TNRCC address listed above or by calling (512) 239–4576, Fax: (512) 239–4420).

SUPPLEMENTARY INFORMATION: Section 402 of the CWA created the NPDES program under which EPA may issue permits for the point source discharge of pollutants to waters of the United States under conditions required by the Act. Section 402(b) requires EPA to authorize a State to administer an equivalent state program, upon the Governor's request, provided the State has appropriate legal authority and a program sufficient to meet the Act's requirements.

The regulatory requirements for state program approval are set forth in 40 CFR part 123. 40 CFR 123.21 lists the basic elements of an approvable application. EPA Region 6 considers the documents submitted by the State of Texas administratively complete at the time of this document. EPA will not make a final decision on TPDES program approval until after (1) considering all public comments provided during the public comment period or at the public hearing, (2) completion of the ongoing consultations with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on effects program approval may have on endangered or threatened species and their designated critical habitat, and (3) completion of ongoing consultations with the State Historic Preservation Officer on effects program approval may have on historic properties or sites listed or eligible for listing in the National Register of Historic Places.

On February 5, 1998, the Governor of Texas requested NPDES major category partial permit program approval [1] and submitted a program description (including funding, personnel requirements and organization, and enforcement procedures), an Attorney General's statement, copies of applicable State statutes and regulations, and a Memorandum of Agreement (MOA) to be executed by the Regional Administrator of EPA Region 6 and the Executive Director of TNRCC. Supplements to the State application were received by EPA Region 6 on February 12, March 16, April 15, and May 4, 1998. EPA Region 6 determined that Texas' February 5, 1998, approval request, supplemented by this additional information, constituted a complete package under 40 CFR 123.21, and a letter of completeness was sent to the Chairman of the TNRCC on May 7, 1998.

EPA is required to approve the submitted program within 90 days of submission of the complete information unless it does not meet the requirements of section 402(b) of the Act and EPA regulations, or EPA and TNRCC jointly agree to extend this deadline. (See 40 CFR 123.21(d)). To obtain such approval, the State must show, among other things, that it has authority to issue permits which comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and opportunity for a hearing on each proposed permit. After close of the comment period and completion of the required consultations with other federal agencies, the Regional Administrator for EPA Region 6 will make a decision to approve or disapprove the TPDES program for implementation by the State.

EPA's final decision to approve or disapprove the TPDES program will be based on the requirements of section 402 of the CWA and 40 CFR part 123. EPA is also required by the Endangered Species Act (ESA), the National Historic Preservation Act and the Coastal Zone

[1] Major category partial permit program approval is provided for under section 402(n)(3) of the CWA. Pursuant to that section, EPA may approve a partial permit program covering a major category of discharges if the program represents a complete permit program and covers all of the discharges under the jurisdiction of the agency seeking approval, and if EPA determines the program represents a significant and identifiable part of the State program required by section 402(b) of the Act. As discussed below under "Scope of the Partial Program," TNRCC seeks permitting authority for all facilities that have discharges within its jurisdiction. However, TNRCC does not have jurisdiction over all discharges within the State of Texas. A small portion of the State's discharges fall under the jurisdiction of the Texas Railroad Commission.

Management Act, to consult with other federal agencies before making a final decision in this matter. For example, the ESA requires federal agencies to consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the effects of federal actions (including NPDES state program approvals) on endangered species. Section 7(a)(2) of the ESA places a statutory requirement (separate and distinct from CWA § 402(b)) for EPA to "* * * insure that any action authorized, funded or carried out *, * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat * * * determined to be critical * * *" EPA Region 6 initiated formal consultation under section 7 of the ESA on January 29, 1998. EPA's responsibilities under ESA, as well as under the National Historic Preservation Act and the Coastal Zone Management Act are discussed in more detail later in this notice. Under federal law, EPA may not make a final decision on TPDES program approval until consultation under these acts are completed, and it may be necessary to seek TNRCC's agreement on an extension of the 90 day approval deadline.

If EPA approves the Texas partial program, the Regional Administrator will so notify the State and will sign the proposed MOA. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will transfer to the TNRCC NPDES permitting authority and primary enforcement responsibility for those discharges subject to the TPDES program, with certain exceptions, which are discussed below under *Scope, Transfer of NPDES Authority, and Summary of the TPDES Permitting Program*. If EPA's Regional Administrator disapproves the TPDES program, the TNRCC will be notified of the reasons for disapproval and of any revisions or modifications to the program which are necessary to obtain approval.

Public Hearing Procedures

The following procedures will be used at the public hearing:

1. The Presiding Officer shall conduct the hearing in a manner which will allow all interested persons wishing to make oral statements an opportunity to do so; however, the Presiding Officer may inform attendees of any time limits during the opening statement of the hearing.

2. Any person may submit written statements or documents for the record.

3. The Presiding Officer may, in his discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony or is not relevant to the decision to approve or require revision of the submitted State program.

4. The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Regional Administrator.

5. The hearing record shall be left open until the deadline for receipt of comments specified at the beginning of this Notice to allow any person time to submit additional written statement or to present views or evidence tending to rebut testimony presented at the public hearing.

6. Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record and for use of the Hearing Panel and other interested persons. Persons wishing to make oral testimony supporting their written comments are encouraged to summarize their points rather than reading lengthy written comments verbatim into the record. All comments received by EPA Region 6 by the deadline for receipt of comments, or presented at the public hearing, will be considered by EPA before taking final action on the Texas request for NPDES program approval.

Scope, Transfer of NPDES Authority, and Summary of the TPDES Permitting Program

A. Scope of the Partial Program

The proposed TPDES program is a partial program which conforms to the requirements of section 402(n)(3) of the CWA. TNRCC's application for program approval applies to all discharges covered by the authority of that agency. This includes most discharges of pollutants subject to the federal NPDES program (e.g. municipal wastewater and storm water point source discharges, pretreatment, most industrial wastewater and storm water point source discharges, and point source discharges from federal facilities), including the disposal of sewage sludge (in accordance with section 405 of the Act and 40 CFR part 503).

The TNRCC has authority to regulate discharges from industrial facilities covered by all Standard Industrial Classification (SIC) codes except for those facilities classified as 1311, 1321, 1381, 1382, 1389, 4922, and 4925, which are regulated by the Texas Railroad Commission. Some activities at facilities within these SIC codes are regulated by the TNRCC, and a list of the ten facilities currently affected is included in Appendix 2–A of the TPDES application. EPA will retain NPDES permitting authority and primary responsibility for enforcement over all discharges not under the jurisdiction of TNRCC and therefore not subject to the TPDES program, including those within the jurisdiction of the Texas Railroad Commission. The TNRCC has authority to regulate discharges of storm water associated with industrial activity and discharges of storm water from municipal separate storm sewer systems, except at facilities regulated by the Texas Railroad Commission (see above). The TNRCC has primary responsibility for implementing a Pretreatment Program and a Sewage Sludge Program. The TNRCC has authority to regulate discharges from publicly owned and privately owned treatment works and for discharges from concentrated animal feeding operations (CAFOs) within the TNRCC's jurisdiction.

EPA would retain permitting authority and primary enforcement responsibility over discharges from CAFOs not subject to TNRCC jurisdiction. Pursuant to state statute, CAFOs authorized by TNRCC to use, and that have actually used, a playa lake that does not feed into any other surface water in the state as a wastewater retention facility before July 10, 1991 (the effective date of TNRCC's adoption of related revisions to the Texas Surface Water Quality Standards, 30 TAC Chapter 307) are not subject to water quality standards or other requirements for discharges to waters in the state. These discharges, however, if to waters of the United States, are subject to federal CWA requirements. Because TNRCC would not have jurisdiction under the TPDES program to require compliance with water quality standards for these discharges, EPA would retain permitting authority and primary enforcement responsibility over discharges into playa lakes that are waters of the United States by CAFOs that received authorization to discharge and commenced operation prior to July 10, 1991, and that are therefore not subject to TNRCC jurisdiction.

TNRCC does not have, and is not seeking, the authority to regulate discharges in Indian Country (as defined in 18 U.S.C. 1151). EPA will retain NPDES permitting authority and primary enforcement responsibility over Indian Country in Texas.

B. Transfer of NPDES Authority and Pending Actions

Upon approval of the TPDES program, authority for all NPDES permitting activities, as well as primary

responsibility for NPDES enforcement activities, within the scope of TNRCC's jurisdiction, would be transferred to the State, with some exceptions. These exceptions would be agreed to by EPA and the State under the MOA that would be signed upon program approval, and are explained below. In addition to the exceptions listed below, EPA would retain on a permanent basis its authority under section 402(d) of the CWA to object to TPDES permits proposed by TNRCC, and if the objections are not resolved, to issue federal NPDES permits for those discharges. EPA would also retain on a permanent basis its authority under sections 402(I) and 309 of the CWA to file federal enforcement actions in those instances in which it determines the State has not taken timely or appropriate enforcement action.

1. Permits Already Issued by EPA

40 CFR 123.1(d)(1) provides that EPA retains jurisdiction over any permit that it has issued unless the State and EPA have reached agreement in the MOA for the State to assume responsibility for that permit. The proposed MOA between EPA and the TNRCC provides that the TNRCC would assume at the time of program approval permitting authority and primary enforcement responsibility over all NPDES permits issued by EPA prior to program approval, with the following exceptions:

a. Jurisdiction over those discharges covered by permits already issued by EPA, but for which variances or evidentiary hearings have been requested prior to TPDES program approval. Jurisdiction over these discharges, including primary enforcement responsibility (except as provided by paragraph 3 below—Facilities With Outstanding Compliance Issues), would be transferred to the State once the variance or evidentiary hearing request has been resolved and a final effective permit has been issued.

b. Jurisdiction over all existing discharges of storm water associated with industrial or construction activity (40 CFR 122.26(b)(14)), including allowable non-storm water, authorized to discharge as of the date of program approval under one of the NPDES storm water general permits issued by EPA prior to approval of the TPDES program. The storm water general permits affected are: Baseline Construction storm water general permit (57 FR 41209), NPDES permit numbers TXR10*###; Baseline Non-construction storm water general permit (57 FR 41297), NPDES permit numbers TXR00*###; and Multi-sector storm water general permit (60 FR 51108), NPDES permit numbers TXR05*###. (For an individual facility's permit number, the * is a letter and the #'s are numbers—e.g. TXR00Z999). Jurisdiction over these storm water discharges, including primary enforcement responsibility (except as provided by paragraph 3 below—Facilities With Outstanding Compliance Issues), would be transferred to TNRCC at the earlier of the time the EPA-issued general permit expires or TNRCC issues a replacement TPDES permit, whether general or individual.

Note: EPA Region 6 is in the process of modifying the Multi-sector storm water general permit and this action is expected to be completed prior to the time a final decision on TPDES program approval is made. However, because permit modification does not trigger the transfer of permit jurisdiction under this section, the Multi-sector storm water general permit would remain under EPA's jurisdiction until it expires or is replaced by a TNRCC permit regardless of whether it is modified prior to program approval.

In addition, EPA Region 6 is in the process of reissuing the Baseline Construction storm water general permit. This action is also expected to be completed prior to a final decision on program approval. If the Baseline Construction storm water general permit is reissued prior to program approval, the permit would temporarily remain under EPA jurisdiction pursuant to this section. However, even if the permit is not reissued prior to program approval, EPA would temporarily retain jurisdiction over the permit under paragraph 2 below (Permits Proposed for Public Comment but Not Yet Final). The Baseline construction storm water general permit was proposed for public comment by EPA on June 2, 1997, and has not yet been finalized.

c. Jurisdiction over new discharges of storm water associated with industrial or construction activity, including allowable non-storm water, eligible for coverage under one of the NPDES storm water general permits issued by EPA prior to TPDES approval and listed above. Facilities eligible for but not currently covered by one of these general permits would continue to apply to EPA for coverage. Jurisdiction over these storm water discharges, including primary enforcement responsibility (except as provided by paragraph 3 below—Facilities With Outstanding Compliance Issues), would be transferred to TNRCC at the earlier of the time the EPA-issued general permit expires or TNRCC issues a replacement TPDES permit, whether general or individual.

Except as provided in paragraphs 2 and 3 below, EPA would not retain, even on a temporary basis, jurisdiction over discharges from individual storm water permits; storm water outfalls in waste water permits; and storm water discharges designated by the State in accordance with 40 CFR 123.26(g)(1)(I). The State would have jurisdiction and permitting authority, including primary enforcement responsibility, over these discharges immediately upon TPDES program approval.

d. Jurisdiction over all discharges covered by large and medium Municipal Separate Storm Sewer System (MS4) permits issued by EPA prior to TPDES program approval. Jurisdiction over EPA-issued MS4 permits, including primary enforcement responsibility (except as provided by paragraph 3 below—Facilities With Outstanding Compliance Issues), would be transferred to TNRCC at the earlier of the time the EPA-issued permit expires or TNRCC issues a renewed, amended or replacement TPDES permit.

2. Permits Proposed for Public Comment but Not Yet Final

EPA would temporarily retain NPDES permitting authority, as well as primary enforcement responsibility (except as provided by paragraph 3 below—Facilities With Outstanding Compliance Issues), over all discharges covered by general or individual NPDES permits that have been proposed for public comment by EPA but have not been issued as final at the time of program approval. Although section 402(c)(1) of the Act establishes a 90 day deadline for EPA approval or disapproval of a proposed State program and, if the program is approved, for the transfer of permit issuing authority over those discharges subject to the program from EPA to the State, this provision was intended to benefit States seeking NPDES program approval. As a result, and in the interest of an orderly and smooth transition from federal to State regulation, the time frame for transfer of permitting authority may be extended by agreement of EPA and the State. See, for example, 40 CFR 123.21(d), which allows a State and EPA to extend by agreement the period of time allotted for formal EPA review of a proposed State program. In order to render programmatic transition more efficient and less confusing for permit applicants and the public, the State of Texas and EPA have agreed to enter into an MOA that extends the time frame for transfer of permit issuing authority over those permits that EPA has already proposed for public comment, but which are not yet final at the time of program

approval. Permitting authority and primary enforcement responsibility would be transferred to the State as the permits are finalized.

3. Facilities With Outstanding Compliance Issues

EPA would temporarily retain primary NPDES enforcement responsibility for those facilities which have any outstanding compliance issues. EPA would retain jurisdiction of these facilities until resolution of these issues is accomplished in cooperation with the State. Files retained by EPA for the reasons given above would be transferred to the State as the actions are finalized. Facilities would be notified of this retained jurisdiction and again when the file is transferred to the State. Permitting authority over these facilities would transfer to the State at the time of program approval.

A list of existing Permittees that would temporarily remain under EPA permitting jurisdiction/authority is included as part of the public record and available for review. Texas would continue to provide State-only permits for those dischargers over which EPA temporarily retains permitting authority, and which need State authorization to discharge.

C. Summary of the Application Documents

The TPDES program is fully described in documents the State has submitted in accordance with 40 CFR 123.21, i.e., a letter from the Governor requesting program approval; a Memorandum of Agreement (MOA) for execution by TNRCC and EPA; a Program Description, including an Enforcement Management System, outlining the procedures, personnel and protocols that would be relied on to run the State's permitting and enforcement programs; and a Statement signed by the Attorney General that describes the legal authority which the State has to administer a program equivalent to the federal NPDES program. The State's TPDES application consists of a letter from the Governor of Texas, enclosing eight chapters and associated appendices. The content of those documents is summarized below.

1. A Letter from the Governor

Texas' application for program approval includes a letter dated February 5, 1998, from Governor George W. Bush, officially requesting NPDES program approval.

2. The EPA/TNRCC MOA (Chapter 1)

The requirements for MOAs are found in 40 CFR 123.24. A Memorandum of Agreement is a document signed by each agency, committing them to specific responsibilities relevant to the administration and enforcement of the State's regulatory program. A MOA specifies these responsibilities and provides structure for the State's program management and EPA's program oversight.

The MOA submitted by the State of Texas has been signed by Dan Pearson, Executive Director of the Texas Natural Resource Conservation Commission. The Regional Administrator of U.S. EPA Region 6 would sign the document only if the program has been determined approvable after all comments received during the comment period (including comments received at the public hearing) have been considered. The MOA submitted by TNRCC includes the following items:

Section I—General: This section contains general statements describing the purpose of the MOA.

Section II—Scope of Authorization: This section contains the statement of the scope of the NPDES program (pretreatment, storm water, sewage sludge disposal programs) TNRCC would be administering.

Section III—State and Federal Responsibilities: Lists the responsibilities of TNRCC and EPA in maintaining an effective program. Also outlines the procedures for transfer of authority over discharges over which EPA would be temporarily retaining authority and gives timing for the transition.

Section IV—Permit Processing, Review and Issuance: describes all agreements on the review and issuance of TPDES permits. It covers TNRCC's responsibilities to issue permits, the transfer of EPA files to the State, and the State's application review and permit development process. Included are such things as procedures for permit modification or reissuance, and EPA's review of TPDES drafted individual and general permits. This section includes the State's commitment for responding to public concerns and providing public participation in connection with public hearings, evidentiary hearings, and administrative and judicial enforcement actions.

Section V—Compliance Monitoring and Permit Enforcement: Describes summary agreements between EPA and TNRCC regarding EPA oversight of the TPDES enforcement program. These include those commitments on TNRCC's compliance monitoring, reviews, pretreatment audits, and inspections.

Section VI—Pretreatment Program: Describes summary agreements between EPA and TNRCC regarding EPA oversight of TPDES's implementation of the industrial pretreatment program regulating industrial users of municipal wastewater treatment plants.

Section VII—Sludge Management Program: Describes summary agreements between EPA and TNRCC regarding EPA oversight of TPDES's regulation of the disposal of biosolids (sewage sludge) generated by wastewater treatment systems.

Section VIII—Transmittal of Information: This section describes how reports and requests for information would be handled; and how information is transferred between the two agencies.

Section IX—TPDES Program Review by EPA: Explains how EPA would periodically review the TPDES program for implementation and continued consistency with Clean Water Act requirements.

Section X—Amendments To Be Approved by EPA: This section describes procedures to insure that EPA is given an opportunity to review any proposed amendment, recision or repeal of any State statute or regulation that could affect the continued viability of the TPDES program.

Section XI—Approval, Effective Date And Term Of the MOA: Describes how the MOA can be modified by EPA and TNRCC. Also establishes a commitment to review the MOA within five years and make any necessary changes. The MOA would become effective on the date of program approval.

3. Program Description (Chapters 2–7)

A program description submitted by a State seeking program approval must meet the minimum requirements of 40 CFR 123.22. It must provide a narrative description of the scope, structure, coverage and processes of the State program; a description of the organization, staffing and position descriptions for the lead State agency; and itemized costs and funding sources for the program for the first two years after program approval. It must describe all applicable State procedures (including administrative procedures for the issuance of permits and administrative or judicial procedures for their review) and include copies of forms used in the program. It must further contain a complete description of the State's compliance and enforcement tracking program. The program description submitted by TNRCC includes the following items:

Chapter 2—Overview of the TNRCC: This chapter gives an overview of the history, authority, and organization of the TNRCC.

Chapter 3—Permitting Program Description: Describes how TNRCC staff

would develop effluent limitations; the permitting process, including procedures for public participation in decision making process; and the process for determining the Total Maximum Daily Load a surface water can assimilate and still support its designated beneficial uses (e.g., swimming, fishing, public water supply, etc.).

The Continuing Planning Process (CPP) and its associated Implementation Procedures (IP) used by the TNRCC to develop and implement water quality standards and assess the condition of surface waters of the State are found in two appendixes to Chapter 3 (Appendix 3–C: "TNRCC Continuing Planning Process" and Appendix 3–D: "Implementation of the TNRCC Standards Via Permitting"). Portions of the CPP and IP previously approved by EPA when TNRCC was not proposed to be the NPDES permitting authority would be superseded by agreements found in the section IV.B. of the proposed MOA between TNRCC and EPA. The issues addressed by these superseding agreements include: suspension of the use of biological surveys in the Implementation Procedures; determining cessation of lethality in biomonitoring; use of alternate test species for biomonitoring; calculation of Dioxin/Furan permit limits; development of water quality-based effluent limitations for discharges into the Rio Grande; ensuring all final limitations in a TPDES permit would be consistent with the EPA-approved Water Quality Management Plan (including any applicable Total Maximum Daily Loads); ensuring variance from water quality standards would not be used to establish an effluent limitation for a TPDES permit until the standards variance has been reviewed and approved by EPA; and ensuring appropriate limitations would be included in general permits to ensure compliance with water quality requirements. Texas has committed to incorporating the MOA agreements into the CPP and IP during the next update to the CPP and IP. Taken together, these three documents constitute the CPP required under 40 CFR 130.5(c) for the Administrator's approval of a state program.

Chapter 4—Pretreatment Program Description: This chapter gives the authority for the TNRCC pretreatment program; and the components of the program such as, the establishment of limits for indirect users, fundamentally different factors, categorical determination requests, reporting requirements, inspections and enforcement.

Chapter 5—Sewage Sludge Program Description: This Chapter gives a brief description of the TNRCC sewage sludge program, its history, and statutory framework. It describes sludge permits and reports required.

Chapter 6—Enforcement Program Description: This chapter gives the legal authority for TNRCC enforcement actions, outlines TNRCC policies related to compliance and enforcement and provides a description of State enforcement actions. It also gives a brief overview of compliance review activities for inspections, Discharge Monitoring Reports and other required reports to be submitted by the permittee, and describes the Permits Compliance System and the types of data tracked by it.

States seeking approval of their permitting and enforcement program under NPDES have the option of adopting EPA's enforcement policies, procedures, and guidance; or providing in their program package a complete description of their own enforcement authority and compliance evaluation program (40 CFR 123.26 and 123.27). Texas submitted its own enforcement management system (EMS) (Appendices 6–A through 6–G). An EMS outlines the way the State systematically and efficiently identifies instances of noncompliance and provides timely and appropriate enforcement actions to achieve the final objective of full compliance by the permittee with the Clean Water Act. An EPA memo dated October 2, 1989, titled "Final Version of the Revised Enforcement Management System," describes seven basic principles that are common to an effective EMS:

—Maintain a source inventory that is complete and accurate;
—Handle and assess the flow of information available in a systematic and timely basis;
—Accomplish a pre-enforcement screening by reviewing the flow of information as soon as possible after it is received;
—Perform a more formal enforcement evaluation where appropriate, using systematic evaluation screening criteria;
—Institute a formal enforcement action and follow-up whenever necessary;
—Initiate field investigations based on a systematic plan; and
—Use internal management controls to provide adequate enforcement information to all levels of organization.

The TNRCC's Enforcement Management System (EMS) is a written outline or guide which discusses the procedures that would be followed to ensure that both federal and State regulatory requirements and goals are accomplished in a timely and appropriate manner. For the purpose of review, EPA considers the TNRCC EMS to consist of the seven appendices to Chapter 6.

The inspection and enforcement functions of the TNRCC reside in the Field Operations Division, Compliance Support Division, and Enforcement Division of the Office of Compliance & Enforcement. The Field Operations Division, with 16 regional offices across the State, is responsible for inspecting all permitted and unpermitted facilities which have or are believed to have a surface water discharge and is primarily responsible for the investigation and resolution of all citizen complaints involving waters of the State. The Compliance Support Division provides agency sponsored or administered training courses and technical assistance aimed at development of environmental expertise by agency staff and those regulated by the TNRCC. The Enforcement Division, in coordination with the Field Operations Division, is responsible for addressing non-compliance with the agency's regulations through enforcement actions.

The TNRCC has not adopted EPA's civil penalty policy, but uses their own policy to assess and collect administrative penalties. The penalty policy is discussed in detail in Appendix VI.

Chapter 7—Program Cost and Funding: This chapter gives a budget summary on the projected costs and funding sources for the TPDES program for the first two years after program approval.

4. Attorney General's Statement (Chapter 8)

An Attorney General's Statement is required and described in regulations found at 40 CFR 123.23. The State Attorney General must certify that the State has lawfully adopted statutes and regulations which provide the State agency with the legal authority to administer a permitting program in compliance with 40 CFR part 123. The Texas Attorney General's Statement describes and cites State legal authority it believes adequate to administer the TPDES program; and certifies that the State has the legal authority to administer the TPDES program in accordance with the regulations in 40 CFR part 123. Chapter 8 entitled "Authority for the Texas National Pollutant Discharge Elimination System Program," which was submitted by the

State of Texas on February 5, 1998, and the supplemental March 16, 1998, letter from Texas Attorney General Dan Morales to Acting EPA Region 6 Regional Administrator Jerry Clifford, taken together, constitute the Attorney General's Statement required by section 402(b) of the CWA and 40 CFR 123.23 for purposes of the State's TPDES application. All references to the "Attorney General's Statement" or "statement of legal authority" made in this document refer to the combination of these two documents.

Public Comment on the Described Program

The program submitted by the State of Texas has been determined by EPA to be complete in accordance with the regulations found at 40 CFR part 123. EPA and TNRCC want the citizens of Texas to understand the proposed TPDES program and encourage public participation in the decision making process. Therefore, EPA requests that the public review the program that TNRCC has submitted and provide any comments they feel are appropriate. EPA will consider all comments on the TPDES program and/or its approval in its decision.

EPA is specifically seeking public input on the following aspects of the proposed TPDES program:

Public Participation

In discussions with the State of Texas over the last couple of years concerning the possibility of federal approval of a Texas NPDES program, EPA expressed various concerns regarding the opportunity for public participation in the State permitting and enforcement processes. For example, EPA raised concerns that notice and opportunity for comment should be provided on proposed settlements of administrative enforcement actions; that Texas notices should notify the public that it may request a hearing on permit applications and that a hearing would be granted if there was a significant degree of public interest; that Texas should provide for permissive intervention in administrative penalty actions; and over restrictions placed by the State on the participation of citizens in formal evidentiary contested case hearings and the implications of those restrictions on the ability of citizens to establish standing to obtain judicial review of permits. In response to these discussions, the State of Texas has implemented various regulatory and statutory changes to enhance the opportunity for public participation under the State program, and the Texas Attorney General has stated that the law governing individual standing in Texas judicial proceedings is substantially equivalent to current requirements for standing under federal law. Through these statutory and regulatory changes and the Texas Attorney General's statement, Texas has worked to address EPA's concerns in this area. The results of the various discussions between EPA and TNRCC regarding public participation issues are reflected in an exchange of letters between TNRCC Commissioner Barry McBee and Acting Region 6 Regional Administrator Jerry Clifford dated June 16, 1997 (McBee to Clifford), June 19, 1997 (Jerry Clifford to Barry McBee) and November 25, 1997 (Barry McBee to Jerry Clifford). These three letters are included as part of the official record for this matter.[2]

Texas' Regulatory Flexibility Under Texas Water Code 5.123

The Texas Legislature added section 5.123 to the Texas Water Code in 1997 (implementing Senate Bill 1591). This section gives the TNRCC flexibility to exempt from State statutory or regulatory requirements an applicant proposing an alternative method or alternative standard to control or abate pollution. EPA raised questions concerning the effect of the statute on TNRCC's obligations under the TPDES program. In response, the Texas Attorney General stated that Texas Water Code 5.123 does not subtract from the TNRCC's authority required as a condition of program approval under the CWA or EPA regulations since the statute does not authorize the TNRCC to grant an exemption that is inconsistent with the environmental requirements of any federally approved program. In a letter from TNRCC Commissioner Ralph Marquez to Acting Region 6 Regional Administrator Jerry Clifford dated March 16, 1998, Commissioner Marquez clarified TNRCC's position that section 5.123 does not authorize TNRCC to grant permits that vary from applicable federal requirements. To further clarify this position, Commissioner Marquez committed to include the following language in the proposed MOA between EPA and the TNRCC:

> The regulatory flexibility authority in Senate Bill 1591 will not be used by TNRCC to approve an application to vary a federal requirement or a State requirement which implements a federal program requirement under § 402(b) of the Clean Water Act, EPA regulations implementing that Section, or this MOA, including but not limited to inspection, monitoring or information collection requirements that are required under § 402(b) of the Clean Water Act, EPA regulations implementing that Section or this MOA to carry out implementation of the approved federal program.

This language is included on page 8 of the proposed MOA.

Texas' Defense to Liability for Acts of God, War, Strike, Riot, or Other Catastrophe

Section 7.251 of the Texas Water Code provides that if an event that would otherwise be a violation of a statute, rule, order or permit was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of that statute, rule, order, or permit. This statute and its effect on the TPDES program are discussed in detail in the Attorney General's Statement provided by the State of Texas as part of its application. However, EPA wishes to also clarify its understanding of this statute and its role in the federally authorized program.

It is important to first note that section 7.251 of the Texas Water Code creates a defense to liability not provided for under the federal CWA. Should EPA authorize the TPDES program, EPA would still retain its authority to bring enforcement actions for violations of the Act, and this authority would not be affected by section 7.251. Both EPA and the courts have consistently interpreted the CWA as a strict liability statute. The only defense to liability recognized under federal law is the federal upset defense found at 40 CFR 122.41(n), which is a very narrow affirmative defense for violations of technology-based effluent limitations. Although both Texas Water Code section 7.251 and 40 CFR 122.41(n) provide for affirmative defenses that must be pled and proven by the asserting party, the defenses are not analogous.

The Attorney General's Statement provided by the State of Texas acknowledges that the defenses are not analogous. However, in his effort to clarify the scope of the State statute, the Attorney General compares section 7.251 to "a federal defense that CWA § 301(a) only applies to any person causing an unauthorized discharge." It is EPA's belief that no such federal defense exists. EPA has consistently taken the position, which it believes is supported by available case law, that any unauthorized discharge of pollutants is unlawful regardless of the cause, and that a facility owner or operator is responsible for any unlawful

[2] Also included in the record and of interest on this issue is an exchange of letters between Mr. Richard Lowerre of Henry, Lowerre, Johnson, Hess, & Frederick and the TNRCC dated November 19, 1997 (Lowerre to TNRCC Chairman Barry McBee) and January 6, 1998 (Jim Phillips, Deputy Director of the Office of Legal Services, TNRCC to Lowerre).

discharge occurring at his facility. Therefore, although Texas Water Code section 7.251 creates an affirmative defense to liability for actions brought by Texas under State law, section 7.251 is not a defense to enforcement actions brought by EPA pursuant to the federal CWA.

As interpreted by the Texas Attorney General, section 7.251 provides an affirmative defense to unauthorized discharges under State law only if the event causing the discharge is completely outside the control of the person otherwise responsible for the discharge and only if the discharge could not have been avoided by the exercise of due care, foresight, or proper planning, maintenance or operation. Section 7.251 does not shield a party from liability if that party's action or inaction contributed to the violation. Based on this interpretation, it is EPA's understanding that if a facility owner or operator could have reasonably anticipated a discharge, and could have taken steps to prevent it by care and foresight, proper planning, or maintenance, then the affirmative defense is unavailable. For example, if a heavy rainfall, a strike, or a riot is reasonably foreseeable, or the facility is not designed, operated, or maintained properly, then any discharge resulting from such an event would not be solely caused by the event, and the facility owner or operator would be unable to claim the defense for such a discharge.

The Attorney General also states that section 7.251 would not preclude the imposition of penalties for a violation that persists after the original force majeure event ceases to be the sole cause of a discharge, whether the persisting violation was a continuing discharge or a failure to comply with a rule, order, or permit requirements. EPA understands this to mean that even if a discharge at a facility were initially caused by an act of God, and the facility owner or operator in no way contributed to the discharge, either through his action or inaction, if the facility owner or operator could have taken steps to stop the discharge from continuing, but failed to do so, the facility operator would be liable for the continuing discharge.

As discussed in the Attorney General's Statement, the main impact of section 7.251 is to insulate a party from penalties; the statute's effect on the TNRCC's injunctive authority is minimal in that it does not affect a court's authority to issue an injunction to enforce any Code requirement or prohibition, including the requirement that a party comply with any permit, rule or order issued by the TNRCC. EPA understands the Texas Attorney General's statement to conclude that the TNRCC can enjoin by suit in State court any violation or threat of violation of a statute, rule or permit under the TPDES program. Based on this understanding, TNRCC appears to have injunctive authority equivalent to EPA's authority under federal law despite the existence of section 7.251.

In regard to the insulation of parties from penalties under section 7.251, EPA would rarely seek penalties for violations of the Act that were completely beyond the control of a party, and in regard to which that party had exercised due care, foresight, proper planning and maintenance.

Therefore, based on the Texas Attorney General's Statement and EPA's understanding of TNRCC's broad injunctive authority, the statute does not appear to prevent TNRCC from demonstrating adequate authority to meet its obligations under section 402(b) of the CWA.

Inspections

The federal regulations (40 CFR 123.26(e)(5)) require State NPDES compliance evaluation programs to have the procedures and ability for inspecting the facilities of all major dischargers and all Class I sludge facilities where applicable at least annually. In the proposed MOA between EPA and the TNRCC, the TNRCC states that it has the procedures and ability for inspecting the facilities of all major dischargers and all Class I sludge facilities where applicable at least annually, and that it will inspect 100% of the majors and Class I sludge facilities on an annual basis, or a universe of majors/minors agreed upon annually by EPA and the TNRCC. The agreement to allow TNRCC to substitute the inspection of a mutually agreed-upon universe of majors/minors for inspection of 100% of the majors and Class I sludge facilities is based on EPA's and TNRCC's commitment to a process for targeting inspections according to the priorities established by TNRCC to protect the waters of Texas. Under the terms of the proposed MOA, the TNRCC will develop an annual inspection plan that establishes priorities, lists the major and minor dischargers to be inspected, and demonstrates that the plan is substantially equivalent to the annual inspection of all major dischargers and Class I sludge management facilities where applicable. The TNRCC will have to inspect majors at some regular interval while expending resources on minors equivalent to 100% of the majors annually. The TNRCC will also have to demonstrate water quality improvement as a result of the trade-off. Under the proposed MOA, if EPA and the TNRCC are unable to reach agreement on the universe of majors/minors to be inspected under the annual inspection plan by the beginning of the following fiscal year, TNRCC agrees to inspect 100% of the majors and all Class I sludge management facilities where applicable.

Timely and Appropriate Enforcement

Section 402(b) of the Act requires that a State have adequate authority to abate violations of the permit or the permit program. Because the ability to take timely and appropriate enforcement action is fundamental to an adequate enforcement program, EPA's Oversight Guidance states that by the time a facility appears on the second Quarterly Noncompliance Report, a formal enforcement action should have been taken. Chapter 6 of Texas' application (Enforcement Program Description) outlines the time frames for TNRCC issuance of enforcement actions. The average time for TNRCC enforcement action issuance is 255 days. As a result, in implementing the TPDES program, TNRCC would not in all cases be able to meet the timely and appropriate criteria contained in EPA's Oversight Guidance. In cases where TNRCC cannot meet this criteria, TNRCC has agreed in the proposed MOA to notify EPA 45 days prior to a facility appearing on the Exception List. EPA will then initiate formal enforcement action in order to ensure that the violations are addressed in a timely and appropriate manner.

Penalty Policy

The TNRCC proposes to use its own Penalty Policy in administering the TPDES program, and the TNRCC policy differs in some respects from the EPA penalty policy. It is EPA policy that penalties generally should, *at a minimum*, collect the economic benefit accruing to the violator as a result of violating the law. EPA's policy also states that every effort should be made to calculate and recover an additional amount, over and above economic benefit, to ensure that the violator does not gain economically by violating the law. (EPA's February 1984 "Policy on Civil Penalties" (#GM–21) as implemented in EPA's March 1, 1995 "Interim CWA Settlement Penalty Policy"). TNRCC's policy will not ensure that economic benefit will be collected, at a minimum, in all cases, and TNRCC's policy allows for mitigation of penalties to zero in some instances. Neither the CWA nor 40 CFR part 123 require a State seeking NPDES

authority to adopt EPA's penalty policy verbatim. However, 402(b) of the Act and 40 CFR 123.27 require that States have enforcement authority, including civil and criminal penalties, adequate to abate violations of a permit or the permit program. If the TPDES program were approved, EPA would be required to over-file in certain instances in order to ensure consistency with the Federal penalty policy that no party be allowed to garner an unfair economic advantage through avoiding the cost of compliance with environmental protection requirements. Any penalties collected by EPA go to the federal, not the State, treasury.

Applicability of Water-Quality Based Limits in the Absence of Technology-Based Effluent Guidelines

In a brief filed February 12, 1998, in the U.S. Court of Appeals for the Fifth Circuit on behalf of the State of Texas and the Texas Railroad Commission in *Texas Mid-Continental Oil & Gas Association v. EPA* (No. 97–60042 and Consolidated Cases), the Texas Attorney General took the position that EPA did not have the authority to include water quality-based effluent limitations in an NPDES permit unless technology-based effluent guidelines had been developed. EPA vigorously disagrees with this position and continues to maintain that under the CWA, technology-based and water quality-based effluent limitations are independently applicable in determining appropriate effluent limitations for an NPDES permit.

While confident that the Texas Attorney General's position on EPA's authority to independently require compliance with water quality standards will not be upheld by the courts, EPA also believes it is not necessary to wait for a final ruling by the courts before acting on the TPDES program proposed by TNRCC. The Texas Attorney General's statement confirms that TNRCC has full authority under state law to impose effluent limitations for any discharge as necessary to insure compliance with approved water quality standards. In addition, in a March 16, 1998, letter to EPA Region 6 Acting Regional Administrator Jerry Clifford from TNRCC Commissioner Ralph Marquez, Commissioner Marquez committed to add additional language to the MOA to clarify that in implementing the TPDES program, TNRCC would use water quality-based effluent limits in permits wherever necessary to insure compliance with water quality standards. As a result of Commissioner Marquez' commitment, the following language is now included on page 24 of the proposed MOA:

> Water quality based effluent limitations will be included in TPDES permits for all discharges to ensure compliance with approved water quality standards. Water quality based effluent limitations are part of the federally approved program and the State will impose such limitations in TPDES permits unless technology-based effluent limitations are more stringent.

Therefore, the proposed TPDES program would appear to function in a manner consistent with EPA's interpretation of the requirements of the CWA and its implementing regulations.

TPDES Resource Needs

The CWA and EPA regulations require States seeking approval of State NPDES programs to demonstrate adequate resources, including qualified personnel and sufficient funding, to operate the proposed program if approved. Section 304(I)(2) of the CWA requires EPA to promulgate guidelines establishing the minimum procedural and other elements of State programs, including among other things, funding, personnel qualifications, and manpower requirements. 40 CFR 123.22 requires a state seeking NPDES approval to provide as part of its program submission a description of the staff who will carry out the proposed State program and an itemization of the estimated costs of establishing and administering the proposed program for the first two years after approval. As required by 40 CFR 123.22, the State included a description of the cost of establishing and administering the proposed TPDES program for the first two years after program approval in Chapter 7 of its application. However, information provided to EPA by two public interest groups, the Texas Center for Policy Studies (letter to Samuel Coleman and Steven A. Herman dated May 7, 1998) and People Organized in Defense of Earth and her Resources (letter to Carol Browner and Jerry Clifford dated April 29, 1998), has raised questions concerning whether the available information indicates that the State, if authorized, will have sufficient funding to adequately implement the program. The answers to these questions will be important to EPA's final decision on TPDES program approval. To that end, EPA intends to seek clarification from the TNRCC regarding certain aspects of the information provided. Any additional comments by the public will also be considered by the Regional Administrator in making his final decision.

It is also important to note that under the proposed TPDES program, authority over storm water general permits (approximately 20,000 permittees) and municipal separate storm sewer permits (approximately 30 permits) already issued by EPA would not be transferred to TNRCC until the federal permits expire or are replaced by a TPDES permit. Therefore, permitting authority and primary enforcement responsibility over a significant portion of the NPDES universe would not transfer to TNRCC until after the period covered by the financial capability information included in the program approval request. In addition, the State would be required to begin administering Phase II of the NPDES storm water program (expected to require permitting of numerous smaller municipalities and construction sites) starting around 2001. As a result of these anticipated increases in TNRCC responsibility in the years following program approval, resources needed to run the program would also increase. If the TPDES program were approved, TNRCC would be expected to increase its resources commensurate with program growth, and if it were unable to do so, the program would be subject to withdrawal by EPA under 40 CFR 123.64(b).

Funding Sources Available for the TPDES Program

Under 40 CFR 123.22(b)(3), the program description must include an itemization of the sources and amounts of funding, including Federal grant money, expected to be available to TNRCC for the first two years after approval to meet the costs of establishing and administering the proposed TPDES program. However, since EPA cannot guarantee the level of Federal funding Congress will make available in future years, a State seeking program approval must be able to run its program with or without the assistance of Federal funding.

Chapter 7 of the TPDES application contains both the expected program costs and the required breakdown on funding sources. The funding sources TNRCC would rely on for the first two years of the proposed TPDES program includes federal grants totaling $7,224,305 per year. Approximately 49% of the proposed TPDES budget would therefore be dependent on the continued availability of Federal grants. The Texas Legislature has already authorized TNRCC to increase the maximum annual permit fee to $25,000 and to collect additional fees to recover the costs of an authorized program.[3] If

[3] Under Texas' proposed funding plan, the TNRCC will charge fees for storm water permittees. As a result, many industrial facilities, construction

current levels of available Federal grant funds decline, TNRCC would need to further increase fee revenue or seek additional funds from the Texas Legislature to fund the TPDES program.

Environmental Justice

EPA encourages States to include environmental justice provisions in their environmental programs in furtherance of environmental justice policies, and to help ensure compliance with non-discrimination provisions of Title 6 of the Civil Rights Act. EPA wrote to TNRCC in December of 1997, recommending that the State include an environmental justice program as part of its proposed TPDES program. Under the current regulations for State program approval, Texas is not required to submit a description of program procedures to ensure environmental justice issues are taken into consideration in TNRCC's permitting and enforcement decisions. In a letter dated February 6, 1998, TNRCC indicated it does have an environmental justice program. However, the State did not make that program a part of the TPDES application.

Other Federal Statutes

A. National Historic Preservation Act

Section 106 of the National Historic Preservation Act requires that all federal agencies must consult with the State Historic Preservation Officer and the Advisory Council on Historic Preservation on all federal undertakings which may affect historic properties or sites listed or eligible for listing in the National Register of Historic Places. Regulations outlining the requirements of a section 106 consultation on a federal undertaking are found at 36 CFR part 800. EPA has initiated section 106 consultation on the State's request for approval of the TPDES program.

B. Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires that all federal agencies consult on federal actions which may affect federally listed species to insure they are unlikely to jeopardize the continued existence of those species or adversely modify their critical habitat. Regulations controlling consultation under ESA section 7 are codified at 50 CFR part 402. The approval of the State permitting program under section 402 of the Clean Water Act is a federal action subject to this requirement, but the State's subsequent TPDES permit actions are not. EPA Region 6 initiated formal consultation with the U.S. Fish and Wildlife Service on January 29, 1998.

C. Coastal Zone Management Act

Pursuant to section 307(c)(1)(C) of the Coastal Zone Management Act, Federal agencies carrying out an activity which affects any land or water use or natural resource within the Coastal Zone of a state with an approved Coastal Zone Management Plan must determine whether that activity is, to the maximum extent practicable, consistent with the enforceable requirements of the Plan and provide its determination to the State agency responsible for implementation of the Plan for review. Texas' approved Coastal Zone Management Plan is administered by the General Land Office and, more particularly, by its Coastal Coordination Council. TNRCC permit actions are themselves subject to consistency review under 31 TAC § 505(11)(a)(6); thus approval of TNRCC's TPDES program would not affect Texas' coastal zone and would be consistent with the enforceable requirements of Texas' Coastal Zone Management Plan.

D. Regulatory Flexibility Act

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a State NPDES program submission to constitute an adjudication because an "approval", within the meaning of the APA, constitutes a "license," which, in turn, is the product of an "adjudication". For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* Under the RFA, whenever a Federal agency proposes or promulgates a rule under section 553 of the Administrative Procedure Act (APA), after being required by that section or any other law to publish a general notice of proposed rulemaking, the Agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe and assess the impact of a rule on small entities affected by the rule.

Even if the NPDES program approval were a rule subject to the RFA, the Agency would certify that approval of the State's proposed TPDES program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve an NPDES program merely recognizes that the necessary elements of an NPDES program have already been enacted as a matter of State law; it would, therefore, impose no additional obligations upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this program, even if a rule, would not have a significant economic impact on a substantial number of small entities.

I hereby provide public notice of the application by the State of Texas for approval to administer, in accordance with 40 CFR part 123, the TPDES program.

Dated: June 11, 1998.

Gregg A. Cooke,

Regional Administrator.

[FR Doc. 98–16249 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–P

development projects and municipal separate storm sewer systems not currently regulated by the TNRCC will become subject to the TPDES fee system as storm water permitting authority transfers from EPA to the TNRCC.

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1218–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1218–DR), dated June 1, 1998, and related determinations.

EFFECTIVE DATE: June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 1, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from flooding, severe storms, and tornadoes on April 25, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as

you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Peter Bakersky of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

McCook County for Individual Assistance and Categories A and B under the Public Assistance program.

Day County for Public Assistance.

All counties within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–16387 Filed 6–18–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1218–DR]

South Dakota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota (FEMA–1218–DR), dated June 1, 1998, and related determinations.

EFFECTIVE DATE: June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Dakota, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 1, 1998:

The counties of Hanson and McCook for Categories C through G under the Public Assistance program (already designated for Individual Assistance and Categories A and B under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–16388 Filed 6–18–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, by June 29, 1998.

Agreement No.: 203–011321–006.
Title: Maersk/Sea-Land/U.S./Far East & Middle East Agreement.
Parties:

A.P. Moller-Maersk Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment would permit the parties to increase the maximum number of vessels authorized under the Agreement to 65 vessels, each with a maximum capacity of 7,000 TEUs.

Agreement No.: 203–011448–001.
Title: U.S./Latin America Agreement.
Parties:

A.P. Moller-Maersk Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment would permit the parties to increase the maximum number of vessels authorized under the Agreement to 50 vessels, each with a maximum capacity of 4,100 TEUs. It would also modify the Agreement's geographic scope to delete Jamaica and add the Bahamas.

Agreement No.: 203–011541–001.
Title: Maersk/Sea-Land Mediterranean Agreement.
Parties:

A.P. Moller-Maersk Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment would permit the parties to increase the maximum number of vessels authorized under the Agreement to 30 vessels, each with a maximum capacity of 7,000 TEUs.

By Order of the Federal Maritime Commission.

Dated: June 16, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–16343 Filed 6–18–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, June 24, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Proposed 1999 Federal Reserve Bank budget objectives.

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC. 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: June 17, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16518 Filed 6–17–98; 12:19 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:30 a.m., Wednesday, June 24, 1998, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 17, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16519 Filed 6–12–98; 12:19 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0235]

Submission for OMB Review; Comment Request Entitled Price Reductions Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension to a previously approved OMB Clearance (3090–0235).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Price Reductions clause.

DATES: *Comment Due Date:* August 18, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0235, concerning Price Reductions clause. The Price Reductions clause used in multiple award schedule contracts ensures that the Government maintains its relationship with the contractor's customer or category of customers, upon which the contract is predicated.

B. Annual Reporting Burden

Respondents: 6,862; annual responses: 13,724; average hours per response: 2; burden hours: 27,448.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: June 15, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–16302 Filed 6–18–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0112]

Submission for OMB Review; Comment Request Entitled State Agency Monthly Donation Report of Surplus Personal Property

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension to a previously approved OMB Clearance (3090–0112).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property.

DATES: *Comment Due Date:* August 18, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

the GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0112, concerning GSA form 3040, State Agency Monthly Donation Report of Surplus Personal Property. This report complies with Public Law 94–519 which requires annual reports of donations of personal property to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

B. Annual Reporting Burden

Respondents: 55; annual responses: 220; average hours per response: 1; burden hours: 220.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW., Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: June 15, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–16303 Filed 6–18–98; 8:45 am]

BILLING CODE 6820–61–M

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request: Proposed New Public Financial Disclosure Access Customer Service Survey

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: After this first round notice and public comment period, OGE plans to submit the information collection proposed in this notice to the Office of Management and Budget (OMB) for review and three-year approval under the Paperwork Reduction Act.

DATES: Comments by the public and agencies on this proposed information collection are invited and should be received by September 2, 1998.

ADDRESSES: Comments should be sent to William E. Gressman, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Comments may also be sent electronically to OGE's Internet E-mail address at usoge@oge.gov (for E-mail messages, the subject line should include the following reference—"Proposed Public Financial Disclosure Access Customer Service Survey Paperwork Comment").

FOR FURTHER INFORMATION CONTACT: Mr. Gressman at the Office of Government Ethics; telephone: 202–208–8000, ext. 1110; TDD: 202–208–8025; FAX: 202–208–8037. A copy of the proposed survey may be obtained, without charge, by contacting Mr. Gressman.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is planning to submit, after this notice and comment period, the following proposed customer service survey form for the collection of information to OMB for review under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and three-year approval thereunder.

The Office of Government Ethics is planning to assess, through the proposed "Public Financial Disclosure Access Customer Service Survey" form, requester satisfaction with the service provided by OGE in responding to requests by members of the public for access to copies of Standard Form (SF) 278 Executive Branch Personnel Public Financial Disclosure Reports on file with the Office. Most of the SF 278 reports available at OGE are those filed by executive branch Presidential appointees subject to Senate confirmation. Requests for access to SF 278 reports are made pursuant to the special public access provision of section 105 of the Ethics in Government Act of 1978 (the Ethics Act), as codified at 5 U.S.C. appendix, § 105, and 5 CFR 2634.603 of OGE's executive branchwide regulations thereunder, by completing an OGE Form 201, "Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Report or Other Covered Record." The survey forms will be distributed to requesters along with their copies of requested SF 278 reports, with instructions asking them to complete and return the survey to OGE via the self-contained postage-paid postcards (the reverse side of the survey form, when folded, becomes a preaddressed postcard). The purpose of the survey will be to determine through customer responses how well OGE is responding to such requests and how the Agency can improve its customer service in this important area.

Pursuant to the Paperwork Reduction Act, OGE is not including in its public burden estimate for the new access customer service survey form the limited number of access requests filed by other Federal agencies or Federal employees. Nor is OGE including in that estimate the also limited number of requests for copies of other records covered under the special Ethics Act public access provision (such as certificates of divestiture), since the survey will only be sent to persons who request copies of SF 278 reports. As so defined and assuming a 100% return rate, the total number of access survey forms for copies of SF 278s estimated to be filed annually at OGE over the next three years by members of the public (primarily by news media representatives, public interest group members and private citizens) is 186. This estimate is based on a calculation of the average number of underlying access requests for copies of SF 278 reports received at OGE over the past two calendar years—1996 (152 requests) and 1997 (220 requests). The estimated average amount of time to read the instructions on the new customer service survey form and complete the form is three minutes. Thus, the overall estimated annual public burden for the proposed OGE Public Financial Disclosure Access Customer Service Survey will be nine hours (186 forms X 3 minutes per form, with the number of hours rounded off from 9.3 to 9).

Public comment is invited on each aspect of OGE's proposed new access customer service survey form, as set forth in this notice, including specifically views on: the need for and practical utility of this new collection of information; the accuracy of OGE's public burden estimate; the potential for enhancement of quality, utility and clarity of the information to be collected; and the minimization of burden (including the possibility of use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, the forthcoming OGE request for OMB three-year paperwork approval for this new proposed information collection. At that time, after this notice and comment period, OGE will publish a second paperwork notice in the **Federal Register** to inform the public and Federal agencies.

Approved: June 15, 1998.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

[FR Doc. 98–16285 Filed 6–18–98; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Planning and Evaluation; Notice Inviting Applications for New Award for Fiscal Year 1998; Grants to States to Support Child Indicator Initiatives

AGENCY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE).

ACTION: Announcement of the availability of grant funds and request for applications from states to make advancements in developing and using indicators of children's health and well-being in state and local policy work.

SUMMARY: The Office of the Assistant Secretary for Planning and Evaluation

announces the availability of funds for a program of small grants and invites applications from states to participate in technical assistance opportunities and make advancements in developing and using indicators of children's health and well-being in state and local policy work. The overall aims are (1) to promote state efforts to develop and monitor indicators of the health and well-being of children as welfare reform and other policy changes occur and (2) to help to institutionalize the use of indicator data in state and local policy work. Our intent is to award funds to states with a range of experience, including states not already engaged in substantial work in this area, based on their readiness to make advancements. Applications are invited from partnerships of state agencies and, where appropriate, other state governance groups such as children's councils or committees which have responsibilities for addressing children's issues. The proposed partnership should have a designated lead agency, ability to identify state goals for enhancing children's health and well-being, and ability to direct work with existing or new sources of data to produce child indicators. Technical assistance opportunities will be provided for states to work with one another, research and policy experts, and federal staff. Separate funding is being provided to Chapin Hall, at the University of Chicago, to convene grantee meetings, to promote the exchange of ideas and knowledge among states, and to organize and coordinate technical assistance from a network of experts from a variety of organizations. Assistance will be provided on issues in conceptualizing and measuring child indicators and institutionalizing the use of indicators in policy processes. Approximately ten grants will be awarded in FY98 for up to $50,000 for a one-year budget period. Continuation funding on a noncompetitive basis may be available for a second-budget year, and applicants should use a two-year project period in developing their plans (for a total award of up to $100,000). Awards may be made to additional applicants in FY99, depending on the availability of funds and the interest of the government.

CLOSING DATE: The deadline for submission of applications under this announcement is August 10, 1998.

MAILING ADDRESS: Application instructions and forms should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, D.C. 20201, Telephone: (202) 690–8794. Requests for forms and administrative questions will be accepted and responded to up to five working days prior to the closing date for the receipt of applications. Application submissions may not be faxed.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page http://aspe.os.dhhs.gov. You may fax your request to (202) 690–6518 to the attention of the Grants Officer. Application submissions may not be faxed or sent electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded in any other source is accurate and complete.

Request for forms and questions administrative and technical will be accepted and responded to up to five days prior to the closing date for the receipt of applications.

FOR FURTHER INFORMATION CONTACT: Administrative questions should be directed to the grants officer at the address or phone number listed above. Technical questions should be directed to Martha Moorehouse, Ph.D., Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, S.W., Room 450G, Hubert H. Humphrey Building, Washington, D.C. 20201. Telephone: (202) 690–6461. Questions may be faxed to (202) 690–5514 or emailed to mmooreho@osaspe.dhhs.gov. Consult the final section of the report for information on obtaining any of the publications referenced in the document.

Part I. Supplementary Information

Legislative Authority

This activity is authorized by Section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under PL 105–78 Department of Health and Human Services Appropriations Act, 1998.

Eligible Applicants

This competition is open only to states. Eligible applicants include states not already engaged in substantial work in this area and those with well-established efforts. A state applicant should propose a partnership among state agencies and, where appropriate, other state public governance groups (e.g., a cabinet-level children's council or committee) which have responsibilities for addressing children's issues.

The proposed partnership should have a designated lead agency. The partnership also should have the ability to identify state goals for enhancing children's health and well-being, to direct work with existing or new sources of data to produce child indicators, and to influence the use of indicators in policy work. At a minimum, the partnership should include (1) the state health and human service agencies with lead responsibilities for children's programs, including children's health programs, and the welfare and income support programs and (2) any state agencies or governance groups (e.g., a cabinet-level children's council or committee), already working to develop and use child indicators. Involvement of the state education agency is strongly encouraged.

States also are invited to propose additional partners such as city or county agencies, research institutions, or other state or local groups as part of a well-designed strategy to promote work on child indicators. Public or private nonprofit organizations, including research institutions, may collaborate with states in submitting applications, but states will be the principal grantees. Private for-profit organizations may also participate, with the recognition that grant funds may not be paid as profit to any recipient of a grant or subgrant.

Available Funds

ASPE anticipates awarding approximately ten grants of up to $50,000 for each budget year of an up to two-year project period (for a total award of up to $100,000). The budget period is the interval of time into which the project period is divided for funding and reporting purposes. The project period is the total time for which a project has been programmatically approved, and two years is the expected length of the project period for these awards. Applications for continuation grants funded under these awards beyond the one-year budget period, but within a two-year project period, will be entertained in the subsequent year on a noncompetitive 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. Awards to additional applicants may be made in FY99, depending on the availability of funds and the interest of the government.

Part II. Purpose and Background

Indicators of children's health and well-being are the focus of increased attention at national, state, and local levels in a variety of initiatives. There are significant new national initiatives to monitor key trends in child health and well-being on a yearly basis in order to identify areas of progress and concern. At a variety of levels, there is interest in using indicators to monitor aspects of children's well-being that are most likely to be affected by welfare reform or by a combination of changes in key policies for children like those also occurring in child welfare or access to health care services. In addition, indicators are used increasingly in initiatives to set goals and establish benchmarks related to policies for children and to assess program performance through child outcome measures, though indicators cannot directly demonstrate causal effects of programs or policies.

ASPE is interested in building on existing activities and encouraging new work by states. The aim is to support states in making committed efforts to assess key trends in children's health and well-being and to improve the use of this information in policy development and implementation. ASPE is interested in promoting indicators as a monitoring tool for states to track broadly the status of low-income children in relation to other groups and to monitor changes for children as policy shifts occur in a number of key policy areas (welfare reform, child welfare, child care, health care). An additional purpose is to help states focus on areas where children's well being may be affected—positively or negatively—by welfare policies. ASPE is especially interested in encouraging state welfare agencies to work closely with other agencies to develop and use indicators as part of a strategy to monitor the health and well-being of children whose families leave the welfare rolls. The focus of the small grants is on supporting approximately ten states with varying degrees of experience in these areas to participate in technical assistance opportunities and make advancements.

Building on Federal Initiatives to Establish National Indicators of Children's Health and Well-Being

There is a new national commitment to using indicators to document trends in the health and well-being of America's children. The Federal Interagency Forum on Child and Family Statistics was formally established by Presidential Executive Order in 1997. The Forum works to coordinate and improve the collection and reporting of national data on children, and ASPE is an active member. The Forum's new charge is to report each year on the most important indicators of children's well-being so that policy decisions for children are based on better information.

The first report, America's Children: Key National Indicators of Children's Well-Being, was issued in 1997. The report offers a succinct portrait of what we do and do not know about the health and well-being of children in our nation. Using twenty-five indicators, the report shows how children from infancy through adolescence are faring in critical areas such as mortality, poverty, and health care coverage. Gaps in the report reflect areas where national data sources are inadequate. One gap is in the area of producing positive outcomes for children; most existing indicators are problem focused. Certain key areas such as school readiness are also missing. In producing future reports, the Forum will document change and stability for children using existing indicators and will seek to fill in some of the missing pieces through improvements in data collections.

ASPE is sponsoring additional projects as part of a program of work to promote the development and use of child indicators for purposes of monitoring policy outcomes and identifying new policy needs. ASPE supports the production of a much more extensive annual report on national trends in children's well being. The second edition of Trends in the Well-Being of America's Children and Youth: 1997 presents the most recent and reliable estimates on more than 80 indicators of well-being. The indicators cover five broad areas: population, family and neighborhood; economic security; health conditions and health care; social development, behavioral health, and teen fertility; and education and achievement. The report also calls attention to the areas where better national data—reliably and regularly measured—are needed.

In light of these national developments, this project seeks to promote a committed effort by states to regularly monitor key indicators for children. Working toward a common core of indicators that have comparability across states is valued, but the first emphasis will be on indicators of interest to each of the participating states.

Good data sources for producing state indicators on a year-to-year basis are scarce. Data from national surveys, which are used to produce the national indicators, have gaps in what they cover and use a sampling frame which does not readily yield estimates for most states. Data can be combined over multiple years, an approach used to produce certain indicators for the well known national Kids Count Data Book published by the Annie E. Casey Foundation. However, yearly trends cannot be tracked with this approach. Information on the strengths and limitations of national data sources is provided in The Guide to State and Local-Level Indicators of Child Well-Being Available Through the Federal Statistical System produced by Child Trends.

Administrative data bases, state surveys, and state supplements of national surveys are potential data sources for producing state child indicators with each of these sources having particular strengths and weaknesses. A number of states have begun to produce indicator reports using a variety of sources. This project is intended to build on and stimulate such efforts by states.

A goal of the present project is to establish indicators projects within the state governance structure and to support states' efforts to institutionalize the production and use of indicators using state funds. In addition to funding the national Kids Count Data Book, the Casey Foundation has funded state-level Kids Count grantees to produce more detailed state and local indicator profiles of children's well-being on a yearly basis. Relationships between state governments and Kids Count grantees are highly varied. In some states, grantees are a part of state government or have established common goals and close working relationships. In other states, relationships are distant or problematic. States are encouraged to take stock of the base of technical experience accumulated by these grantees and compatibility of goals and determine the best relationship to establish between these existing efforts and the proposed project. Areas where this project may provide a different focus or add value include: creating or refining indicators based on states' goals for children's health and well-being, accessing

additional sources of state data, developing methods for tracking indicators year-to-year rather than over longer periods, and leveraging state resources for institutionalizing the production and use of indicator information.

Linking Child Indicators to Monitoring of Welfare Reform and Other Policy Changes

Children's indicators are an important tool for monitoring changes in children's health and well-being as welfare reforms are implemented in response to passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Census Bureau surveys will provide a major source of data for producing national indicators for children and for conducting analyses of welfare impacts. As part of implementing the 1994 Welfare Indicators Act, ASPE will work with the Census Bureau and other federal agencies to produce annual reports which focus on indicators of welfare dependence and the well-being of children and adults. With the advice and recommendations of the bipartisan Advisory Board on Welfare Indicators and the assistance of other Federal agencies, an interim and first annual report to Congress entitled Indicators of Welfare Dependence.

Sources are more limited for producing state-specific indicators, especially for indicators which can be tracked at regular intervals. Under the PRWORA, using a methodology to be established by DHHS, states will report annually on changes in child poverty. ASPE is interested in assisting states with the development of indicators which go beyond child poverty. With the Administration on Children and Families and other funding partners, ASPE is supporting the Project on State-Level Child Outcomes (PCO). The primary focus of this project is supporting states in adding child outcome measures to welfare waiver evaluations. A second focus is indicator development. State welfare agencies have been encouraged to work with other state agencies to create or improve capacities for monitoring indicators of children's well-being which are most likely to be affected by welfare reforms. We have found that welfare agencies often were not connected to existing indicator initiatives, but were able to establish connections with the support of the project. Descriptions of the focus on indicators and states' activities are provided in a report summarizing the third meeting of the planning phase, Indicators of Children's Well-Being: From Construct to Application, prepared by Child Trends. From this experience, the present project seeks to strengthen the involvement of state welfare agencies in work on children's indicators. If appropriate, states may designate the welfare agency to lead the project. However, for most states, we anticipate that leadership will come from another agency which is promoting work on children's indicators or which has lead responsibilities for children's policies and programs.

In relation to welfare monitoring, the purpose is to help states focus on areas where children's well being may be affected—positively or negatively—by welfare policies. ASPE is especially interested in encouraging states to work on indicator strategies for monitoring the health and well-being of children whose families leave the welfare rolls. The Project on State-Level Child Outcomes worked with states during the planning phase to develop a common conceptual framework of the linkages between welfare reforms and potential child outcomes. The resulting matrix identifies ways in which welfare reform provisions may produce changes for adults (e.g., welfare dependence, income changes, work participation) which would affect family processes (e.g., residential stability, family routines, parental depression and behavior) and children's participation in child care (e.g., use of care, amount, type, stability, quality) which would in turn affect child outcomes (health and safety, education, social and emotional adjustment). The conceptual matrix and related measures are presented in the report From Constructs to Measures prepared by Child Trends.

A number of the state officials participating in the Project on State-Level Child Outcomes also participate in the Midwest Welfare Peer Assistance Network (WELPAN), a group of senior welfare officials who began meeting in October 1996 on welfare reform issues, with the Family Impact Seminar providing coordination. This group's recent report, Welfare Reform: How Will We Know If It Works?, presents a similar framework and outlines the process the group followed to select and refine goals and measures. The ultimate outcomes identified for children are affected by much more than welfare reform, as the report notes. Recognizing, therefore, that no one agency can be held solely accountable for broad outcomes, the process of identifying ultimate outcomes should lead to better coordination across policies and programs and to improvements for children.

WELPAN's report notes that choosing outcomes and the appropriate measures is only the first step, and recommends that states invest in sufficient resources to ensure that the right data are available and that the measures are used and interpreted objectively. A purpose of this project is to help states to consider multiple data sources and make progress in accessing data, developing new data sources, and analyzing and reporting indicator data.

The Assessing New Federalism Study, conducted by the Urban Institute, is producing profiles of a limited set of policy variables and social indicators for the 50 states. The health and well-being of children and families is being monitored in 13 states with surveys in 1997 and 1999. Along with the efforts described above, the data and methods from this project can provide a base for states to use in considering designs for longer-term monitoring efforts.

As states are implementing welfare reforms, changes are occurring in other key policies for children including those related to health care, child care, and child welfare. A number of states are also making innovations in early childhood and educational policies. Innovations are likely to continue at national, state, and local levels in a number of these key policy areas for children and their families. Individually and in combination these changes may affect a number of important health and well-being outcomes for children.

This project aims to support states' efforts to develop indicator systems which can serve as a tool for monitoring how children are faring as multiple policy changes occur. Though indicators cannot be used to attribute changes in well-being to specific changes in policy, they can signal whether changes are moving in positive, negative, or neutral directions. Good indicator systems also can help identify unmet needs and inform policy development in new areas.

Linkages With Performance Measurement Initiatives

Indicators are seeing increasing use in national, state, and local initiatives to set goals and establish benchmarks in policies for children and to measure the performance of programs by assessing whether outcomes for children are achieved. DHHS and other federal agencies are in the process of implementing the Government Performance and Results Act of 1993 (GPRA). GPRA requires federal agencies to set long-term strategic goals, link goals to specific program activities, identify indicators, and develop the information systems and measures to produce the required data.

Examples of federal performance measurement efforts that have a primary focus on children include those underway for Head Start, immunizations (tracking rates at national and state levels through the National Immunization Survey), the Maternal and Child Health Block Grants (with measures established in partnership with states), and the new Children's Health Insurance Program (with measures selected by states). These efforts are at an early stage, and it is yet to be seen how well these programmatically-focused efforts will be able to inform policy development and produce improvements in key areas of children's health and well-being. An aim of the technical assistance component of this project is to help apply the lessons emerging from the successes and failures of these efforts.

Another effort of DHHS is Healthy People 2000 which provides a framework for measuring performance by outcomes. It specifies objectives for 22 priority areas, including areas focusing on children. The overarching goals are to increase years of healthy life, reduce disparities in health among different population groups, and achieve access to preventive health services. All but a few states have developed their own Healthy People 2000 plans tailored to their own needs. Planning for Healthy People 2010 is underway and will address emerging issues, such as changing demographics, advances in preventive therapies and new technologies.

Through legislative or management initiatives, a number of states are implementing a variety of performance measurement efforts. The Harvard Family Research Project has published the Resource Guide of Results-Based Accountability Efforts. This 1996 report highlights the efforts of eighteen states which have developed systems focusing on children and families. Descriptions of the ways in which six states (California, Florida, Massachusetts, Minnesota, Oregon, and Vermont) are developing and using children's indicators are provided in the 1997 report by Child Trends, Social Indicators of Child and Family Well-being: A Profile of Six State Systems, published as an Institute for Research on Poverty Special Report.

The most sensitive issue for performance measurement initiatives is how changes in indicators will be attributed to the good or poor performance of a specific program, and how program funds may be increased or decreased accordingly. Indicators can show changes in children's well-being, but cannot show the causes of changes. For states now using indicator data in policy processes, indicators are seeing more usage in setting overarching goals for children and their families, assessing baselines, and tracking whether changes are moving in the right direction. For example, Oregon and Vermont have used negative indicator data (a teenage pregnancy or birth rate that is higher in one county than in other counties) as a starting point for policy development and the provision of additional resources and technical assistance. It is this type of focus that the present project seeks to promote.

The process of identifying indicators of program performance at federal, state and local levels can change the focus of policy making. This process should focus attention on the fact that outcomes of fundamental importance for children are interactive and cannot be accomplished by any one program alone. Vermont's experience shows the importance of considering sets of related indicators and their interactions with one another. For example, improvements in input indicators such as the percent of the population covered by health insurance, the percent of women with early prenatal care, the percent of newborns receiving home visits, have been followed by declines in teen birth rates, child abuse, and numbers of children needing special education ("The Importance of Indicators and What They Can Do", by C. D. Hogan, Vermont Agency of Human Services, in Indicators of Children's Well-Being: From Construct to Application, prepared by Child Trends).

The present project seeks to build on experiences at all levels and focus on helping to transfer knowledge, especially from state to state. States are encouraged to build on technical work that they are doing to develop specific performance measures. However, this project must have a focus on broader state-identified goals for children's health and well-being, as in the examples above, and thus go beyond the selection of specific performance measures for individual programs.

Technical Assistance

This project will provide opportunities for states to work with one another and with research and policy experts to develop indicators and promote their use in policy. States should plan to fully participate in technical assistance opportunities and may use grant funds for travel to project meetings (see Budget section of the Application Instructions). Separate funding has been provided to Chapin Hall, at the University of Chicago, to convene grantee meetings, promote the exchange of ideas and knowledge among states, and organize and coordinate consultations with a broad network of experts (from a team at Chapin Hall and from a variety of other organizations). Areas of expertise include: policies and programs for children and their families, issues in conceptualizing and measuring different domains of children's health and well-being, data strategies for producing children's indicators, and appropriate ways of using indicator data in policy processes. Technical assistance will be oriented to the interests and needs of participating states and will support the purposes described in this announcement.

Part III. Application Preparation and Evaluation Criteria

This section contains information on the preparation of applications for submission under this announcement, on the forms necessary for submission, and on the evaluation criteria under which the applications will be reviewed. Potential applicants should read this section carefully in conjunction with the information provided above. The application must contain the required Federal forms, title page, table of contents, and the sections listed below. All pages of the narrative should be numbered.

Whatever the state's prior experience is this area, the application should clearly show that the state is motivated and prepared to make advancements in indicators work. States not already engaged in substantial work in this area are encouraged to apply and to propose plans for new work. States with substantial experience should focus on what new advancements will be made and what value will be added. Applications also should include plans to make full use of the opportunities to work with one another and with the broad network of research and policy experts to be arranged and coordinated by Chapin Hall.

The application should include the following elements:

1. *Abstract:* A one page summary of the proposed project.

2. *Authorship:* Authors of the proposal and their planned role in the project.

3. *Goals:* Focus on proposed advancements, and describe the goals and objectives to be achieved with regard to developing and using child indicators. Describe the expected contributions of participating agencies for achieving the identified goals and objectives, the proposed accomplishments and how they will be assessed, the value to be added to

existing state indicator initiatives, and knowledge and information to be gained from the project by the applicant, the government, and the research and policy communities.

4. *Background information on the lead agency and the partnership:* Identify and provide background information on the participating agencies and their roles, responsibilities, and decision making authority. Explain the leadership structure. Describe existing collaborations pertinent to the project. Indicate previous experience in coming to agreement on goals for children (and key indicators, if applicable), with sharing information and data across agencies and in disseminating indicators publicly. If experience is limited, provide clear and specific plans for working collaboratively in these areas. Provide attachments documenting interagency agreements. At a minimum, the partnership should include (1) the state governmental agencies with lead responsibilities for children's programs, including children's health programs, and the welfare and income support programs and (2) any state agencies or governance groups, (e.g., a Governor's Office on Children or a cabinet-level children's council or committee), already working to develop and use child indicators. Involvement of the state education agency is strongly encouraged. States also are invited to propose additional partners, including city or county agencies, research institutions, and other state and local groups, as part of a well-designed strategy to promote work on child indicators. As applicable, describe the planned roles for other organizations, including research institutions. Demonstrate the capacity of the partnership for institutionalizing the production and use of indicators within the state public governance structure. Demonstrate a commitment from senior leadership in the state.

5. *Experience, capacity, qualifications, and use of staff for the lead agency and partnering agencies:* Describe the organizational capabilities of the lead agency and its experience in conducting related projects. Show capability to direct work with existing or new sources of data to produce child indicators. Provide specific examples of work with data that can be applied to this project. Identify the key staff who are expected to carry out the project and provide a résumé or curriculum vitae for each person. Provide a discussion of how key staff will contribute to the success of the project. Describe their normal duties and indicate how time will be allocated to work on this project. Show commitment to staffing this project from policy, program, and research and planning areas. Provide similar information on partnering agencies in sufficient depth to understand how the proposed project will be accomplished.

6. *Work plan outline:* Provide sufficient information to show that the applicant is prepared to engage in a sequence of tasks and activities that will enable meaningful progress to be made in accomplishing the identified goals and objectives. There should be a clear relationship between the work plan and the identified roles and responsibilities described for the participating agencies and key staff. The work plan should anticipate a project start date of no later than September 30, 1998, and outline plans for a two-year period, providing more detail for the first year. It is expected that plans will evolve over the course of the project and in response to participation in technical assistance opportunities. Information on areas of interest for technical assistance (that Chapin Hall will provide or coordinate including opportunities to work with other states) should be indicated and the range of issues and preferred priorities should be described.

The plan should indicate what will be most emphasized in relation to the following areas:

Conceptualizing and Measuring Indicators: The process and activities that the partnership will undertake to choose a set of child indicators to be tracked at regular intervals. Work to be conducted to use existing data resources or develop new data resources for measuring the indicators. Where appropriate, data plans should build on existing technical work and resources, such as projects to link administrative data bases, to produce program performance measures, or ability to use national survey data or other major data bases (e.g., New Federalism). The focus should be on using these data sources to produce child indicators at regular intervals.

Use of Indicators and Possible Products: The ways in which the appropriate use of indicators will be promoted through this project. Outline steps to be taken to institutionalize a commitment within state government to regularly produce and appropriately use child indicators. Possible products (reports, presentations, events, web postings, etc.), intended audiences, and value to be added over any existing efforts.

7. *Budget:* Applicants must submit a request for federal funds using Standard Form 424A and include a detailed breakdown of all Federal line items. A narrative explanation of the budget should be included which explains fund usage in more detail and which makes clear the value to be added over any existing efforts. For budgeting purposes, states should plan for travel of four representatives to at least three meetings (of two days) using costs for Washington, D.C. for one meeting and Chicago, IL for two meetings.

ASPE anticipates awarding approximately ten grants of up to $50,000 for each budget year of an up to two-year project period (for a total award of up to $100,000). The budget period is the interval of time into which the project period is divided for funding and reporting purposes. The project period is the total time for which a project has been programmatically approved, and two years is the expected length of the project period for these awards.

On page 2 of SF 424A, Section E "Budget Estimates of Federal Funds Needed for Balance of the Project." indicate the amounts estimated for the first and second funding (budget) periods. Applications for continuation grants funded under these awards beyond the one-year budget period, but within a two-year project period, will be entertained in the subsequent year on a noncompetitive 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.

Grantees must provide at least $5,000 of the total approved cost of the project. The total approved cost of the project is the sum of the Federal Share and the non-Federal Share. The non federal share may be met by cash or in-kind contribution. Therefore a project requesting $50,000 in Federal funds must include a match of at least $5,000 for a total approved project cost of $55,000.

Review Process and Funding Information

A Federal panel will review and score all applications that are submitted by the deadline date and which meet the screening criteria (all information and documents as required by this Announcement). The panel will review the applications using the evaluation criteria listed below to score each application. These review results will be the primary element used by the ASPE in making funding decisions. The Department reserves the option to discuss applications with other Federal or State staff, specialists, experts and the general public. Comments from these sources, along with those of the

reviewers, will be kept from inappropriate disclosure and may be considered in making an award decision.

State Single Point of Contact (E.O. No. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Deadline for Submission of Applications

The closing date for submittal of applications under this announcement is August 10, 1998. Hand-delivered applications will be accepted Monday through Friday, excluding Federal holidays during the working hours of 9:00 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW. in Washington, D.C. When hand-delivering an application, call (202) 690–8794 from the lobby for pick up. A staff person will be available to receive applications. Faxed applications will not be accepted.

An application will be considered as meeting the deadline if it is either (1) received at, or hand-delivered to, the mailing address on or before August 10, 1998, or (2) postmarked before midnight August 10, 1998 and received in time to be considered during the competitive review process (within two weeks of the deadline date).

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the deadline are considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to natural disasters, such as floods, hurricanes, or earthquakes; or if there is a widespread disruption of the mail; or if DHHS determines a deadline extension to be in the best interest of the government. However, DHHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application Forms

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, D.C. 20201, Telephone: (202) 690–8794. Requests for forms and questions (administrative and technical) will be accepted and responded to up to 5 working days prior to the closing date for receipt of applications. We will not accept faxed applications.

Also see section entitled "Components of a Complete Application." All of these documents must accompany the application package.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page http://aspe.os.dhhs.gov. You may fax your request to (202) 690–6518 to the attention of the Grants Officer. Application submissions may not be faxed or sent electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded in any other source is accurate and complete.

Length of Application

Applications should be as brief as possible but should assure successful communication of the applicant's proposal to the reviewers. In no case shall an application (excluding the resumes, appendices and other appropriate attachments) be longer than 20 single spaced pages. Applications should be neither unduly elaborate nor contain voluminous supporting documentation. Video tapes and cassette tapes may not be included as part of a grant application for panel review. A signed original and two (2) copies of each application are required. Applicants are encouraged to send an additional (2) copies of their application to ease processing, but applicants will not be penalized if these extra forms are not included. One of these copies must be unbound, suitable for photocopying; if only one is the original (has an original signature, is attached to a cover letter, etc.) it should not be this copy. The applicant's Form 424 must be signed by the applicant's representative authorized to act with the full authority on behalf of the applicant.

Selection Process and Evaluation Criteria

Selection of the successful applicant will be based on the technical and financial criteria described in this announcement. 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 review panel will prepare a summary of all applicant scores and strengths/weaknesses and recommendations and submit it to the ASPE for final decisions on the award.

The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the applications.

Two (2) copies of each application are required. Applicants are encouraged to submit a total of five (5) copies. One of these copies must be unbound, suitable for photocopying; if only one is the original (has the original signature, is attached to a cover letter, etc.) it should not be this copy.

Applications will be judged according to the criteria set forth below:

Goals and potential usefulness (25 points). The fit between the applicants' goals and the purposes described in this announcement, the value to be added through augmentation of any existing indicator initiatives, the potential usefulness of the proposed accomplishments, and the ways the anticipated results of the proposed project will advance the development and use of indicators by the state and contribute to the knowledge base in this area. ASPE seeks to fund a group of grantees with varying amounts of experience, and emphasis will be placed on the clarity of states' goals for advancing work on indicators rather than on the overall level of sophistication that states will be able to achieve.

Qualifications and soundness of the partnership (25 points). The extent to which the partnership is able to meet or

exceed the requirements for which agencies and groups agree to participate and have well-defined roles, responsibilities, and decision making authority. There is a clear leadership structure. There is good evidence of an ability to work together or to create new and productive partnerships in the areas relevant to this project. There is evidence of capacity to help institutionalize the production and use of indicators within the state public governance structure, and an indication of commitment from senior leadership in the state.

Qualifications of personnel and organizational capability (20 points). The experience, training, and qualifications of proposed personnel for leading work on identifying indicators, directing work with data, and influencing the institutionalized use of indicators. The ability of designated staff to allocate time to the project. The capacity of the lead agency to provide the infrastructure and support necessary for the project. The lead agency's ability to collaborate effectively with other partnering agencies. The information provided about partnering agencies (staff commitments and organization capabilities) is sufficient to understand how the proposed project will be accomplished. Any planned role for other organizations, including research institutions, will add value to the effort.

Quality and soundness of the work plan (20 points). The work plan will be evaluated on the extent to which the proposed plans will enable the state to make meaningful advancements on the goals it specifies in relation to (1) developing and monitoring indicators of the health and well-being of children overall and as welfare reform and other policy changes occur and (2) helping to institutionalize the use of indicator data in state and local policy work.

4. *Appropriateness of the budget.* (10 points). Reviewers will examine how these specific funds will be used and ways they will enhance other committed resources.

Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or © defer action on the application for such reasons as lack of funds or a need for further review. However, nothing commits the Assistant Secretary to making an award or limits the ability to make multiple awards.

2. *Notification of disposition.* The Assistant Secretary for Planning and Evaluation will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);
2. Budget Information—Non-construction Programs (Standard Form 424A);
3. Assurances—Non-construction Programs (Standard From 424B);
4. Table of Contents;
5. Budget Justification for Section B Budget Categories;
6. Proof of Non-profit Status, if appropriate;
7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;
8. Project Narrative Statement;
9. Any appendices or attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel;
14. Application for Federal Assistance Checklist.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93–239.

Reports

Grantees must submit quarterly progress reports and annual summary reports. The specific format and content for these reports will be provided by the project officer.

Information on Obtaining Publications Referenced in the Document

Federal Publications

Healthy People 2000

Published by: Department of Health and Human Services (OPHS)
Websites: http://odphp.osophs.dhhs.gov/pubs/hp2000/

American's Children: Key National Indicators of Well-Being: 1997

Published by: National Center for Health Statistics
Website: http://www.cdc.gov/publications.htm
Copy Request: Fax all requests for copies to the attention of Lisa L. Franklin at (202) 690–5514

Trends In The Well-Being of America's Children and Youth: 1997

Published by: Department of Health and Human Services
Website: http:/aspe.os.dhhs.gov/hsp/trends/TOC.HTM
Copy Request: Fax all requests for copies to the attention of Lisa L. Franklin at (202) 690–5514

Indicators of Welfare Dependence: 1997

Published by: Department of Health and Human Services
Website: http://aspe.os.dhhs.gov/hsp/indicator/front.htm
Copy Request: Fax all requests for copies to the attention of Barbara Bishop at (202) 690–6562

Reports by Child Trends, Inc.

- From Constructs To Measures.
- Indicators of Children's Well Being: From Construct to Applications.
- Social Indicators of Child and Family Well-Being.
- A Profile of Six State Systems.
- The Guide to State and Local-Level Indicators of Child Well-Being Available Through the Federal Statistical System.

Websites:
http://Childtrends.org/research.htm (Synopsis of Publications)
http://Childtrends.org/order.htm (Ordering Publications)
Copy Request: Child Trends, Inc., 4301 Connecticut Avenue, NW., Washington, D.C. 20008, Phone: (202) 362–5580 Fax: (202) 362–5533

Other Reports

Kids Count Data Book: 1998

Published by: The Annie E. Casey Foundation
Website: http://www.kidscount.org
Copy Request: (410) 223–2890

Resource Guide of Results Based Accountability Efforts

Copy Request: Harvard Family Research Project, 38 Concord Avenue, Cambridge, MA 02138

Welfare Reform: How Will We Know If It Works

Published by: Family Impact Seminar
Website:
http://www.ssc.wisc.edu/irp
http://www.ssc.welfareinfo.org
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Dated: June 11, 1998.

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 98–16362 Filed 6–18–98; 8:45 am]
BILLING CODE 4151–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 98062]

Notice of Availability of Funds for Fiscal Year 1998; Cooperative Agreement for Asthma Education

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement for the development, implementation, and evaluation of an asthma education and management program for families enrolled in Welfare-to-work programs.

The purpose of this project is to bring together public health expertise and welfare reform to provide the asthma education and management techniques necessary to enable families enrolled in the Welfare-to-work program to finish job training and enter the work force.

B. Eligible Applicants

Eligible applicants are State health departments or other State agencies or departments deemed most appropriate to lead, coordinate, and conduct this project. This eligibility includes health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

If a State agency applying for funds is other than the official State health department, written concurrence by the State health department must be provided.

Only one application per State may enter the review process and be considered for award under this program.

Eligible applicants may enter into contracts and consortia agreements and understandings as necessary to meet the requirements of the program and strengthen the overall application.

C. Availability of Funds

Approximately $100,000 will be available in FY 1998 to support one award. It is expected that the award will begin on or about September 30, 1998, and will be made for a 12-month budget and project period. Continued funding under this program will be based on grantee performance and the availability of funding.

D. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities under B. (CDC Activities).

A. Recipient Activities

1. Develop, implement, and evaluate in collaboration with other organizations, an asthma education and management program for families enrolled in the Welfare-to-work program.
2. Provide asthma education and management techniques to the target population.
3. Evaluate and analyze surveillance data in terms of the impact of asthma education and management on job training among the target population.
4. Disseminate findings.

B. CDC Activities

1. Provide programmatic technical assistance in planning, implementing, and evaluating program activities.
2. Provide up-to-date scientific information and activities of other projects in the area.

E. Application Content

All applications must be developed in accordance with the instructions for PHS Form 5161–1 (revised 5/96), information that is contained in this program announcement, and the instructions outlined in the following section headings. The narrative section of the application should not exceed 25 pages. The application pages must be clearly numbered, and a complete index to the application and its appendices must be included. Please begin each section of the proposal on a new page. The original and each copy of the application set must be submitted UNSTAPLED and UNBOUND. All material must be typewritten, double spaced, with un-reduced type on 8½" by 11" paper, with at least 1" margins, heading and footers, and printed on one side only. All graphics, maps overlays, etc., should be in black and white and meet the above criteria.

A. Description of Problem

Describe the issues related to requirements, problems, objectives, complexities, and interactions required in developing and implementing a project such as this. Include a discussion of past experiences with similar projects.

B. Goals and Objectives

For each of the elements cited in the program plan (item C. of Application Content), provide objectives that are realistic, time-phased, measurable, and consistent with the applicant's proposed theme, purpose, and objectives.

C. Program Plan

Submit a plan that describes how the project goals will be achieved. The plan must address the following topics:

1. "Study activities"—discuss the administrative and scientific capacity critical to the development and implementation of the study.

2. "Public Input and coordination of affected parties"—discuss the administrative capacity and plans necessary to ensure that the affected parties have ample input during all phases of this study.

3. "State agency linkages"—describe the linkages and support that will be used during the development, implementation and conclusion of this study and the potential long-term sustainability of the intervention.

D. Management and Staffing Plan

Submit a management and staffing plan that includes a list of key Department staff and, if appropriate, key contractor staff, their role in the study and their resume.

E. Evaluation

Describe how progress made toward meeting the demonstration objectives will be evaluated.

F. Budget

A detailed budget and justification should be submitted for the study. A brief budget projection should be submitted that clearly separates and distinguishes direct and indirect costs.

F. Application Submission and Deadline

The original and 2 copies of the application PHS Form 5161–1 (revised 5/96) must be submitted to David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, on or before *August 7, 1998.*

Deadlines: Applications shall be considered as meeting the deadline above if they are either: (1) received on or before the deadline date; or (2) sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

G. Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. Understanding the Problem (10 points)

Evidence of the applicant's understanding of the problem and the purpose of the cooperative agreement.

2. Measurable Objectives (20 points)

The consistency of the measurable objectives with the stated purpose of the cooperative agreement and the ability to meet the objectives and timetable within the specified period.

3. Proposed Plan (20 points)

The adequacy of the applicant's plan to carry out the activities proposed. Of particular interest is the potential long-term sustainability of the intervention and the involvement of community organizations.

4. Management and Staffing Plan (35 points)

The extent to which the proposal has described (a) the qualifications and commitment of the applicant in terms of related asthma projects, (b) allocations of time and effort of staff devoted to the project, (c) information on how the applicant will implement and administer the project, (d) the qualifications of the key project staff in terms of asthma related programs and experience.

5. Proposed Evaluation Plan (15 points)

The adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project.

6. Budget (not scored)

The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the cooperative agreement funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semi-annual progress reports including the following for each goal or activity involved in the study: (a) comparison of actual accomplishments to the objectives established for the period; (b) the reasons for slippage if objectives were not met; (c) other pertinent information including, when appropriate, analysis and explanation of unexpectedly high costs for performance.

2. Financial status report, no more than 90 days after the end of the budget period, and

3. Final financial status report and performance report no more than 90 days after the end of the project period.

Send all reports to: David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Room 300, Mailstop E13, Atlanta, GA 30305–2209.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum 1 included in the application kit.

AR98–1—Human Subjects Requirements
AR98–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–9—Paperwork Reduction Act Requirements
AR98–10—Smoke-Free Workplace Requirements
AR98–11—Healthy People 2000
AR98–12—Lobbying Restrictions
AR98–7—Executive Order 12372
AR98–8—Public Health System Reporting Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, section 301(a) [42 U.S.C. 241(a)], as amended. The Catalog of Federal Domestic Assistance number assigned to this project is 98.062.

J. Where To Obtain Additional Information

Please refer to Announcement Number 98062 and contact David Elswick, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Room 300, Mailstop E–13, Atlanta, GA 30305–2209, telephone (404) 842–6521, for business management technical assistance.

Programmatic technical assistance may be obtained from James Rifenburg, Air Pollution and Respiratory Health Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), Mailstop F–39, 4770 Buford Highway, N.E., Atlanta, GA 30341–3724, telephone (770) 488–7322.

Dated: June 15, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–16325 Filed 6–18–98; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

[Announcement Number 98068]

Notice of Availability of Funds for Fiscal Year 1998; Grants for Radiation Studies and Research

Introduction

The Centers for Disease Control and Prevention (CDC), announces that applications are being accepted for Grants for Radiation Studies and Research. The efforts funded by these grants will result in models and procedures that will improve systems to track environmental exposures and diseases.

CDC is committed to achieving the health promotion and disease prevention objectives of HEALTHY PEOPLE 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health. For ordering a copy of HEALTHY PEOPLE 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.

Authority

This program is authorized under Section 301(a) of the Public Health Service Act [42 U.S.C. Section 241(a)] as amended, and under the Occupational Safety and Health Act [29 U.S.C. Section 669(a)].

Eligible Applicants

Eligible applicants include all non-profit organizations. Thus State and local health departments and other State and local governmental agencies, universities, colleges, research institutions, laboratories, and other public and private organizations, including small, minority and/or woman-owned businesses are eligible for these research grants.

Availability of Funds

Approximately $350,000 is expected to be available in Fiscal Year 1998 to fund approximately two to four awards. It is expected that the average award will be $100,000–$150,000, the range being $60,000 to $200,000 (including both direct and indirect costs). It is expected that the awards will begin on or about September 30, 1998, and are usually made for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds: Grant funds may not be used to support direct care services.

Background

The Secretary, Department of Health and Human Services (HHS) and the Secretary, Department of Energy (DOE) signed a Memorandum of Understanding (MOU) transferring the authority and resources to manage and conduct energy-related analytic epidemiologic research from DOE to HHS. This includes the authority, resources, and responsibility for the design, implementation, analysis, and scientific interpretation of analytic epidemiologic studies of the following populations: workers at DOE facilities; residents of communities in the vicinity of DOE facilities; other persons potentially exposed to radiation; and persons exposed to potential hazards resulting from non-nuclear energy production and use.

The Secretary, HHS, delegated the responsibility for implementation of the MOU to the Centers for Disease Control and Prevention (CDC). The Director, CDC, designated the National Center for Environmental Health (NCEH) as lead for CDC and for the conduct of environmental studies. The National Institute for Occupational Safety and Health has the responsibility for the conduct of occupational studies.

Purpose

The purposes of this program are:

A. To support radiation research on priority issues in the following categories:

1. A broad-based need for participation in International Validation Studies for Environmental Transport Models.

2. Development of methodologies for using current sampling data as an indicator of past contaminant releases to the environment.

3. Development of Usage Factors for Environmental Dose Calculations.

4. Uncertainty Analysis of Dose Conversion Factors for Radio nuclides.

5. Risk Factors for Thyroid Disease.

6. Development of Ultra sensitive Measurement Techniques for Individual Environmental Radiation Dosimetry.

B. To encourage professionals from a wide spectrum of disciplines such as engineering, medicine, health care, public health, physical sciences, and others, to undertake radiation research programs.

C. To evaluate current and new scientific methodologies and strategies in the areas of radiation research.

Program Requirements

The following are applicant requirements:

A. A director who has specific authority and the responsibility to carry out the project.

B. Demonstrated experience in conducting, evaluating, and publishing radiation, epidemiology, and or dose assessment research.

C. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

D. The ability to disseminate and implement the research findings through organizations (such as public health agencies) or systems, both public and private.

E. An overall match between the applicant's proposed theme and research objectives, and the program priorities as described in the PURPOSE, A. Radiation research.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

Programmatic Interest

The focus of each grant application should reflect priority issues in one or more of the following areas; (1) a broad-based need for participation in International Validation Studies for Environmental Transport Models; (2) development of methodologies for using current sampling data as an indicator of past contaminant releases to the environment; (3) development of Usage Factors for Environmental Dose Calculations; (4) Uncertainty Analysis of Dose Conversion Factors for Radio nuclides; (5) Risk Factors for Thyroid Disease; and (6) Development of Ultra sensitive Measurement Techniques for Individual Environmental Radiation Dosimetry.

International Validation Studies for Environmental Transport Models

The best way to determine the accuracy of any environmental transport model is to compare predictions made by the model with measurements of the same quantity in the environment, a process known as model validation. The environmental transport models potentially useful in dose reconstruction projects must be validated to the extent possible if the results produced by the models are to be scientifically and publicly defensible. A series of recent international projects coordinated by the International Atomic Energy Agency have been attempting to address this issue using environmental radio nuclide data gathered from around the world, especially from nations formerly part of the Soviet Union.

Environmental Indicators of Past Releases

All environmental dose reconstructions will require the extensive use of mathematical models of source term development and environmental transport and dosimetry. These models will be validated against past and present environmental monitoring results. Early environmental monitoring was not as comprehensive or sensitive as today's methods. Therefore, the use of monitoring data for model validation for early years of site operations potentially will be less certain than later years. A number of methods are available for defining long-term trends of environmental contamination. For example, tree ring analyses have been performed to reconstruct historical concentrations of tritium and mercury. Methods developed must provide information on the temporal and geographic patterns of contamination in the environment.

Usage Factors for Environmental Dose Calculations

There are four major factors that determine the dose and risk to people from the inhalation and ingestion of radio nuclides and chemicals released to the environment:

1. the source term (the type and amount of contaminant released to the environment);

2. environmental transport to people (via the atmosphere, hydrosphere, and/or food chains);

3. usage factors (time spent outdoors, rate of inhalation, amount of a particular food product consumed, etc.); and

4. metabolism or the particular radio nuclide or chemical in the body resulting in a particular dose or risk.

What is required for modern dose and risk estimation is a probability distribution for each usage factor.

Uncertainty Analysis of Dose Conversion Factors for Radio Nuclides

All environmental dose reconstructions require the extensive use of Dose Conversion Factors (DCF) that relate intake or exposure to radioactive materials to the endpoint dose. The DCFs in use today have been developed mainly for radiation protection purposes. In as much, these DCFs were derived by the use of conservative values and assumptions, non-stochastic values of DCFs are listed singularly (i.e., with no estimates of

uncertainty). Modern dose and risk estimates require that (1) probability distributions be defined for each of the parameters used to derive the DCF's; (2) each of these distributed parameters be propagated through the model which defines the specific DCF; and (3) the final DCF be presented as a distribution with uncertainties.

Risk Factors for Thyroid Disease

Historical releases of iodine from activities at DOE facilities and during weapons testing have raised questions concerning the risk of thyroid disease associated with radiation exposure. Not only have questions been raised about the risk of thyroid neoplasia, but also about other thyroid diseases that may or may not be related to radiation exposure. Medical monitoring for all thyroid diseases has been proposed for the population around the Hanford nuclear weapons facility potentially exposed to historical releases of radio iodine. A large number of studies have been completed in the last ten years that shed light on the risk factors for thyroid disease and on the association between thyroid disease and radiation.

Development of Ultra Sensitive Measurement Techniques for Individual Environmental Radiation Dosimetry

Much work on environmental dose reconstruction deals with computer modeling using limited environmental monitoring data to ascertain radiation doses to individuals for the purpose of risk assessment and epidemiologic study. This is often due to the fact that the radio nuclides of concern have short effective half lives with respect to the elapsed time from exposure to assessment. In many cases the environmental levels of contamination are significantly below conventional levels of detection for in vivo radiation detection. The purpose of this grant is to develop Ultra sensitive techniques that could be used for assessing environmental exposures to people who are now alive and who may have been exposed to historical releases from DOE weapons facilities. Development of novel techniques or significant improvements on current techniques will be considered.

Application Content

Applications for radiation research should include:

A. The project's focus that justifies the research need and describes the scientific basis for the research, the expected outcome, and the relevance of the findings. The focus should be based on one or more of the priority topic issues.

B. Specific, measurable, and time-framed objectives.

C. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

D. A description of the grant's principal investigator's role and responsibilities.

E. A description of all project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

F. A description of those activities related to, but not supported by the grant.

G. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

H. A detailed first year budget for the grant with future annual projections, if relevant.

I. Applicants must identify the principal priority topic areas upon which their project focuses.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option, on the original and six copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the deleted amounts shown. This budget page will be reserved for internal staff use only.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. The specific aims of the research project, i.e., the broad long term objectives, the intended accomplishment of the specific research proposal, and the hypothesis to be tested; (15 points)

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and specific identification of the knowledge gaps which the proposal is intended to fill; (10 points)

3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research; (20 points)

4. The progress of preliminary studies pertinent to the application; (5 points)

5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and a statistical analysis plan; (15 points)

6. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of the stated objectives; (15 points)

7. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities; (10 points)

8. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement); (5 points)

9. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds; (Not scored) and

10. Adequacy of existing and proposed facilities and resources. (5 points)

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirement.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance number is 93.283.

Application Submission and Deadlines

Applicants should use Form PHS–398 and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and six copies, on or before August 7,1998 to: David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Room 300, Atlanta, GA 30305.

Deadlines: Applications shall be considered as meeting a deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to

the review committee. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

Applications which do not meet the criteria in 1. or 2. above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

All application procedures and guidelines are contained within the present announcement. Business management technical information may be obtained from David Elswick, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6521.

Programmatic technical assistance may be obtained from Steven Adams, Project Officer, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Hwy, N.E., Mailstop F–35, Atlanta, GA 30341–3724, telephone (770) 488–7040.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone (202) 513–1800).

Dated: June 15, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–16327 Filed 6–18–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0384]

Knickerbocker Biologicals, Inc.; Revocation of U.S. License No. 458–001

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 458–001) and the product licenses issued to Knickerbocker Biologicals, Inc., for the manufacture of Whole Blood, Red Blood Cells, Plasma, and Source Leukocytes. Knickerbocker Biologicals, Inc., did not respond to a notice of opportunity for a hearing on a proposal to revoke its licenses.

DATES: The revocation of the establishment license (U.S. License No. 458–001) and the product licenses is effective June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is revoking the establishment license (U.S. License No. 458–001) and the product licenses issued to Knickerbocker Biologicals, Inc., doing business as Knickerbocker Blood Bank, 272 Willis Ave., Bronx, NY 10454, for the manufacture of Whole Blood, Red Blood Cells, Plasma, and Source Leukocytes.

An attempted inspection of the facility by FDA revealed that the facility was no longer in operation at the location listed on the license. A certified, returned-receipt letter from FDA dated November 14, 1996, notifying the Responsible Head of the unsuccessful inspection and requesting the status of the firm was returned to the agency as "undeliverable; address unknown". A later attempt by FDA to visit three other known addresses of Knickerbocker Biologicals, Inc., New York, NY, verified that the company was no longer in business at these locations. The respective post office for each location was also visited and each verified that no information regarding either a forwarding address or address change was available. Based on the inability of authorized FDA employees to conduct a meaningful inspection of the facility, FDA initiated proceedings for the revocation of the licenses under 21 CFR 601.5(b)(1) and (b)(2). A certified, returned-receipt letter, dated January 24, 1997, to the firm's Responsible Head providing notice of FDA's intent to revoke the licenses and its intent to offer an opportunity for a hearing on the proposed revocation was returned as undeliverable.

Under 21 CFR 12.21(b), FDA published in the Federal Register of October 6, 1997 (62 FR 52135), a notice of opportunity for a hearing on a proposal to revoke the licenses of Knickerbocker Biologicals, Inc. In the notice, FDA explained that the proposed license revocation was based on the inability of authorized FDA employees to conduct a meaningful inspection of the facility because it was no longer in operation and noted that documentation in support of the license revocation had been placed on file for public examination with the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. The notice provided the firm 30 days to submit a written request for a hearing and 60 days to submit any data and information justifying a hearing. The notice provided other interested persons with 60 days to submit written comments on the proposed revocation. The firm did not respond within the 30-day time period with a written request for a hearing. The 30-day time period, prescribed in the notice of opportunity for a hearing and in the regulation, may not be extended. No comments were received from any other parties within the 60-day time period.

Accordingly, under 21 CFR 12.38, section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 458–001), and the product licenses issued to Knickerbocker Biologicals, Inc., are revoked, effective June 19, 1998.

Dated: May 28, 1998.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 98–16294 Filed 6–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Studies of Adverse Effects of Marketed Drugs; Availability of Grants (Cooperative Agreements); Request for Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research, is announcing $1.4 million for cooperative agreements to study adverse effects of drugs marketed in Canada, the United States and its territories, subject to the availability of Fiscal Year 1999 funds. This amount is consistent with the level

of funding in the President's budget. FDA expects to make up to four awards for $300,000 per year for 3 years for general data bases and up to two awards for $100,000 per year for 3 years for special population data bases. The purpose of these agreements is to conduct drug safety analysis to the benefit of the public's health; respond expeditiously to urgent public safety concerns; provide a mechanism for collaborative pharmacoepidemiological research designed to test hypotheses, particularly those arising from suspected adverse reactions reported to FDA; and enable rapid access to multiple data sources to ensure public safety when necessary.

DATES: Submit applications by August 3, 1998.

ADDRESSES: Application kits are available from, and completed applications should be submitted to: Robert L. Robins, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7185.

Note: Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20852. Please DO NOT send applications to the Center for Scientific Review (CSR), National Institutes of Health (NIH). Applications mailed to CSR and not received by FDA in time for orderly processing, will be returned to the applicant without consideration.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Robert L. Robins (address above).

Regarding the programmatic aspects of this notice: Thomas M. Conrad, Division of Pharmacovigilance and Epidemiology (HFD–730), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3180.

SUPPLEMENTARY INFORMATION: Because of the reduction of funding throughout the U.S. Government and particularly in this program, continuation of funding will be evaluated annually to a higher degree than ever before. As stated later in this document, funding of the second and third years will be contingent upon: (1) Investigator's demonstrated success collaborating with FDA scientists, as well as with other investigators funded by this cooperative agreement program. Such demonstration may include suggestions for and design of a study, analysis of data sets, and publication of results among FDA and cooperative agreement investigators, and (2) the availability of Federal fiscal year appropriations. A points system has been established to quantitate the grantee's usefulness in the Government's collaborative efforts with non-Federal organizations to improve the health of the American public.

It is determined that these cooperative agreements are exempt from Protection of Human Subjects requirements in accordance with 45 CFR 46.102(b).

FDA's authority to fund research projects is set out in section 301 of the Public Health Service Act (the PHS Act) (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103. Applications submitted under this program are not subject to the requirements of Executive Order 12372.

I. Background

New drugs are required to undergo extensive testing before marketing. With the submission of adequate data on safety and effectiveness, FDA approves a new drug application (NDA) and that permits a manufacturer to market its product in the United States. Although the information provided before marketing is sufficient for approval, it is not adequate to anticipate all effects of a product once it comes into general use. This request for applications (RFA) is intended to encourage collaboration between FDA and researchers with pharmacoepidemiological data bases to address postmarketing issues confronting the agency.

FDA is also interested in the ability to measure and/or estimate incidence rates and test hypotheses based on signals of possible drug safety problems originating from reports of adverse reaction reports received by FDA.

II. Program Research Goals

FDA shall fund a variety of data bases representing, without overlap to each other or agency contracts, different patient populations and/or types of patient care settings.

The goal for these cooperative agreements is to collaborate with researchers with pharmacoepidemiological data bases, to investigate suspected associations between specific drug exposures and specific adverse events, and to estimate such risk. The specific objectives are to: (1) Provide immediate access to existing data sources with the capability of providing assessments of study feasibility; (2) respond to specific drug safety questions within a few weeks; and (3) provide a complete analysis to those questions deemed feasible within a few months.

Additional points will be awarded for the collaborative sharing of data sets with the agency and with other cooperative agreement recipients.

Databases

For the purpose of this RFA, all $300,000 awards will be to longitudinal data bases. Awards for data bases of special populations ($100,000 awards) may be either longitudinal or case control.

A. Longitudinal Data Bases

These data bases must be able to: (1) Provide exposure data on new molecular entities (those approved within the last 5 years in the United States); (2) perform feasibility studies of multiple drugs and/or multiple outcomes; (3) identify adverse drug events that occur infrequently (i.e., at rates lower than can be detected in clinical trials); and (4) provide data and preliminary analysis within a very short timeframe (2 to 4 weeks depending on the problem).

Data base characteristics of interest might include the ability to: (1) Estimate adverse event rates or relative risks for a specific event; (2) estimate the contribution of various risk factors associated with the occurrence of adverse events (e.g., age, sex, dose, coexisting disease, disease severity, concomitant medication); (3) determine adverse event rates for generic entities as well as for classes of drugs; (4) obtain data from laboratory results; (5) link to state vital statistics; (6) link to cancer registry; (7) determine inpatient exposure; and (8) follow patients long term after an exposure to a suspect drug.

In addition, FDA is interested in data bases capable of innovatively applying the objectives stated previously to general populations.

The ideal data source would: (1) Capture all drug exposures linked longitudinally to each patient regardless of health care delivery setting. Outcomes of interest could be either acute or chronic effects, all health provider encounters (i.e., medical records) would be captured whether in the ambulatory, emergency, chronic care or acute care setting; (2) have the statistical power to identify rare (<1 event per 1000 exposures) adverse events in the population of interest; (3) be automated with a computerized system available for linking each patient to all relevant medical care data including drug exposure data, coded medical outcomes, vital records, cancer registries and birth defect registries; (4) have a low patient turn-over, thereby permitting long-term longitudinal followup of most patients for delayed

adverse effects; (5) address effects from chronically used drugs (e.g., Framingham Study); and (6) address delayed effects resulting from drug use.

Additional points would be awarded for linkage of data bases to laboratory values and readily accessible medical records as evidenced by past performance in studies. The ability to retrieve medical records relevant to study questions posed by FDA is extremely important.

Submitted applications must include an indepth description of the data base and provide descriptive and quantitative information on diagnoses or drug exposures in the population.

The applicant shall also provide evidence that their data base has sufficient exposure to marketed drugs (as evidenced by listing their top 50 drug substances of exposure; including the drug and number of exposures). The quality and validity of the data should be described in detail.

B. Case-Control Data Bases

These data bases must be able to: (1) Provide exposure data in general and/or hospital populations; (2) perform feasibility studies; and (3) provide data and preliminary analysis within a very short timeframe (2 to 4 weeks depending on the problem).

The specific objectives are to: (1) Provide immediate access to existing data sources with the capability of providing assessments of study feasibility; (2) respond to specific drug safety questions within a few weeks; and (3) provide a complete analysis to those questions deemed feasible within a few months.

Characteristics of interest might include: (1) The use of standardized ascertainment and outcome methodology; (2) the ability to perform prospective and retrospective studies; (3) demonstrated validation of data; (4) estimate the contribution of various risk factors associated with the occurrence of adverse events (e.g., age, sex, dose, coexisting disease, disease severity, concomitant medication); (5) availability of large numbers of cases with validated outcomes of interest in drug safety and associated controls; (6) construct cases and controls for case-controlled and nested case-controlled studies (include sampling scheme); (7) determine odds ratios; and (8) determine attributable risks.

In addition, FDA is interested in data bases capable of innovatively applying the objectives stated previously to general and specifically defined populations.

The ideal data source would: (1) Capture all drug exposures for each patient regardless of health care delivery setting; (2) identify rare (<1 event per 1000 exposures) adverse events in the population of interest; and (3) be automated with a computerized system available for linking each patient to all relevant medical care data including drug exposure data, coded medical outcomes.

Additional points would be awarded for linkage of data bases to laboratory values and readily accessible medical records as evidenced by past performance in studies. The ability to retrieve medical records relevant to study questions posed by FDA is extremely important.

Submitted applications shall include an indepth description of the data base and provide descriptive and quantitative information on diagnoses and drug exposures in the population. The quality and validity of the data should be described in detail. The applicant shall also provide evidence that their data base has sufficient exposure to marketed drugs (as evidenced by listing their top 50 drug substances of exposure; including the drug and number of exposures) and demonstrate the prevalence of exposure in their control groups.

III. Reporting Requirements

Program progress reports will be required annually. These reports must be submitted 60 days prior to the last day of the budget period of the cooperative agreement. The Progress Report Summary required for Non-Competing Continuation Application is sufficient, if amended with the following information: (1) Publications, abstracts, presentations to professional organizations; (2) top 50 drug substance exposures for the previous year; and (3) summary of any changes in the demographics or capabilities of the data base over the last year.

Financial Status Reports (SF–269) will be required annually. These reports must be submitted within 90 days after the last day of the budget period of the cooperative agreement. Send the original and one copy each, of the Annual Progress and Financial Reports to the Grants Office at the address listed above. Failure to file the Annual Progress Report or the Financial Status Report (SF–269) in a timely fashion will be grounds for suspension or termination of the grant.

Program monitoring of the grantees will be conducted on an ongoing basis and written reports will be prepared by the Project Officer. The monitoring may be in the form of telephone conversations between the Project Officer and/or Grants Management Specialist and the Principal Investigator. Periodic site visits with appropriate officials of the grantee organization may also be conducted. The results of these reports will be recorded in the Official Grant File and may be available to the grantee upon request.

A final Program Progress Report, Financial Status Report (SF–269) and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award. Send the original and one copy to the Grants Management Officer at the address listed above.

Up to two representatives from each cooperative agreement may be required, if requested by the Project Officer, to travel to FDA up to twice a year for no more than 2 days at a time. These meetings will include, but are not limited to, presentation on study design and findings and discussions with FDA staff involved in the collaborative research. At least one FDA employee may visit the cooperative agreement site at least once a year for collaboration and information exchange.

IV. Mechanism of Support

A. Award Instrument

Support of this program will be in the form of cooperative agreements. All awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of 42 CFR part 52, 45 CFR parts 74 and 92 and PHS Grants Policy Statement.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit organization (including State, local, and foreign units of government) and any for-profit organization. For-profit organizations must exclude fees or profit from their requests for support. Organizations described in section 501(c)4 of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive grant/cooperative agreement awards.

C. Length of Support

The first year will be competitive and future support for the second and third years will be noncompetitive. Future support will be contingent upon: (1) Investigator's demonstrated success collaborating with FDA scientists, as well as other investigators funded by this cooperative agreement program. Such demonstration may include suggestions for and design of a study, analysis of data sets, and publication of

results from investigations performed by FDA and cooperative agreement investigators, and (2) the availability of Federal fiscal year appropriations.

D. Funding Plan

Up to four cooperative agreements may be funded with the intent that they will have large, general data bases with the ability to address a variety of questions in the field of pharmacoepidemiology. (If an application using case-control methods research is received, it will be placed in the special population data bases as described in the next paragraph.) These cooperative agreements have $1.2 million dollars budgeted per year.

Up to two cooperative agreements may be funded for special populations, such as acquired immune deficiency syndrome (AIDS), pregnant women, pediatrics, maternal-child linked data bases. The data base type for these awards may be either longitudinal or case control. These two cooperative agreements have $200,000 dollars budgeted per year.

These amounts are to include all direct and indirect costs. Federal funds for this program are limited; therefore, if two or more approved cooperative agreements are perceived as duplicative or very similar data sources with one another, FDA will support only the source with the best score. If any data source is perceived as duplicative or very similar to an existing FDA research contract, the contract will take precedence over the application.[1]

Applicants may compete for either type of cooperative agreement, but not both. An applicant can only be awarded one cooperative agreement under this RFA. Applicants must clearly label block No. 2 of the face page of their application either "Large" or "Special". If the application appears to be eligible for both areas of consideration and is not labeled, reasonable efforts will be made to contact the applicant to determine their preference. If reasonable efforts to contact the applicant fail, program staff shall determine in which area the applicant will compete.

V. Delineation of Substantive Involvement

Program support will be offered through cooperative agreements because FDA will have a substantive involvement in the programmatic activities of all projects funded under this RFA. Involvement may be modified to fit the unique characteristics of each application. Substantive involvement includes, but is not limited to the following:

1. FDA staff will participate in the selection and approval of the drug and medical events to be studied as predicated by the needs of FDA. The drug and medical events to be studied will be jointly agreed upon by the Principal Investigator and the FDA staff.

2. FDA scientists will collaborate with awardees in study design and data analysis. Collaboration may include sharing of the analysis data set, interpretation of findings, review of manuscripts, design of protocols and where appropriate, coauthorship of publications.

3. Because of the ad hoc and frequently urgent nature of the agency's request, we have decided to quantify the amount of requests we would ask of an awardee in one year's time. We expect that the grantee would perform at least one medium or large study in the course of each year. We also would expect that at least one large or one medium study, per year, result from requested feasibility studies. The following table illustrates our method to quantify work.

TABLE 1.—QUANTIFICATION OF WORK

Large Study[1]	30–60 points
Medium Study[2]	15–40 points
Other[3] (e.g., Data Base Search or Feasibility Study)	1–3 points

[1] Large Study—a large study is one that would involve extensive use of the data base (e.g., large studies with laboratory linkages) and, possibly, the retrieval of medical records.

[2] Medium Study—a medium study is one that might be a large data base search only or a smaller data base search with medical records retrieval required.

[3] Other—include feasibility studies and requests for information that may include a few tables describing demographics of the patients, drug exposures and denominator data.

The determination of the points per project will normally be determined by the grantee and the program before work begins; however, if circumstances dictate a change is needed after work has begun, it will be permissible, if agreed by both the grantee and the agency.

All grantees will receive requests for all feasibility studies made by the agency. This method will afford all grantees the opportunity to respond to requests.

An additional 10 points will be awarded to medium and large studies (after the above points have been negotiated) for sharing data sets with the agency and other cooperative agreements.

These points will be used in determining continued support of the cooperative agreement for the second and third years of the project period.

VI. Review Procedure and Criteria

A. Review Procedure

All applications submitted must be responsive to the RFA. Those applications found to be nonresponsive will not be considered for funding under this RFA and will be returned to the applicant. Again, this RFA is limited to data bases where data have been collected from drugs marketed in Canada, the United States and its Territories.

Responsive applications will undergo dual peer review. A review panel of experts, comprised primarily of non-Federal scientists, in the fields of epidemiology, statistics and data base management will review and evaluate each application based on its scientific merit. Responsive applications will also be subject to a second level review by the National Advisory Environmental Health Science Council for concurrence with the recommendations made by the first level reviewers, and funding decisions will be made by the Commissioner of Food and Drugs or his designee.

B. Review Criteria

Applications will be reviewed according to the following criteria, with each criteria being of equal weight within each major category, unless

[1] FDA Contracts include IMS America's National Prescription Audit, National Disease and Therapeutic Index, Provider Prospective, Retail Prospective (Contract No. 223–98–5520) and Mediplus (Purchase Order No. F–07396).

otherwise specified. All applications will be scored with a maximum of 100 points allowable.

Specific review data base size and characteristics apply to each type of data base (General Longitudinal or Special Populations, Case-Control or Special Populations, Longitudinal). Each applicant will be reviewed by the type of data base the applicant claims to be applying for. Separate scores will not be given for the same data base.

1. Size and Characteristics of the Data Base (General Longitudinal; Special Populations, Longitudinal; or Special Populations, Case-Control) (45 points—Total)

General, Longitudinal Data Base

The size and characteristics of the general, longitudinal data base should include the following:

a. Structure (10 points)

Common data structure and elements. With this, we would desire to have a data base that has unified and linked data that has common structure and data elements for critical variables (including, at a minimum, demographics, drug use and clinical outcomes.)

b. Size (10 points)

1. Patient population >3 million individuals enrolled annually (10 points).
2. Patient population >2 million individuals enrolled annually (7 points).
3. Patient population >1 million individuals enrolled annually (4 points).

c. Duration (10 points)

A long calendar time-period for which patient longitudinal data are available and linked.

- No points to data bases with less than 2 years of drug exposure and outcome data.
- 2 points for 2 years of drug exposure and outcome data.
- 2 points for each year greater than 2 years of drug exposure and outcome data.
- 10 points (maximum) for 6 years or more of drug exposure and outcome data.

d. General Data Base Features (15 points)

1. Ability to assemble and follow (retrospectively and prospectively) well-defined cohorts based on exposure or clinical diagnosis for the purpose of performing case-control or cohort studies.
2. Ability to access and to link to the patient, all health provider encounters and drug exposure information regardless of patient care setting.
3. Ability to detect rare (<1:1,000) adverse drug events in one or more specific target populations of interest (i.e., children, pregnant women, and the elderly).
4. Ability to detect and study, with sufficient power, birth defect and cancer outcomes related to drug exposure.
5. Ability to study all drug products, especially new molecular entities (NME's) approved by FDA since 1993.
6. Ability to ascertain patient enrollment and turnover rates as demonstrated by descriptions of the entry and dropout rates and the average length of enrollment.
7. A standard set of drug and disease classification systems.
8. Ability to successfully retrieve a high proportion of medical records (sufficient to address the issue presented) in a timely fashion. Documentation of a large proportion of medical records retrieved in a specified time period should be included.
9. Ability to link to cancer registry and to state vital statistics.
10. Ability to identify risk factors for drug-associated outcomes and assess potential confounders.
11. Ability to assess drug interactions.
12. A short lag time (<6 months) between patient events (hospitalization, etc.) and availability of clean data.
13. A listing of the data base's top 50 drug substances of exposure to include the drug and number of exposures at the time of the panel review.

Special Populations Data Base, Longitudinal

The size and characteristics of the data base should include the following:

a. Size (15 points)

Special population data bases shall demonstrate that their data base is representative of their special population as a whole. These special data bases can be awarded full points if sufficient evidence is submitted that demonstrates that their special population is adequately represented.

b. General Data Base Features (30 points)

1. Ability to assemble and follow (retrospectively and prospectively) well defined cohorts based on drug exposure or clinical diagnosis for the purpose of performing case-control or cohort studies.
2. Ability to access and to link to the patient, all health provider encounters and drug exposure information regardless of patient care setting.
3. Ability to study all drug products, especially NME's approved by FDA since 1993.
4. Ability to detect and study, with sufficient power, birth defect and cancer outcomes related to drug exposure (if applicable).
5. Ability to ascertain patient enrollment and turnover rates as demonstrated by descriptions of the entry and dropout rates and the average length of enrollment.
6. A standard set of drug and disease classification systems.
7. Ability to successfully retrieve a high proportion of medical records (sufficient to address the issue presented) in a timely fashion. Documentation of a large proportion of medical records retrieved in a specified time period should be included.
8. Ability to link to state vital statistics.
9. Ability to identify risk factors for drug-associated outcomes and assess potential confounders.
10. Ability to assess drug interactions.
11. A long calendar time period for which data are available and longitudinally linkable. *No points will be awarded to data bases with less than 2 years of history.*
12. A short lag time (<6 months) between patient events (hospitalization, etc.) and availability of clean data.
13. A listing of the data base's top 50 drug substances of exposure to include the drug and number of exposures at the time of the panel review.

Special Populations Data Base, Case-Control

The size and characteristics of the case controlled data base should include the following:

a. Size (15 points)

Investigators should be able to provide information on at least 500 cases of a specific disease or disorder and exposure primarily to new molecular entities.

b. Controls (15 points)

Evidence of past experience performing case-control studies, estimating sample size, exposure rates and proper use of controls as evidenced in literature and abstracts.

c. General Data Base Features (15 points)

1. Ability to provide information on a variety of diseases or disorders and drug exposures.
2. Ability to assemble and follow cases and controls based on drug exposure and clinical diagnosis.
3. Ability to access and to link to the cases, all health provider encounters and drug exposure information regardless of patient care setting.
4. Ability to study drug-induced risks in one or more specific target populations of interest (i.e., children, pregnant women, and the elderly).

5. Ability to study all drug products, especially NME's approved by FDA since 1993.

6. Ability to attain complete and unbiased ascertainment of cases and controls.

7. A standard set of drug and disease classification systems.

8. Ability to successfully retrieve a high proportion of medical records (sufficient to address the issue presented) in a timely fashion. Documentation of a large proportion of medical records retrieved in a specified time period should be included.

9. Ability to identify risk factors for drug-associated outcomes and assess potential confounders.

10. Ability to assess drug interactions.

11. A listing of the data base's top 50 drug substances of exposure to include the drug and number of exposures at the time of the panel review.

The Remaining Criteria Apply to General, Longitudinal; Special Populations, Longitudinal; and Special Populations, Case-Controlled Data Bases:

2. Identification of NME's (15 points)

NME's in a data base (as identified in the following list) with:

- at least 6,000 exposures will be awarded 3 points for each NME;
- at least 4,000 exposures will be awarded 2 points for each NME;
- at least 2,000 exposures will be awarded 1 point for each NME.

Applicant's may choose five NME's from the following list for evaluation and scoring by the panel.

NME's eligible for scoring with the previously described criteria are shown below in Table 2:

TABLE 2.—NEW MOLECULAR ENTITIES

Brand names	Approval year
Cedax	1995
Claritin	1994
Cognex	1993
Cozaar	1995
Effexor	1993
Felbatol	1993
Fosamax	1995
Glucophage	1994
Lamictal	1994
Lovenox	1993
Neurotin	1993
Propulsid	1993
Risperdal	1993
Serevent	1994
Ultram	1995

3. Information Systems and Software Capabilities (10 points)

Information systems and software capabilities should include the following (2 points each):

a. A well-defined and acceptable description of computer resources and the extent of automation and software capabilities.

b. Availability of computerized data elements (inpatient drugs, diagnostic procedures and diagnosis; outpatient drugs, diagnostic procedures and diagnosis; medical records) or progress toward automation of those data elements not yet available.

c. Existing software to calculate person-time at risk and time of event occurrence.

d. Ability to complete routine searches of the data base within a short time period of about 15 working days.

e. Ability to generate customized statistical, ASCII or other appropriate data sets to facilitate data transfer and research collaboration.

4. Personnel (20 points)

Personnel should have the following qualifications:

a. Scientific (10 points)—Extensive research experience, training and competence of all personnel. Special consideration will be given to teams with knowledge and previous experience in drug epidemiology. Applicants with strong acute and chronic disease epidemiology backgrounds and a demonstrated ability to draw on consultative expertise (particularly in the areas of postmarketing surveillance and epidemiology) are encouraged to apply. (If consultants are used, letters of intent or other contractual agreements, with beginning and end dates, shall be included in the application to fulfill this requirement.) Demonstrated ability to initiate, conduct, complete and publish epidemiology studies in a timely manner.

b. Support (10 points)—Project management and information systems expertise with previous experience in the organization and manipulation of large data sets and specific experience in data bases under agreement.

5. Data Sharing (5 points)

To provide study data sets (free of patient identifiers and in a format usable to the agency) with members of FDA for analysis and with other cooperative agreement holders in studies that would require data pooling.

6. Budget (5 points)

Reasonableness of the proposed budget. Special consideration will be given to methodology which is cost effective (e.g., well-structured medical records and/or records linkage) if otherwise scientifically acceptable.

VII. Submission Requirements

The original and five copies of the completed Grant Application Form PHS 398 (rev. 5/95) or the original and two copies of Form 5161 (Rev. 7/92) or Form PHS 398 for applications from State and local governments, with sufficient copies of the appendix for each application should be delivered to Robert L. Robins (address above). No supplemental material will be accepted after the closing date. The outside of the mailing package should be labeled "Response to RFA–FDA–CDER–99–1".

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before August 3, 1998.

Applications will be considered received on time if sent or mailed on or before the receipt dates as evidenced by the legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

B. Format of Application

Applications must be submitted on Grant Application Form PHS 398 (Rev. 5/95). All "General Instructions" and "Specific Instructions" in the application kit should be followed with the exception of the receipt dates and the mailing label addresses. Do not send applications to the Center for Scientific Review, NIH. This information collection is approved under OMB control number 00925–0001. Applications from State and local governments may be submitted on Form PHS 5161 (Rev.7/92) or PHS 398 (Rev.5/95). The face page of the application must reflect the request for applications number RFA–FDA–CDER–99–1. This information collection is approved under OMB control number 0937–0189.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of the application that have been specifically identified by page number, paragraph, etc., by the applicant as containing confidential commercial information or other information that is exempt from public disclosure will not be used or disclosed except for evaluation purposes.

Dated: June 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16293 Filed 6–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0192]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Establishment and Product License Applications" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 8, 1998 (63 FR 17183), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0124. The approval expires on June 30, 1998.

Dated: June 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16292 Filed 6–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0529]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "National Tobacco Retailer Tracking Study," has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Tuesday, December 30, 1997 (62 FR 67876), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0369. The approval expires on May 31, 2001.

Dated: June 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16340 Filed 6–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0401]

Draft "Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product"; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product." The draft guidance document would provide guidance to applicants on the content and format of the Chemistry, Manufacturing and Controls (CMC) and Establishment Description sections of the "Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use"

(revised Form FDA 356h) for vaccines or related products. This action is part of FDA's continuing effort to achieve the objectives of the President's "Reinventing Government" initiatives and the FDA Modernization Act of 1997, and is intended to reduce unnecessary burdens for industry without diminishing public health protection.

DATES: Written comments may be submitted at any time, however, comments should be submitted by August 18, 1998, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled "Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product." This draft guidance document, when finalized, is intended to provide guidance to applicants in completing the CMC section and the establishment description information of revised Form FDA 356h. As announced in the **Federal Register** of July 8, 1997 (62 FR 36558), this form will be used as a single harmonized application form for all drug and licensed biological products. Use of the new harmonized Form FDA 356h, when fully implemented, will allow a biologic product manufacturer to submit one biologics license application instead of two separate applications (product license application and establishment license application).

This draft guidance document represents FDA's current thinking on the content and format of the CMC and Establishment Description sections of a license application for a vaccine or related product. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this draft guidance document to be all-inclusive and cautions that not all information may be applicable to all situations. The draft guidance document is intended to provide information and does not set forth requirements.

II. Request for Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding the draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by August 18, 1998, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document by using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: June 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16291 Filed 6–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–24]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* July 20, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will

be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 12, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Manufactured Home Construction and Safety Standards.

Office: Housing.

OMB Approval Number: 2502–0253.

Description of the Need for the Information and Its Proposed Use: The National Manufactured Housing Construction and Safety Standards Act authorized HUD to establish construction and safety standards for manufactured (mobile) homes and to enforce these standards. The standards require pertinent information in the form of labels and notices to be placed in each manufactured home. HUD needs this information to make sure manufacturers are complying with the standards.

Form number: None.

Respondents: State, Local or Tribal Governments, and businesses or other for-profit.

Frequency of submission: Monthly and recordkeeping.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
SAA Reports	432		1		.64		276
IPIA Reports	1,056		1		.60		633
Manufacturer Records	360,000		1		.16		57,600
Consumer Information Cards	360,000		1		.48		172,800
State Plans	12		40		1.00		480
Consumer Manuals	360,000		1		.08		28,800
Labels and Notices	360,000		1		.22		79,200

Total Estimated Burden Hours: 339,789.

Status: Reinstatement with changes.

Contacts: Stuart Margulies, HUD, (202) 708–6409; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 12, 1998.

[FR Doc. 98–16329 Filed 6–18–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–25]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* July 20, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 12, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Lead-Based Paint Hazard Control Grant Program Data Collection for Rounds Two and Three Grantees.

Office: Lead Hazard Control.

OMB Approval Number: 2539–0008.

Description of the Need for the Information and its Proposed Use: This data collection is designed to provide timely information to HUN regarding the implementation progress of the grantees on carrying out the Lead-Based Paint Hazard Control Grant Program. The information collection will also be used to provide Congress with status reports as required by Title X of the Housing and Community Development Act of 1992.

Form Number: 96005.

Respondents: State, Local, or Tribal Government.

Frequency of Submission: Quarterly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Data collection	51		4		45		9,075

Total Estimated Burden Hours: 9,075.
Status: Extension.
Contact: Matt Ammon, HUD, (202) 755–1785; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 12, 1998.

[FR Doc. 98–16330 Filed 6–18–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–15]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired: (202) 708–2565 (these telephone numbers are not toll-free,) or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll-free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Army: Mr. Jeff Holste, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22315; (703) 428–6318; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; Navy: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342 (these are not toll-free numbers).

Dated: June 11, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 6/19/98

Suitable/Available Properties

Buildings (by State)

Washington

149 Duplexes
Navy Transient Family Accom. Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 002–148, 150, 152–153, 157
Landholding Agency: Navy
Property Number: 779820118
Status: Excess
Comment: 1286 sq. ft./1580 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

9 Fourplexes
Navy Transient Family Accom. Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 151, 155–156, 158–163
Landholding Agency: Navy
Property Number: 779820119
Status: Excess
Comment: 3082 sq. ft./3192 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

2 Sixplexes
Navy Transient Family Accom. Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 154, 189
Landholding Agency: Navy

Property Number: 779820120
Status: Excess
Comment: 4618 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

1 Single Unit
Navy Transient Family Accom. Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structure 149
Landholding Agency: Navy
Property Number: 779820121
Status: Excess
Comment: 790 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

Storage Building
Navy Transient Family Accom. Eastpark
90 Magnuson Way
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 779820122
Status: Excess
Comment: 2160 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Admin. Building, Structure 001
Navy Transient Family Accom. Eastpark
90 Magnuson Way
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 779820123
Status: Excess
Comment: 9550 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Wisconsin

Natl Weather Svc Forecast Ofc.
3009 W. Fairview Rd.
Neenah Co: Winnebago WI 54956–
Landholding Agency: GSA
Property Number: 549820004
Status: Excess
Comment: 1755 sq. ft., good condition, presence of asbestos/lead paint, most recent use—office
GSA Number: 1–C–WI–594

Unsuitable Properties

Buildings (by State)

California

214 Enlisted Barracks
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820192
Status: Unutilized
Reason: Secured Area; Extensive deterioration

47 Dining Rooms
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820193
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Open Dining
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820194
Status: Unutilized
Reason: Secured Area; Extensive deterioration

43 HQ Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820195
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Maint. Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820196
Status: Unutilized
Reason: Secured Area; Extensive deterioration

1 Theater w/Stage
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820197
Status: Unutilized
Reason: Secured Area; Extensive deterioration

1 Dental Clinic
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820198
Status: Unutilized
Reason: Secured Area; Extensive deterioration

3 Day Rooms
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820199
Status: Unutilized
Reason: Secured Area; Extensive deterioration

27 Recreation Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820200
Status: Unutilized
Reason: Secured Area; Extensive deterioration

15 B.N. HQ Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820201
Status: Unutilized
Reason: Secured Area; Extensive deterioration

6 RG HQ Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820202
Status: Unutilized
Reason: Secured Area; Extensive deterioration

6 Officer Dining Rooms
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820203
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Post HQ Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820204
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Div. HQ Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820205
Status: Unutilized
Reason: Secured Area; Extensive deterioration

1 Admin. Bldg.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820206
Status: Unutilized
Reason: Secured Area; Extensive deterioration

4 Gen. Purp. Admin. Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820207
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Gen. Storage
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820208
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Gen. Storehouse
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820209
Status: Unutilized
Reason: Secured Area; Extensive deterioration

4 Gen. Purp. Warehouse
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820210
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Tele. Exchange Bldg.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820211
Status: Unutilized
Reason: Secured Area; Extensive deterioration

5 Unit Chapels
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820212
Status: Unutilized
Reason: Secured Area; Extensive deterioration

9 Gen. Inst. Bldgs.
Camp Roberts

Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820213
Status: Unutilized
Reason: Secured Area; Extensive deterioration

11 TLR PK Svc Bldgs.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820214
Status: Unutilized
Reason: Secured Area; Extensive deterioration

4 Target Stor. Bldgs.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820215
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Exch. Branch Bldgs.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820216
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Clorinator Bldg.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820217
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Veh. Maint. Sh. Org.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820218
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Veh. Storage Bldgs.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820219
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 QM Repair Shops
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820220
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Det Latrine Bldgs.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820221
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Scale House
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820222
Status: Unutilized
Reason: Secured Area; Extensive deterioration

5 Flam. Mt. Stor. Bldgs.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820223
Status: Unutilized
Reason: Secured Area; Extensive deterioration

FE Storage Bldg.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820224
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Insect. Storage Fac.
Camp Roberts
Camp Roberts, CA 93446–
Landholding Agency: Army
Property Number: 219820225
Status: Unutilized
Reason: Secured Area; Extensive deterioration

3 Lum & P Shed FE
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820226
Status: Unutilized
Reason: Secured Area; Extensive deterioration

LP Gas Str/Trans Fac.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820227
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 DFE Admin. Shops
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820228
Status: Unutilized
Reason: Secured Area; Extensive deterioration

3 FE Facility
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820229
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Green House
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820230
Status: Unutilized
Reason: Secured Area; Extensive deterioration

WPlat Org LP
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820231
Status: Unutilized
Reason: Secured Area; Extensive deterioration

2 Exch Branch Bldgs.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820232
Status: Unutilized
Reason: Secured Area; Extensive deterioration

1 Commercial Facility
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820233
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Oil Storage Bldg.
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820234
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Veh. Wash Cov
Camp Roberts
Camp Roberts CA 93446–
Landholding Agency: Army
Property Number: 219820235
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Florida

Bldg. 139
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820098
Status: Unutilized
Reason: Secured Area;

Bldg. 221
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820099
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 226
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820100
Status: Unutilized
Reason: Secured Area;

Bldg. 654
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820101
Status: Unutilized
Reason: Secured Area;

Bldg. 701
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820102
Status: Unutilized
Reason: Secured Area;

Bldg. 1805
Naval Air Station
Pensacola Co: Escambia FL 32508–

Landholding Agency: Navy
Property Number: 779820103
Status: Unutilized
Reason: Secured Area

Bldg. 1806
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820104
Status: Unutilized
Reason: Secured Area

Bldg. 1971
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820105
Status: Unutilized
Reason: Secured Area

Bldg. 1994
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820106
Status: Unutilized
Reason: Secured Area

Bldg. 2657
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820107
Status: Unutilized
Reason: Secured Area

Bldg. 3213
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820108
Status: Unutilized
Reason: Secured Area

Bldg. 3443
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 779820109
Status: Unutilized
Reason: Secured Area

Mississippi

Bldg. 170
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 779820110
Status: Unutilized
Reason: Secured Area

New York

Bldg. P–1
Glen Falls Reserve Center
Glen Falls Co: Warren NY 12801–
Location: 67–73 Warren Street
Landholding Agency: GSA
Property Number: 219540015
Status: Excess
Reason: Extensive deterioration
GSA Number: 1–D–NY–865

North Carolina

Bldg. 96
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779820111
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 97
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779820112
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 169
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779820113
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 196
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779820114
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 477
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779820115
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area; Extensive deterioration

Bldg. 3422
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779820116
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Land (by State)

Maine

Land—Triangular Area;
NAS Brunswick, Wildwood Subd. Encroachment
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779820117
Status: Excess
Reason: Other
Comment: landlocked

[FR Doc. 98–16065 Filed 6–18–98; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Environmental Assessment for Determining the Future Role of Leadville National Fish Hatchery, Leadville, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Draft Environmental Assessment for determining the future role of the Leadville National Fish Hatchery, a whirling disease and bacterial kidney disease positive facility.

SUMMARY: The U.S. Fish and Wildlife Service, Mountain-Prairie Region, has developed a draft environmental assessment on the future operation of the Leadville National Fish Hatchery in light of the discovery of whirling disease at the Hatchery in May, 1995. This notice advises the public that the Service proposes to continue fish production at the Leadville Hatchery and line all earthen rearing units in order to reduce tubifex worm populations which host whirling disease, and therefore control (reduce) whirling disease infection levels at the Hatchery. Lining earthen rearing units will also help prevent bacterial kidney disease epidemics.

This draft environmental assessment has been developed by Service biologists in coordination with the Colorado Division of Wildlife, private conservation organizations, and the general public. The assessment considers the biological, environmental, and socioeconomic effects of operating the Hatchery, stocking whirling disease-positive trout in Colorado, and lining earthen rearing units. The assessment evaluates nine alternative actions and potential impacts of those alternatives on the environment. Written comments or recommendations concerning the proposal are welcomed, and should be sent to the address below.

DATES: The draft assessment will be available to the public for review and comment on June 15, 1998. Written comments must be received no later than July 20, 1998, to be considered in developing a final environmental assessment.

ADDRESSES: Comments and requests for copies of the assessment should be addressed to Mr. John Hamill, Associate Manager (Colorado), U.S. Fish and Wildlife Service, Denver Federal Center, P.O. Box 25486, Denver, Colorado 80225.

SUPPLEMENTARY INFORMATION: The Leadville Hatchery currently produces 39,000 pounds of fish annually for Fryingpan-Arkansas Project waters mitigation per a Memorandum of Agreement with the Bureau of Reclamation: 13,000 pounds for the Grand Valley as per an agreement with Colorado Division of Wildlife to mitigate lost recreational fishing opportunities due to recovery activities on the Colorado River authorized under the Endangered Species Act; 30,000 pounds (cost reimbursable) for Military waters in Colorado Springs and Denver as per an agreement with the

Department of Defense authorized by the Sikes Act; and 3,000 pounds for the Hatchery public fishing ponds.

Whirling disease was first detected in Colorado in 1987 and has since been detected in 13 major river basins, 16 State fish hatcheries, and the Leadville Hatchery. Reports that whirling disease was responsible for decreases in wild rainbow trout recruitment in the upper Colorado River in Colorado during 1994 and 1995, and population declines of wild rainbow trout in the upper Madison River, Montana beginning in 1991 caused significant concern over the disease's effects on wild trout populations in Colorado. Colorado Division of Wildlife has responded to this concern by adopting new policies and regulations in January 1997 which severely restrict the stocking locations of fish produced at hatcheries were whirling disease has been detected.

Nine alternatives for the disposition of the Leadville Hatchery were formulated utilizing input from the public, environmental organizations, and resource agencies. Each alternative was evaluated for consistency with Service priorities, compliance with Service operational and fish health policies, compliance with Colorado Division of Wildlife regulations, preservation of the historical value of the Hatchery, potential for spreading whirling disease and other fish diseases to native fish and wild fish in Colorado, and cost effectiveness. Alternative 1 (current program, no action) was used as a baseline for evaluation of the environmental impacts of the other alternatives.

The Service designated Alternative 2a as the preferred alternative. This is strictly a preliminary decision which will be reevaluated after comments from the public are received. Alternative 2a was chosen as the most feasible means of fulfilling fish stocking obligations while taking progressive action towards controlling whirling disease infection levels. Disease monitoring indicates that the earthen lakes and ponds used for fish production are the most significant sources of disease on the Hatchery. Lining these rearing units would vastly reduce tubifex worm populations at the Hatchery which host the disease. Alternative 2b (installing hatchery influent ozonation facility) will be considered in the future if funding can be attained.

Although construction costs are lower for Alternatives 3a and 3b, these alternatives would necessitate termination of production for Fryingpan-Arkansas Project waters. These alternatives are not as cost effective in the long run due to a significant decrease in fish production and increase in cost per pound of fish produced.

Alternatives 4, 5a, and 5b emphasize production of native cutthroat trout utilizing spring water in the Hatchery building. Under current Service policies and Colorado Division of Wildlife regulations, such trout can only be certified as whirling disease-negative if all fish production utilizing open water supplies is terminated. Therefore, Alternative 4 (maintaining production using open water supplies) cannot be achieved under current Service policies and Colorado Division of Wildlife regulations. Alternatives 5a and 5b (ceasing all production using open water supplies) are not cost effective since only 500 to 3,000 pounds of trout could be achieved in producing whirling disease negative fingerlings due to the proximity of whirling disease to the Hatchery building. It would be more practical to use currently whirling disease-negative hatchery facilities to produce disease-free native cutthroat trout for restoration purposes.

Alternative 6 (closing the Hatchery and transferring ownership) was not chosen due to opposition from the general public, and because the Service desires to continue to honor the obligations for fish production currently being fulfilled by the Leadville Hatchery. Since the Leadville Hatchery stocks waters where there is no trout reproduction, where whirling disease already exists, and at considerable distances from uncontaminated waters, the Service believes that the most feasible means of fulfilling these obligations is by continuing to produce the fish at the Leadville Hatchery.

Author: The primary author of this notice is Mr. John Hamill (See **ADDRESSES** section) (telephone 303/236–8155, extension 252).

Authority: The authority for this action is the National Environmental Policy Act of 1969, as amended (P.L. 91–190, 42 U.S.C. *et seq.*).

Dated: June 12, 1998.

Ralph O. Morgenweck,

Regional Director, Region 6, Fish and Wildlife Service.

[FR Doc. 98–16332 Filed 6–18–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare Comprehensive Conservation Plans for 8 National Wildlife Refuges in the Southwest Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a comprehensive conservation plan (CCP) and other environmental documents for certain National Wildlife Refuges listed in the **SUPPLEMENTAL INFORMATION** section pursuant to the National Environmental Policy Act and its implementing regulations.

DATES: The Service will be open to written comments through October 30, 1998.

ADDRESSES: Address comments and requests for more information to: Mr. Lou Bridges, Project Coordinator, Research Management Consultants, Inc., 1746 Cole Blvd., Bldg. 21, Suite 300, Golden, CO 80401

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Public input into this planning process is essential. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service intends to gather information necessary to prepare a CCP and other environmental documents for Las Vegas National Wildlife Refuge, Las Vegas, New Mexico; Maxwell National Wildlife Refuge, Maxwell, New Mexico; Muleshoe and Grulla National Wildlife Refuges, Muleshoe, Texas; Buffalo Lake National Wildlife Refuge, Umbarger, Texas; Salt Plains National Wildlife Refuge, Jet, Oklahoma; and Sequoyah and Ozark Plateau National Wildlife Refuges, Vian, Oklahoma. The Service is furnishing this notice in compliance with Service CCP policy: (1) to advise other agencies and the public of our intentions, and (2) to obtain suggestions

and information on the scope of issues to include in the environmental documents.

Additional opportunities for written comments will be provided during the draft review process. If necessary, the Service will solicit information from the public via open houses, meetings, and workshops. Special mailings, newspaper articles, and announcements will inform people in the general area near each refuge of the current status of the project as well as the time and place of any meetings to be conducted.

Review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improvement Act of 1997, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

The Service anticipates that draft CCP documents and any associated NEPA documents will be available by June, 1999.

Dated: June 12, 1998.

Geoffrey L. Haskett,

Acting Regional Director.

[FR Doc. 98–16326 Filed 6–18–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW126102]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

June 10, 1998.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW126102 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.000 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW126102 effective February 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Mavis Love,

Acting Chief, Leasable Minerals Section.

[FR Doc. 98–16305 Filed 6–18–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–08–1430–01; CACA–39215, CACA–39714]

El Dorado and Amador Counties, California: Realty Action, CACA–39215 and CACA–39714

AGENCY: Bureau of Land Management.

ACTION: Notice of Realty Action—Leasing of Public Lands; El Dorado and Amador Counties, California.

SUMMARY: The following public lands in El Dorado County, California will be leased under the provisions of Section 302 of the Federal Land Policy and Management Act of 1976 and 43 CFR Part 2920. The lands will be leased for seasonal commercial use, including RV storage, primitive tent camping, a volleyball court, and RV camp sites (partial), to Ponderosa Park Campground.

Mount Diablo Meridian, California

T. 11 N., R. 10 E.,
Sec. 18, portion of NWNENW.
Containing 5.0 acres, more or less.

In addition, the following described public lands in Amador County, California, will be leased under the provisions of Section 302 of the Federal Land Policy and Management Act of 1976 and 43 CFR Part 2920. The lands will be leased to Mr. Elton Rodman, of the Roaring Camp Mining Company, for seasonal recreation use associated with the Roaring Camp Mining Resort, including picnic facilities, vehicle parking, equipment storage, and a small assay office.

Mount Diablo Meridian, California

T. 6 N., R. 12 E.,
Sec. 13, that portion of lot 5 lying west of the North Fork of the Mokelumne River.
Containing 5.0 acres more or less.

This action will resolve two inadvertent trespasses. The leases will be issued for 10 years, with the right to renew.

DATES: For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease to the address under the **ADDRESSES** caption of this notice. Any adverse comments will be evaluated by the Field Manager who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Field Manager, this Realty Action will become the final determination of the Bureau.

ADDRESSES: For further information or to submit comments regarding the proposed leases contact Karen Montgomery, Realty Specialist, or John Beck, Realty Specialist, Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630, (916) 985–4474.

D.K. Swickard,

Field Manager.

[FR Doc. 98–16364 Filed 6–18–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 26 N., R. 71 W., accepted June 10, 1998
T. 23 N., R. 116 W., accepted June 10, 1998
T. 24 N., R. 116 W., accepted June 10, 1998

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s)

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from

the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: June 10, 1998.

Jerry L. Messick,

Acting Chief, Cadastral Survey Group.

[FR Doc. 98–16315 Filed 6–18–98; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Supplement to the Final Environmental Impact Statement/ Resources Management Plan for Improvement of Water Quality and Conservation of Rare Species and Their Habitats on Santa Rosa Island, Channel Islands National Park; Availability

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service, Department of the Interior, has prepared an abbreviated Final Supplement to the Final Environmental Impact Statement/ Resources Management Plan for improving water quality and conserving rare species and their habitats on Santa Rosa Island. Upon completion of the current conservation planning and impact analysis process, a new Record of Decision will be prepared which will supersede the previous decision concerning this stewardship initiative.

BACKGROUND: In August, 1995, the National Park Service (NPS) began developing a resources management plan for Santa Rosa Island to address impacts from ongoing commercial ranching and hunting on water quality, riparian values, and rare plant species and their habitats. In May, 1996 the NPS completed and distributed a draft environmental impact statement (Draft) for this plan; during a 125-day public review period, the NPS received over 240 comments. The Draft was subsequently revised, and a final environmental impact statement (Final) for the resources management plan was released in April, 1997. In a Record of Decision signed June 9, 1997, the NPS indicated the intent to implement the Proposed Action, *Alternative D,* Revised Conservation Strategy. Subsequently negotiations for revising the alternative ensued among Vail & Vickers, the National Park and Conservation Foundation, and the NPS. As a result, a draft supplement to the Final was prepared which identified a new alternative, *Alternative F,* Negotiated Settlement. Members of the public and interested agencies and organizations were afforded an opportunity to comment during a 60-day public review period from February 17 to April 17, 1998. Although many elements of the negotiated *Alternative F* were similar to the previously selected *Alternative D,* there were some differences.

New Proposed Action: Under *Alternative F,* Negotiated Settlement, water quality and riparian values would be improved and rare plants and their habitats would be conserved by rapid removal of cattle and phased removal of deer and elk. With the exception of 12 head in Lobo Pasture, all cattle would be removed by the end of 1998. Deer and elk would be removed by the end of 2011, although they could be removed earlier if necessary to achieve recovery goals for selected listed species and their habitats. After an initial reduction in deer and elk, an adaptive management program for deer and elk would be implemented. Under adaptive management, deer and elk would be managed at levels allowing rare species and their habitats to recover. Provided recovery goals were met, Vail & Vickers would be permitted to conduct commercial deer and elk hunting activities. After the adaptive management period, deer and elk populations could be eliminated during a final phaseout period. If for some reason an acceptable adaptive management program cannot be developed, deer and elk populations will be reduced at a pre-determined rate. Also, the NPS would implement road management actions to reduce impacts to island streams, and would develop a comprehensive alien plant management plan to address problems caused by alien species. The NPS would develop monitoring programs for rare species, water quality, and riparian recovery. Visitor access to Santa Rosa Island would be increased beyond current levels.

Other Alternatives: Other alternatives subject to the supplemental conservation planning and impact analysis process were the same as identified and described in the Final. In addition to the above, these include: *Alternative A,* No Action; *Alternative B,* Minimal Action; *Alternative C,* Targeted Management Action; and *Alternative E,* Immediate Removal of Ungulates.

SUPPLEMENTARY INFORMATION: The final supplement contains responses to seven (7) respondents to the draft supplement (eight comments were received). It also contains changes and clarifications which are minor and few in number; information and analysis otherwise remains essentially unchanged. As an abbreviated document, it must be combined with the draft supplement and original Draft and Final EIS to comprise a complete record. The no-action period for the final supplement will extend for 30-days from EPA's notice of the filing of the document in the **Federal Register**. Requests for information or copies of the document should be directed to the Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, CA 93001, or by telephone at (805) 658–5776. Copies will also be available at area libraries.

Dated: May 21, 1998.

Martha K. Leicester,

Acting Regional Director, Pacific West.

[FR Doc. 98–16375 Filed 6–18–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Universal Hiring Program Application; Reinstatement, without change, of a previously approval collection for which approval has expired.

The Department of Justice, Office of Community Oriented Policing Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted until August 18, 1998.

Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Universal Hiring Grant Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form: None. Office of Community Oriented Services, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State and Local governments, Tribal governments.

Other: None.

This application will be used by state and local jurisdictions to apply for federal funding which will be used to increase the number of law enforcement positions in their law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3200 respondents; 5.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,600 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: June 15, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–16295 Filed 6–18–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[A.G. Order No. 2166–98]

RIN 1105–AA56

Proposed Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended

AGENCY: Department of Justice.

ACTION: Proposed guidelines.

SUMMARY: The United States Department of Justice is publishing Proposed Guidelines to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as amended by Megan's Law, the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, and section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998.

DATES: Comments must be received by August 18, 1998.

ADDRESSES: Comments may be mailed to Bonnie J. Campbell, Director, Violence Against Women Office, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, 202–616–8894.

SUPPLEMENTARY INFORMATION: The Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104–236, 110 Stat. 3093 (the "Pam Lychner Act"), and section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105–119, 111 Stat. 2440, 2461 (the "CJSA"), amended section 17101 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071), which contains the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (the "Wetterling Act" or "the Act"). These legislative changes require conforming changes in the Final Guidelines for the Jacob Wetterling Act and Megan's Law (Pub. L. No. 104–145, 110 Stat. 1345) that were published by the Department of Justice on July 21, 1997, in the **Federal Register** (62 FR 39009).

The Wetterling Act generally sets out minimum standards for state sex offender registration programs. States that fail to comply with these standards within the applicable time frame will be subject to a mandatory 10% reduction of formula grant funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (42 U.S.C. 3756), which is administered by the Bureau of Justice Assistance of the Department of Justice. Any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. Information concerning compliance review procedures and requirements appears in part VIII of these guidelines.

The Wetterling Act's requirements for compliance may be divided into three categories, each of which carries a different compliance deadline, depending on the legislation from which it derives:

1. *Original requirements.* Many of the provisions of the current formulation of the Wetterling Act derive from the original version of the Act, which was enacted on September 13, 1994, or from the Megan's Law amendment to the Act. These include, for example, the basic requirements to register offenders for at least 10 years; to take registration information from offenders and to inform them of registration obligations when they are released; to require registrants to update address information when they move; to verify the registered address periodically; and to release registration information as necessary for public safety. The deadline for compliance with these features of the Act was September 12, 1997, based on the specification of 42 U.S.C. 14071(g) that states have three years from the Act's original enactment date (i.e., September 13, 1994) to achieve compliance. However, 42 U.S.C. 14071(g) allows a two-year extension of the deadline for states that are making good faith efforts to achieve compliance, and states that have been granted this extension have until September 12, 1999, to comply with these features of the Act.

2. *Pam Lychner Act requirements.* The Pam Lychner Act's amendments to the Wetterling Act created a limited number of new requirements for state registration programs, including a requirement that the perpetrators of particularly serious offenses and

recidivists be subject to lifetime registration. The time frame for compliance with these new requirements is specified in section 10(b) of the Pam Lychner Act—three years from the Pam Lychner Act's enactment date of October 3, 1996, subject to a possible extension of two years for states that are making good faith efforts to come into compliance. Hence, barring an extension, states will need to comply with these features of the Act by October 2, 1999.

3. *CISA requirements.* The CJSA amendments made extensive changes to the Wetterling Act, many of which afford states greater flexibility in achieving compliance. Under the effective date provisions in section 115(c) of the CJSA, states immediately have the benefit of amendments that afford them greater discretion and can rely on these amendments in determining what changes (if any) are needed in their registration programs to comply with the Act. For example, the Act as amended by CJSA affords states discretion concerning the procedures to be used in periodic verification of registrants' addresses, in contrast to the Act's original requirement that a specific verification-form procedure be used. In light of this change, effective immediately, states have discretion concerning the particular procedures that will be used in address verification.

While the CJSA's amendments to the Wetterling Act were largely in the direction of affording states greater discretion, the CJSA did add some new requirements to the Wetterling Act. For example, the CJSA added provisions to promote registration of sex offenders in states where they work or attend school (as well as states of residence) and to promote registration of federal and military sex offenders. The time frame for compliance with new requirements under CJSA amendments, as specified in section 115(c)(2) of the CJSA, is three years from the CJSA's enactment date of November 26, 1997, subject to a possible extension of two years for states that are making good faith efforts to come into compliance. Hence, barring an extension, states will need to comply with these features of the Act by November 25, 2000.

The proposed guidelines in this publication identify and discuss separately all of the requirements that states will need to meet by each of the three specified deadlines, thereby making it clear when states will need to be in compliance with each element of the Wetterling Act to maintain eligibility for full Byrne Formula Grant funding.

Proposed Guidelines

1. *General purposes and principles of interpretation.* These guidelines carry out a statutory directive to the Attorney General in subsection (a)(1) of the Wetterling Act (42 U.S.C. 14071(a)(1)) to establish guidelines for state registration programs under the Act. Before turning to the specific provisions of the Act, five general points should be noted concerning the Act's interpretation and application.

First, the general objective of the Act is to assist law enforcement and protect the public from convicted child molesters and violent sex offenders through requirements of registration and appropriate release of registration information. The Act is not intended to, and does not have the effect of, making states less free than they were under prior law to impose such requirements. Hence, the Act's standards constitute a floor for state programs, not a ceiling. States do not have to go beyond the Act's minimum requirements to maintain eligibility for full Byrne Grant funding, but they retain the discretion to do so, and state programs do often contain elements that are not required under the Act's standards. For example, a state may have a registration system that covers broader classes of offenders than those identified in the Act, requires address verification for registered offenders at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period of time than the period specified in the Act. Exercising these options creates no problem of compliance because the Act's provisions concerning duration of registration, covered offenders, and other matters do not limit state discretion to impose more extensive or stringent requirements that encompass the Act's baseline requirements.

Second, to comply with the Wetterling Act, states do not have to revise their registration systems to use technical definitions of covered sex offenses based on federal law. Rather, subject to certain constraints, they may use their own criminal law definitions and categories in defining registration requirements. This point is explained more fully below.

Third, the Act's definitions of covered offense categories are tailored to its general purpose of protecting the public from persons who molest or sexually exploit children and from other sexually violent offenders. Hence, these definitions do not include all offenses that involve a sexual element. For example, offenses consisting of consensual acts between adults are not among the offenses for which registration is required under the Act, and requiring registration for persons convicted of such offenses would not further the Act's objectives.

Fourth, the Wetterling Act contemplates the establishment of programs that will prescribe registration and notification requirements for offenders who are subsequently convicted of offenses in the pertinent categories. The Act does not require states to attempt to identify and to prescribe such requirements for offenders who are convicted prior to the establishment of a conforming program. Nevertheless, the Act does not preclude states from prescribing registration and notification requirements for offenders convicted prior to the establishment of the program.

Fifth, the Act sets minimum standards for state registration and notification programs but does not require that its standards be implemented by statute. In assessing compliance with the Act, the totality of a state's rules governing the operation of its registration and notification program will be considered, including administrative policies and procedures as well as statutes.

2. *Related litigation.* Some state registration and notification systems have been challenged on constitutional grounds. The majority of courts, and all federal appeals courts, that have dealt with the issue thus far have held that systems like those contemplated by the Wetterling Act do not violate released offenders' constitutional rights. *See, e.g., Roe* v. *Office of Adult Probation,* 125 F.3d 47 (2d Cir. 1997) (Connecticut probation office notification policy); *Russell* v. *Gregoire,* 124 F.3d 1079 (9th Cir. 1997) (Washington state act), *cert denied,* 118 S.Ct. 1191 (1998); *Doe* v. *Pataki,* 120 F.3d 1263 (2d Cir. 1997) (New York act), *cert denied,* 118 S.Ct. 1066 (1998); *E.B.* v. *Verniero,* 119 F.3d 1077 (3d Cir. 1997) (New Jersey notification provisions), *cert. denied.* 118 S.Ct. 1039 (1998); *Artway* v. *Attorney General,* 81 F.3d Cir. 1996) (New Jersey registration provision); *Doe* v. *Kelley,* 961 F. Supp. 1105 (W.D. Mich. 1997) (Michigan notification provisions); *Doe* v. *Weld,* 954 F. Supp. 425 (D. Mass. 1996) (Massachusetts registration of juvenile offenders); *State* v. *Pickens,* 558 N.W. 2d 396 (Iowa 1997); *Arizona Dep't of Public Safety* v. *Superior Court,* 949 P.2d 983 (Ariz. App. 1997); *Opinion of the Justices to the Senate,* 423 Mass. 1201, 668 N.E. 2d 738 (Mass 1996); *Doe* v. *Poritz,* 142 N.J. 1, 662 A.2d 367 (N.J. 1995); *State* v. *Ward,* 123 Wash. 2d 488, 869 P.2d 1062 (Wash. 1994). The United States has filed "friend of the court" briefs in several of these cases, arguing that sex

offender registration and community notification do not impose punishment for purposes of the Ex Post Facto and Double Jeopardy Clause or violate privacy or liberty interests guaranteed by the federal Constitution.

In a few other cases, however, courts have found that certain applications or provisions of some state systems violate the United States Constitution or provisions of a state constitution. *See, e.g., Doe* v. *Attorney General*, 426 Mass. 136, 686 N.E. 2d 1007 (Mass. 1997) (holding that the Massachusetts act implicates liberty and property interests protected by the Massachusetts constitution, so that the act could not be applied to Doe—who had been convicted of "indecent assault" for sexually suggestive touching of an undercover police officer in an area known for consensual sexual activity between adult males—without a prior hearing to determine if he individually presented any threat to persons for whose protection the act was passed; the court did not rule out the possibility that a categorical "dangerousness" determination could be justified by certain other conviction offenses); *State* v. *Myers*, 260 Kan. 669, 923 P. 2d 1024 (Kan. 1996) (holding that due to the breadth of offenses subject to Kansas registration act and the potentially unlimited scope of notification, Kansas notification provisions violate the Ex Post Facto Clause), *cert. denied*, 117 S. Ct. 2508 (1997). The New Jersey Supreme Court in *Doe* v. *Poritz* (above) also found a state law privacy interest requiring certain procedural protections, and those procedures were further elaborated upon by the Third Circuit in *E.B.* v. *Verniero* (above).

In addition, when these guidelines were written, there were appeals pending in the Sixth Circuit, *see Cutshall* v. *Sundquist*, 980 F. Supp. 928 (M.D. Tenn. 1997) (holding that the Tennessee notification provisions implicate federal and state law privacy and employment interests, requiring procedural protections prior to notification), *appeal pending*, 6th Cir. Nos. 97–6276 & 97–6321, and in the Third Circuit, *see Paul* v. *Verniero*, 3d Cir. No. 97–5791 (from district court's rejection of constitutional privacy challenge to community notification). There was also ongoing litigation in federal district court in Minnesota and in state courts in Ohio and Pennsylvania.

3. *Summary and text of guidelines.* The following guidelines explain the interpretation and application of the Wetterling Act's standards for registration programs and related requirements. All citations in these guidelines to the Act are to the Act's current text, reflecting the Megan's Law, Pam Lychner Act, and CJSA amendments. The detailed explanation is preceded by a table that summarizes the organization of the guidelines, the major elements of the Act, and the time for compliance with each element under the enacting legislation.

Summary and Deadlines for Wetterling Act Compliance

I. Ten-Year Minimum Registration for Persons Convicted of a Criminal Offense Against a Victim Who is a Minor or a Sexually Violent Offense [Time For Compliance: September 12, 1997; Possible Two-Year Extension]

To comply with subsections (a)(1) and (b)(6)(A) of the Wetterling Act, a state registration program must require current address registration for a period of 10 years for persons convicted of "a criminal offense against a victim who is a minor" or a "sexually violent offense."

This requirement derives from the Wetterling Act as originally enacted. The time for compliance is accordingly that provided in 42 U.S.C. 14071(g)—Sept. 12, 1997, or Sept. 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance.

The interpretation and application of this requirement are as follows:

A. "States" to Which the Act Applies

For purposes of the Act, "state" refers to the political units identified in the provision defining "state" for purposes of eligibility for Byrne formula Grant funding (42 U.S.C. 3791(a)(2)). Hence, the "states" that must comply with the Act's standards for registration programs to maintain full eligibility for such funding are the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

B. Duration of Registration

Subsection (b)(6)(A) provides that the registration requirement must remain in effect for 10 years following the registrant's release from prison or placement on parole, supervised release, or probation. States may choose to establish longer registration periods, and are required to do so under the Act's standards for certain types of offenders as discussed in parts IV and V of these guidelines. Registration requirements of shorter duration than 10 years are not consistent with the Act. Hence, for example, a state program would not be in compliance with the Act if it allowed registration obligations to be waived or terminated before the end of the 10 year period on such grounds as a finding of rehabilitation or a finding that registration (or continued registration) would not serve the purposes of the state's registration provisions. However, if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned, registration (or continued registration) is not required under the Act.

Also, in light of a proviso in subsection (b)(6), a state need not require registration "during ensuing periods of incarceration." The reference to subsequent "incarceration" should be understood to include periods of civil commitment, as well as imprisonment for the commission of another criminal offense, since a state may conclude that it is superfluous to carry out address registration and verification procedures while the registrant is in either criminal

or civil confinement. To comply with the Act, a state that does waive registration during subsequent criminal or civil confinement must require that registration resume when the registrant is released, if time remains under the registration period required by the Act.

C. Coverage of Offenses

1. *"Criminal offense against a victim who is a minor"*. The Act requires registration of any person convicted of a "criminal offense against a victim who is a minor." Subsection (a)(3)(A) defines the relevant category of offenses. The general purpose of the definition is to ensure comprehensive registration for persons convicted of offenses involving sexual molestation or sexual exploitation of minors. "Minors" for purposes of the Act means a person below the age of 18.

The specific clauses in the Act's definition of "criminal offense against a victim who is a minor" are as follows:

(1)–(2) Clauses (i) and (ii) cover kidnapping of a minor (except by a parent) and false imprisonment of a minor (except by a parent). All states have statutes that define offenses—going by such names as "kidnapping," "criminal restraint," or "false imprisonment"—whose gravamen is abduction or unlawful restraint of a person. States can comply with these clauses by requiring registration for persons convicted of these statutory offenses whose victims were below the age of 18. It is a matter of state discretion under these clauses whether registration should be required for such offenses in cases where the offender is a parent of the victim.

(3) Clause (iii) covers offenses consisting of "criminal sexual conduct toward a minor." States can comply with this clause by requiring registration for persons convicted of all statutory sex offenses under state law whose elements involve physical contact with a victim—such as provisions defining crimes of "rape," "sexual assault," "sexual abuse," or "incest"—in cases where the victim was a minor at the time of the offense. Coverage is not limited to cases where the victim's age is an element of the offense (such as prosecutions for specially defined child molestation offenses). It is a matter of state discretion under this clause whether registration should be required for sex offenses that do not involve physical contact, such as exhibitionism offenses.

(4) Clause (iv) covers offenses consisting of solicitation of a minor to engage in sexual conduct. The notion of "sexual conduct" should be understood in the same sense as in clause (iii). Hence, states can comply with clause (iv) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

—A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense would be covered by clause (iii), and

—A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to engage in sexual activity involving physical contact.

(5) Clause (v) covers offenses consisting of using a minor in a sexual performance. This includes both live performances and using minors in the production of pornography.

(6) Clause (vi) covers offenses consisting of solicitation of a minor to practice prostitution. The interpretation of this clause is parallel to that of clause (iv). States can comply with clause (vi) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

—A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense is a prostitution offense, and

—A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to get a person to engage in prostitution.

(7) Clause (vii) covers offenses consisting of any conduct that by its nature is a sexual offense against a minor. This clause is intended to ensure coverage of convictions under statutes defining sex offenses in which the status of the victim as a minor is an element of an offense, such as specially defined child molestation offenses, and other offenses prohibiting sexual activity with underage persons. States can comply with this clause by including convictions under these statutes in the registration requirement. A proviso at the conclusion of the Act's definition of "criminal offense against a victim who is a minor" allows states to exclude from registration requirements persons convicted for conduct that is criminal only because of the age of the victim if the perpetrator is 18 years of age or younger. Whether registration should be required for such offenders is a matter of state discretion under the Act.

(8) Considered in isolation, clause (viii) gives states discretion whether to require registration for attempts to commit offenses described in clauses (i) through (vii). However, state discretion to exclude attempted sexual offenses against minors is limited by other provisions of the Act, since any verbal command or attempted persuasion of the victim to engage in sexual conduct would bring the offense within the scope of the solicitation clause (clause (iv)) and make it subject to the Act's mandatory registration requirements. Hence, the simplest approach for states is to include attempted sexual assaults on minors (as well as completed offenses) uniformly as predicates for the registration requirement.

2. *"Sexually violent offense"*. The Act prescribes a 10-year registration requirement for offenders convicted of a "sexually violent offense," as well as for those convicted of a "criminal offense against a victim who is a minor." Subsection (a)(3)(B) defines the term "sexually violent offense." The general purpose of the definition is to require registration of persons convicted of rape or rape-like offenses—i.e., non-consensual sexually assaultive crimes involving penetration—regardless of the age of the victim. The definition refers specifically to any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18 of the United States Code, or as described in the state criminal code), or an offense that has as its elements engaging in physical contact with another person with intent to commit such an offense.

In light of this definition, there are two ways in which a state can satisfy the requirement of registration for persons convicted of "sexually violent offenses":

First, a state can comply by requiring registration for offenders convicted for criminal conduct that would violate 18 U.S.C. 2241 or 2242—the federal "aggravated sexual abuse" and "sexual abuse" offenses—if prosecuted federally. (The part of the definition relating to physical contact with intent to commit aggravated sexual abuse or sexual abuse does not enlarge the class of covered offenses under the federal law definitions, because sections 2241 and 2242 explicitly encompass attempts as well as completed offenses.)

Second, a state can comply by requiring registration for offenders convicted of the state offenses that correspond to the federal offenses described above—i.e., the most serious sexually assaultive crime or crimes under state law, covering non-consensual sexual acts involving penetration—together with state offenses (if any) that have as their elements engaging in physical contact with another person with intent to commit such a crime.

Like the other requirements of the Act, the requirement to register persons convicted of sexually violent offenses, regardless of the age of the victim, establishes only a baseline for state registration programs. Whether registration should be required for additional offenses against adult victims is a matter of state discretion under the Act.

3. *"Comparable * * * range of offenses".* As a result of language added by the CJSA amendments, states need not comply exactly with the specific offense coverage requirements in subparagraph (A) or (B) of subsection (a)(3). Rather, a state may comply with the Act by requiring registration for persons convicted of offenses in a "range of offenses specified by State law which is comparable to or which exceeds" the range of offenses described in the Act.

This change reflects a practical recognition by Congress that exact state compliance with the Act's offense coverage specifications may be difficult because of the degree of detail in the Act's definitions and because of the variations among different jurisdictions in the terminology and categorizations used in defining sex offenses. *See* H.R. Rep. No. 256, 105th Cong., 1st Sess. 15 (1997). As a result, Congress was concerned that some states "may inadvertently find themselves out of compliance with the Wetterling Act" because the state registration provisions "are not exactly congruent" with the Act's offense categories, "even if the offenses covered by the [state] program are much broader in other respects than required by the Wetterling Act." *Id.* The language concerning coverage of a "comparable" range of offenses was added to address this concern.

States should aim to have their registration offenses fully encompass the offense categories described in the Act and will be assured of compliance with the Act's offense coverage requirements if they do so. However, in light of the CJSA amendments affording a degree of flexibility concerning offense coverage, inadvertent departures from the Act's offense category specifications will not necessarily result in a finding of non-compliance. Such departures will be allowed if, in the judgment of the reviewing authority, they do not substantially undermine the objective of comprehensive registration for persons convicted of crimes involving sexual molestation or sexual exploitation of minors, and of persons convicted of rape or rape-like crimes against victims of any age.

In addition, in assessing compliance, the reviewing authority may consider whether a state program imposes registration requirements which are broader in other respects than the offense coverage specifications of the Act. For example, consistently requiring registration for persons convicted of attempted offenses, and of sexual assaults against adult victims other than rape-like offenses, goes beyond the Act's mandatory standards. Such additional coverage may be considered by the reviewing authority in deciding whether the overall offense coverage under a state program "is comparable to or * * * exceeds" the Act's offense coverage specifications.

D. Coverage of Offenders

1. *Resident offenders convicted in other states.* In addition to the Act's requirement that states register their own offenders in the pertinent categories, subsection (b)(7) of the Act requires states, as provided in these guidelines, to include in their registration programs residents who were convicted in other states.

To comply with this requirement, states must apply the Act's standards to residents who were convicted in other states of a criminal offense against a victim who is a minor or a sexually violent offense as defined in the Act). Specifically, states must require such persons to promptly provide current address information to the appropriate authorities when they establish residence in the state, and thereafter must apply to such persons all of the Act's standards relating to treatment of registered offenders following release including reporting of subsequent changes of address, periodic address verification, criminal penalties for registration violations, and release of registration information as necessary for protection of the public. States also should be aware that it is a federal offense for registered offenders to change residence to another state without notifying the new state of residence and the FBI. *See* 42 U.S.C. 14072(g)(3) and (i).

The durational requirements for registration of offenders convicted in other states are the same as those for in-state offenders—registration for at least 10 years or for life as provided in subsection (b)(6) of the Act. If a portion of the applicable registration period has run while the registrant was residing in another state, a new state of residence may give the registrant credit for that period. For example, if a person required to register for 10 years under the Act's standards has lived for six years following release in the state of conviction, another state to which the registrant moves at that point does not have to require registration for more than the four remaining years.

2. *Juvenile delinquents and offenders.* The Act's registration requirements depend in all circumstances on conviction for certain types of offenses. Hence, states are not required to mandate registration for juveniles who are adjudicated delinquent—as opposed to adults convicted of crimes and juveniles convicted as adults—even if the conduct on which the juvenile delinquency adjudication is based would constitute an offense giving rise to a registration requirement if engaged in by an adult. However, states may require registration for juvenile delinquents, and the conviction of a juvenile who is prosecuted as an adult does count as a conviction for purposes of the Act's registration requirements.

3. *Tribal offenders.* The Act does not impose any requirements relating to registration of persons convicted of sex offenses in Indian tribal courts. However, a sex offender convicted in an Indian tribal court whose presence is unknown to state authorities or Indian tribal authorities raises the same public safety concern as an unregistered offender convicted of a similar offense in a state court. States are accordingly encouraged to require registration for sex offenders subject to their jurisdiction who were convicted in Indian tribal courts and to work with tribal authorities to ensure effective registration for such persons.

4. *Protected witnesses.* The Act requires current address registration but does not dictate under what name a person must be required to register. Hence, the Act does not preclude states from taking measures for the security of registrants who have been provided new identities and relocated under the federal witness security program (*see* 18 U.S.C. 3521 *et seq.*) or comparable state programs. A state may provide that the registration system records will identify such a registrant only by his or her new name and that the registration system records will not include the true pre-relocation address of the registrant or other information from which his or her original identity or participation in a witness security program could be inferred. States are encouraged to make provision in their laws and procedures for the security of such registrants and to honor requests from the United States Marshals Service and other agencies responsible for witness protection to ensure that the identities of these registrants are not compromised.

States should also be aware that 18 U.S.C. 3521(b)(1)(H), enacted by section 115(a)(9) of CJSA, specifically authorizes the Attorney General to

adopt regulations to "protect the confidentiality of the identity and location" of protected witnesses who are subject to registration requirements, "including prescribing alternative procedures to those otherwise provided by Federal or State law for registration and tracking of such persons." The Attorney General's policy, to the maximum extent allowed by security considerations, is to require the registration of all federally protected witnesses who otherwise would be required to register. However, in the Attorney General's discretion, the Attorney General will decide on a case-by-case basis whether these registrations will utilize new identities, modified listings, or other special conditions or procedures that are warranted to avoid inappropriately jeopardizing the safety of the protected witnesses.

II. Registration and Tracking Procedures; Penalties for Registration Violations [September 12, 1997; Possible Two-Year Extension]

Paragraphs (1)(A) and (2)(A) of subsection (b) of the Act set out general duties for states in relation to offenders required to register who are released from prison or who are placed on any form of post-conviction supervised release ("parole, supervised release, or probation"). The duties include taking registration information, informing the offender of registration obligations, making the information available at the state level and to local law enforcement, and transmission of conviction data and fingerprints to the FBI. Paragraphs (4)–(5) of subsection (b) of the Act contain requirements that are designed to ensure that registration information will be updated when the registrant changes address and that registrants will continue to be required to register when they move from one state to another during the registration period. Subsection (b)(3)(A) states that "State procedures shall provide for verification of address at least annually."

These requirements generally derive from the Wetterling Act as originally enacted. The time for compliance is accordingly that provided in 42 U.S.C. 14071(g)—Sept. 12, 1997, or Sept. 12, 1999, for states which have received a two-year extension based on good faith efforts to achieve compliance. However, one aspect of subsection (b)(1)(A)—a requirement to inform offenders that they must register in states where they work or attend school, in clause (iii)—derives from the CJSA and consequently is subject to a longer deadline for compliance as discussed in part V of these guidelines.

A. Initial Registration Procedures

1. *Taking of registration information and informing offenders of registration obligations.* Subsection (b)(1)(A) provides that "a State prison officer, the court, or another responsible officer or official" must carry out specified duties in relation to persons who are required to register. The purpose of this provision is to ensure that offenders are made aware of their registration obligations and to preclude "honor systems" in which the initial registration depends on the offender's reporting the information on his own. States have discretion under the Act concerning what types of officials or officers will be made responsible for these initial registration functions.

The specific duties set out in subparagraph (A) of paragraph (1) include: (i) informing the person of the duty to register and obtaining the information required for registration (i.e., address information), (ii) informing the person that he must report subsequent changes of address in the manner provided by state law, (iii) informing the person that if he moves to another state, he must report the change of address in the manner provided by state law and comply with any registration requirement in the new state of residence, (iv) obtaining fingerprints and a photograph if they have not already been obtained and (v) requiring the person to read and sign a form stating that these requirements have been explained.

In addition, the CJSA amended subparagraph (A)(iii) to require that the person be informed that he also must register in states where he works or attends school. States must comply with this new requirement by November 25, 2000 (subject to a possible two-year extension), as explained in part V of these guidelines.

These informational requirements, like other requirements in the Act, only define minimum standards. Hence, states may require more extensive information from offenders. For example, the Act does not require a state to obtain information about a registrant's expected employment when it releases him, but a state may legitimately wish to know if a convicted child molester is seeking or has obtained employment that involves responsibility for the care of children.

As a second example, states are strongly encouraged to collect DNA samples, where permitted under applicable legal standards, to be typed and stored in state DNA databases. States are also urged to participate in the Federal Bureau of Investigation's (FBI's) Combined DNA Index System (CODIS). CODIS is the FBI's program of technical assistance to state and local crime laboratories that allows them to store and match DNA records from convicted offenders and crime scene evidence. The FBI provides CODIS software, in addition to user support and training, free of charge, to state and local crime laboratories for performing forensic DNA analysis. CODIS permits DNA examiners in crime laboratories to exchange forensic DNA data on an intrastate level and will enable states to exchange DNA records among themselves through the national CODIS system. Thus, collection of DNA samples and participation in CODIS greatly enhance a state's capacity to investigate and solve crimes involving biological evidence, especially, serial and stranger rapes.

2. *Transmission of registration information.* Paragraph (2)(A) of subsection (b) states, in part, that the registration information must be promptly made available to a law enforcement agency having jurisdiction where the registrant expects to reside and entered into the appropriate state records system. The purpose of this provision is to ensure that registration information will be available both to local law enforcement and at the state level.

States have discretion under the Act concerning the specific mechanisms and procedures for carrying out this requirement. For example, a state may provide that the responsible official or officer is to transmit the registration information concurrently to an appropriate local law enforcement agency and to the agency responsible for maintenance of the information at the state level, or may provide that the information is to be provided in the first instance only to the local agency or to the state agency, which then transmits it to the other. States also have discretion concerning the form of notification or transmission. For example, in meeting the requirement to make the information available to a law enforcement agency where the registrant will reside, permissible options include written notice, electronic transmission of registration information, and provision of on-line access to registration information.

While the Act generally leaves states discretion concerning specific procedures for taking and transmitting registration information, it does require that the information be "promptly" made available to the appropriate recipient agencies (both state and local). This requirement precludes procedures under which lengthy delays are allowed

in the transmission or forwarding of the information. For example, in relation to registrants released from prison, state procedures must ensure: (1) that the registration information taken from the offender will be transmitted prior to release or within a short time (e.g., five days) thereafter, and (2) that there is no long delay in any subsequent forwarding of the information required for compliance with the Act, such as provision of the information to an appropriate local law enforcement agency by a state agency if only the state agency receives the information in the first instance.

The Act leaves states discretion in determining which state record system is appropriate for storing registration information, and which agency will be responsible at the state level for the maintenance of this information. As discussed in Part VI of these guidelines, however, states will be required effective November 25, 2000, to participate in the National Sex Offender Registry (NSOR), which is administered by the FBI. States can ensure that they will be able to freely exchange registration information with the FBI's records systems and comply with the requirement of participation in NSOR by making a "criminal justice agency" as defined in 28 CFR 20.3(c) responsible for the registration information at the state level. This continues to leave states with broad discretion concerning the designation of responsibility for the state registry, since "criminal justice agency" is defined broadly in the rule and generally includes (inter alia) law enforcement agencies, correctional and offender supervision agencies, and agencies responsible for criminal identification activities or criminal history records.

In addition to requiring procedures that ensure the prompt availability of the initial registration information both to local law enforcement and at the state level, paragraph (2)(A) of subsection (b) requires the prompt transmission of conviction data and fingerprints of registrants to the FBI. This should not be understood as requiring duplicative transmission of conviction data and fingerprints to the FBI at the time of initial registration if the state already has sent this information to the FBI (e.g., at the time of conviction).

3. *Fingerprinting.* The final subsection of the Wetterling Act—which should be designated as subsection (h) but is designated as a second subsection (g) because of a technical drafting error in section 115(a)(3) of the CJSA—relates to a requirement under the Pam Lychner Act that certain offenders register directly with the FBI. In conjunction with other provisions of the Pam Lychner Act, it requires that fingerprints be obtained from such offenders by the FBI or by a local law enforcement official pursuant to regulations issued by the Attorney General. However, section 115(a)(7) of the CJSA deferred the effective date for direct FBI registration of certain offenders and issuance of related regulations. Hence, the final subsection of the Wetterling Act does not impose any requirements on the states at the present time.

B. Change of Address Procedures

1. *Intrastate moves.* Subsection (b)(4) provides that registrants are to report changes of address in the manner provided by state law. It further provides that state procedures must ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate state records or data system.

The purpose of this provision is to ensure that current address information will continue to be available both to local law enforcement and at the state level. To comply with this part of the Act, states must require registrants to report changes of address within the state in a manner which ensures that information concerning the new address will promptly be made available to local law enforcement in the new place of residence and at the state level. Thus, states must require registrants to report changes of address prior to moving, or by some short time (e.g., 10 days) after moving.

States have discretion under the Act concerning specific mechanisms and procedures for reporting the updated address information and ensuring that it reaches the appropriate recipients. For example, many states require the registrant to notify local law enforcement agencies (e.g., local sheriffs' offices) in the place he is leaving and the place to which he is going and then require one of these local agencies to notify the agency responsible for maintenance of registration information at the state level. Alternatively, a state may require the registrant to directly notify a central registration agency at the state level, which then makes the information available to an appropriate local law enforcement agency. Another possibility is to require the registrant to report the change of address to a third party, such as a probation officer responsible for his supervision, who then is responsible for notifying a law enforcement agency in the new place of residence and the state registration agency.

The choice among these alternatives or the election of other alternatives beyond those described is a matter of state discretion. States will be in compliance as long as the procedures adopted ensure the prompt availability of the updated address information to law enforcement in the relevant local jurisdiction and at the state level.

2. *Interstate moves.* Subsection (b)(5) states that a registrant who moves to another state must report the change of address to the responsible agency in the state he is leaving and must comply with any registration requirement in the new state of residence. It further provides that the procedures of the state the registrant is leaving must ensure that notice is provided promptly to an agency responsible for registration in the new state of residence, if that state requires registration.

The purpose of this provision is to ensure a gap-free nationwide network of state registration programs that reliably tracks all offenders throughout the applicable period of registration and ensures that offenders cannot evade registration obligations by moving from one state to another. Hence, a state's procedures must require the registrant to report his departure to a responsible agency in the state, and must provide for prompt notice of the registrant's move by an agency in the state to the responsible registration authority in the new state of residence. An "honor system" approach, under which it is left to the registrant to notify the registration authority in the new state of residence on his own, does not satisfy the Act's requirements.

As discussed in part I.D.1 of these guidelines, the Wetterling Act's registration requirements "follow the registrant" if he moves to another state, and any state in which he establishes residence must include him in its registration program if registration is still required under the Wetterling Act's standards. This includes requiring the registrant to continue to register for at least the remainder of the Act's minimum ten-year registration period and to register for life if he is in a lifetime registration category under subsection (b)(6)(B) of the Act. Hence, the state a registrant is leaving is strongly encouraged to provide as part of its notice to the new state of residence sufficiently detailed information concerning the registrant's offenses and status to enable the new state to register him without difficulty in the appropriate category and for the appropriate amount of time.

C. Periodic Address Verification

Subsection (b)(3)(A) requires that state procedures provide for the verification of registrants' addresses at least annually. The purpose of the requirement of periodic address verification is to ensure that the authorities will become aware if a registrant has moved away from the registered address and has failed to report the change of address. Such procedures are obviously important for effective tracking of sex offenders and enforcement of registration requirements.

As a result of changes made by the CJSA amendments, the particular approach to address verification is a matter of state discretion under the Act. For example, some states verify addresses by having the responsible state or local agency annually send to the registered address a nonforwardable address verification form, which the registrant is required to sign and return within 10 days or some other limited period. This is one means by which states may comply with the verification requirement under subsection (b)(3)(A). The legislative history of the CJSA amendments to the Act noted other possible approaches: "A review of State sex offender registry laws indicates that some States require registrants to appear in person periodically at local law enforcement agencies to verify their address (and for such purposes as photographing and fingerprinting). Some States assign caseworkers to verify periodically that registrants still reside at the registered address. These * * * procedures effectively verify registrants' location, and impress on registrants that they are under observation by the authorities, in addition to making law enforcement agencies aware of the presence and identity of registered sex offenders in their neighborhoods." H.R. Rep. No. 256, 105th Cong., 1st Sess. 17 (1997).

D. Penalties for Registration Violations

Subsection (d) provides that a person required to register under a state program established pursuant to the Act who knowingly fails to register and keep such registration current shall be subject to criminal penalties. Accordingly, states that wish to comply with the Act must have criminal provisions covering this situation.

The requirement of criminal penalties for registration violations under the Act applies both to a state's own offenders who are required to register and to persons convicted in other states who are required to register because they have moved into the state to reside.

The Act neither requires states to allow a defense for offenders who were unaware of their legal registration obligations nor precludes states from doing so. As a practical matter, states can ensure that offenders are aware of their obligations through consistent compliance with the Act's provisions for advising offenders of registration requirements at the time of release and obtaining a signed acknowledgment that this information has been provided.

As discussed in part V of these guidelines, the Act as amended by the CJSA includes provisions that are designed to promote the registration of federal and military offenders and of non-resident workers and students. The CJSA amendments did not apply the Act's mandatory requirement of criminal penalties under state law for registration violations to federal and military offenders who reside in the state or to non-resident workers and students. However, Congress recognized the desirability of fully incorporating such offenders into state registration programs by statute, *see* H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997), and the availability of substantial sanctions for registration violations by all types of sex offenders is important to realize the Act's objective of a comprehensive, nationwide sex offender registration system. Hence, states are strongly encouraged to provide criminal penalties for registration violations by all offenders within the scope of the Act, regardless of whether the registrant is present in the state as a resident, worker, or student, and regardless of whether registration is premised on a conviction under the law of a state or under federal or military law.

III. Release of Registration Information [September 12, 1997; Possible Two-Year Extension]

Subsection (e) of the Act governs the disclosure of information collected under state registration programs.

This part of the Act derives from the federal Megan's Law amendment to the Wetterling Act (Pub. L. No. 104–145, 110 Stat. 1345), which is subject to the same deadline for compliance as the original provisions of the Act under 42 U.S.C. 14071(g). Hence, the deadline for compliance is Sept. 12, 1997, or Sept. 12, 1999, for states which have received a two-year extension based on good faith efforts to achieve compliance.

Paragraph (1) of subsection (e) provides that information collected under a state registration program may be disclosed for any purpose permitted under the laws of the state. Hence, there is no requirement under the Act that registration information be treated as private or confidential to any greater extent than the state may wish.

Paragraph (2) of subsection (e) provides that the state or any agency authorized by the state shall release relevant information as necessary to protect the public. To comply with this requirement, a state must establish a conforming information release program that applies to offenders required to register on the basis of convictions occurring after the establishment of the program. States do not have to apply new information release standards to offenders whose convictions predate the establishment of a conforming program, but the Act does not preclude states from applying such standards retroactively to offenders convicted earlier if they so wish.

The principal objective of the information release requirement in paragraph (2) of subsection (e) is to ensure that registration programs will include means for members of the public to obtain information concerning registered offenders that is necessary for the protection of themselves or their families. Hence, a state cannot comply with the Act by releasing registration information only to law enforcement agencies, to other governmental or non-governmental agencies or organizations, to prospective employers, or to the victims of registrants' offenses. States also cannot comply by having purely permissive or discretionary authority for officials to release registration information. Information must be released to members of the public as necessary to protect the public from registered offenders. This disclosure requirement applies both in relation to offenders required to register because of conviction for "a criminal offense against a victim who is a minor" and those required to register because of conviction for a "sexually violent offense."

States do, however, retain discretion to make judgments concerning the circumstances in which, and the extent to which, the disclosure of registration information to the public is necessary for public safety purposes and to specify standards and procedures for making these determinations. Several different approaches to this issue appear in existing state laws.

One type of approach, which is consistent with the requirements of the Act, involves particularized risk assessments of registered offenders, with differing degrees of information release based on the degree of risk. For example, some states classify registered offenders in this manner into risk levels, with registration information limited to law enforcement uses for offenders in

the "low risk" level; notice to organizations with a particular safety interest (such as schools and other child car entities) for "medium risk" offenders; and notice to neighbors for "high risk" offenders.

States also are free under the Act to make judgments concerning the degree of danger posed by different types of offenders and to provide information disclosure for all offenders (or only offenders) with certain characteristics or in certain offense categories. For example, states may decide to focus particularly on child molesters, in light of the vulnerability of the potential victim class, and on recidivists, in light of the threat posed by offenders who persistently commit sexual offenses.

Another approach by which states can comply with the Act is to make information accessible to members of the public on request. This may be done, for example, by making registration lists open for inspection by the public, or by establishing procedures to provide information concerning the registration status of identified individuals in response to requests by members of the public. As with proactive notification systems, states that have information-on-request systems may make judgments about which registered offenders or classes of registered offenders should be covered and what information will be disclosed concerning these offenders.

States are encouraged to involve victims and victim advocates in the development of their information release programs, and in the process for particularized risk assessments of registrants if the state program involves such assessments.

A proviso at the end of paragraph (2) of subsection (e) states that the identity of the victim of an offense that requires registration under the Act shall not be released. This proviso safeguards victim privacy by prohibiting disclosure of victim identity to the general public in the context of information release programs for registered offenders. It does not bar the dissemination of victim identity information for law enforcement or other governmental purposes (as opposed to disclosure to the public) and does not require that a state limit maintenance of or access to victim identity information in public records (such as police and court records) that exist independently of the registration system. Because the purpose of the proviso is to protect the privacy of victims, its restriction may be waived at the victim's option.

So long as the victim is not identified, the proviso in paragraph (2) does not bar including information concerning the characteristics of the victim and the nature and circumstances of the offense in information release programs for registered offenders. For example, states are not barred by the proviso from releasing such information as victim age and gender, a description of the offender's conduct, and the geographic area where the offense occurred. However, states are encouraged to avoid unnecessarily including information that may inadvertently result in the victim's identity becoming known, such as identifying a specific familial relationship between the offender and a victim who still lives in the area.

Concerns have been raised that the disclosure of registration information to the public under "community notification" programs may result in criminal acts or other reprisals against registrants. While currently available information does not indicate that this has been a significant problem under state programs, states are encouraged to consider including measures in their programs to minimize any possibility of misuse of the information released under the program. For example, some states include in their informational notices statements that the information is provided only for legitimate protective purposes, and that criminal acts against registrants will result in prosecution. As a further example, some states provide special training for officers responsible for community notification and/or hold community meetings in connection with the provision of notice to the community concerning a registrant's presence.

IV. Special Registration Requirements Under The Pam Lychner Act for Recidivists and Aggravated Offenders [October 2, 1999; Possible Two-Year Extension]

Subsection (b)(6)(B)(i)–(ii) of the Act requires lifetime registration for persons in two categories: (1) registrants who have a prior conviction for an offense for which registration is required by the Act, and (2) registrants who have been convicted of an "aggravated offense."

This requirement derives from an amendment to the Wetterling Act enacted by the Pam Lychner Act. The time for compliance is accordingly that provided in section 10(b) of the Pam Lychner Act—Oct. 2, 1999, subject to a possible two-year extension for states making good faith efforts to come into compliance.

Subsection (b)(6)(B)(i) requires lifetime registration for certain recidivist. States can comply with this provision by requiring offenders to register for life where the following conditions are satisfied: (1) the current offense is one for which registration is required by the Act—i.e., an offense in the range of offenses specified in subsection (a)(3)(A)–(B) or a comparable range of offenses, and (2) the offender has a prior conviction for an offense for which registration is required by the Act.

Subsection (b)(6)(B)(ii) requires lifetime registration for persons convicted of an "aggravated offense," even on a first conviction. "Aggravated offense" refers to state offenses comparable to aggravated sexual abuse as defined in federal law (18 U.S.C. 2241), which principally encompasses: (1) engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, and (2) engaging in sexual acts involving penetration with victims below the age of 12. Hence, states can comply with this provision by requiring lifetime registration for persons convicted of the state offenses which cover such conduct.

A state is not in compliance with subsection (b)(6)(B) (i) or (ii) if it has a procedure or authorization for terminating the registration of convicted offenders within the scope of these provisions at any point in their lifetimes. However, if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned, registration (or continued registration) is not required under the Act. Likewise, if the applicability of the lifetime registration requirement is premised on a prior conviction pursuant to subsection (b)(6)(B)(i), it become inapplicable if the prior conviction is reversed, vacated, or set aside, or if the registrant is pardoned for the prior conviction offense.

The proviso in subsection (b)(6) that registration need not be required "during ensuing periods of incarceration" applies to registrants subject to lifetime registration. Hence, states are not required to carry out address registration and verification procedures for such registrants during subsequent periods in which the registrant is imprisoned or civilly committed. To comply with the Act, a state that does waive registration for such registrants during subsequent criminal or civil confinement must require that registration resume when the registrant is released.

V. Special Registration Requirements Under The CJSA Amendments Relating to Sexually Violent Predators. Federal and Military Offenders, and Non-Resident Workers and Students [November 25, 2000; Possible Two-Year Extension]

Subsections (a)(2), (a)(3)(C)–(E), (b)(1)(B), and (b)(6)(B)(iii) of the Act prescribe heightened registration requirements for persons who are determined to be "sexually violent predators" under specified procedures. These provisions also, however, allow the approval of alternative procedures and of alternative measures of comparable or greater effectiveness in protecting the public.

Subsection (b)(7) of the Act requires states, as provided in these guidelines, to ensure that procedures are in place to accept registration information from (1) residents convicted of a federal offense or sentenced by a court martial, and (2) nonresident offenders who have crossed into another state in order to work or attend school.

Because these requirements, in their current form, derive from the CJSA, the time for compliance is that provided in section 115(c)(2) of the CJSA—Nov. 25, 2000, subject to a possible two-year extension for states making good faith efforts to come into compliance.

A. Heightened Sexually Violent Predator Registration or Alternative Measures

1. *Heightened sexually violent predator registration.* Subparagraphs (B)–(E) of subsection (a)(3) contain the Act's definition of "sexually violent predator" and related definitions. Subparagraph (C) defines "sexually violent predator" to mean a person who has been convicted of a sexually violent offense and who suffers from a medical abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offense. Subparagraph (D) essentially defines "medical abnormality" to mean a condition involving a disposition to commit criminal sexual acts of such a degree that it makes the person a menace to others. The definition of "personality disorder" is a matter of state discretion since the Act includes no specification on this point. For example, a state may choose to utilize the definition of "personality disorder" that appears in the Diagnostic and Statistical Manual of Medical Disorders: DSM–IV. American Psychiatric Association, *Diagnostic and Statistical Manual of Medical Disorders* (4th ed. 1994). Subparagraph (E) defines "predatory" to mean an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

A state that wishes to comply with the Act's provisions concerning sexually violent predator registration must adopt some approach to deciding when a determination will be sought as to whether a particular offender is a sexually violent predator. However, the specifics are a matter of state discretion. For example, a state might commit the decision whether to seek classification of an offender as a sexually violent predator to the judgment of prosecutors, or might provide that a determination of this question should be undertaken routinely when a person is convicted of a sexually violent offense and has a prior history of committing such crimes. Similarly, the Act affords states discretion with regard to the timing of the determination whether an offender is a "sexually violent predator." A state may, but need not, provide that a determination on this issue be made at the time of sentencing or as a part of the original sentence. It could, for example, be made instead when the offender has served a term of imprisonment and is about to be released from custody.

Subparagraphs (A) and (B) of subsection (a)(2) govern the procedures for making the sexually violent predator determination. Subparagraph (A) states that the determination is to be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies. However, subparagraph (B) allows the Attorney General to waive these requirements where a state has established alternative procedures or legal standards for designating a person as a sexually violent predator.

The waiver authority under subparagraph (B), which was added by the CJSA amendments, recognizes that a judicial determination informed by the recommendations of a board of mixed composition is not the only approach states may validly adopt to secure appropriate input and make fair determinations. For example, at a sentencing proceeding or other hearing to determine sexually violent predator status, a state might provide for input concerning psychological assessment through expert testimony; input from the law enforcement perspective through the prosecutor's presentation; and input from the perspective of victims through allocation or testimony by the victim(s) of the underlying sexually violent offense or offenses. Moreover, judicial determinations concerning sexually violent predator status are not the only legitimate approach since, for example, a state may decide to assign responsibility for such determinations to a parole board or other administrative agency with adjudicatory functions. Because there are many valid approaches that states may devise, the particular approach taken to determining whether an offender is a sexually violent predator as defined in the Act will be treated as a matter of state discretion under the Act.

For registrants who have been determined to be "sexually violent predators" under the Act's definitions, the Act prescribes three special registration requirements:

First, subsection (b)(1)(B) provides that the initial registration information obtained from a sexually violent predator must include "the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person." In determining whether offenders have received treatment, the officers responsible for obtaining the initial registration information may rely on information that is readily available to them, either from existing records or the offender, and may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment. If states want to require the inclusion of more detailed information about offenders' treatment history, however, they are free to do so.

Second, subsection (b)(3)(B) requires quarterly address verification for sexually violent predators, as opposed to the annual address verification required for registrants generally under subsection (b)(3)(A). Part II.C of these guidelines provides a general explanation of the Act's address verification requirement.

Third, subsection (b)(6)(B)(iii) requires lifetime registration for sexually violent predators. This requirement is unqualified. While language in subsection (a)(1)(B) of the Act alludes to possible termination of sexually violent predator status under subsection (b)(6)(B), this is a relic of earlier versions of the Act that has no referent in the Act's current text following the Pam Lychner Act and CJSA amendments.

Hence, for example, a state is not in compliance with the Act's requirements if it allows registration to be terminated for a person who has been found to be a sexually violent predator on the basis of a later determination that the person is no longer a sexually violent predator

or has been rehabilitated. However, if the underlying conviction for a sexually violent offense is reversed, vacated, or set aside, or if the registrant is pardoned for the offense, registration (or continued registration) as a sexually violent predator is not required under the Act. Moreover, the proviso in subsection (b)(6) that registration need not be required "during ensuing periods of incarceration" applies to sexually violent predators. Hence, states are not required to carry out address registration and verification procedures when a sexually violent predator is subsequently imprisoned or civilly committed. To comply with the Act, a state that does waive registration for sexually violent predators during subsequent criminal or civil confinement must require that registration resume when the registrant is released.

2. *Alternative measures of comparable or greater effectiveness.* Subparagraph (C) of subsection (a)(2) authorizes the Attorney General to approve "alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators." This authorization was added by the CJSA, reflecting Congress's recognition that few states followed the Act's specific provisions concerning sexually violent predators; that it would be difficult for many states to do so; and that states can "incorporate other features into their systems which further the objective of protecting the public from particularly dangerous sex offenders." H.R. Rep. No. 256, 105th Cong., 1st Sess. 15 (1997).

The legislative history of the CJSA identified a number of factors that would be pertinent to a determination whether a state has adopted alternative measures of comparable or greater effectiveness:

States can * * * incorporate other features into their systems which further the objective of protecting the public from particularly dangerous sex offenders. For example, some State programs have registration periods for broadly defined categories of sex offenders which are much longer than the basic 10-year registration period under the Wetterling Act. This may provide more protection for the public than heightened registration requirements limited to a relatively small class of offenders who would be classified as sexually violent predators. * * * Moreover, some States require civil commitment, lifetime supervision, or very long periods of imprisonment for sexually violent predators or broader classes of serious sex offenders. [Subsection (a)(2)] makes it clear that alternative approaches like these can be approved if a State's approach is equally effective or more effective in protecting the public from particularly dangerous sex offenders.

H.R. Rep. No. 256 105th Cong., 1st Sess. 15 (1997).

Hence, for example, the reviewing authority will approve a state system as providing alternative measures "of comparable or greater effectiveness" if the state applies the principal heightened registration requirements under the Act's sexually violent predator provisons—i.e., lifetime registration and quarterly address verification—to a class of offenders that is generally broader than "sexually violent predators." Since "sexually violent predators" are, by definition, a subclass of persons convicted of a "sexually violent offense," a state has obviously adopted an alternative measure of comparable or greater effectiveness if it requires lifetime registration and quarterly address verification uniformly for persons in the broader class of those convicted of a "sexually violent offense."

For states that follow other approaches, the determination whether "alternative measures of comparable or greater effectiveness" have been adopted will be made on a case-by-case basis.

B. Federal and Military Offenders: Non-Resident Workers and Students

Subsection (b)(7) of the Act requires states, as provided in these guidelines, to ensure that procedures are in place to accept registration information from: (1) residents convicted of federal offenses or sentenced by courts martial, and (2) nonresident offenders who cross into other states in order to work or attend school.

This requirement was added to close two gaps in the Wetterling Act standards for registration programs. First, Congress was concerned about the lack of any provision for registration of persons convicted of federal sex offenses—such as those defined in chapters 109A, 110, and 117 of title 18, United States Code—and the lack of any provision for registration of persons convicted of sexual offenses under the Uniform Code of Military Justice while in the armed forces. Second, Congress was concerned about the commission of offenses by registered offenders at or near their place of work or study, where the local authorities are unaware of the offenders' presence in those areas because they reside in a different state. The new provisions relating to registration of federal and military offenders, and non-resident workers and students, were added to address these concerns.

1. *Federal and military offenders.* In relation to federal and military offenders, states can comply with the new requirement under subsection (b)(7) by accepting in their registration programs address information from such offenders who reside in the state, where the federal convictions or court martial sentence was for a criminal offense against a victim who is a minor or a sexually violent offense (as defined in the Act).

Congress did not otherwise make the Act's mandatory standards for state registration programs applicable to federal and military offenders. Congress, however, did note that "it would be preferable that States fully incorporate federal offenders [and] persons sentenced by courts martial * * * into their registration and notification programs by statute." H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997). As a practical matter, the presence in a state of a sex offender whose whereabouts are unknown to the authorities poses the same potential danger to the public, regardless of whether the offender was convicted in a state court for a state offense or for a comparable offense under federal or military law.

Hence, as a matter of sound policy, states are strongly encouraged to subject federal and military offenders to the full panoply of registration requirements and procedures established for state offenders, including reporting of subsequent changes of address following the initial registration, periodic address verification, criminal penalties for registration violations, and release of registration information as necessary for protection of the public. Some states currently put sex offenders convicted in federal or military courts on the same footing as state offenders under their registration programs; all states are encouraged to adopt this approach.

States should be aware that the CJSA enacted provisions that impose complementary obligations on federal authorities to facilitate state registration of federal and military offenders. Specifically, provisions in section 115(a)(8) of the CJSA require federal and military authorities to notify state and local law enforcement and registration agencies concerning the release or subsequent movement to their areas of federal and military sex offenders. In addition, under amendments in section 115(a)(8) of the CJSA, federal sex

offenders are required to register in states where they reside, work, or attend school as mandatory conditions of probation, parole, and post imprisonment supervised release. State and local officers accordingly are encouraged to notify federal authorities of any failure by such offenders to register, so that appropriate action can be taken with respect to their federal release status. States also should be aware that section 115 of the CJSA amended the federal failure-to-register offense (42 U.S.C. 14072(i)) in order to bring within its scope federal and military sex offenders who fail to register.

2. *Non-resident workers and students.* Subsection (b)(7)(B) of the Act requires states to accept registration information from non-residents who have come into the state to work or attend school. Related provisions appear in subsections (a)(3)(F)–(G) and (c). As specified in these provisions, the workers from whom registration information must be accepted include those who have any sort of full-time or part-time employment in the state, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year. The students from whom registration information must be accepted include those who are enrolled in any type of school in the state on a full-time or part-time basis.

The Act's provisions regarding non-resident workers and students sometimes refer to persons who cross into another state "in order to work or attend school" and sometimes refer to persons who are may be in another state where the person "is employed," "carries on a vocation," or "is a student." These are merely terminological variations; the Act's various references to non-resident workers and students all refer to the same classes of persons, as defined above.

States can comply with the Act's requirement to accept registration information from non-resident workers and students by accepting registration information from such persons, where the person would be required to register in his state of residence under the Act's standards. The "registration information" the state must accept from such a registrant to comply with the Act is, at a minimum, information concerning the registrant's place of employment or the school attended in the state and his address in his state of residence. States are free to accept or require more extensive information if they wish, such as information concerning any place of lodging the registrant may have in the state for purposes of work or school attendance.

Congress did not otherwise make the Act's mandatory standards for state registration programs applicable to non-resident workers and students, but did note that "it would be preferable that States fully incorporate * * * offenders crossing State borders to work or go to school * * * into their registration and notification programs by statute." H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997). States are encouraged to include measures in their registration systems that will ensure effective registration of non-resident workers and students, including provision of criminal penalties under state law for such offenders who fail to register and release of registration information concerning such offenders as necessary for public safety. States also should be aware that section 115 of the CJSA amended the federal failure-to-register offense (42 U.S.C. 14072(i)) in order to bring within its scope non-resident workers and students who fail to register.

In addition to requiring states to accept registration information from non-resident workers and students, the CJSA amendments added, as part of subsection (b)(1)(A)(iii), a requirement to inform a registrant in the initial registration process that he must register in a state where he is employed, carries on a vocation, or is a student. As discussed in Part II.A of these guidelines, subsection (b)(1)(A) of the Act has always required that offenders be informed of the general duty to register, of the duty to report subsequent changes of address, and of the duty to register in any state of residence. States can readily supplement their procedures for informing offenders of registration obligations to include the information that the offender also must register in any state where he is employed, carries on a vocation, or is a student.

VI. Participation in The National Sex Offender Registry [November 25, 2000; Possible Two-Year Extension]

Subsection (b)(2)(B) of the Act requires states to "participate in the national database established under section 14072(b)"—i.e., the National Sex Offender Registry (NSOR)—"in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines."

This requirement derives from the amendment of the Wetterling Act by section 115(a)(2)(B) of CJSA. The time for compliance is accordingly that provided in section 115(c)(2) of CJSA—Nov. 25, 2000, subject to a possible two-year extension for states making good faith efforts to come into compliance. At the present time, many states are already participating in NSOR, and the remainder are strongly encouraged to do so as promptly as possible.

States should be aware that participation in NSOR is a condition for determining that a state has a "minimally sufficient" sex offender registration program as defined in 42 U.S.C. 14072(a)(3). Pursuant to section 115(a)(7) of the CJSA, states have until October 2, 1999, to establish "minimally sufficient" programs (subject to a possible two-year extension for states making good faith efforts). In states that have not established "minimally sufficient" programs by that time, the FBI will be required to directly register sex offenders convicted in the state, and there will be correlative responsibilities on such states to facilitate FBI registration of their sex offenders as provided in 42 U.S.C. 14072(h)(1) and (k). Hence, the failure of a state to participate in NSOR by October 2, 1999, may result in otherwise avoidable federal intervention in sex offender registration in the state.

States should also be aware that under the National Sex Offender Registry Assistance Program (NSOR–AP), funding is available from the Bureau of Justice Statistics of the United States Department of Justice to facilitate state participation in NSOR and upgrade state sex offender registries. States desiring additional information concerning this funding program should contact the Bureau of Justice Statistics.

In accordance with 42 U.S.C. 14072(b), the FBI has established an interim version of NSOR (the "Interim Registry") to track the whereabouts and movement of persons required to register under sex offender registration programs. The Interim Registry functions as a "pointer" system, indicating on an individual's FBI Identification Record the fact that the individual is a registered sex offender and the name and location of the state agency that maintains the offender's registration information.

The FBI will be issuing regulations concerning state participation in NSOR. To participate in NSOR under current procedures, states must submit the following information on registrants to the FBI: the name under which the person is registered; the registering agency's name and location; the date of registration; and the date registration expires. Upon the submission of this information, a notice indicating that an individual is a registered sex offender and listing the information will be

included on the individual's FBI Identification Record.

The FBI is in the process of modifying the National Crime Information Center (NCIC) to establish a new crime information system which will be known as "NCIC 2000." NCIC 2000, which is expected to go on-line in mid-1999, will include a Convicted Sexual Offender Registry File that will serve as the permanent National Sex Offender Registry (the "Permanent Registry"). In the Permanent Registry, sex offender registration information will be entered directly into the NCIC Convicted Sexual Offender Registry File, via the NCIC communication circuit, and will include such information as the offender's name and address and details regarding the conviction resulting in registration. States will receive further guidance concerning participation in the Permanent Registry through future modifications of regulations and guidelines.

VII. Good Faith Immunity [Available to States Immediately]

Subsection (f) states that law enforcement agencies, employees of law enforcement agencies, independent contractors acting at the direction of such agencies, and state officials shall be immune from liability for good faith conduct under the Act, Inclusion of this provision in the Act was necessary to protect state actors and contractors involved in registration and notification programs for unwarranted exposure to liability, since the states cannot legislate immunities to liability under federal causes of action. This part of the Act does not impose any requirement on states and the character of state law provisions regarding the scope of immunity or liability will not be considered in the compliance review under the Act.

VIII. Compliance Review; Consequences of Non-Compliance

The time states have to comply with the Act's requirements depends on the legislation from which the requirements derive, as specified in these guidelines. Thus, the initial deadline for complying with requirements derived from the Wetterling Act as originally enacted or from Megan's Law was September 12, 1997, and the deadline is now September 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance. Requirements deriving from the Pam Lychner Act must be complied with by October 2, 1999, subject to a possible two-year extension for states making good faith efforts to comply. Requirements deriving from the CJSA must be complied with by November 25, 2000, subject to a possible two-year extension for states making good faith efforts to comply.

These deadlines set outer limits for state compliance to avoid a reduction of Byrne Formula Grant funding. States are strongly encouraged to attempt to achieve compliance with all parts of the Act as quickly as possible to maximize the benefits of the Act's reforms.

States that fail to come into compliance within the specified time periods will be subject to a mandatory 10% reduction of Byrne Formula Grant funding, and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. If a state's funding has been reduced because it has failed to comply with the Act's requirements by an applicable deadline, the state may regain eligibility for full funding in later program years by establishing compliance with all applicable requirements of the Act in such later years.

States are encouraged to submit information concerning existing and proposed sex offender registration provisions to the Bureau of Justice Assistance with as much lead-time as possible. This will enable the reviewing authority to assess the status of state compliance with the Act and to suggest any necessary changes to achieve compliance before the funding reduction goes into effect. At the latest, state submissions must be provided on the following timetable:

To maintain eligiblity for full Byrne Formula Grant funding following September 12, 1999—the end of the implementation period for the Act's original requirements and Megan's Law, for states that have received the two-year "good faith" extension—such states must submit to the Bureau of Justice Assistance by July 12, 1999, information that shows compliance, in the reviewing authority's judgment, with the requirements described in parts I, II, and III of these guidelines.

To maintain eligibility for full Byrne Formula Grant funding following October 2, 1999—the end of the implementation period for the Pam Lychner Act requirements, absent an extension—states must submit to the Bureau of Justice Assistance by July 12, 1999, information that shows compliance, in the reviewing authority's judgment, with the requirements described in part IV of these guidelines, or a written explanation of why compliance cannot be achieved within that period and a description of the good faith efforts that justify an extension of time (but not more than two years) for achieving compliance.

To maintain eligibility for full Byrne Grant funding following November 25, 2000—the end of the implementation period for the CJSA requirements, absent an extension—states must submit to the Bureau of Justice Assistance by September 25, 2000, information that shows compliance, in the reviewing authority's judgment, with the requirements described in the parts V and VI of these guidelines, or a written explanation of why compliance cannot be achieved within that period and a description of the good faith efforts that justify an extension of time (but not more than two years) for achieving compliance.

After the reviewing authority has determined that a state is in compliance with the Act, the state will be required as part of the Byrne Formula Grant application process in subsequent program years to certify that the state remains in compliance with the Act.

Dated: June 13, 1998.

Janet Reno,

Attorney General.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Atkemix Thirty-Seven, Inc.*, (M.D. Fl.) Civil Action No. 98–1203–CIV–T–25–F was lodged on June 10, 1998, with the United States District Court for the Middle District of Florida.

In this action the United States sought injunctive relief and recovery of response costs under sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607, with respect to the Stauffer Chemical Superfund Site in Tampa, Florida ("the Site").

Under a proposed Consent Decree, Atkemix Thirty-Seven, Inc., the present owner and operator of a portion of the Site, has agreed to perform the remedy chosen by EPA to clean up the Site, pay the government's remaining past response costs, and pay future response costs, in settlement of the government's claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication,

comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Atkemix Thirty-Seven, Inc.*, (M.D. Fl.), DOJ# 90–11–2–1227.

The proposed consent decree may be examined at the Office of the United States Attorney, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602; the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303, and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $50.00 (25 cents per page reproduction costs), payable to the Consent Decree Library. In requesting a copy exclusive of exhibits, please enclose a check for $20.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–16389 Filed 6–18–98; 8:45 am]

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *City of Clear Lake, Iowa*, Civil Action No. C 98 3043, was lodged on June 4, 1998 with United States District Court for the Northern District of Iowa, Central Division. In a complaint filed contemporaneously with lodging of the proposed consent decree, the United States alleged that the Defendant City of Clear Lake is liable as an owner at the time of disposal of hazardous substances, and is the current owner of the Clear Lake FMGP Superfund Site located in Cerro Gordo County, Iowa ("Site") pursuant to Sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. 9607(a)(1) and (2). The Complaint also alleges that Defendants Kansas City Power and Light, and Centel Corporation, are successors to and assumed liability for persons who at the time of disposal of hazardous substances owned and/or operated a facility at the Site at which hazardous substances were disposed, and who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Site, and are liable pursuant to Sections 107(a) (2) and (3) of CERCLA, 42 U.S.C. 9607(a) (2) and (3). The complaint further alleges that the United States incurred costs and may continue to incur costs for response actions at and in connection with the Site.

The proposed consent decree provides that the Defendants shall pay $350,000 to the EPA Hazardous Substance Superfund for Response Costs. The proposed consent decree also provides that the United States covenants not to sue or take administrative action against the Defendants under sections 106, 107 and 113 of CERCLA, 42 U.S.C. 9606, 9607 and 9613 except as specifically provided in the consent decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Clear Lake, Iowa*, DOJ Ref. 90–11–2–1343.

The proposed consent decree can be examined at the Office of the United States Attorney, Northern District of Iowa, Hach Building, 401 1st Street, SE, Suite 400, Cedar Rapids, Iowa 52401–1825; the Region 7 Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $8.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–16390 Filed 6–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Act," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ980002 (Feb. 13, 1998)
NJ980003 (Feb. 13, 1998)
NJ980004 (Feb. 13, 1998)
NJ980005 (Feb. 13, 1998)
NJ980007 (Feb. 13, 1998)

Volume II

None

Volume III

Alabama
AL980007 (Feb. 13, 1998)
AL980008 (Feb. 13, 1998)
AL980052 (Feb. 13, 1998)
Georgia
GA980034 (Feb. 13, 1998)
Kentucky
KY980001 (Feb. 13, 1998)
KY980002 (Feb. 13, 1998)
KY980003 (Feb. 13, 1998)
KY980007 (Feb. 13, 1998)
KY980025 (Feb. 13, 1998)
KY980027 (Feb. 13, 1998)
KY980029 (Feb. 13, 1998)
North Carolina
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NC980003 (Feb. 13, 1998)

Volume IV

Illinois
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IL980002 (Feb. 13, 1998)
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IL980006 (Feb. 13, 1998)
IL980007 (Feb. 13, 1998)
IL980008 (Feb. 13, 1998)
IL980009 (Feb. 13, 1998)
IL980010 (Feb. 13, 1998)
IL980011 (Feb. 13, 1998)
IL980012 (Feb. 13, 1998)
IL980013 (Feb. 13, 1998)
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IL980015 (Feb. 13, 1998)
IL980016 (Feb. 13, 1998)
IL980023 (Feb. 13, 1998)
IL980026 (Feb. 13, 1998)
IL980028 (Feb. 13, 1998)
IL980039 (Feb. 13, 1998)
IL980040 (Feb. 13, 1998)
IL980041 (Feb. 13, 1998)
IL980042 (Feb. 13, 1998)
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IL980053 (Feb. 13, 1998)
IL980054 (Feb. 13, 1998)
IL980055 (Feb. 13, 1998)
IL980056 (Feb. 13, 1998)
IL980057 (Feb. 13, 1998)
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Ohio
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Wisconsin
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WI980017 (Feb. 13, 1998)

Volume V

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IA980005 (Feb. 13, 1998)
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IA980009 (Feb. 13, 1998)
IA980019 (Feb. 13, 1998)
IA980032 (Feb. 13, 1998)
IA980038 (Feb. 13, 1998)
IA980047 (Feb. 13, 1998)
IA980067 (Feb. 13, 1998)

Volume VI

Idaho
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North Dakota
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OR980004 (Feb. 13, 1998)
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Washington
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WA980005 (Feb. 13, 1998)
WA980007 (Feb. 13, 1998)
WA980008 (Feb. 13, 1998)
WA980011 (Feb. 13, 1998)

Volume VII

Arizona
AZ980002 (Feb. 13, 1998)
AZ980013 (Feb. 13, 1998)
AZ980014 (Feb. 13, 1998)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 12th day of June 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–16074 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–27]

Agency Information Collection Activities; Proposed Collection; Comment Request; Powered Platforms for Building Maintenance (29 CFR 1910.66)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in the standard on Powered Platforms for Building Maintenance (29 CFR 1910.66). The Agency is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted on or before August 18, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–27, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 219–8061. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061, extension 100, or Barbara Bielaski at (202) 219–8076, extension 142. For electronic copies of the Information Collection Request on Powered Platforms for Building Maintenance (29 CFR 1910.66), contact OSHA's WebPage on the Internet at http://www.osha-slc.gob/

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

One of the information collection requirements if for the employer to develop written work procedures to be used to train employees (§ 1910.66(i)(1)(iv)). The employer would then prepare a certification record to verify that the training has been given (§ 1910.66(i)(1)(v)). The written work procedures would address the operation, safe use, and inspection of powered platforms.

Another information collection requirement is that employers develop a written emergency action plan for employees who work on powered platforms at different building sites (§ 1910.66(e)(9)). OSHA believes it is necessary for the employer to prepare for emergencies so that employees using powered platforms know what actions are required of them during emergency situations. Employers would also certify that employees had been trained in the emergency action plan.

OSHA also requires employers to conduct inspections and tests (§§ 1910.66(g)(2)(i), (g)(2)(ii), (g)(3)(i), and (g)(5)(iii)) and to certify that these inspections and tests had been conducted (§§ 1910.66(g)(2)(iii), (g)(3)(ii) and (g)(5)(v)). Certification records are required to show inspections: (1) Of the building supports (once a year); (2) of the equipment used on the platform—the hoist, control systems, bearings, gears, and governors, for example (as recommended by the manufacturer or supplier, but at least once a year inspection and tested as needed); (3) of the installation of the platform (every 30 days or when used less frequently, before each work cycle); (4) of the wire rope every month or before being used; and (5) to demonstrate employee training.

OSHA estimates the burden for all of the inspections, tests, and certification records at 256,500 hours based on professional staff knowledge of the time it takes to perform the inspections and tests of the building supports, platform installation and platform equipment, including wire ropes, and to prepare the required certification records. OSHA believes about half of the burden it has calculated is a usual and customary burden to employers for the following reasons: (1) Many employers rent powered platforms and the rental company supplies the documentation required by the OSHA standard as a usual and customary business practice; (2) insurance carriers require building owners to inspect the platform support system; (3) building owners, for their own liability, inspect the platform installation and equipment; (4) many states require building owners to make the same inspections that OSHA requires in its standard; and (5) there is a national consensus standard, ANSI A–120, which prescribes similar requirements which have been adopted by local and state officials and represents standard industry practice. In consideration of all of these factors, OSHA believes it would be reasonable to assume that 50 percent of the burden is usual and customary. For the purpose of this paperwork package, OSHA is reducing the burden estimate to 128,250 hours for those inspections, tests, and records. In addition, there are 144 hours of burden for the training certification records.

The Agency specifically invites the public to comment on its estimate that 50 percent of the burden discussed above is considered normal business operations.

The final group of information collection requirements in the standard pertains to a number of provisions requiring tags and labels. Section 1910.65(f)(5)(i)(C) requires a load rating plate to be affixed to each suspended unit. Section 1910.66(f)(5)(ii)(N) requires the compartment for an emergency electric operating device to be labeled with instructions for use. Sections 1910.66(f)(7)(vi), 1910.66(f)(7)(vii), and 1910.66(f)(7)(viii) require the attachment of a tag on a suspension wire rope when it is installed, renewed or resocketed.

The information collected would also be used by OSHA compliance officers to ensure that employers are complying with the requirements set forth in 29 CFR 1910.66.

II. Current Actions

This notice requests public comment on OSHA's burden hour estimates prior to OSHA seeking Office of Management and Budget (OMB) approval of the information collection requirements contained in the Powered Platforms for Building Maintenance standard.

Type of Review: Extension of a Currently Approved collection.

Agency: U.S. Department of labor, Occupational Safety and Health Administration.

Title: Powered Platforms for Building Maintenance (29 CFR 1910.66).

OMB Number: 1218–0121.

Agency Number: Docket Number ICR–98–27.

Affected Public: Business or other for-profit; State or local governments.

Number of Respondents: 51,687.

Frequency: Varies (Initially, Annually, Monthly, On Occasion).

Average Time per Response: Varies from five minutes to generate, maintain and disclose records to 8 hours to prepare plans (average of two hours).

Estimated Total Burden Hours: 129,763.

Total Annualized Capital/Startup Costs: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. The comments will become a matter of public record.

Signed at Washington, D.C., this 15th day of June 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–16381 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–18]

Concrete and Masonry Construction

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed information collection request; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and information collection burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on both current and proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that reporting burden (time and financial resources) is minimized, collection materials are clearly understood, impact of collection requirements on respondents can be accurately assessed, and requested data can be provided in the desired format. Currently, the Occupational Safety and Health Administration is soliciting comments on the information collection requirement contained in 29 CFR 1926.703(a)(2). that provision requires that formwork drawings or plans for cast-in-place concrete construction work be available at the jobsite.

The Agency is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of OSHA's responsibilities, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses).

DATES: Written comments must be submitted on or before August 18, 1998.

ADDRESSES: Comments are to submitted to the Docket Office, Docket ICR–98–18, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3621, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7207. Copies of the information collection requests are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Mr. Davey at (202) 219–7207 or Barbara Bielaski at (202) 219–8076. For electronic copies of the information collection request, contact OSHA's Web Page on Internet at http://www.osha-slc.gov (click on Information Collection Requests).

SUPPLEMENTARY INFORMATION:

Background

The Occupational Safety and Health Administration (OSHA) currently has approval from the Office of Management and Budget (OMB) for the information collection (records) requirements contained in 29 CFR 1926.703(a)(2). That approval will expire on September 30, 1998, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval.

Section 1926.703(a)(2) requires that formwork drawings or plans for cast-in-place concrete construction work be available at the jobsite. The information is needed by employers, employees, OSHA compliance officers, and other interested persons in the construction industry to ensure concrete structures are erected in a safe and purposeful manner. This provision addresses safety and health concerns caused by improperly designed and erected formwork. Such hazards could cause partial or total collapse of concrete structures and result in serious or fatal injuries to workers.

Current Action

This notice requests an extension of the current OMB approval of the paperwork requirements in 29 CFR 1926.703(a)(2).

Type of Review: Extension of existing approval.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Concrete and Masonry Construction (29 CFR 1926.703(a)(2)).

OMB Number: 1218–0095.
Agency Number: Docket No. ICR–98–18.
Frequency: On Occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 994.
Estimated Time Per Respondent: 10 Minutes.
Total Burden Hours: 7,787.
Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 15th day of June, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–16382 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 98–13]

Construction Crane Rating Chart Limitations Instructions and Hand Signal Illustrations

AGENCY: Occupational and Health Administration, Labor.

ACTION: Notice of proposed information collection request; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and information collection burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on both current and proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that reporting burden (time and financial resources) is minimized, collection materials are clearly understood, impact of collection requirements on respondents can be accurately assessed, and requested data can be provided in the desired format. Currently, the Occupational Safety and Health Administration is soliciting comments concerning the collection of information requirements contained in 29 CFR 1926.550(a)(1), (2), (4) and (16).

The Agency is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of OSHA's responsibilities, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses).

DATES: Written comments must be submitted on or before August 18, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket ICR 98–13, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3621, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7207. Copies of the information collection requests are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Mr. Davey at (202) 219–7207 or Barbara Bielaski at (202) 219–8076. For electronic copies of the information collection request, contact OSHA's Web Page on Internet at http://www.osha-slc.gov (click on *Information Collection Requests*).

SUPPLEMENTARY INFORMATION:

Background

The Occupational Safety and Health Act of 1970 authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

There are several provisions in OSHA's crane and derrick standard that require employers to obtain information and post it on the crane or derrick. Specifically, employers are required to post the rated load capacities, recommended operating speeds, special hazard warnings, and instructions. In addition, an illustration of hand signals is to be posted at the jobsite. OSHA believes this information is normally provided by the crane or derrick manufacturers as a usual and customary business practice and there is a minimal time burden in posting this information. There is also a cost burden for employers who field modify cranes or derricks to obtain the information (loading ratings and limitations) for the employer to post.

Current Action

This notice requests comment on OSHA's burden hour estimates prior to seeking OMB approval of the information collection requirements in 29 CFR 1926.550(a)(1), (2), (4) and (16).

Type of Review: Revision.
Agency: Occupational Safety and Health Administration, U.S. Department of Labor.
Title: Construction Crane Rating Chart Limitations Instructions and Hand Signal Illustrations (29 CFR 1926.550(a)(1) and (a)(2), 1926.550(a)(4), and 1926.550(a)(16)).
Agency Number: Docket No. ICR 98–13.
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 59,944.
Estimated Time Per Respondent: 5 minutes per respondent.
Total Burden Hours: 4996 hours.
Total Annualized Capital/Start-up Costs: $330,000.
Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, D.C., this 15th day of June, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–16383 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–11]

Underground Construction—Air Quality Record

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed information collection; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and information collection burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on both current and proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that reporting burden (time and financial resources) is minimized, collection materials are clearly understood, impact of collection requirement on respondents can be accurately assessed, and requested data can be provided in the desired format. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in 29 CFR 1926.800, which addresses underground construction.

The Agency is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of OSHA's responsibilities, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses).

DATES: Written comments must be submitted on or before August 18, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket ICR–98–11, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3621, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7207. Copies of the information collection requests are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Mr. Davey at (202) 219–7207 or Barbara Bielaski at (202) 219–8076. For electronic copies of the information collection request, contact OSHA's Web Page on Internet at http://www.osha-slc.gov (click on *Information Collection Requests*).

SUPPLEMENTARY INFORMATION:

Background

The Occupational Safety and Health Administration (OSHA) currently has approval from the Office of Management and Budget (OMB) for the information collection (records) requirements contained in 29 CFR 1926.800(j)(3). The approval will expire on August 31, 1998, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval.

Under § 1926.800(j)(3), employers are required to test the atmosphere at underground work locations, and prepare and retain a written record of these air quality test findings. The provision requires that employers retain the record aboveground at the job site until completion of the project, and make it available to the Secretary of Labor upon request. The record provides a means to check the effectiveness of ventilation at the site and to evaluate the need to modify ventilation or withdraw employees from a hazardous location.

In addition, under § 1926.800(t)(3)(xxi), employers are required to inspect and test hoisting assemblies at the time of installation, after repairs or alterations, after safety devices have been tripped, and annually. Persons performing these inspections and load tests are to certify when the tests were performed, identify the hoist, and sign the certification (only the most recent certification must be maintained).

There are also seven provisions in § 1926.800 that contain posting requirements: Employers are required to post warnings to notify employees when there are unused openings; a gassy atmosphere is present; testing results show that the atmosphere is dangerous; smoking or open flames are not allowed due to fire hazards; the ground is not stable; air lines are buried or hidden by water or debris; and when work is being done in a shaft normally used for hoisting.

In the request for an extension, OSHA is proposing to adjust the burden hours downward to reflect increased use of technologically advanced equipment for monitoring and advanced tunneling methods, such as microtunneling. The adjustment also reflects a reassessment of the estimated time to perform and record these air quality tests based upon discussions with OSHA compliance personnel and industry specialists who are knowledgeable about underground construction, as well as OSHA's inspection data.

Current Action

This notice requests public comment on OSHA's burden hour estimates prior to OSHA seeking Office of Management and Budget (OMB) approval of the paperwork requirements in 29 CFR 1926.800(j)(3), as well as approval of provisions in § 1926.800(t)(3)(xxi) and seven posting requirements in the standard.

Type of Review: Revision.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Underground Construction (29 CFR 1926.800).

OMB Number: 1218–0067.

Agency Number: Docket No. ICR–98–11.

Affected Public: Business or other for-profit.

Number of Respondents: 320.

Frequency: On Occasion.

Estimated Time Per Respondent: Ranges from 30 seconds to record monitoring results, up to 1 hour to inspection and certify hoisting assemblies.

Total Burden Hours: 8,357 hours.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, D.C., this 15th day of June, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–16384 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–16]

Crane- or Derrick-Suspended Personnel Platforms Used in Construction

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed information collection; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and information collection burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on both current and proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that reporting burden (time and financial resources) is minimized, collection materials are clearly understood, impact of collection requirements on respondents can be accurately assessed, and requested data can be provided in the desired format. Currently, the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection requirement contained in 29 CFR 1926.550(g)(4)(ii)(I) (Crane- or derrick-suspended personnel platforms). The Agency is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of OSHA's responsibilities, including whether the information will have practical utility;

• Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses).

DATES: Written comments must be submitted on or before August 18, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–16, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7207 ext. 131. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Laurence Davey at (202) 219–7207 ext. 131 or Barbara Bielaski at (202) 219–8076, ext. 142. For electronic copies of the information collection request, contact OSHA's Web Page on the Internet at http://www.osha-slc.gov (click on *Information Collection Requests*).

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), the Occupational Safety and Health Administration (OSHA) currently has approval from the Office of Management and Budget (OMB) for the information collection (record) requirements contained in 20 CFR 1926.550(g)(4)(ii)(I). That approval will expire on September 30, 1998, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval.

Section 1926.550(g)(4)(ii)(I) requires that personnel platforms suspended from cranes or derricks have information posted on plates or other permanent markings indicating the weight of the platform and its rated load capacity or maximum intended load.

Type of Review: Extension.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Crane- or Derrick-Suspended Personnel Platforms Used in Construction.

OMB Number: 1218–0151.

Agency Number: ICR–98–16.

Frequency: On Occasion.

Affected Public: Business or other for profit.

Number of Respondents: 2,750.

Average time per Response: 5 minutes.

Estimated Total Burden Hours: 229.

Total Annualized Capital/Startup Costs: $0.

Signed at Washington, DC, this 15th day of June, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–16385 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–15]

Construction Oxygen and Toxic Gas Test; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed information collection; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and information collection burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on both current and proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that reporting burden (time and financial resources) is minimized, collection materials are clearly understood, impact of collection requirements on respondents can be accurately assessed, and requested data can be provided in the desired format. Currently, the Occupational Safety and Health Administration is soliciting comments on the collection of information requirements contained in 29 CFR 1926.550(a)(11). Under that provision, records of oxygen and toxic gas tests must be made whenever internal combustion engines of construction cranes or derricks exhaust into enclosed workspaces.

The Agency is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of OSHA's responsibilities, including whether the information will have practical utility;

• Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses).

DATES: Written comments must be submitted on or before August 18, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket ICR–98–15, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3621, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7207. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Mr. Davey at (202) 219–7207 or Barbara Bielaski at (202) 219–8076. For electronic copies of the information collection request, contact OSHA's Web Page on Internet at http://www.osha-slc.gov (click on *Information Collection Requests*).

SUPPLEMENTARY INFORMATION:

Background

The Occupational Safety and Health Administration (OSHA) currently has approval from the Office of Management and Budget (OMB) for the information collection requirement contained in 29 CFR 1926.550(a)(11). That approval will expire on September 30, 1998, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval. The provision requires employees to keep a record of oxygen and toxic gas tests made when internal combustion engines of construction cranes or derricks exhaust into enclosed workspaces.

Current Action

The notice requests an extension of the current OMB approval of the paperwork requirements in 29 CFR 1926.550(a)(11).

Type of Review: Extension of existing approval.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Construction Oxygen and Toxic Gas Test.

OMB Number: 1218–0054.

Agency Number: Docket No. ICR–98–15.

Affected Public: Business or other for-profit.

Number of Respondents: 50.

Frequency: Daily.

Average Time Per Response: 2 minutes.

Total Burden Hours: 100.

Comments submitted in response to this notice will be summarized and included in the request of Office of Management and Budget approval of the information collection (record) request; they will also become a matter of public record.

Signed this 15th day of June 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–16386 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10327, et al.]

Proposed Exemptions; Lehman Brothers, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written comments and hearing requests: All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. *Attention:* Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to interested persons: Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Lehman Brothers Inc. (Lehman) and Lehman Brothers Trust Company and Affiliates (LBTC) Located in New York, New York

[Application No. D–10327]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the lending of securities to Lehman or to any other U.S. registered broker-dealer who is an affiliate of Lehman (collectively, Lehman Broker-Dealers) by employee benefit plans, including commingled investment funds holding plan assets (the Client Plans), with respect to which the Lehman Broker-Dealer is a party in interest, or for which LBTC or any other affiliate of Lehman, acts as directed trustee or custodian and/or securities lending agent (or sub-agent) for such Client Plan; and (2) the receipt of compensation by LBTC in connection with these transactions, provided that the following conditions are met:

1. Neither the Lehman Broker-Dealers nor LBTC has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction (other than with respect to the investment of cash collateral after the securities have been loaned and collateral received), or renders investment advise (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan;

2. Before a Client Plan participates in a securities lending program and before any loan of securities to the Lehman Broker-Dealers is affected, a Client Plan fiduciary who is independent of LBTC and the Lehman Broker-Dealers must have:

(a) Authorized and approved a securities lending authorization agreement with LBTC (the Agency Agreement), where LBTC is acting as the direct securities lending agent;

(b) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent, where LBTC is lending securities under a sub-agency arrangement with the primary lending agent;[1]

(c) Approved the general terms of the securities loan agreement (the Basic Loan Agreement) between such Client Plan and the borrower, the Lehman Broker-Dealers, the specific terms of which are negotiated and entered into by LBTC;

3. A Client Plan may terminate the securities lending agency agreement at any time without penalty on five (5) business days notice, whereupon the Lehman Broker-Dealers shall deliver securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (a) the customary delivery period for such securities, (b) five (5) business days, or (c) the time negotiated for such delivery by the Client Plan and the Lehman Broker-Dealers, whichever is less;

4. LBTC (or another custodian on behalf of the Client Plan) will receive from the Lehman Broker-Dealers either by physical delivery, book entry in a securities depository, wire transfer or similar means collateral consisting of U.S. dollars, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by an entity other than the Lehman Broker-Dealers) or other collateral permitted under Prohibited Transaction Exemption (PTE) 81–6 (as amended from time to time or, alternatively, any additional or superceding class exemption that may be issued to cover securities lending by employee benefit plans) [2] by the close of business on or before the day the loaned securities are delivered to the Lehman Broker-Dealers;

5. The market value of the collateral will initially equal at least 102 percent of the market value of the loaned securities. If the market value of the collateral on the close of trading on a business day falls below 100 percent of the market value of the borrowed securities at the close of business on that day, the Lehman Broker-Dealers will deliver additional collateral on the following day such that the market value of the collateral will again equal 102 percent. The Basic Loan Agreement will give the Client Plans a continuing security interest in, and a lien on, the collateral. LBTC will monitor the level of the collateral daily;

6. All the procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of PTE 81–6 and PTE 82–63;

7. In the event the Lehman Broker-Dealer fails to return securities within a designated time, the Client Plan will have the right under the Basic Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Lehman Broker-Dealer's obligation to return the Client Plan's securities, the Lehman Broker-Dealer will indemnify the Client Plan with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Client Plan plus applicable interest at a reasonable rate, including any attorneys fees incurred by the Client Plan for legal action arising out of default on the loans, or failure by the Lehman Broker-Dealer to properly indemnify the Client Plan;

8. The Client Plan will receive the equivalent of all distributions made to the holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

9. Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Lehman Broker-Dealers; provided, however, that—

(a) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Lehman Broker-Dealers, the foregoing $50 million

[1] When LBTC acts as sub-agent, rather than the primary lending agent, the primary lending agent is receiving no section 406(b) of the Act relief herein. In such situations, the primary lending agent may be provided relief by Prohibited Transaction Class Exemption (PTE) 81–6 and PTE 82–63. PTE 81–6 was published at 46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987, and PTE 82–63 was published at 47 FR 14804, April 6, 1982.

[2] The Department notes that this proposed exemption would provide relief from the restrictions of section 406(a) as well as section 406(b)(1) and (b)(2) of the Act, whereas PTE 81–6 provides relief only for securities lending transactions which would violate section 406(a) of the Act. Thus, any amendments that may be made by the Department to PTE 81–6 which would permit different types of assets to be used as collateral for a securities loan would not allow the use of such assets as collateral under this proposed exemption to the extent that the transactions covered by this exemption (if granted) would require relief from section 406(b) of the Act.

requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(b) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Lehman Broker-Dealers, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

10. With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers.

11. The terms of each loan of securities by the Client Plans to the Lehman Broker-Dealer will be at least as favorable to such plans as those terms which would exist in a comparable arm's-length transaction between unrelated parties;

12. Each Client Plan will receive monthly reports on the transactions, so that an independent fiduciary of such plan may monitor the securities lending transactions with the Lehman Broker-Dealer;

13. Before entering into the Basic Loan Agreement and before a Client Plan lends any securities to the Lehman Broker-Dealer, an independent fiduciary of such Client Plan will receive sufficient information, concerning the financial condition of the Lehman Broker-Dealer, including the audited and unaudited financial statements of the Lehman Broker-Dealer;

14. The Lehman Broker-Dealer will provide to a Client Plan prompt notice at the time of each loan by such plan of any material adverse changes in the Lehman Broker-Dealer's financial condition, since the date of the most recently furnished financial statements;

15. With regard to the "exclusive borrowing" agreement (as described below), the Lehman Broker-Dealer will directly negotiate the agreement with a Client Plan fiduciary who is independent of the Lehman Broker-Dealers and LBTC, and such agreement may be terminated by either party to the agreement at any time; [3]

16. The Client Plan: (a) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to the Lehman Broker-Dealer, if such fee is not greater than the fee the Client Plan would pay an unrelated party in an arm's length transaction;

17. In the event that a Lehman Broker-Dealer is also the securities lending agent for a Client Plan, LBTC shall act as securities lending sub-agent in connection with any loan of securities to the Lehman Broker-Dealer;

18. Prior to the Client Plan's approval of the lending of its securities to the Lehman Broker-Dealers, a copy of the exemption, if granted, (and this notice of pendency) will be provided to the Client Plan; and

19. Lehman maintains or causes to be maintained within the United States for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (20) below to determine whether the conditions of this exemption have been met; except that a party in interest with respect to an employee benefit plan, other than Lehman or the Lehman Broker-Dealers, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975 (a) or (b) of the Code, if such records are not maintained, or are not available for examination as required by this section, and a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Lehman or the Lehman Broker-Dealers, such records are lost or destroyed prior to the end of such six year period;

20. (i) Except as provided in subparagraph (ii) of this paragraph (20) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (19) are unconditionally available at their customary location for examination during normal business hours by—

(a) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission,

(b) Any fiduciary of a Client Plan or any duly authorized representative of such fiduciary,

(c) Any contributing employer to any Client Plan, or any duly authorized employee or representative of such employer, and

(d) Any participant or beneficiary of any Client Plan, or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subparagraphs (b)–(d) of this paragraph (20) shall be authorized to examine trade secrets of Lehman or the Lehman Broker-Dealers, or commercial or financial information which is privileged or confidential.

Summary of Facts and Representations

1. Lehman, a Delaware corporation, is the principal operating subsidiary of Lehman Brothers Holdings Inc. (LB Holdings), also a Delaware corporation. Lehman is one of the largest full-line investment service firms in the United States, and is registered with and regulated by the Securities and Exchange Commission (SEC). Lehman is a member of the New York Stock Exchange and other principal securities exchanges in the United States, and is also a member of the National Association of Securities Dealers, Inc. As of November 30, 1995, Lehman had $82.6 billion in assets.

2. Lehman and the Lehman Broker-Dealers acting as principals, borrow securities from institutions and either utilize such securities to satisfy their own needs, or re-lend these securities to borrowing brokerage firms and other

[3] The termination will be without penalty to the Client Plan, except for the return to the Lehman Broker-Dealers of a part of any flat fee paid by the Lehman Broker-Dealers to the Client Plan, if the Client Plan has terminated its exclusive borrowing agreement with the Lehman Broker-Dealers.

entities which need a particular security for certain periods of time. Borrowers often need securities to satisfy deliveries in cases of short sales, or where a broker fails to receive securities it is required to deliver. Lehman Broker-Dealers borrow and lend approximately $50 billion of securities on an average daily basis, and are among the largest institutional securities borrowers and lenders in the United States. In making such loans, the Lehman Broker-Dealers carefully review the credit-worthiness of its counterparties.

3. LBTC is an affiliate of Lehman, and is a wholly owned subsidiary, organized and chartered by LB Holdings as a limited purpose trust company under the laws of the State of New York. LBTC has its principal executive offices in New York, New York. LBTC provides a variety of services to its clients, including custodial services and securities lending services as a direct securities lending agent. LBTC may also be retained from time to time by primary securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such primary securities lending agents. As a securities lending sub-agent, LBTC's role (i.e., negotiating the terms of the loans with borrowers pursuant to a client-approved form of a loan agreement, and monitoring receipt of, and marking-to-market, the required collateral) parallels those under the lending transactions for which LBTC acts as a primary lending agent on behalf of its clients.

4. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or a bank to earn a fee in addition to any interest, dividends, or other distributions paid on the loaned securities. The lender generally requires that the security loans be fully collateralized, and the collateral usually is cash or high quality liquid securities issued by the U.S. Government, or Federal Agency obligations or certain bank letters of credit. When the collateral is cash, the lender generally invests the cash and rebates a portion of the earnings on such collateral to the borrower. The fee received by the lender is the difference between the earnings on the collateral and the amount of the rebate that is paid to the borrower. When a securities loan is collateralized with U.S. Government or Federal Agency securities or with letters of credit issued by a bank, the fee is paid directly by the borrower to the lender.

Institutional investors often utilize the services of an agent in performing securities lending transactions. The lending agent is paid a fee for its services which may be a percentage of the income earned by the investor from lending its securities. The applicants represent that the essential functions which define a securities lending agent are identifying appropriate borrowers of securities and negotiating loan terms to the borrowers. Certain services which are ancillary to securities lending include monitoring the level of collateral, the value of loaned securities, and in some instances, investing the collateral.

5. LBTC and Lehman request an exemption for the lending of securities owned by the Client Plans, with respect to which the Lehman Broker-Dealer is a party in interest, or for which LBTC will serve as directed trustee or custodian and/or securities lending agent (or sub-agent),[4] following disclosure to the Client Plans of LBTC's affiliation with the Lehman Broker-Dealer, under either of the two arrangements described as Plan A and Plan B, and for receipt of compensation by LBTC in connection with such transactions. Neither LBTC nor the Lehman Broker-Dealers will have discretionary authority or control over the Client Plans' decisions concerning the acquisition or disposition of securities available for lending. However, because LBTC under the Plan A arrangement and the Lehman Broker-Dealers under the Plan B arrangement (as discussed further below), will have discretion with respect to whether there is a loan of the Client Plan securities to the Lehman Broker-Dealers, the lending of securities to the Lehman Broker-Dealers under such arrangements may be outside the scope of relief provided by PTE 81–6 and PTE 82–63.[5]

6. When a loan of securities by a Client Plan is collateralized with cash, LBTC, at the Client Plan's direction, will either transfer such cash collateral to the Client Plan or its designated agent for investment. Alternatively, LBTC may invest the cash in short-term securities or interest-bearing accounts. In either case, LBTC will rebate a portion of the earnings on the cash collateral to the Lehman Broker-Dealers on behalf of the Client Plan. The Lehman Broker-Dealers will pay a fee to the Client Plan based on the value of the loaned securities where the collateral consists of obligations other than cash. Under the Plan A arrangement and, in some instances, under the Plan B arrangement (see paragraph 24 for the types of lending services which may be provided to the Client Plans by LBTC under Plan B arrangement), the Client Plan will pay a fee to LBTC for providing lending services to the Client Plan, which will reduce the income earned by the Client Plan from lending its securities to the Lehman Broker-Dealers. The Client Plan and LBTC will agree in advance to this fee, which will represent a percentage of the income the Client Plan earns from its lending activities.

Several safeguards, described more fully below, are incorporated into the application to ensure the protection of the Client Plans' assets involved in these securities lending transactions. In addition, the applicants represent that both the Plan A and Plan B arrangements described herein incorporate the relevant conditions contained in PTE 81–6 and PTE 82–63.

7. Plan A. Where LBTC is the direct securities lending agent, a fiduciary of a Client Plan who is independent of LBTC and the Lehman Broker-Dealers will sign a securities lending agency agreement (the Agency Agreement) with LBTC before the Client Plan participates in the LBTC securities lending program. The Agency Agreement will, among other things, describe the operation of the lending program, prescribe the form of the securities loan agreement to be entered into on behalf of the Client Plan with the borrowers, identify the securities which are available to be lent, required collateral and daily marking-to-market, and provide the list of permissible borrowers, including the Lehman Broker-Dealers. The Agency Agreement will also set forth the basis and rate for LBTC's compensation from the Client Plan for the performance of securities lending services. The Client

[4] Future references to LBTC's performance of services as securities lending agent should be deemed to include its parallel performance as a securities lending sub-agent, and references to the Client Plans should be deemed to include those plans for which LBTC is acting as a sub-agent with respect to securities lending activities, unless otherwise specifically indicated or by the context of reference.

[5] PTE 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest. However, condition 1 of PTE 81–6 requires, in part, that neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction.

PTE 82–63 (47 FR 14804, April 6, 1982) provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. PTE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of the Act.

Plan may terminate the Agency Agreement at any time, without penalty, on no more than five business days' notice.

8. The Agency Agreement will contain provisions regarding designation by the Client Plan of the Lehman Broker-Dealer as an approved borrower. Specifically, the Client Plan will acknowledge that the Lehman Broker-Dealer is an affiliate of LBTC. Pursuant to the Agency Agreement, LBTC will represent to the Client Plan that each loan made to the Lehman Broker-Dealer on behalf of the Client Plan will be at market rates, and in no event less favorable to the Client Plan than a loan of such securities, made at the same time and under the same circumstances, to an unaffiliated borrower.

9. When LBTC is lending securities under a sub-agency arrangement, the primary lending agent will enter into a securities lending agency agreement (the Primary Lending Agreement) with a fiduciary of the Client Plan, who is independent of such primary lending agent, LBTC and the Lehman Broker-Dealers, before the Client Plan participates in the securities lending program. Except as set forth in paragraph 10 below, the primary lending agent will be unaffiliated with LBTC and the Lehman Broker-Dealers. The Primary Lending Agreement will contain substantive provisions akin to those in the Agency Agreement described above, relating to the description of the operation of the lending program, use of an approved form of securities loan agreement, identification of securities which are available to be lent, required collateral and daily marking-to-market, and provision of a list of approved borrowers (which will include the Lehman Broker-Dealers). The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents, including LBTC, to facilitate its performance of securities lending agency functions. Where LBTC is to act as a sub-agent, the Primary Lending Agreement will expressly disclose that LBTC is to so act. The Primary Lending Agreement will also set forth the basis and rate for the primary lending agent's compensation from the Client Plan for the performance of securities lending services, and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s) it retains pursuant to the authority granted under such agreement. The Client Plan may terminate the Primary Lending Agreement at any time, without penalty, on no more than five business days' notice.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with LBTC under which the primary lending agent will retain and authorize LBTC, as sub-agent, to lend securities of the primary lending agent's clients, subject to the same terms and conditions as are specified in the Primary Lending Agreement. Thus, for example, the form of basic loan agreement (described in paragraph 12 below) will be the same as that approved by the Client Plan fiduciary in the Primary Lending Agreement, and the list of permissible borrowers under the Sub-Agency Agreement (which will include the Lehman Broker-Dealers) will be limited to those approved borrowers listed as such under the Primary Lending Agreement.

The Sub-Agency Agreement will contain provisions which are in substance comparable to those described in paragraphs 7 and 8 above, which would appear in the Agency Agreement in situations where LBTC is the primary lending agent. In this regard, LBTC will make the same representation in the Sub-Agency Agreement as described in paragraph 8 above with respect to arm's-length dealings with the Lehman Broker-Dealers. The Sub-Agency Agreement will also set forth the basis and rate for LBTC's compensation to be paid by the primary lending agent.

10. Lehman has been informed that some Client Plans will not be able to hire LBTC as direct securities lending agent, because under the provisions of that Plan any such agent for such Client Plans is required to be registered as a broker-dealer with the Securities and Exchange Commission (SEC). In these cases, the applicants propose that a Lehman Broker-Dealer, which is registered as a broker-dealer with the SEC, will act as a primary lending agent and LBTC will act as sub-agent. In other respects the sub-agency relationship will operate as set forth in paragraph (9) above.

11. In all cases, LBTC will maintain transactional and market records sufficient to assure compliance with its representation that all loans to the Lehman Broker-Dealers are effectively at arms-length terms. Such records will be provided to the Client Plan fiduciary, who is independent of LBTC and the Lehman Broker-Dealers, in the manner and format agreed to by the Client Plan fiduciary and LBTC, without charge to the Client Plan.

12. LBTC, under the Agency Agreement, as securities lending agent for the Client Plans, will negotiate a master securities borrowing agreement with a schedule of modifications attached thereto (the Basic Loan Agreement) with the Lehman Broker-Dealers on behalf of the Client Plans. An independent fiduciary of the Client Plan will approve the form of the Basic Loan Agreement before such fiduciary executes the Agency Agreement. The Basic Loan Agreement will specify, among other things, the right of the Client Plan to terminate a loan at any time and the Client Plan's rights in the event of any default by the Lehman Broker-Dealers. The Basic Loan Agreement will set forth the basis for compensation to the Client Plan for lending securities to the Lehman Broker-Dealers under each category of collateral. The Basic Loan Agreement will also contain a requirement that the Lehman Broker-Dealers must pay all transfer fees and transfer taxes related to the security loans.

13. Prior to making any loans under the Basic Loan Agreement, the Lehman Broker-Dealers will furnish its most recent available audited and unaudited financial statements to LBTC (assuming LBTC does not already possess such statements), which, in turn, will provide such statements to the Client Plan before the independent fiduciary of the Client Plan is asked to approve the terms of the Basic Loan Agreement. The terms of the Basic Loan Agreement will contain a requirement that the Lehman Broker-Dealer must give prompt notice at the time of the loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, LBTC will request that the independent fiduciary of the Client Plan approve the loan in view of the changed financial condition.

14. As noted above, the agreement by LBTC to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. The Client Plan and LBTC will agree to an arrangement under which LBTC will be compensated for its services as the lending agent prior to the commencement of any lending activity. Similarly, with respect to arrangements under which LBTC is acting as securities lending sub-agent, the agreed upon fee arrangement of the primary lending agent will be set forth in the Primary Lending Agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of such fee, as the primary lending agent determines in its sole

discretion, to any sub-agent, including LBTC, which is to provide securities lending services to the plan.[6]

15. Each time a Client Plan loans securities to the Lehman Broker-Dealers pursuant to the Basic Loan Agreement, the Lehman Broker-Dealers will execute a designation letter specifying the material terms of the loan, including the securities to be loaned, the required level of collateral, and the fee or rebate payable, and any special delivery instructions. The terms of each loan will be at least as favorable to the Client Plan as those of a comparable arm's-length transaction between unrelated parties.

16. LBTC will establish each day a written schedule of lending fees [7] and rebate rates [8] to assure uniformity of treatment among borrowing brokers and to limit the discretion LBTC would have in negotiating securities loans to the Lehman Broker-Dealers. Loans to the Lehman Broker-Dealers on any day will be made at rates on the daily schedule or at rates which may be more advantageous to the Client Plans. In no case will the loans be made to the Lehman Broker-Dealers at rates or lending fees less advantageous to the Client Plan than those on the schedule.

The rebate rates, which are established for cash collateral loans made by the Client Plans, will take into account the potential demand for the loaned securities, the applicable benchmark cost of funds indices [typically, the U.S. Federal Funds Rate established by the Federal Reserve System (Federal Funds), the overnight "REPO" [9] rate, or the like) and the anticipated investment return on overnight investments which are permitted by the Client Plan Fiduciary. The lending fees, which are established with respect of loans made by the Client Plans collateralized by other than cash, will be set daily to reflect conditions as influenced by potential market demand.

LBTC will negotiate rebate rates for cash collateral payable to each borrower, including the Lehman Broker-Dealers, on behalf of a Client Plan. Where, for example, cash collateral derived from an overnight loan is intended to be invested in a generic repurchase agreement, any rebate fee determined with respect to an overnight repurchase agreement benchmark will be set below the applicable "ask" quotation therefor. Where cash collateral is derived from a loan with an expected maturity date (term loan) and is intended to be invested in instruments with similar maturities, the maximum rebate fee will be less than the investment return (assuming no investment default). With respect to any loan to the Lehman Broker-Dealers, LBTC will not knowingly negotiate a rebate rate with respect to such loan which over the anticipated term of the loan would produce a zero or negative return to the Client Plan (assuming no default on the investments related to the cash collateral from such loan where LBTC has investment discretion over the cash collateral). LBTC represents that the written rebate rate established daily for cash collateral under loans negotiated with the Lehman Broker-Dealers will not exceed the rebate rate which would be paid to a similarly situated unrelated borrower with respect to a comparable securities lending transaction. LBTC will disclose the method for determining the maximum daily rebate rate as described above to an independent fiduciary of the Client Plan for approval before lending any securities to the Lehman Broker-Dealers on behalf of the Client Plan.

17. For collateral other than cash, the applicable lending fee in respect of any outstanding loan will be reviewed daily by LBTC for competitiveness and adjusted, where necessary, to reflect market terms and conditions. With respect to any calendar quarter, at least 50 percent of the securities loans negotiated on behalf of the Client Plans will be to borrowers not affiliated with LBTC, and so the competitiveness of the loan fee will be tested in the marketplace. Accordingly, the applicants state that loans to the Lehman Broker-Dealers should result in a competitive rate of income to the lending Client Plan. At all times, LBTC will effect loans in a prudent and diversified manner.

The method of determining the actual daily securities lending rates (fees and rebates), the minimum lending fees payable by the Lehman Broker-Dealers and the maximum rebate payable to the Lehman Broker-Dealers, will be specified in an exhibit attached to the Agency Agreement to be executed between the independent fiduciary of the Client Plan and LBTC in cases where LBTC is the direct securities lending agent. These methods of determination need not be formulative, but may consist of a description of the process involved in determining rebate rates and lending fees.

18. If LBTC reduces the lending fee or increases the rebate rate on any outstanding loan to an affiliated borrower (except for any change resulting from a change in the value of any index with respect to which the fee or rebate is calculated), LBTC, by the close of business on the date of such adjustment, shall provide the independent fiduciary of the Client Plan with notice that it has adjusted such fee or rebate to such affiliated borrower, and that the Client Plan may terminate such loan at any time. LBTC shall provide the independent fiduciary with such information as the independent fiduciary may reasonably request regarding such adjustment.

19. While LBTC will normally lend securities to requesting borrowers on a first come, first served basis, as a means of assuring uniformity of treatment among borrowing brokers, in some cases it may not be possible to adhere to first come, first served allocation. This can occur in instances where (a) the credit limit established for such "first in line" borrower by LBTC and/or the Plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by a particular Client Plan whose securities are sought to be borrowed; or (c) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different representatives of LBTC at or about the same time with respect to the same security. In situations (a) and (b), loans would normally be effected with the "second in line" borrower. In situation (c), securities would be allocated as equitably as practicable among all eligible requesting borrowers.

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[6] The foregoing provisions describe arrangements comparable to conditions (c) and (d) of PTE 82–63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary." In the event that a commingled investment fund will participate in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement set forth in paragraph (f) of PTE 82–63 will be satisfied.

[7] LBTC will adopt minimum daily lending fees for non-cash collateral payable by the Lehman Broker-Dealer to LBTC on behalf of the Client Plans. LBTC will submit the method for determining such minimum daily lending fees to an independent fiduciary of the Client Plan for approval before initially lending any securities to a Lehman Broker-Dealer on behalf of a Client Plan.

[8] LBTC will adopt maximum daily rebate rates with respect to securities loans collateralized with cash collateral. LBTC will submit the method for determining such maximum daily rebate rates to an independent fiduciary of a Client Plan for approval before initially lending any securities to the Lehman Broker-Dealer on behalf of such Client Plan.

[9] An overnight "REPO" is an overnight repurchase agreement which is an arrangement whereby securities dealers and banks finance their inventories of Treasury bills, notes, and bonds. The dealer or bank sells securities to an investor with a temporary surplus of cash, agreeing to buy them back the next day. Such transactions are settled in immediately available Federal Funds, usually at a rate below the Federal Funds rate (the rate charged by the banks lending funds to each other). See Barron's *Dictionary of Finance and Investment Terms*, 2nd Edition (New York, 1987).

20. LBTC on behalf of the Client Plan will receive collateral from Lehman Broker-Dealers by physical delivery, book entry in a securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to the Lehman Broker-Dealers. The collateral will consist of U.S. dollars, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by a person other than the Lehman Broker-Dealers or any affiliates thereof) or such other types of collateral which might be permitted by the Department under PTE 81–6 or any successor.[10] The market value of the collateral on the close of business on the business day preceding the day the loaned securities are delivered to the Lehman Broker-Dealers will be at least 102 percent of the then market value of the loaned securities. The Basic Loan Agreement will give the Client Plan a continuing security interest in and a lien on the collateral. LBTC will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent, LBTC will require the Lehman Broker-Dealers to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

21. Subject to the terms and conditions of the Agency Agreement (or the Primary Lending Agreement), LBTC will invest and reinvest all or substantially all cash collateral in approved investments designated by the applicable Client Plan and identified on a schedule attached to the relevant agreement. All approved investments made by LBTC will be for the sole account and risk of the applicable Client Plan. These approved investments shall not include securities, instruments, transactions and investments issued by LBTC or any of its affiliates. From time to time, the Client Plan may instruct LBTC in writing not to make any approved investment with a certain counterparty, or through a particular financial institution or intermediary. Alternatively, the Client Plan may also retain the right to directly control the reinvestment of the cash collateral.

22. Each Client Plan participating in the lending program will be sent a monthly transaction report. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case may be) at which the security is loaned, and the number of days the security has been on loan. At the request of the Client Plan, such a report will be provided on a weekly or daily basis, rather than a monthly basis. Also, upon request of the Client Plan, LBTC will also provide the Client Plan with daily confirmations of securities lending transactions.

In order to provide the means for monitoring lending activity, rates on loans to the Lehman Broker-Dealers compared with loans to other brokers, and the level of collateral on the loans, it is represented that the monthly report will show, on a daily basis, the market value of all outstanding security loans to the Lehman Broker-Dealers and to other borrowers. Further, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The monthly report also will state, on a daily basis, the rates at which securities are loaned to the Lehman Broker-Dealers compared with those at which securities are loaned to other brokers. This statement will give an independent Client Plan fiduciary information which can be compared to that contained in the daily rate schedule.

23. Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Lehman Broker-Dealers; provided, however, that—

(a) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Lehman Broker-Dealers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(b) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Lehman Broker-Dealers, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

24. Plan B. The Lehman Broker-Dealers will directly negotiate "exclusive borrowing" agreements with fiduciaries of Client Plans, including Client Plans for which LBTC serves as directed trustee or custodian, where such fiduciary is independent of the Lehman Broker-Dealers and LBTC. Under the exclusive borrowing agreement, the Lehman Broker-Dealer will have exclusive access for a specified period of time to borrow securities of the Client Plan pursuant to certain conditions. LBTC will not participate in the negotiation of the exclusive borrowing agreement. The involvement of LBTC, if any, will be limited to such activities as holding securities available for lending, handling the movement of borrowed securities and collateral, and investing or depositing any cash collateral and supplying the Client Plans with certain reports. The applicants represent that, under the exclusive borrowing agreement, neither the Lehman Broker-Dealer nor LBTC will perform for the Client Plans the functions which

[10] See Footnote 2 above regarding the scope of relief that may be provided by the Department in any successor class exemption and the type of assets that may be used as collateral for a securities loan.

constitute the essential functions of a securities lending agent.

25. Upon delivery of loaned securities to the Lehman Broker-Dealer, LBTC, or another custodian on behalf of the Client Plan, will receive from the Lehman Broker-Dealer the same day by physical delivery, book entry in a securities depository, wire transfer, or similar means collateral consisting of U.S. dollars, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by a person other than a Lehman Broker-Dealer or any affiliate thereof) or other non-cash collateral permitted under PTE 81–6 or any successor. The market value of the collateral at the close of business on the business day preceding the day the loaned securities are delivered to the Lehman Broker-Dealer will be at least 102 percent of the then market value of the loaned securities. LBTC or such other custodian, will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent of that of the loaned securities, the Lehman Broker-Dealer will deliver sufficient additional collateral on the following day such that the market value of all collateral will equal at least 102 percent of the market value of the loaned securities. The Lehman Broker-Dealer or, in the case of some Client-Plans, LBTC, will provide a weekly report to the Client Plan showing, on a daily basis, the aggregate market value of all outstanding security loans to the Lehman Broker-Dealer, and the aggregate market value of the collateral.

26. Before entering into an exclusive borrowing agreement, the Lehman Broker-Dealer will furnish to the Client Plan, if it does not already possess such statements, the most recent publicly available audited and unaudited statements of its financial condition, as well as any other publicly available information which it believes is necessary for the Client Plan to determine whether to enter into or renew the agreement, and a copy of the final exemption, if granted, together with this proposed exemption. The agreement will contain a representation by the Lehman Broker-Dealer that, as of each time it borrows securities, there has been no material adverse changes in its financial condition. All the procedures under the agreement will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63.

27. In exchange for the exclusive right to borrow certain securities from the Client Plan, the Lehman Broker-Dealer will pay the Client Plan either a flat fee, or a minimum flat fee plus a percentage (negotiated at the time the exclusive borrowing agreement is entered into) of the total balance outstanding of borrowed securities, or a percentage of the total balance outstanding without any flat fee. A percentage may be established by reference to an objective formula. The Lehman Broker-Dealer and the independent fiduciary of the Client Plan may agree that different fee arrangements will apply to different securities or different groups of securities. Any change in the rate paid to the Client Plan will require written consent of the Client Plan independent fiduciary. However, such Client Plan's consent will be presumed where the rate changes pursuant to an objective formula. In such instances, an independent fiduciary of the Client Plan must be notified at least 24 hours in advance of the rate change, and the independent fiduciary must not object in writing to such change, prior to the effective date of the change. Under this fee arrangement, all earnings generated by the cash collateral will be returned to the Lehman Broker-Dealer. The Client Plan will receive credit for all interest, dividends or other distributions on any borrowed securities. In addition, under some arrangements, the earnings on the collateral due to the Lehman Broker-Dealer, and the dividends, interest, and other distributions on the borrowed securities payable to the Client Plan may be offset against each other, so that only a net amount will be returned to the Lehman Broker-Dealer.

28. The exclusive borrowing agreement and/or any securities loan outstanding may be terminated by either party at any time. Upon termination of any securities loan, the Lehman Broker-Dealer will deliver any borrowed securities back to the Client Plan within five business days of written notice of termination. If the Lehman Broker-Dealer fails to return the loaned securities or the equivalent thereof, the Client Plan will have the right under the agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Client Plan associated with the sale and/or purchase. Pursuant to the terms of the exclusive borrowing agreement, if the collateral is insufficient to satisfy the Lehman Broker-Dealer's obligation to return the Client Plan's securities, the Lehman Broker-Dealer will indemnify the Client Plan with respect to the difference between the replacement cost of the securities and the market value of the collateral on the date a loan is declared to be in default together with expenses not covered by the collateral, plus applicable interest at a reasonable rate.

29. With regard to those Client Plans for which LBTC provides custodial, clearing and/or reporting functions relative to securities loans, LBTC and a Client Plan fiduciary independent of LBTC and the Lehman Broker-Dealers, will agree in advance and in writing to any fee that LBTC is to receive for such services. Such fees, if any, would be fixed fees (e.g., LBTC might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services, or to receive a stated dollar amount) and any such fee would be in addition to any fee LBTC has negotiated to receive from any such Client Plan for standard custodial or other services unrelated to the securities lending activity. The arrangement for LBTC to provide such functions relative to securities loans to the Lehman Broker-Dealer will be terminable by the Client Plan within five business days of receipt of written notice without penalty to the Client Plan, except for the return to the Lehman Broker-Dealer of a part of any flat fee paid by the Lehman Broker-Dealer to the Client Plan, if the Client Plan has also terminated its exclusive borrowing agreement with the Lehman Broker-Dealer. Before entering into an agreement with the Client Plan to provide such functions relative to securities loans to the Lehman Broker-Dealer, LBTC will furnish to the Client Plan any publicly available information which it believes is necessary for the Client Plan to determine whether to enter into or renew the exclusive borrowing agreement.

30. In summary, the applicant represents that the subject transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

A. Plan A requires approval of the terms of the Basic Loan Agreement and the execution of the Agency Agreement (or the Primary Lending Agreement) by a Client Plan fiduciary independent of the Lehman Broker-Dealers and LBTC before a Client Plan lends any securities to the Lehman Broker-Dealers;

B. Under Plan B, the Lehman Broker-Dealers will directly negotiate exclusive borrowing agreement with the Client Plan;

C. The lending arrangements will permit the Client Plans to lend securities to the Lehman Broker-Dealers, which have a substantial market position as securities lenders, and will enable the Client Plans to earn additional income from the loaned securities while continuing to receive any dividends, interest payments and other distributions on those securities;

D. Neither the Lehman Broker-Dealers nor LBTC has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction (other than with respect to the investment of cash collateral after the securities have been loaned and collateral received, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan;

E. Before a Client Plan participates in a securities lending program and before any loan of securities to the Lehman Broker-Dealers is affected, a Client Plan fiduciary who is independent of LBTC and the Lehman Broker-Dealers must have:

(i) Authorized and approved a securities lending authorization agreement with LBTC (i.e., the Agency Agreement) with LBTC, where LBTC is acting as the direct securities lending agent;

(ii) Authorized and approved the primary securities lending authorization agreement (i.e., the Primary Lending Agreement) with the primary lending agent, where LBTC is lending securities under a sub-agency arrangement with the primary lending agent;

(iii) Approved the general terms of the securities loan agreement (i.e., the Basic Loan Agreement) between such Client Plan and the borrower, the Lehman Broker-Dealers, the specific terms of which are negotiated and entered into by LBTC;

F. A Client Plan may terminate any securities lending agency agreement at any time without penalty on five (5) business days' notice;

G. LBTC (or another custodian on behalf of the Client Plan) will receive from the Lehman Broker-Dealers either by physical delivery, book entry in a securities depository, wire transfer or similar means collateral consisting of U.S. dollars, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by an entity other than the Lehman Broker-Dealers) or other collateral permitted under PTE 81–6 (as amended from time to time or, alternatively, any additional or superceding class exemption that may be issued to cover securities lending by employee benefit plans) by the close of business on or before the day the loaned securities are delivered to the Lehman Broker-Dealers;

H. The market value of the collateral will initially equal at least 102 percent of the market value of the loaned securities. If the market value of the collateral falls below 100 percent, the Lehman Broker-Dealers will deliver additional collateral on the following day such that the market value of the collateral will again equal 102 percent. The Basic Loan Agreement will give the Client Plans a continuing security interest in, and a lien, on the collateral. LBTC will monitor the level of the collateral daily;

I. All the procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of PTE 81–6 and PTE 82–63;

J. In the event the Lehman Broker-Dealer fails to return securities within a designated time, the Client Plan will have the right under the Basic Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Lehman Broker-Dealer's obligation to return the Client Plan's securities, the Lehman Broker-Dealer will indemnify the Client Plan with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Client Plan plus applicable interest at a reasonable rate, including any attorneys fees incurred by the Client Plan for legal action arising out of default on the loans, or failure by the Lehman Broker-Dealer to properly indemnify the Client Plan;

K. The Client Plan will receive the equivalent of all distributions made to the holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

L. Only those Client Plans which have assets with an aggregate market value of at least $50 million (except for certain Related Client Plans or Unrelated Client Plans whose assets are commingled in a group trust under the conditions discussed herein) will be permitted to lend securities to the Lehman Broker-Dealers;

M. With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers;

N. The terms of each loan of securities by the Client Plans to the Lehman Broker-Dealer will be at least as favorable to such plans as those of a comparable arm's-length transaction between unrelated parties;

O. Each Client Plan will receive monthly reports on the transactions, including but not limited to the information described in paragraph 22 above, so that an independent fiduciary of such plan may monitor the securities lending transactions with the Lehman Broker-Dealer;

P. Before entering into the Basic Loan Agreement and before a Client Plan lends any securities to the Lehman Broker-Dealer, an independent fiduciary of such Client Plan will receive sufficient information, concerning the financial condition of the Lehman Broker-Dealer, including the audited and unaudited financial statements of the Lehman Broker-Dealer;

Q. The Lehman Broker-Dealer will provide to a Client Plan prompt notice at the time of each loan by such plan of any material adverse changes in LBTC's financial condition, since the date of the most recently furnished financial statements;

R. With regard to the "exclusive borrowing" agreement, the Lehman Broker-Dealer will directly negotiate the agreement with a Client Plan fiduciary who is independent of the Lehman Broker-Dealers and LBTC, and such agreement may be terminated by either party to the agreement at any time;

S. The Client Plan: (a) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to the Lehman Broker-Dealer, if such fee is not greater than the fee the Client Plan would pay an unrelated party in an arm's length transaction;

T. In the event that a Lehman Broker-Dealer is also the securities lending agent for a Client Plan, LBTC shall act as securities lending sub-agent in connection with any loan of securities to the Lehman Broker-Dealer; and

U. Prior to the Client Plan's approval of the lending of its securities to the Lehman Broker-Dealers, a copy of the final exemption, if granted, (and this notice of pendency) will be provided to the Client Plan.

For Further Information Contact: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Individual Retirement Accounts (the IRAs) for Roark Young, Russell Rice, Mary J. Rice, Bruce Lamchick, Steven McKean and David McKean, and Burton Young (Collectively, the Participants) Located in Miami, Florida

[Application No. D–10558–10561, 10565–10566, 10568]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sales (the Sales) of certain stock (the Stock) by the IRAs [11] to the Applicants, disqualified persons with respect to the IRAs, provided that the following conditions were met:

(a) The terms and conditions of the Sales were at least as favorable to each IRA as those obtainable in an arm's length transaction with an unrelated party;

(b) The Sale of Stock by each IRA was a one-time transaction for cash;

(c) Each IRA received the fair market value of the Stock as established by a qualified, independent appraiser; and

(d) Each IRA was not required to pay any commissions, costs or other expenses in connection with each Sale.

Effective Date: These proposed exemptions, if granted, will be effective as of March 30, 1998.

Summary of Facts and Representations

1. The IRAs are individual retirement accounts, as described in Section 408(a) of the Code. Among the assets of each IRA were shares of closely-held stock in Turnberry Financial Services, Inc. (Turnberry), a unitary savings and loan holding company located in Aventura, Florida. The primary asset held by Turnberry is the Turnberry Bank (the Bank), also of Aventura, Florida.

The applicants describe the Participants, the IRAs, and their former holdings of the Stock as follows:

(a) The IRA of Roark Young, Chairman and CEO of Turnberry and the Bank, and majority shareholder in Turnberry, currently holds assets of approximately $260,141 which, prior to the Sale, included 6,400 shares of the Stock. The IRA acquired most of the Stock from the issuer, at various times and various prices, from the period between 1993 and 1995.

(b) The IRA of Russell Rice, President of Turnberry, Executive Vice President of the Bank, and Director of both, currently holds total assets of approximately $22,000 which, prior to the Sale, included 700 shares of the Stock. The IRA acquired the Stock from other shareholders during 1997 at a price of $25, the fair market value at the time of purchase.

(c) The IRA of Mary J. Rice, wife of Russell Rice, currently holds total assets of approximately $9,600 which, prior to the Sale, included 300 shares of the Stock. The IRA acquired the Stock during 1997 at a price of $25, the fair market value of the Stock at the time of purchase.

(d) The IRA of Burton Young, Director of the Bank, currently holds total assets of approximately $1,563,039 which, prior to the Sale, included 4,567 shares of the Stock. The IRA acquired all of the Stock from the issuer in October of 1995.

(e) The IRA of David McKean currently holds total assets of approximately $14,000 which, prior to the Sale, included 380 shares of the Stock. The IRA acquired most of the Stock from the issuer at various times and prices during the period from 1990 to 1997.

(f) The IRA of Steven McKean currently holds total assets of approximately $20,000 which, prior to the Sale, included 715 shares of the Stock. The IRA acquired most of the Stock from the issuer at various times and various prices during the period of 1990 to 1997.

(g) The IRA of Bruce Lamchick currently holds total assets of approximately $320,000, which, prior to the Sale, included 700 shares of the Stock. The IRA acquired the Stock from other shareholders in October 1995 for its fair market value.

2. The applicants request an exemption for the Sale of the Stock by each individual IRA to its respective Participant. Business and income tax considerations have recently caused Turnberry to elect to be taxed as a Subchapter S corporation pursuant to the Code, effective the close of business on March 31, 1998. However, section 1361 of the Code only permits eligible shareholders to hold stock in a Subchapter S corporation. Because the IRAs are not eligible shareholders for purposes of the Code, the applicants wished to purchase the Stock from their IRAs. The applicants represent that the acquisition of the Stock by each IRA was done for investment purposes and that, in fact, each IRA made a profit on its original investment.[12] Furthermore, the applicants represent that the Stock held by the IRAs only represented a small portion of the 296,300 shares outstanding.

3. Mr. David A. Harris (Mr. Harris) and Mr. Douglas K. Southard (Mr. Southard), both accredited appraisers with Southard Financial, located in Memphis, Tennessee, appraised the Stock on July 14, 1997. Both Mr. Harris and Mr. Southard represent that they are full-time, qualified appraisers, as demonstrated by the fact that they both are currently Senior Members of the American Society of Appraisers. In addition, Mr. Harris and Mr. Southard represent that they and their firm are independent of the Participants. After analyzing the Stock, on a marketable minority interest basis which they believed appropriate for this transaction, Southard and Mr. Harris concluded that the fair market value of the Stock was $30 per share.

In reaching their conclusion as to the value of the Stock, Mr. Harris and Mr. Southard took the weighted average of the asset-based approach, the income approach, the market approach using price/book value, and the market approach using prior transactions, and arrived at a per share value of $29.98.

[11] Because each IRA has only one Participant, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[12] The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. *See, e.g.* Rev. Rul. 73–532, 1973–2 C.B. 128. The Department further notes that section 408(a) of the Code, which describes the tax qualification provisions for IRAs, mandates that the trust be created for the exclusive benefit of an individual or his beneficiaries. However, the Department is expressing no opinion in this proposed exemption regarding whether violations of the Code have taken place with respect to the purchase and subsequent retention of the Stock by some of the Applicants.

Further, to the extent that Turnberry or the other sellers were not disqualified persons with respect to the IRAs under section 4975(e)(2), the purchase of the Stock would not have constituted a prohibited transaction under section 4975(c)(1)(A) of the Code. However, the purchase and holding of the Stock by the IRAs of officers and directors of Turnberry and/or the Bank raises questions under section 4975(c)(1)(D) and (E) depending on the degree (if any) of the IRA Participant's interest in the transaction. Section 4975(c)(1)(D) and (E) of the Code prohibits the use by or for the benefit of a disqualified person of the assets of a plan and prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. The IRA Participants, as officers and directors of Turnberry and/or the Bank, may have interests in the proposed transactions which may affect their best judgment as fiduciaries of their IRAs. In such circumstances, the transactions may violate 4975(c)(1)(D) and (E) of the Code. *See* Advisory Opinion 90–20A (June 15, 1990). Accordingly, to the extent there were violations of section 4975(c)(1)(D) and (E) of the Code with respect to the purchases and holdings of the Stock by the IRAs, the Department is extending no relief for these transactions herein.

After obtaining this number, they rounded the fair market value to reflect what they believe is the imprecision inherent in the various assumptions used in the fair market value determination.

4. The applicants represent that the transactions were feasible in that each was a one-time transaction for cash. Furthermore, the applicants state that the transactions were in the best interest of the IRAs because they provided each IRA with the opportunity to dispose of the Stock for cash at the fair market value, thus allowing for diversification and enhancing liquidity so as to facilitate future distributions. Finally, the applicants represent that the transactions were protective of the rights of the Participants and beneficiaries because each IRA received the fair market value of the Stock, as determined by a qualified, independent appraiser, and incurred no commissions, costs, or other expenses as a result of each Sale.

5. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 4975(c)(2) of the Code because: (a) the terms and conditions of the Sales were at least as favorable to each IRA as those obtainable in an arm's length transaction with an unrelated party; (b) the Sale of Stock by each IRA was a one-time transaction for cash; (c) each IRA received the fair market value of the Stock, as established by a qualified, independent appraiser; and (d) each IRA was not required to pay any commissions, costs or other expenses in connection with each Sale.

Notice to Interested Persons: Because the applicants are the only participants in the IRAS, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

For Further Information Contact: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

Service Employees International Union Local 252 Welfare Fund (the Fund) Located in Wynnewood, Pennsylvania

[Application No. L–10595]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the proposed sale (the Sale) of certain improved real property located in Wynnewood, Pennsylvania (the Property) to the Service Employees International Union Local 252 (Local 252), a party in interest with respect to the Fund, provided the parties adhere to the following conditions:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Fund as those obtainable in an arm's length transaction with an unrelated party;

(c) The Sales price is an amount which represents the greater of: (1) the total cost to the Fund of acquiring the Property; or (2) the fair market value of the Property on the date of Sale as determined by a qualified, independent appraiser;

(d) The Fund does not incur any expenses with respect to the Sale.

Summary of Facts and Representations

1. The Fund is a welfare plan providing medical, hospital, and disability benefits to approximately 900 health care workers currently affiliated with Local 252, a 4000 member labor organization based in Wynnewood, Pennsylvania. The Fund was created and is maintained pursuant to collective bargaining agreements between Local 252 and employers in and around the Philadelphia, Pennsylvania area. The Local 252 trustee for the Fund is Anthony L. Teti, and the employer trustee is Zelick Kaplan. As of April 30, 1997, the Fund held net assets of $4,745,862.

2. Among the assets of the Fund is the Property, a parcel of improved real property located at 3 East Wynnewood Road in Wynnewood, Pennsylvania. Purchased for $725,000 in July 1994 from an unrelated third party, the Property consists of 8,490 square feet of land improved with a 5,360 square foot, two-story plus basement office building (the Building). The first floor of the Building consists primarily of office space with the second floor containing additional office space and a meeting room. Currently, the Fund and Local 252 occupy the Building, the latter leasing the space for its principal office.[13]

3. The Fund's need to sell the Property arises out of a recent restructuring imposed by the Service Employees International Union (the International). According to the applicant, the International has ordered the approximately 900 health care workers affiliated with Local 252 to transfer their membership to two other local organizations whose membership also consists of workers in the health care industry. Pursuant to the agreement between Local 252 and the International, the Fund will be terminated and the assets currently held therein transferred to the International's welfare fund. As a result of this transfer, the International plans to dispose of the Property. Because the Building currently serves as Local 252's principal office, and fearing that the Fund faces taking a substantial loss on the sale of the Property to an unrelated third party, Local 252 wishes to purchase the Property from the Fund.

4. Paul J. Leis (Mr. Leis), an accredited appraiser with Hayden Real Estate, Inc., located in Conshohocken, Pennsylvania, appraised the Property on January 21, 1998. Mr. Leis states that he is a qualified appraiser, as demonstrated by his status as a Member of the Appraisal Institute and a Certified Pennsylvania General Appraiser. In addition, Mr. Leis represents that both he and Hayden Real Estate, Inc. are independent of the International, Local 252, and the Trustees. After inspecting the Property, Mr. Leis determined a fee simple interest in the Property is worth $550,000.

As noted above, the Fund originally paid $725,000 for the Property. In light of the fact that this amount exceeds the fair market value determined pursuant to Mr. Leis's appraisal, Local 252 represents that it will pay $725,000 to the Fund for the Property. Local 252 has determined that paying the Fund an amount equal to the Property's acquisition price would be in the best interest of the Fund and its participants and beneficiaries as it would enable the Fund to recoup its original investment.

5. The applicant represents that the proposed transaction would be feasible in that it would be a one-time transaction for cash. Furthermore, the applicant states that the transaction would be in the best interests of the Fund because the price offered by Local 252 exceeds that obtainable in a sale to an unrelated third party and because it will allow the Fund to recoup its original investment. Finally, the applicant asserts that the transaction

[13] The Fund and Local 252 represent that the lease satisfies the requirements of Prohibited Transaction Class Exemption 76–1 (PTE 76–1, 41 FR 12740, March 26, 1976) and Prohibited Transaction Class Exemption 77–10 (PTE 77–10, 42 FR 33918, July 1, 1977), relating to, among other things, the leasing of office space by a multiemployer plan to a participating employee organization. The Department expresses no opinion as to whether the lease satisfies the conditions of PTE 76–1 or PTE 77–10.

will be protective of the rights of the participants and beneficiaries because the Fund will receive a purchase price which is an amount representing the greater of: (1) the total cost to the Fund of acquiring the Property; or (2) the fair market value of the Property on the date of Sale as determined by a qualified, independent appraiser.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) the Sale is a one-time transaction for cash; (b) the terms and conditions are at least as favorable to the Fund as those obtainable in an arm's length transaction with an unrelated party; (c) the Sales price is an amount which represents the greater of: (1) the total cost to the Fund of acquiring the Property; or (2) the fair market value of the Property on the date of Sale as determined by a qualified, independent appraiser; and (d) the Fund does not incur any expenses with respect to the Sale.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due on or before ____.

For Further Information Contact: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of June, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–16335 Filed 6–18–98; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–28; Exemption Application No. D–10396, et al.]

Grant of Individual Exemptions; Massachusetts Mutual Life Insurance Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings: In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Massachusetts Mutual Life Insurance Company (MM) Located in Springfield, Massachusetts [Prohibited Transaction Exemption 98–28; Exemption Application No. D–10396]

Exemption

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts Maintained by MM

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) *Transfers Between Accounts*

(1) The restrictions of section 406(b)(2) of the Act shall not apply to

the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between ERISA-Covered Accounts and the General Account, provided that such transfer is made pursuant to stalemate procedures, described in the notice of proposed exemption, adopted by the independent fiduciary for the ERISA-Covered Account, and provided further that the ERISA-Covered Account pays no more or receives no less than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared joint venture interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply either to the making of a pro rata equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate [as defined in Section V(e)] equity capital contribution by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a pro rata contribution.

(d) *Lending of Funds*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to participating plans,

(B) bears interest at a rate not to exceed the greater of the prime rate plus two percentage points or the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts, (1) the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower, any decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower, or any exercise of a right under the loan agreement in the event of such default, and (2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM thereof on behalf of two or more ERISA-Covered Accounts: (A) not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one (but not all) of such Accounts has approved such modification or has not approved the exercise of such rights.

Section II—Exemption for Certain Transactions Involving the Management of Joint Venture Interests Shared by Two or More Accounts Maintained by MM

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate joint venture between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the making of additional pro rata equity capital contributions by one or more Accounts participating in the joint venture.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to the participating plans,

(B) bears interest at a rate not to exceed the greater of the prime rate plus two percentage points or the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(3) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the making of Disproportionate [as defined in section V(e)] additional equity capital contributions (or the failure to make such additional contributions) in the joint venture by one or more Accounts which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis of the fair market value of such joint venture interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-venturer fails to provide all or any part of its pro rata share of an additional equity capital contribution, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the making of Disproportionate additional equity capital contributions to the joint venture by the General Account and an ERISA-Covered Account up to the amount of such contribution not provided by the co-venturer which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis provided in the joint venture agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all

additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the joint venture, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by MM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the joint venture even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved the acceptance of the offer, provided that such declining ERISA-Covered Account[s] are first afforded the opportunity to buy out both the co-venturer and "selling" Account's interests in the joint venture.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a joint venture agreement to purchase a co-venturer's interest in the joint venture at the price offered for such interest by a third party, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by such Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM on behalf of the Accounts not to exercise such a right of first refusal even though the independent fiduciary for one (but not all) of such ERISA-Covered Accounts has approved the exercise of the right of first refusal, provided that none of the ERISA-Covered Accounts that approved the exercise of the right of first refusal decides to buy-out the co-venturer on its own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the joint venture agreement, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the joint venture to a co-venturer even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved such sale, provided that such disapproving ERISA-Covered Account is first afforded the opportunity to purchase the entire interest of the co-venturer.

Section III—Exemption for Transactions Involving a Joint Venture or Persons Related to a Joint Venture

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account that is participating in an interest in the joint venture, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to MM and its affiliates. This condition shall not apply to plans covering employees of MM.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments that are structured as shared investments under this exemption is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the final exemption.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either

(1) a business organization which has at least five years of experience with respect to commercial real estate investments,

(2) a committee composed of three to five individuals (who may be investors or investor representatives approved by the plans participating in the ERISA-Covered Account, and) who each have at least five years of experience with respect to commercial real estate investments, or

(3) the plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of MM or any of its affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from MM, its affiliates and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his or her annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation shall not include compensation for services rendered to a single-customer ERISA-Covered Account by an independent fiduciary who is initially selected by the Plan sponsor for that ERISA-Covered Account.

The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the

Department. Notwithstanding the foregoing, such income limitation shall not include any income for services rendered to a single customer ERISA-Covered Account by an independent fiduciary selected by the Plan sponsor to the extent determined by the Department in any subsequent prohibited transaction exemption proceeding.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, MM, its affiliates, or any Account maintained by MM or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by MM or its affiliates for each of the transactions in this exemption. In the case of a possible transfer or exchange of any interest in a shared investment between the General Account and an ERISA-Covered Account, the independent fiduciary shall also have full authority to negotiate the terms of the transfer. MM and its affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) MM maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (h) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of MM or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided in paragraph (2) of this subsection (h) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (g) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (h) shall be authorized to examine trade secrets of MM, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this exemption:

(a) An "affiliate" of MM includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with MM,

(2) Any officer, director or employee of MM or person described in section V(a)(1), and

(3) Any partnership in which MM is a partner.

(b) An "Account" means the General Account (including the general accounts of MM affiliates which are managed by MM), any separate account managed by MM, or any investment advisory account, trust, limited partnership or other investment account or fund managed by MM.

(c) The "General Account" means the general asset account of MM and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An "ERISA-Covered Account" means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(e) "Disproportionate" means not in proportion to an Account's existing equity ownership interest in an investment, joint venture or joint venture interest.

For a more complete statement of the facts and representations supporting the department's decision to grant this exemption, refer to the notice of proposed exemption published on February 6, 1998 at 63 FR 6217.

Written Comments and Hearing Requests: The Department received no hearing requests with respect to the proposed exemption. The only written comments were submitted by MM in order to clarify certain of the information contained in the summary of facts and representations for the proposed exemption (the Summary).

First, MM states that with regard to the reference to health insurance in Representation 1 of the Summary, Footnote 1 is intended to indicate only the extent to which MM currently offers such health insurance. The footnote states that MM sold its group life and health subsidiary on March 31, 1996 and will no longer offer group life and health insurance after the completion of a transition period under the purchase and sale agreement relating thereto.

Second, with respect to the second paragraph of Representation 1 of the Summary, MM wishes to clarify that the exemption will cover Accounts (including ERISA-Covered Accounts) other than those currently in existence, and which may invest in equity real estate and mortgage investments.

Third, the last sentence of Representation 7 of the Summary concerns those persons to whom MM must make certain disclosures regarding its shared real estate investments. With respect to the proposed exemption and other information to be contained in such disclosures, MM seeks to clarify that it was only required to provide a copy of the proposed exemption within 30 days of the publication of the proposed exemption (i.e., March 8, 1998) to each current contractholder in an ERISA-Covered Account that proposes to engage in transactions which are structured as shared investments under the exemption. In addition, MM states that it will provide a copy of this exemption (as published in the **Federal Register**) before the Account begins to participate in such investments.

Fourth, concerning the first sentence of Representation 8 of the Summary, MM states that in order to more clearly define the persons to whom certain disclosures must be made, the sentence should be rewritten to read as follows:

With respect to new contractholders in an ERISA-Covered Account that participates in the sharing of investments which are structured as shared investments under this exemption, each such contractholder must be provided with the description outlined above, a copy of the notice of pendency and a copy of the exemption as granted, before the Account begins to participate in the sharing of such investments.

Fifth, with respect to Footnote 4 in Representation 12 of the Summary, relating to the sophistication of investors participating in MM's single customer and pooled closed-end real estate Accounts, MM states that this footnote only refers to contractholders in its ERISA-Covered Accounts which engage in transactions structured as shared investments under this exemption.

Finally, the third sentence in Representation 18 of the Summary and the fourth paragraph of Representation 21 of the Summary both refer to the partition and sale of undivided and divided real estate investment interests, respectively. In this regard, MM seeks to clarify that the partition and sale of such interests is meant to establish a possible resolution to the stalemates which are described in Representations 18 and 21 of the Summary. Such events would involve the partition of property in which Accounts own a fractional undivided interest in the whole, and the sale of one or more resulting divided interests, including those interests which are co-owned by some of the Accounts. The Department confirms that these scenarios are presented only as examples of possible resolutions to the stalemates which are described in Representations 18 and 21 of the Summary, and are not meant to describe resolutions to other matters.

In addition, the Department acknowledges all of the above-described clarifications by MM to the record which formed the basis for the proposed exemption as published in the **Federal Register**.

Accordingly, after considering the entire record, including the comments made by MM, the Department has determined to grant the exemption as proposed.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Knoxville Surgical Group Qualified Retirement Plan (the Plan) Located in Knoxville, Tennessee

[Prohibited Transaction Exemption 98–29; Exemption Application No: D–10506]

Exemption

The restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply to the sale (the Sale) of a medical office condominium (the Property) by the Plan to Hugh C. Hyatt, M.D., Richard A. Brinner, M.D., Randal O. Graham, Michael D. Kropilak, M.D., and P. Kevin Zirkle, M.D., parties in interest with respect to the Plan provided the following conditions are satisfied: (1) The Sale will be a one time transaction for cash; (2) the Property will be sold at a price equal to the greater of $780,000 or the fair market value of the Property on the date of the Sale; and (3) the Plan will pay no commissions or expenses associated with the Sale.

For a more complete statement of the summary of facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on February 6, 1998 at 63 FR 6216.

Written Comments: The Department received one comment from the applicant. The applicant noted that during the Department's consideration of the exemption application, the Knoxville Surgical Group had originally planned to merge the Plan into the Premier Surgical Plan. However, this merger did not occur. Rather, the Plan will remain a dormant plan with all participants fully vested.

The Department has considered the entire record, including the comment submitted by the applicant, and has determined to grant the exemption as proposed.

For Further Information Contact: Allison Padams Lavigne, U. S. Department of Labor, telephone (202) 219–8971. (This is not a toll-free number.)

Jack Mayesh Wholesale Florist, Inc. Profit Sharing Plan (the Plan) Located in Los Angeles, California

[Prohibited Transaction Exemption 98–30; Exemption Application No. D–10524]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of certain unimproved real property (the Property) to Roy Dahlson, a party in interest with respect to the Plan, provided that the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan pays no commissions nor other expenses relating to the sale; and (3) the Plan receives an amount which is the greater of either (a) the fair market value of the Property as of the date of the sale, as determined by a qualified, independent appraiser, or (b) the original acquisition cost of the Property to the Plan, plus lost opportunity costs attributable to the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 22, 1998 at 63 FR 19950.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Pipefitters Local Union No. 537 Pension Fund (the Plan) Located in Boston, Massachusetts

[Prohibited Transaction Exemption No. 98–31; Application No. D–10577]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) of certain real property (the Property) to the Plan by Local Union 537 (the Union) of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Plan than those which the Plan would receive in an arm's-length transaction with an unrelated party;

(B) The Sale is a one-time transaction for cash;

(C) The Plan incurs no expenses from the Sale;

(D) The Plan pays as consideration for the Property no more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale; and

(E) The independent fiduciary for the Plan will undertake to monitor and enforce the terms of the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this

exemption, refer to the Notice of Proposed Exemption published on April 22, 1998, at 63 FR 19953.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202)219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 16th day of June 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–16337 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Nos. D–10470 and D–10576]

Navistar International Transportation Corporation (Navistar); Located in Chicago, IL and the Supplemental Program Committee of the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan (Supplemental Program Committee) Located in Euclid, OH

AGENCY: Department of Labor.

ACTION: Notice of proposed amendments to Prohibited Transaction Exemption (PTE) 93–69

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of proposed amendments to PTE 93–69 [58 FR 51105, September 30, 1993]. PTE 93–69 provides an exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 for: (1) the acquisition and holding by the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan (New Plan) of shares of Class B Common Stock and Series A Preference Stock of Navistar International Corporation (NIC); (2) the holding by the New Plan of shares of NIC Common Stock resulting from the conversion of NIC Class B Common Stock into such shares; (3) the extension of credit between Navistar and the New Plan, which may occur in conjunction with Navistar's annual obligation to advance funds to the Supplementary Benefit Program Trust; and (4) the sale of shares of NIC Class B Common Stock by the New Plan to Navistar. The proposed amendments, if granted, would affect participants and beneficiaries of, and fiduciaries with respect to the New Plan.

EFFECTIVE DATE: If granted, the proposed amendments will be effective July 1, 1998.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before the expiration of August 3, 1998.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210, Attention: Application Nos. D–10470 and D–10576. The applications for amendments and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5638, 200 Constitution Avenue, NW., Washington DC 20210.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall of the Department of Labor, telephone (202) 219–8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of proposed amendments to PTE 93–69. The proposed amendments were requested in applications filed by the Supplemental Program Committee and Navistar pursuant to section 408(a) of the Act and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847. August 10, 1990). One of the proposed amendments would permit William Craig, a member of the Supplemental Program Committee, to continue to serve on the NIC board of directors beyond the termination of the Lock-up Period. The other amendment would permit the sale of shares of NIC Common Stock by the New Plan to NIC or Navistar for not less than adequate consideration as defined in section 3(18) of the Act.

Summary of Facts and Representations

The applications contain representations with regard to the proposed amendments which are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the applicants.

1. Background

(a) Navistar, a Delaware corporation headquartered in Chicago, Illinois, is a manufacturer of large and medium size trucks and mid-range diesel engines.

(b) NIC is a publicly-traded corporation which wholly owns Navistar.

(c) The Supplemental Program Committee is a five-member committee which is responsible for managing the assets of the Supplemental Benefit Program Trust.

(d) In 1992 , Navistar proposed to terminate its retiree health and life insurance benefit program and to replace it with a plan providing a reduced schedule of benefits. The New Plan was created as part of the 1993 settlement of a class action which was filed by the Navistar retirees against Navistar in response to the proposed

termination.[1] The New Plan consists of two parts, the Retiree Health Benefit Program and Trust ("Base Program" and "Base Trust") and the Supplemental Benefit Program and Trust. The Supplemental Benefit Program Trust was initially funded with approximately 255 million shares of NIC Class B Common Stock.

Until the end of the Lock-up Period (July 1, 1998),[2] the NIC Class B Common Stock generally is restricted and has no voting or transfer rights. The NIC Class B Common Stock certificates bear a legend indicating that the stock has not been registered under the Securities Act of 1933 and may not be sold or transferred. In addition, under the terms of NIC's Certificate of Incorporation and pursuant to the Shy Settlement, the Supplemental Benefit Program Trust could not sell its Class B Common Stock until the end of the Lock-up Period, except in a transaction approved by NIC's board of directors. On July 1, 1998 (or upon an earlier sale approved by the Board), the Class B Common Stock will automatically convert to NIC Common Stock, a widely-held publicly-traded New York Stock Exchange security with full voting rights. After the Lock-up Period expires, a Registration Rights Agreement gives the Supplemental Benefit Program Trust the right to require NIC to register the Supplemental Benefit Program Trust's NIC Common Stock and the exclusive right to sell NIC Common Stock to the public for five years or until the sale of $500 million in NIC Common Stock by the Supplemental Benefit Program Trust, whichever occurs first. All decisions regarding management of the Supplemental Benefit Trust, including decisions affecting the NIC stock, are made by a five-person committee, the Supplemental Program Committee.

PTE 93–69 provides, in part, that effective July 1, 1993, the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act shall not apply to the acquisition and holding by the New Plan of Class B Common Stock, the extension of credit which may occur in conjunction with Navistar's annual obligation to advance funds to the Supplemental Benefit Trust the holding by the New Plan of shares of NIC Common Stock resulting from the conversion of NIC Class B Common Stock into such shares, or the sale of NIC Class B Common Stock by the New Plan to Navistar. One of the conditions in the notice of proposed exemption for PTE 93–69[3] requires in part, that:

(1) the majority of the members of the Supplemental Program Committee would be individuals who:

(a) Are not affiliates of Navistar, NIC or the UAW;

(b) Did not have any ownership interest in Navistar or NIC;

(c) Are not officers, directors, or 5 percent or more shareholders or partners of a person in which NIC has an ownership interest.

In commenting on the proposed exemption, the UAW requested that the final exemption permit the Supplemental Program Committee to name one of its non-UAW members to serve on NIC's board of directors. The UAW represented that the failure to allow a non-UAW member of the Supplemental Program Committee to serve on NIC's board of directors would impair the Committee's ability to pursue the most prudent course towards maximizing the value of the Supplemental Benefit Program Trust. The UAW stated that the Supplemental Program Committee desired to make [board] selections that would best facilitate the Committee's efforts to protect its stake in the company. The UAW further stated that without dual membership on the part of at least one of its appointments, the Committee felt that its ability to act as an effective "watchdog" over NIC's management would be materially diminished. After considering the UAW's comment, the Department decided to modify the final exemption to permit one of the three non-UAW members of the Supplemental Program Committee to serve on NIC's board of directors during the Lock-up Period. In this regard, William Craig has served on NIC's board of directors as well as on the Supplemental Program Committee up to the present time.

2. The Supplemental Program Committee's Requested Amendment

(a) In support of its application to amend PTE 93–69 to allow Mr. Craig to continue to serve on both the board of directors of NIC and on the Supplemental Program Committee, the Committee represents that Mr. Craig has a broad background in, and extensive knowledge of the trucking industry and, especially, NIC's role therein which has brought important insights to the deliberations of the Supplemental Program Committee. The Committee members have learned to rely on his judgement and abilities as he has brought his wealth of experience to bear on issues arising from his service as both a non-UAW member of the Supplemental Program Committee and a member of NIC's board of directors.

The applicant further notes that Mr. Craig's current dual service has only served to enhance the value of his views to the Supplemental Program Committee. He has demonstrated both a dedication to furthering the interests of the shareholders of NIC and an acute sensitivity to the importance that successful resolution of labor-management issues confronting NIC has to the future success of NIC and the health and welfare of its employees and retirees.

In addition, the Supplemental Program Committee states that the unique perspective afforded Mr. Craig as a result of the dual service permitted under PTE 93–69 and the distinct background and abilities he brings to this dual service provides a function that the Supplemental Program Committee believes it can ill afford to lose.

(b) In commenting on the proposed exemption, the UAW represented that the potential for conflict regarding dual membership, if any, is minimal. To the extent any conflicts were to arise a Committee/board members' conduct would be reviewable under ERISA's fiduciary standards and, moreover, the Committee would, in such circumstances, be empowered to remove such individual from the NIC board, if appropriate.

(c) The Supplemental Program Committee has acknowledged that they have been briefed and understand the limits that are placed on Mr. Craig under federal and state securities laws relating to Mr. Craig's ability to make disclosures to the Committee regarding information he obtains at meetings of the board of directors of NIC. Despite those limitations, the Supplemental Program Committee members believe that Mr. Craig's continuing dual service on the Committee and on the board of directors of NIC is critical to the Supplemental Benefit Plan's success. The Committee further noted that Mr. Craig will have available to him, at all times, two different, expert legal advisors, one for his service on the Supplemental Program Committee and one in his role on NIC's board of directors.

(d) In summary, the Supplemental Program Committee believes that the requested amendment to permit Mr. Craig to continue in his dual roles will assist the Supplemental Program Committee in its future planning and

[1] *Shy et al. v. Navistar International Corporation, et. al.*, Civil Action No. C–3–92–333 (S.D. Ohio, 1992) (Shy Settlement).

[2] The period beginning on the date of the contribution of Class B Common Stock to the Supplemental Benefit Program Trust in 1993 until July 1, 1998 is the "Lock-up Period".

[3] 58 FR 35467, 35468 (July 1, 1993).

help to ensure the future stability of the Supplemental Benefit Program Trust.

4. Navistar's Requested Amendment

Upon the expiration of the Lock-up Period, the NIC Class B Common Stock will automatically convert to NIC Common Stock. Navistar requests an amendment to PTE 93–69 to permit the Supplemental Benefit Program Trust to sell NIC Common Stock to either NIC or Navistar after the expiration of the Lock-up Period for not less than adequate consideration as defined in section 3(18) of the Act. Navistar represents that having the ability to sell NIC Common Stock to NIC or Navistar will provide the Supplemental Benefit Program Trust with an additional market for the stock. In this regard, Navistar notes that NIC Common Stock is widely traded on the New York Stock Exchange, thus pricing issues associated with non-publicly traded securities would not be present in these transactions.

The proposed amendments, if granted, will be subject to the express condition that the material facts and representations contained in the applications are true and complete, and that the applications accurately describe all material terms of the transactions to be consummated pursuant to the proposed amendment.

Notice to Interested Persons

Because of the large number of potentially interested parties, it is not possible to provide a separate copy of notice of the proposed amendment to each participant. The only practical form of notice to interested parties is the **Federal Register**. The Committee will, however, provide notices to both NIC and the UAW. Also, the Supplemental Program Committee will supply copies of the notice to union locals and chapters of salaried employee retiree organizations for posting or other possible distribution to retirees. Provision of notice in this manner can be accomplished within 15 working days of publication.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) The proposed amendments to PTE 93–69, if adopted, will not extend to transactions prohibited under section 406(b)(3) of the Act.

(3) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed amendments to PTE 93–69, if adopted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above.

All comments will be made a part of the record. Comments received will be available for public inspection with the applications for amendment at the address set forth above.

Proposed Amendments

Under section 408(a) of ERISA and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847 August 10, 1990), the Department proposes to amend PTE 93–69 as set forth below in italics in the republished exemption below.

Transactions

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act shall not apply to (1) the acquisition and holding by the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan (the New Plan) of shares or Class B Common Stock and Series A Preference Stock of Navistar International Corporation (NIC); (2) the holding by the New Plan of shares of NIC Common Stock resulting from the conversion of NIC Class B Common Stock into such shares; (3) the extension of credit between Navistar and the New Plan, which may occur in conjunction with Navistar's annual obligation to advance funds to the Supplemental Benefit Program Trust; (4) the sale of shares of NIC Class B Common Stock by the New Plan to Navistar; and (5) the sale of shares of NIC Common Stock by the New Plan to NIC or Navistar, provided that:

(a) All decisions regarding the management of the Supplemental Benefit Program Trust, including determinations affecting NIC stock held by such Trust, are made by the Supplemental Program Committee;

(b) The Supplemental Program Committee will take whatever action is necessary to protect the New Plan's rights with respect to the transaction;

(c) With respect to the sale of NIC Class B Common Stock by the New Plan to Navistar, each Class B share will be valued at the average closing price per share of NIC Common Stock during the 30 day trading period immediately prior to the date Navistar acquires the Class B Shares, but in no case will the price be less than adequate consideration as defined in section 3(18) of the Act;

(d) With respect to the sale of NIC Common Stock by the New Plan to Navistar or NIC, in no case will the price be less than adequate consideration as defined in section 3(18) of the Act;

(e) The Supplemental Program Committee shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (f) below to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Supplemental Program Committee, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than the Supplemental Program Committee shall be subject to the civil penalty that may be assessed under section 502(i) of the Act if the records are not maintained, or are not available for examination as required by paragraph (f) below; and

(f)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (e) above shall be unconditionally available at their customary location during business hours by:

(A) Any duly authorized employee or representative of the Department;

(B) The UAW or any duly authorized representative of the UAW;

(C) Any participant or beneficiary of the New Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B) and (C) of this paragraph (e) shall be authorized to examine the trade secrets of NIC or Navistar or commercial or financial information which is privileged or confidential.

(g) For purposes of this exemption:

(1) The majority of the members of the Supplemental Program Committee will be individuals who:

(A) Are not affiliates of Navistar, NIC or the UAW;

(B) Do not have any ownership interest in Navistar or NIC;

(C) Are not officers, directors, or 5 percent or more shareholders or partners of a person in which NIC has any ownership interest;

(D) Have acknowledged in writing acceptance of fiduciary responsibility;

(E) Do not receive more than 5 percent of their annual gross income (excluding retirement income and directors fees received) for any taxable year in the aggregate from Navistar, UAW or any affiliate thereof; and

(F) Will not acquire any property from, sell any property to or borrow any funds from NIC, UAW, or any affiliate thereof, during the period that such individual serves as a member of the supplemental Program Committee and continuing for a period of 6 months after such individual ceases to be a member of the Supplemental Program Committee or negotiate any such transaction during the period that such individual serves as a member of the Supplemental Program Committee.

Notwithstanding (A) and (C) above, William Craig is not precluded from serving on NIC's board of directors while also serving as a member of the Supplemental Program Committee.

(2) An affiliate of another person means:

(A) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(B) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(C) Any corporation or partnership of which such other person is an officer director or partner.

(3) Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Signed at Washington, D.C., this 16th day of June, 1998.

Ivan Strasfeld,

Director of Exemptions Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–16336 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–080]

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before July 20, 1998.

ADDRESSES: All comments should be addressed to Mr. Robert J. Bobek, Code ICB National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports

Title: Patent Waiver Report.

OMB Number: 2700–0050.

Type of Review: Reinstatement.

Need and Uses: Reports are analyzed by the NASA Inventions and Contributions Board to evaluate the progress made by NASA contractors who received waiver of patent rights in terms of development and commercialization of waived inventions.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 66.

Responses Per Respondent: 1.

Estimated Annual Responses: 66.

Estimated Hours Per Request: 2.

Estimated Annual Burden Hours: 147.

Frequency of Report: Annually.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–16328 Filed 6–18–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Meetings

TIME AND DATE: 10:00 a.m., Tuesday, June 23, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from Two (2) Federal Credit Unions to Convert to Community Charters.
2. Funding for the Office of Corporate Credit Unions.

RECESS: 11:00 a.m.

TIME AND DATE: 11:30 a.m., Tuesday, June 23, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to exemption (8).
2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (4), (7) and (8).
3. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
4. Administrative Act under Part 745 of NCUA's Rules and Regulations. Closed pursuant to exemption (6).
5. Four (4) Personnel Actions. Closed pursuant to exemptions (2), (5), (6) and (9)(B).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–16453 Filed 6–16–98; 4:41 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

PECO Energy Co. (Peach Bottom Atomic Power Station, Units 2 and 3); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 70.24 for Facility Operating License Nos. DPR–44 and DPR–56, issued to PECO Energy Company (the licensee), for

operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24(a), which require in each area in which special nuclear material is handled, used, or stored a monitoring system that will energize clear audible alarms if accidental criticality occurs. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated March 18,1998.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that, if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant, the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and design features that prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24(a), therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors. However, an exemption to 10 CFR 70.24(a) is needed to permit a deviation from these requirements.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20.

The proposed action will not result in an increase in the probability or consequences of accidents or result in a change in occupational or public dose. Therefore, there are no radiological impacts associated with the proposed action.

The proposed action will not result in a change in nonradiological plant effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no environmental impacts associated with this action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of Peach Bottom Atomic Power Station, Units 2 and 3," April 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on May 6, 1998, the staff consulted with the Pennsylvania State official, Mr. David Ney, of the State of Pennsylvania, Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 18, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA.

Dated at Rockville, MD, this 15th day of June 1998.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–16378 Filed 6–18–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 8–10, 1998, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, November 20, 1997 (62 FR 62079).

Wednesday, July 8, 1998

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:45 a.m.–10:30 a.m.: BWR Extended Power Uprate Application (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the General Electric Nuclear Energy (GE), the Northern States Power Company (NSP), and the NRC staff regarding the GE extended power uprate program for operating BWRs, and the NSP application for a power level increase of 6.3 percent for the Monticello Nuclear Generating Plant.

Note: A portion of this session may be closed to discuss GE Nuclear Energy proprietary information.

10:45 a.m.–12:15 p.m.: Proposed Revisions to CFR 50.59 (Changes, Tests and Experiments) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed revisions to 10 CFR

50.59, resolution of issues identified in the March 24, 1998 Staff Requirements Memorandum related to SECY–97–205, "Integration and Evaluation of Results from Recent Lessons Learned Reviews," and related matters.

1:15 p.m.–3:45 p.m.: AP600 Design (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the Westinghouse Electric Company and the NRC staff regarding Westinghouse's application for certification of the AP600 design and the associated NRC staff's evaluation.

Note: A portion of this session may be closed to discuss Westinghouse proprietary and safeguards information related to the AP600 design.

4:00 p.m.–5:30 p.m.: Fire Barrier Penetration Seals and Related Matters (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Supplement 1 to NUREG–1552, "Fire Barrier Penetration Seals at Nuclear Power Plants," an Information Notice on "Inadequate Identification and Analysis of Required and Associated Electrical Circuits Resulting in the Potential Loss of Post-Fire Safe-Shutdown Capability," and related matters.

5:45 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Thursday, July 9, 1998

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10:30 a.m.: BWR Pressure Vessel Shell Weld Inspections (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the BWR Vessel and Internals Project (BWRVIP) regarding the BWRVIP–05 report, "BWR Pressure Vessel Shell Weld Inspection Recommendations," and the associated NRC staff's evaluation.

10:45 a.m.–12:15 p.m.: Operating Plan for the NRC Office of Nuclear Reactor Regulation (NRR) (Open)—The Committee will hear presentations by and hold discussions with the NRR Director and his staff regarding the NRR Operating Plan and related matters.

1:15 p.m.–1:45 p.m.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

1:45 p.m.–2:00 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports, including EDO's response to the ACRS comments and recommendations included in its May 11, 1998 report on, "Elevation of CDF to a Fundamental Safety Goal and Possible Revision of the Commission's Safety Goal Policy Statement."

2:00 p.m.–2:30 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

Note: A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, qualifications of candidates for ACRS membership, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

2:45 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Friday, July 10, 1998

8:30 a.m.–3:00 p.m. (12:00–1:00 p.m. Lunch): Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

3:00 p.m.–4:30 p.m.: Technical Papers for the Quadripartite Meeting (Open)—The Committee will discuss several Technical Papers to be discussed at the Quadripartite meeting scheduled to be held in Japan on October 5–9, 1998, including the following:

- Safety of Future Nuclear Power Plants
- Safety of Aging Plants
- Steam Generator Operating Experience
- Assessment of Computerized Systems
- Safety of High Burnup and Mixed Oxide Fuels/Fuel Behavior Under Reactivity Induced Accidents
- Risk Significance of Low-Power and Shutdown Events
- Probabilistic Safety Assessment and Risk-Based Regulation

4:30 p.m.–5:00 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 4, 1997 (62 FR 46782). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief of the Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman.

Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss Westinghouse proprietary information per 5 U.S.C. 552b(c)(4), Westinghouse safeguards information per 5 U.S.C. 552b(c)(3), matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), General Electric Nuclear Energy proprietary information per 5 U.S.C. 552b(c)(4), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy, Chief of the Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are

available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: June 15, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–16379 Filed 6–18–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, N.W., Washington, D.C. 20549

Extension:

Rule 45, SEC File No. 270–164, OMB Control No. 3235–0154

Rule 52, SEC File No. 270–326, OMB Control No. 3235–0369

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 collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 45 under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79A, *et seq.*) ("Act") imposes a filing requirement of registered holding companies and their subsidiaries under section 12(b) of the Act. Under the requirement, the companies must file a declaration seeking authority to make loans or otherwise extend credit to other companies in the same holding company system. Among others, the rule excepts from the filing requirement the performance of payment obligations under consolidated tax agreements. The purpose of the rule is to ensure that registered holding companies and their subsidiaries do not engage in activities that are a detriment to interests the Act is designed to protect (*i.e.*, cross-subsidization). The Commission estimates that the total annual reporting and recordkeeping burden is 46 hours. (*e.g.*, 14 recordkeepers x approximately 3.3 hours = approximately 46 hours).

Rule 52 under the Act permits public utility subsidiary companies of registered holding companies to issue and sell certain securities without filing a declaration if certain conditions are met. The purpose of collecting the information is to determine the existence of detriment to interests the Act was designed to protect. The Commission estimates that the total annual reporting and recordkeeping burden of collections under rule 52 is 33 hours (*e.g.*, 33 responses x one hour = 33 burden hours).

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are 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 proposed collections of information are 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 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 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.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Dated: June 11, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16352 Filed 6–18–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23251; 812–11118]

Fountain Square Funds, et al.; Notice of Application

June 12, 1998.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of the Fountain Square Funds ("FSF") to acquire all of the assets and certain stated liabilities of certain series of The Cardinal Group ("Cardinal").

APPLICANTS: FSF, Cardinal, Cardinal Management Corp. ("CMC"), and Fifth Third Bank (the "Bank").

FILING DATES: The application was filed on May 1, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 7, 1998, and should be accomplished by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Fountain Square Funds and Fifth Third Bank, 38 Fountain Square Plaza, Cincinnati, Ohio 45263. The Cardinal Group and Cardinal Management Corp., 155 East Broad Street, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. FSF is a Massachusetts business trust registered under the Act as an open-end management investment company. FSF currently has sixteen separate series, five of which are the acquiring funds ("Acquiring Funds"). The Bank, an Ohio state-chartered bank, serves as the investment adviser to FSF. The Bank is not required to register under the Investment Advisers Act of 1940 ("Advisers Act"). The Bank is a subsidiary of Fifth Third Bancorp ("Fifth Third"), a bank holding company.

2. Cardinal is an Ohio business trust registered under the Act as an open-end management investment company.

Cardinal currently has six separate series, five of which are termed the "Acquired Funds" for purposes of this application (the Acquired Funds together with the Acquiring Funds, the "Funds").[1] CMC serves as the investment adviser to Cardinal and is registered under the Advisers Act. CMC is a subsidiary of The Ohio Company. The Ohio Company, as a fiduciary for its customers, owns more than 5% of each of the Acquired Funds.

3. On or about July 12, 1998, The Ohio Company will merge with a subsidiary of Fifth Third ("The Ohio Company Merger"). As a result of the Ohio Company Merger, CMC will become an indirect subsidiary of Fifth Third.

4. On March 12, 1998, the board of trustees of Cardinal, including a majority of its trustees who are not "interested persons" under section 2(a)(19) of the Act, approved and authorized an Agreement and Plan of Reorganization and Liquidation (the "Reorganization Agreement") pursuant to which the Acquiring Funds will acquire a corresponding series of the Acquired Funds having similar investment objectives. Pursuant to the Reorganization Agreement, as soon as practicable after July 13, 1998 or such later date as the parties may mutually agree ("Closing Date"), each Acquiring Fund will acquire all of the assets and certain stated liabilities of the corresponding Acquired Fund in exchange for shares of the Acquiring Fund equal in value to the Acquired Fund's aggregate net asset value, computed as of the close of business on the last day preceding the Closing Date (the "Reorganizations").[2] As soon as practicable after the Closing Date, each Acquired Fund will liquidate and distribute *pro rata* to the Acquired Fund's shareholders of record, determined as of the close of business on the Closing Date, the Acquiring Fund's shares received by the Acquired Fund.

5. The Acquired Funds, except for the Cardinal money market funds, offer two classes of shares, Investor Y ("Institutional") Shares and Investor A ("Investor") Shares. The Acquiring Fund currently offer two classes of shares, Investment A Shares and Investment C Shares, but will begin offering Institutional Shares in connection with the Reorganizations.

6. In the Reorganizations, holders of Institutional Shares of an Acquired Fund will receive Institutional Shares of the corresponding Acquiring Fund and holders of Investor Shares of an Acquired Fund will receive Investment A Shares of the corresponding Acquiring Fund. Holders of the Cardinal money market funds who are eligible to purchase Institutional Shares will receive Institutional Shares of the corresponding Acquiring Fund. Holders of the Cardinal money market funds who are not eligible to purchase Institutional Shares will receive Investment A Shares of the corresponding Acquiring Fund. No sales charges will be imposed in connection with the Reorganizations.

7. Institutional Shares of the Acquired and the Acquiring Funds are not subject to any asset-based distribution fees. Institutional Shares of the Acquired Funds are subject to an administrative service fee of .15% of average net assets. Institutional Shares of the Acquiring Funds are not subject to administrative service fees. Investor Shares and Investment A Shares are both subject to a 4.5% front-end sales charge. Investor Shares and Investment A shares also are subject to asset-based distribution fees of up to .25% of the average net assets. After the Reorganizations the Acquiring Funds will begin paying asset-based distribution fees, with the exception of the Fountain Square Tax Exempt Money Market Fund for which these fees will be waived. None of the classes of the Acquiring and the Acquired Funds are subject to any redemption fees.

8. The investment objectives of each Acquired Fund and its corresponding Acquiring Fund are substantially similar. The investment policies and restrictions of each Acquired Fund and its corresponding Acquiring Fund also are substantially similar, but in some cases involve differences that reflect the differences in the general investment strategies used by the Acquiring Funds.

9. The board of directors of the Acquiring and the Acquired Funds (collectively, "Boards") approved the Reorganizations as in the best interests of the existing shareholders and determined that the interests of the existing shareholders will not be diluted as a result of the Reorganizations. The Boards, including a majority of the disinterested trustees (the "Independent Trustees"), considered various factors in approving the Reorganizations, including that: (i) the investment objectives and policies of the Acquiring and the Acquired Funds are substantially similar; (ii) no sales charges will be imposed in connection with the Reorganizations; (iii) the Reorganizations will be free from federal income taxes; (iv) the conditions and policies of rule of 17a–8 under the Act will be followed: (v) the Reorganizations will be based on net asset values calculated by the Bank, as custodian of the Acquiring Funds, in accordance with the stated policies and procedures of both the Acquiring and Acquired Funds; (vi) the Reorganizations will be submitted to shareholders of the Acquired Funds in a combined proxy statement/prospectus; and (vii) no overreaching of any person is occurring. Expenses incurred in connection with the Reorganizations will be borne by the Bank.

10. The Reorganization Agreement may be terminated at any time prior to the Closing Date (a) by mutual written consent of the Acquiring and Acquired Funds or (b) by either an Acquiring or an Acquired Fund by written notice to the other, without liability on the part of either party, if circumstances develop that, in the opinion of the Board of either Fund, make proceeding with the Reorganizations not in the best interests of the Fund's shareholders.

11. A registration statement on Form N–14 was filed with the Commission on April 6, 1998 and became effective on May 27, 1998. Applicants mailed a prospectus/proxy statement to shareholders of the Acquired Funds on or about June 1, 1998. A special meeting of the Acquired Funds' shareholders will be held on July 10, 1998 to vote on the Reorganizations.

12. The consummation of the Reorganizations is subject to the following conditions, as set forth in the Reorganization Agreement: (i) the N–14 Registration Statement will have become effective; (ii) the Acquired Funds' shareholders will have approved the Reorganization Agreement; (iii) applicants will have received exemptive relief from the Commission with respect to the issues in the application; (iv) the Acquiring and the Acquired Funds will have received an opinion of counsel concerning the federal income tax aspects of the Reorganizations; and (v) each Acquired Fund will have declared a dividend or dividends to distribute substantially all of its investment company taxable income and net gain, if any, to its shareholders. Applicants agree not to make any material changes to the Reorganization Agreement that affect the application without prior Commission approval.

[1] The sixth series also is an acquired fund but no relief is being sought for this series because it may rely on rule 17a–8.

[2] The Acquired Funds and the corresponding Acquiring Funds are: (i) The Cardinal Fund and Fountain Square Cardinal Fund; (ii) Cardinal Aggressive Growth Fund and Fountain Square Mid Cap Fund; (iii) Cardinal Balanced Fund and Fountain Square Balanced Fund; (iv) Cardinal Government Securities Money Market Fund and Fountain Square Government Cash Reserves Fund; (v) Cardinal Tax Exempt Money Market Fund and Fountain Square Tax Exempt Money Market Fund.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of that person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a-8 under the Act because the Funds may be affiliated for reasons other than those set forth in the rule. Because the Ohio Company owns 5% or more of each of the Acquired Funds, each Acquired Fund may be deemed an "affilaited person of an affiliated person" of each Acquiring Fund.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganizations. Applicants submit that the terms of the Reorganizations satisfy the standards set forth in section 17(b) of the Act. Applicants also note that the Boards of the Acquiring and the Acquired Funds, including the Independent Trustees, have determined that the Reorganizations are in the best interests of their shareholders and that the interests of the existing shareholders of the Funds will not be diluted as a result of the Reorganizations. In addition, applicants state that the exchange of the Acquired Funds' shares for shares of the Acquiring Funds will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16346 Filed 6–18–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26885]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 12, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 6, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 6, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates (70–9205)

Notice of Proposal to Amend Declaration of Trust to Eliminate Requirement of Shareholder Approval For the Sale By Eastern Utility Associates of Any of Its Majority-Owned Subsidiaries; Order Authorizing Solicitation of Proxies

Eastern Utilities Associates, ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed a declaration with the Commission under section 6(a)(2), 7, and 12(e) of the Public Utility Holding Company Act of 1935, as amended ("Act"), and rules 62 and 65 under the Act.

EUA's declaration of trust ("Declaration of Trust") currently provides that a two thirds majority of the holders of its outstanding common shares entitled to vote must approve the sale by EUA of any of its majority-owned subsidiaries. EUA seeks authority to amend its Declaration of Trust to eliminate this requirement ("Proposed Amendment").

EUA proposes to solicit proxies from its common shareholders ("Shareholders") to approve the Proposed Amendment at a special meeting scheduled for July 20, 1998 ("Special Meeting"). Accordingly, EUA requests that an order authorizing the solicitation of proxies be issued as soon as practicable under rule 62(d).

It is ordered, under rule 62 under the Act, that the declaration regarding the proposed solicitation of proxies can become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16347 Filed 6–18–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26886]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 12, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for

public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 6, 1998, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 6, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company, et al. (70–9203)

Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania, 15222–3199, a registered holding company, and CNG's wholly owned subsidiaries, CNG Energy Services Corporation ("Energy Services"), CNG Power Company ("Power Company"), both at One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244–0746, CNG Retail Services Corporation ("Retail Services"), One Chatham Center, Pittsburgh, Pennsylvania 15219, CNG Products and Services, Inc. ("Products and Services"), CNG Tower, Pittsburgh, Pennsylvania 15222–3199 and CNG Producing Company ("Producing Company"), CNG Tower, 1450 Poydras Street, New Orleans, Louisiana 70112–6000 (collectively, "Applicants"), have filed an application-declaration, as amended, under sections 9(a), 10 and 12(c) of the Act and rules 43, 46 and 54 under the Act.

CNG has decided to discontinue wholesale marketing and trading of natural gas and electricity. Energy Services was principally formed to be the subsidiary in the CNG system to market natural gas at wholesale, and CNG Power Services Corporation ("Power Services") was formed to market electricity at wholesale. Power Services is an exempt wholesale generator ("EWG") under section 32 of the Act. Energy Services has several wholly owned subsidiaries engaged in the energy business. The six directly owned subsidiaries of Energy Services (collectively, "Energy Services Subsidiaries") are: Products and Services, Power Company, CNG Storage Service Company, CNG Main Pass Gas Gathering Corporation ("Main Pass"), CNG Oil Gathering Corporation ("Oil Gathering") and Retail Services. Power Services has one wholly owned subsidiary, CNG Lakewood, Inc., which is also an EWG. In its exiting of the wholesale energy industry, CNG may sell its equity ownership in Energy Services and Power Services. In order to prepare these companies for disposition, Applicants propose to transfer ownership of each subsidiary of Energy Services and Power Services. Additionally, two subsidiaries of Energy Services would be consolidated.

Applicants consequently propose to effect a two-phase restructuring of the Energy Services group consisting of the following transactions.

Phase One

Energy Services Subsidiaries Become Direct Subsidiaries of CNG

Since CNG desires to retain the Energy Services Subsidiaries as part of the CNG System after the disposition of Energy Services, Applicants propose to transfer ownership of these companies. This would occur through Energy Services transferring to CNG all of the common stock of the six subsidiaries as a dividend, so that each company initially will become a direct subsidiary of CNG ("Phase One").[1]

Phase Two

Products and Services Merged Into Retail Services

Retail Services was formed under Commission order dated January 15, 1997, HCAR No. 26647 ("January 1997 Order"), which authorized Energy Services, among other things, to engage in all forms of energy brokering and marketing transactions, including those involving electricity, natural gas, coal, oil, other hydrocarbons, wood chips, wastes and other combustibles, at wholesale and retail. By order dated August 28, 1995, HCAR No. 26363 ("August 1995 Order"), the Commission, among other things authorized Energy Services to form Products and Services to engage in the business of certain energy-related services. By a subsequent order dated August 27, 1997, HCAR No. 26757 ("August 1997 Order"), the Commission further authorized Products and Services to offer several additional categories of energy-related services.

Applicants now propose that Retail Services merge with Products and Services, with Retail Services being the surviving corporation (the "Merger").

Retail Services Succeeds to Certain Authorizations

Upon completion of the Merger, Retail Services would succeed to the prior authorizations granted to Products and Services under the August 1995 Order and the August 1997 Order. However, Applicants request the elimination of one restriction in these orders. Both orders state that Products and Services will provide it categories of services both within and outside of the four states of Virginia, West Virginia, Pennsylvania and Ohio where the public utility company subsidiaries of CNG are located (collectively, "LDC States"). Both orders require that during the twelve-month period beginning on the first day of the month following the commencement of Products and Services' business, and for each subsequent calendar year, total revenues derived by Products and Services in LDC States exceed total revenues similarly derived from customers in all other states. Due to the trend of energy markets in a deregulation environment to become integrated national markets, Applicants request that this "50% limit" be eliminated for all future revenues of Retail Services as the successor to Products and Services after the Merger.

In view of the proposed disposition of Energy Services by CNG, Applicants propose that Retail Services also succeed to the authorizations granted to Energy Services under the January 1997 Order. Specifically, Retail Services would be authorized to engage in energy marketing to the same extent as that allowed Energy Services, and Retail Services would be permitted to form subsidiaries through which to engage in marketing activities to the same extent permitted Energy Services. CNG would provide financing to Retail Services under rule 52 of the Act.

CNG Technologies, Inc. Becomes a Subsidiary of Power Company

By order dated December 21, 1990, HCAR No. 25224, the Commission authorized CNG to form CNG Technologies, Inc. ("CNG Technologies") and to invest up to 2 million in CNG Technologies for it to acquire limited partnership interests in a gas industry fund created to invest in

[1] The Application states that the transfers of stock of the Energy Services Subsidiaries in Phase One may be in the form of either dividends or liquidating distributions under a plan of liquidation adopted under section 332 of the Internal Revenue Code, depending upon the CNG system's business needs and the ultimate tax impact of the restructuring transactions. The term "dividend", as used in this notice, includes both dividends and liquidating distributions.

smaller companies developing new technologies to enhance the supply, transportation and utilization of natural gas. CNG Technologies is currently a subsidiary of Products and Services. Applicants propose that the outstanding common stock of CNG Technologies be declared as a dividend by Products and Services to CNG, and subsequently be transferred by CNG as a capital contribution to Power Company after Power Company becomes a direct subsidiary of CNG.

Main Pass and Oil Gathering Each Become a Subsidiary of Producing Company

Producing Company is a wholly owned subsidiary of CNG which engages in gas and oil exploration and production primarily in the Gulf of Mexico, the southern and western United States, the Appalachian region and in Canada.

By order dated July 26, 1995, HCAR No. 26341 ("July 1995 Order"), Energy Services was authorized, without further Commission approval, through December 31, 1997, to invest an aggregate amount up to at least $150 million to acquire direct or indirect interests in entities engaged in Gas Related Activities.[2]

As of December 31, 1997, Energy Services had invested $24,235,000 and $14,323,000 and acquired a partnership interest in the Main Pass Gathering Company and the Main Pass Oil Gathering Company, respectively, under the July 1995 Order. Energy Services owns the interests in these partnerships through Main Pass and Oil Gathering, respectively.

The July 1995 Order was extended through December 31, 2002 by Commission order dated December 30, 1997, HCAR No. 26807 ("December 1976 Order"). The December 1997 Order also increased the amount Energy Services may invest and the amount of guarantees which could be made to $200 million in each case.

Applicants propose the transfer of ownership of all of the outstanding common stock of Main pass and Oil Gathering to be held by CNG after completion of Phase One to Producing Company. The transfer would occur through a transfer by CNG of the stock to Producing Company as a capital contribution.

[2] "Gas Related Activities" include purchasing, pooling, transporting, exchanging, storing and selling gas supplies from competitively priced sources, including the spot markets, independent producers and brokers, and Producing Company.

Producing Company Succeeds to Certain Authorizations

As indicated above, Applicants propose that Producing Company succeed to Energy Services' interests in Main Pass and Oil Gathering, which are acquired by Energy Services under the July 1995 Order. Producing Company will also continue to engage in all aspects of the business of a gas producing company which substantially encompasses all of the activities defined as "Gas Related Activities" in the July 1995 Order. Applicants propose that Producing Company succeed to and be substituted for Energy Services as the authorized party under the July 1995 Order and the December 1997 Order.

Source and Form of Declaration and Payment of Dividends

Applicants propose that dividends declared and paid in connection with the restructuring be paid out of capital or unearned surplus, to the extent permitted under applicable corporate law, in the event the payer does not have sufficient earned surplus on its books to cover the amount of the dividend. Applicants represent that the payment of dividends out of capital or unearned surplus in connection with the restructuring would not in any way adversely affect the financial integrity of any company in the CNG system or the working capital of any public utility company in the CNG system.

The Application states that the form of distributions to CNG in Phase One of the restructuring and the timing, manner and extent of the re-distributions by CNG in Phase Two of the restructuring will depend on the CNG system's business needs as well as the ultimate tax impact of the restruturing transactions.

Atlantic City Electric Company (70–9307)

Atlantic City Electric Company ("ACE"), 6801 Blackhorse Pike, Egg Harbor Township, New Jersey 08234, a wholly owned electric utility subsidiary of Conectiv, Inc., a public utility holding company to be registered under the Act, has filed an application under sections 9(a) and 10 of the Act and rule 41 under the Act.

By order dated February 25, 1998 (HCAR No. 26832), Conectiv was authorized to acquire all of the outstanding voting securities of ACE, Delmarva Power & Light Company, a public utility company ("Delmarva"), and various nonutility subsidiaries of Delmarva and ACE.

ACE now requests authority to purchase two 39.3 megawatt combustion turbine generating units and accessory equipment ("Units") for a purchase price of $8 million. ACE states that the Units were previously leased by ACE under a December 1, 1972 Indenture of Lease ("Lease") among ACE, Frank B. Smith and Ben Maushardt, as lessors ("Lessor"), and United States Leasing Corporation, as agent for the Lessor. ACE has used the Units, located in Upper Deerfield Township. Cumberland County, New Jersey, for the generation of electricity for twenty five years. The Lease terminates on July 11, 1998 and ACE wishes to purchase the Units and continue them in service.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16348 Filed 6–18–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40085; International Series Release No. 1140; file No. SR–CBOE–98–17]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto, by the Chicago Board Options Exchange, Incorporated Relating to Listing and Trading Warrants on a Narrow-Based Index

June 12, 1998.

I. Introduction

On April 23, 1998, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] the proposed rule change to list and trade warrants on an equal dollar-weighted, narrow-based index ("Index"), comprised of 15 to 20 actively traded common stocks. The Exchange submitted Amendment No. 1 to the filing on April 30, 1998.[3] Notice

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Stephanie C. Mullins, Attorney, CBOE to Martianne H. Duffy, Special Counsel, Division of Market Regulation ("Division"), SEC, dated April 30, 1998. Amendment No. 1 clarifies, among other things, that the Index, as defined above, is narrow-based and will comply with the

of the filing and Amendment No. 1 appeared in the Federal Register on May 13, 1998.[4] No comments were received concerning the proposed rule change. On June 11, 1998, the Exchange submitted Amendment No. 2.[5] This order approves the CBOE's proposal, as amended.

II. Description of the Proposal

The purpose of the proposed rule change is to permit the Exchange to list and trade warrants based on the Index, comprised of 15 to 20 actively traded common stocks, no more than four of which will be foreign issued and traded. The remaining stocks will be listed on the American Stock Exchange, Incorporated ("Amex"), New York Stock Exchange, Incorporated ("NYSE") or through the facilities of the National Association of Securities Dealers Automated Quotation ("Nasdaq") system and are reported national market system securities ("Nasdaq/NMS").

The Exchange is permitted to list and trade stock index warrants under CBOE Rule 31.5E. The Exchange now is proposing to list and trade cash-settled, stock index warrants linked to the Index. At the time of listing and trading, the warrants will meet all of the generic criteria for stock index warrants as set forth in CBOE Rule 31.5E as well as the specific generic criteria for narrow-based index warrants discussed below.

Rule 31.5E requires, among other things, that: (1) the issuer has a tangible net worth in excess of $150,000,000 and otherwise substantially exceeds earnings requirements in Rule 31.5(A)[6] or meet the alternate guideline in paragraph (4) of Rule 31.5E;[7] (2) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000; (3) the term of the warrants shall be for a period ranging from one to five years from date of issuance; (4) if 25% or more of the value of the underlying index is represented by securities that are traded primarily in the United States, the terms of the warrants provide that the opening prices of the stocks comprising the index will be used to determine (i) the final settlement value (*i.e.* the settlement value at expiration); and (ii) the settlement value for the warrants as valued on either of the two business days preceding the day on which the final settlement value is to be determined; (5) all stock index warrants must include in their terms provisions specifying the time by which all exercise notices must be submitted and that all unexercised warrants that are in the money (or in the money by a stated amount) will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by the Exchange; (6) foreign country securities or ADRs that are not subject to a comprehensive surveillance agreement and have less than 50% of their global trading volume in dollar value in the United States, shall not, in the aggregate, represent more than 20% of the weight of an index, unless such index is otherwise approved for warrant or option trading; and (7) the issuer of the warrants will make arrangements to advise the Exchange immediately of any change in the number of warrants outstanding due to the early exercise of such warrants or will provide this information itself. If any change in the number of warrants occurs, notice will be filed with the Exchange by 3:30 p.m. Chicago time, on the date when the settlement value for the Warrants is determined.

The generic criteria for narrow-based index warrants include, among other things, initial listing standards which state that: (1) each component security have a market capitalization of at least $75 million, except that for each of the lowest weighted securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market capitalization is at least $50 million; (2) the trading volume of each component security has been at least one million shares for each of the last six months, except that for each of the lowest weighted securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume has been at least 500,000 shares for each of the last six months; (3) no single component security represents more than 25% of the weight of the Index, and the five highest weighted component securities in the Index do not in the aggregate account for more than 60%, for an index consisting of fewer than 25 component securities, of the weight of the Index; (4) at least 80% of the total number of component securities in an index satisfy the requirements of CBOE Rule 5.3[8] applicable to individual underlying securities; (5) U.S. component securities are "reported securities" as defined in Rule 11Aa3–1 under the Act; (6) the current underlying Index value will be reported at least once every fifteen seconds during the time the Index warrants are traded on the exchange; and (7) for maintenance purposes, the total number of component securities in the Index may not increase or decrease by more than 33⅓% from the number of component securities in the Index at the time of its initial listing, and in no event may be less than nine component securities.[9]

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generic narrow-based margin requirements (CBOE Rule 30.53) and position limit requirements (CBOE Rule 30.35) of the Exchange.

[4] Securities Exchange Act Release No. 39965 (May 6, 1998) 63 FR 26658.

[5] See Letter from Stephanie C. Mullins, Attorney, CBOE to Marianne H. Duffy, Special Counsel, Division, SEC, dated June 11, 1998. Amendment No. 2 clarifies that the Index value will be disseminated every 15 seconds and will be calculated based on real-time prices, for all of the component stocks, including those foreign stocks that are traded during CBOE trading hours. With respect to foreign stock components that trade during CBOE trading hours, each Index calculation will use the most recent last sale price from the appropriate home market. For foreign stocks that do not trade during CBOE trading hours, the closing price will be used to calculate the Index value. In addition, Amendment No. 2 clarifies that component securities will be replaced or supplemented only under the events discussed below. Absent unusual circumstances involving a merger or consolidation, conversion into another class of securities, a spin-off, or the termination of a depository receipt program, the Exchange will adhere to the following procedures: (1) in the event of a merger or consolidation (whether between component stocks or between one component stock and one non-component stock), the original component stock will be replaced by the new security; (2) in the event of a conversion into another class of security, the original component stock will be replaced by the new security; (3) in the event of a spin-off of a subsidiary, both the subsidiary issue and the original parent security will be included in the Index, unless the subsidiary is an insignificant percentage of the original security, in which case the CBOE will consult with the SEC prior to omitting the subsidiary issuer from the Index; and (4) should a depositary receipt program be terminated, for any reason, after an American Depositary Receipt ("ADR") has already been included in the Index, the CBOE in consultation with the SEC staff will evaluate the appropriate procedure to be employed to ensure continuity of the Index.

[6] Rule 31.5A requires that an issuer's total assets less total liabilities are at least $4,000,000, that pre-tax income earnings of at least than $750,000 in the issuer's last fiscal year or in two of the last three fiscal years and net income of at least $400,000.

[7] Paragraph (4) of CBOE Rule 31.5E states that where an issuer has a minimum tangible net worth in excess of $150,000,000, but less than $250,000,000, the Exchange shall not list stock index warrants of the issuer if the value of such warrants plus the aggregate value, based upon the original issue price, of all outstanding stock index, currency index and currency warrants of the issuer and its affiliates combined that are listed for trading on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

[8] CBOE Rule 5.3 describes, among other things, the options eligibility requirements for individual equity securities.

[9] The Commission notes that the requirement of paragraph (7) may not be maintained in the following limited circumstances. The CBOE has represented that no attempt will be made to find a replacement stock or to otherwise compensate for a stock which is extinguished due to bankruptcy or similar circumstances.

A. Index Design and Stock Selection Criteria

The Exchange represents that the Index will be categorized as narrow-based. The stocks to be included in the Index will be selected by a member firm of the Exchange and will be announced at or as close as possible to the time of the offering, and included in the issuer's offering materials. The Exchange represents that the Index and its component stocks will meet all the criteria of CBOE Rule 31.5E and the generic criteria for narrow-based index warrants, discussed above, prior to trading of the warrants. Particularly, the CBOE notes that with regard to paragraph (1) of CBOE Rule 31.5E, the net worth and earnings of the issuer substantially exceeds the criteria for equity issues of CBOE Rule 31.5A (*i.e.*, total assets less total liabilities are greater than $4,000,000; pre-tax income earnings were greater than $750,000 in its last fiscal year; and the issuer's net income was greater than $400,000), and the issuer has a minimum tangible net worth in excess of $250,000,000. As a result, the CBOE notes that paragraph (4) of CBOE Rule 31.5E regarding limitations on issuance is not applicable. In addition, the CBOE represents that with regard to paragraph (3) of CBOE Rule 31.5E, the warrants will mature between two to three years from the date of issuance. With regard to the generic criteria for narrow-based index warrants discussed above, the Exchange represents that each component security of the Index will have a minimum market capitalization of $150 million except that two component stocks that do not in the aggregate account for more than 10% of the Index weight, may have a market capitalization of not less than $50 million.

B. Calculation and Dissemination of the Index Value

The Index will be calculated using an equal dollar-weighting methodology designed to ensure that each of the component securities is represented in an approximately equal dollar amount in the Index. To create the Index, a portfolio of equity securities will be established by a member firm of the Exchange representing an investment of $10,000 in each component security (rounded to the nearest whole share). The value of the Index will equal the market value of the sum of the assigned number of shares of each of the component securities divided by an Index divisor. The Index divisor initially will be set to provide a benchmark value of 100 at the time that the warrants are priced for sale to the investing public.

The number of shares of each component stock in the Index will remain fixed except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. The number of shares of each component security also may be adjusted, if necessary, in the event of a merger, consolidation, dissolution, or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of a foreign issuer, or the imposition of certain foreign taxes on shareholders of a foreign issuer.

The Exchange represents, that component securities will be replaced or supplemented only under the events discussed below. Absent unusual circumstances involving a merger or consolidation, conversion into another class of securities, a spin-off, or the termination of a depositary receipt program, the Exchange will adhere to the following procedures: (1) in the event of a merger or consolidation (whether between component stocks or between one component stock and one non-component stock), the original component stock will be replaced by the new security; (2) in the event of a conversion into another class of security, the original component stock will be replaced by the new security; (3) in the event of a spin-off of a subsidiary, both the subsidiary issue and the original parent security will be included in the Index, unless the subsidiary is an insignificant percentage of the original security, in which case the CBOE will consult with the SEC prior to omitting the subsidiary issuer from the Index; and (4) should a depositary receipt program be terminated, for any reason, after an ADR had already been included in the Index, the CBOE in consultation with the SEC staff will evaluate the appropriate procedure to be employed to ensure continuity of the Index.[10] If the security remains in the Index, the number of shares of the security may be adjusted to the nearest whole share to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In all cases, the divisor will be adjusted, if necessary, to ensure continuity of the value of the Index.

The CBOE also represents that after the selection of the initial securities has been made, the CBOE, not the broker-dealer that initially will select the stocks, will decide all subsequent issues relating to the composition of the Index and/or the component securities.

Primary and backup pricing sources will be used to obtain prices for foreign stocks. All non-U.S. traded stocks will be valued in U.S. dollars using each country's cross-rate to the U.S. dollar. Bloomberg's composite New York rates, or comparable rates, quoted at 2:00 p.m. Chicago time the previous day, will be used to convert any non-U.S. traded stock price from the respective countries to U.S. dollars. If there are several quotes, the first quoted rate in that minute will be used to calculate the Index. In the event that there is no Bloomberg exchange rate for a country's currency at 2:00 p.m. the previous day, stocks will be valued at the first U.S. dollar cross-rate quoted before 2:00 p.m. Chicago time the previous day.

As previously stated, the Index value will be calculated and disseminated every 15 seconds and will be calculated based on real-time prices, for all of the component stocks, including those foreign stocks that are traded during CBOE trading hours. With respect to foreign stock components that trade during CBOE trading hours, each Index calculation will use the most recent last sale price from the appropriate home market. For foreign stocks that do not trade during CBOE trading hours, the closing price will be used to calculate the Index value.[11]

C. Index Warrant Trading (Exercise and Settlement)

The warrants will be direct obligations of their issuer, subject to cash-settlement in U.S. dollars and will be exercisable throughout their life (*i.e.*, American-Style).[12] Upon exercise, the holder of a Warrant structured as a "put" will receive payment in U.S. dollars to the extent that the value of the Index has declined below a pre-stated cash settlement value. Conversely, upon exercise (or at the warrant expiration date in the case of warrants with European-style exercise), the holder of a Warrant structured as a "call" will receive payment in U.S. dollars to the extent that the value of the Index has increased above the pre-stated cash settlement value. Warrants that are "out-

[10] No attempt will be made to find a replacement stock or to otherwise compensate for a stock which is extinguished due to a bankruptcy or similar circumstances, supra note 9.

[11] See Amendment No. 2, supra footnote 5.

[12] Telephone conversation between Stephanie C. Mullins, Attorney, CBOE and Marianne H. Duffy, Special Counsel, June 12, 1998.

of-the-money" at the time of expiration will expire worthless.

D. Warrant Listing Standards and Customer Safeguards

Sales practice rules applicable to the trading of index warrants are provided for in Exchange Rule 30.50 and to the extent provided by Rule 30.52 they are also contained in Chapter IX of the Exchange's Rules. Rule 30.50 governs, among other things, communications with the public. Rule 30.52 subjects the transaction of customer business in stock index warrants to many of the requirements of Chapter IX of the Exchange's rules dealing with public customer business, including suitability. For example, no member organization may accept an order from a customer to purchase a stock index warrant unless that customer's account has been approved for options transactions. The same suitability and use of discretion provisions that are applicable to transactions in options will be equally applicable to the warrants pursuant to CBOE rules. The listing and trading of index warrants on the Index will be subject to these guidelines and rules.

E. Other Applicable Exchange Rules

As previously stated, the CBOE represents that the Index will be categorized as narrow-based. As such, the generic narrow-based warrant standards regarding margin requirements provided for under Exchange rule 30.53 will apply. The applicable generic narrow-based position and exercise limits will be determined pursuant to Exchange rule 30.35.[13]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change by the Exchange is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) of the Act.[14] Specifically, the Commission finds that the listing and trading of warrants based on the Index will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with a portion of the equity markets[15] and promote efficiency, competition and capital formation.[16]

Nevertheless, the trading of warrants on the Index raises several concerns related to the design and maintenance of the Index, customer protection, surveillance and market impact. The Commission believes, however, for the reasons discussed below, that the CBOE has adequately addressed these concerns.

A. Design and Maintenance of the Index

The Commission finds that it is appropriate and consistent with the Act for the CBOE to apply its narrow-based index warrant listing standards and trading rules to the Index. First, the Index will be composed of 15 to 20 actively traded common stocks, no more than four of which will be foreign issued and traded. The remaining stocks will be listed on the Amex, NYSE or through the facilities of Nasdaq and are reported Nasdaq/NMS securities.

The Commission notes that with respect to the maintenance of the Index, the CBOE has implemented several safeguards in connection with the listing and trading of Index warrants that will serve to ensure that the Index component securities are relatively highly capitalized and actively traded. In this regard, the CBOE represents that the Index and its component stocks will meet all the criteria of CBOE Rule 31.5E and the generic criteria for narrow-based index warrants, discussed above, prior to trading of the warrants. Particularly, the CBOE notes that with regard to paragraph (1) of CBOE Rule 31.5E, the net worth and earnings of the issuer substantially exceeds the criteria for equity issues of CBOE Rule 31.5A (*i.e.*, total assets less total liabilities are greater than $4,000,000; pre-tax income earnings were greater than $750,000 in its last fiscal year; and the issuer's net income was greater than $400,000), and the issuer has a minimum tangible net worth in excess of $250,000,000. As a result, the CBOE notes that paragraph (4) of CBOE Rule 31.5E regarding limitations on issuance is not applicable. In addition, the CBOE represents that with regard to paragraph (3) of CBOE Rule 31.5E, the warrants will mature between two to three years from the date of issuance. With regard to the generic criteria for narrow-based index warrants discussed above, the Exchange represents that each component security of the Index will have a minimum market capitalization of $150 million except that two component stocks that do not in the aggregate account for more than 10% of the Index weight, may have a market capitalization of not less than $50 million.[17]

B. Customer Protection

The Commission notes that the rules and procedures of the Exchange adequately address the special concerns attendant to the trading of Index warrants. Specifically, the applicable suitability, account approval, disclosure and compliance requirements of the CBOE warrant listing standards satisfactorily address potential concerns. Moreover, the CBOE plans to distribute a circular to its membership calling attention to specific risks associated with warrants on the Index. Further, pursuant to the Exchange's listing guidelines, only companies capable of meeting the CBOE's index warrant issuer standards will be eligible to issue Index warrants. These standards, among other things, help to ensure that the issuer is sufficiently creditworthy to be able to meet its obligations at the expiration of the Index warrants.

C. Surveillance

In evaluating new derivative instruments, the Commission consistent with the protection of investors, considers the degree to which the derivative exchange has the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. It is for this reason that the Commission requires that there be a comprehensive surveillance agreement in place between an exchange listing or trading a derivative product and the exchanges trading the stocks underlying the derivative contract that specifically enables officials to survey trading in the derivative product and its underlying stocks.[18] Such agreements facilitate the

[13] See Amendment No. 1, supra note 3.

[14] 15 U.S.C. 78f(b)(5).

[15] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[16] 15 U.S.C. 78c(f).

[17] The Commission notes that the proposal does not contain a list of the actual components of the Index. The CBOE has committed to provide the list to the Commission, when it becomes publicly available, prior to the trading of the Index warrants. See Amendment No. 2, supra note 5.

[18] The Commission believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance agreement. A comprehensive surveillance agreement should provide the parties thereto with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a

Continued

availability of information needed to fully investigate a potential manipulation if it were to occur. For foreign stock index derivative products, these agreements are especially important to facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions. In order to address the above concerns, the Commission notes that the Index will be maintained in accordance with CBOE Rule 31.5(E)(7), which states that foreign country securities or ADRs that are not subject to a comprehensive surveillance agreement and have less than 50% of their global trading volume in dollar value in the United States, cannot, in the aggregate, represent more than 20% of the weight of an index.

For the reasons discussed above, the Commission finds good cause to approve Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 provides that the Index value will be disseminated every 15 seconds and will be calculated based on real-time prices, for all of the component stocks, including those foreign stocks that are traded during CBOE trading hours. With respect to foreign stock components that trade during CBOE trading hours, each Index calculation will use the most recent last sale price from the appropriate home market. For foreign stocks that do not trade during CBOE trading hours, the closing price will be used to calculate the Index value. In addition, Amendment No. 2 clarifies that component securities will be replaced or supplemented only under the events discussed below. Absent unusual circumstances involving a merger or consolidation, conversion into another class of securities, a spin-off, or the termination of a depositary receipt program, the Exchange will adhere to the following procedures: (1) in the event of a merger or consolidation (whether between component stocks or between one component stock and one non-component stock), the original component stock will be replaced by the new security; (2) in the event of a conversion into another class of security, the original component stock will be replaced by the new security; (3) in the event of a spin-off of a subsidiary, both the subsidiary issue and the original parent security will be included in the Index, unless the subsidiary is an insignificant percentage of the original security, in which case the CBOE will consult with the SEC prior to omitting the subsidiary issuer from the Index; and (4) should a depositary receipt program be terminated, for any reason, after an ADR had already been included in the Index, the CBOE in consultation with the SEC staff will evaluate the appropriate procedure to be employed to ensure continuity of the Index. The Commission notes that no comments were received when the original notice of the proposed rule change was published and that no new regulatory issues are presented in Amendment No. 2.

Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2)[19] of the Act, to find good cause exists to approve Amendment No. 2 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–98–17 and should be submitted by July 10, 1998.

For the foregoing reasons, the Commission finds that the CBOE's proposal to list and trade warrants based on the Index is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–98–17), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jonathan G. Katz,

Secretary.

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comprehensive surveillance agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity and customer identity. *See* Securities Exchange Act Release No. 31529 (November 27, 1992).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12) (1994).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40087; File No. SR–NASD–98–23]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 and Amendment No. 2 to Proposed Rule Change Relating to an Amendment to the NASD's Options Position Limit Rule

June 12, 1998.

I. Introduction

On March 10, 1998, NASD Regulation, Inc. ("NASD Regulation") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 2860(b) of the National Association of Securities Dealers, Inc. ("NASD") or "Association") to: (1) increase the position limits on conventional equity options to three times the basic position limits for standardized equity options on the same security; (2) disaggregate conventional equity options from standardized equity options and FLEX Equity Options for position limit purposes; and (3) provide that the OTC Collar Aggregation Exemption shall be available with respect to an entire conventional equity options position, not just that portion of the position that is established pursuant to the NASD's Equity Option Hedge Exemption.

The proposed rule change was published for comment in Exchange Act Release No. 39893 (April 21, 1998), 63 FR 23317 (April 28, 1998) NASD Regulations submitted an amendment to the proposed rule change on April 29, 1998.[3] A second amendment to the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from John M. Ramsay, Vice President and Deputy General Counsel, NASD Regulation, dated April 29, 1998 ("Amendment No. 1"). Amendment No. 1 makes certain technical corrections to the text of the proposed rule change.

proposed rule change was submitted on June 3, 1998.[4] One comment letter was received on the proposal.[5] This order approves the proposed rule change, as amended.

II. Description

NASD Rule 2860(b)(3) provided that the position limit[6] for each equity option is determined according to a five-tiered system whereby more actively traded securities with larger public floats are subject to higher position limits and less actively traded stocks are subject to lower limits.[7] Presently, conventional and standardized equity options are subject to the same position limits, and all equity options overlying a particular equity security on the same side of the market are aggregated for position limit purposes, regardless of whether the option is a conventional, standardized or FLEX Equity Option.[8] On September 9, 1997, the Commission approved a two-year pilot program ("Pilot Program") to eliminate position and exercise limits for FLEX Equity Options, which are traded on the American Stock Exchange, Inc. ("AMEX"), the Chicago Board Options Exchange, Inc. ("CBOE"), and the Pacific Exchange, Inc. ("PCX") (collectively "Options Exchange").[9] In light of the Pilot Program, NASD Regulation is proposing to amend its rules governing position and exercise limits for conventional equity options. NASD Regulation previously has filed a proposed rule change to eliminate position and exercise limits on FLEX Equity Options to make its rules consistent with the Pilot Program.[10] NASD Regulation believes the proposed rule change herein is necessary to foster competition between the over-the-counter ("OTC") market and the Options Exchanges.

FLEX Equity Options are exchange-traded options issued by the OCC that give investors the ability, within specified limits, to designate certain terms of the option (*i.e.*, the exercise price, exercise style, expiration date, and option type). Because they are non-uniform and individually negotiated, FLEX Equity Options closely resemble and are economically equivalent to conventional equity options. Accordingly, to align more closely the NASD's position limit rules for conventional equity options with the rules for FLEX Equity Options, NASD Regulation proposes to amend Rule 2860(b)(3) to provide that: (1) position limits on conventional equity options shall be increased to three times the basic position limits for standardized equity options on the same security, (2) conventional equity options shall be disaggregated from standardized equity options FLEX Equity Options for position limit purposes; and (3) the OTC Collar Aggregation Exemption shall be available with respect to an entire conventional equity options position, not just that portion of the position that is established pursuant to the NASD's Equity Option Hedge Exemption.

The NASD's Equity Option Hedge Exemption[11] provides for an automatic exemption from equity option limits for accounts that have established hedged positions on a limited one-for-one basis (*i.e.*, 100 shares of stock for one option contract). Under the Equity Option Hedge Exemption, the largest options position that may be established (combining hedged and unhedged positions) may not exceed three times the basic position limit. The OTC Collar Aggregation Exemption[12] provides that positions in conventional put and call options establishing OTC collars need not be aggregated for position limit purposes. An OTC collar transaction involves the purchase (sale) of a put and the sale (purchase) of a call on the same underlying security to hedge a long (short) stock position.

At the present time, NASD Regulation believes that the prudent regulatory approach is to increase position limits on conventional equity options in conjunction with continued availability of the Equity Option Hedge Exemption and OTC Collar Aggregation Exemption. NASD Regulation proposes an incremental approach and in this case believes increasing position limits for conventional equity options to three times the position limits for standardized equity options is appropriate. These proposed limits correspond to the position limits in effect for FLEX Equity Options prior to the Pilot Program.

NASD Regulation also believes that conventional equity options positions should not be aggregated with standardized and FLEX Equity Options on the same securities for position limit purposes. It believes that disaggregation of conventional and other options is necessary to give full effect to the proposed increase in position limits for conventional equity options. Without disaggregation, positions in FLEX Equity Option or standardized option positions would reduce or potentially even eliminate (in the case of FLEX

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[4] *See* Letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Gary L. Goldsholle, Assistant General Counsel, NASD Regulation, dated June 2, 1998 ("Amendment No. 2"). Amendment No. 2 corrects a deficiency in the language of the proposed rule change by clarifying that the tripling aspect of the proposal will apply to all conventional equity options. Under the current rules, the position limits for conventional equity options overlying a security for which there is no standardize equity options contract is set at 4,500 contracts, or such higher limit for which the underlying security would qualify. As now written, the proposed rule language establishes position limits for conventional equity options at "three times the applicable position limit established for standardized equity options overlying the security," but does not take into account the circumstance where there is no standardized equity option contract overlying the security. Amendment No. 2 proposes language that triples the position limits for all conventional equity options, including those for which there is no standardize equity option contract overlying the security.

[5] *See* Letter to Jonathan G. Katz, Secretary, Commission, from Deutsche Bank Securities, Inc., Merrill Lynch, Pierce Fenner & Smith, Inc., Morgan Stanley & Co., Inc., Salomon Brothers Inc./Smith Barney, Inc., and SBC Warburg Dillon Read, Inc., dated June 2, 1998 ("Firms' Letter"). The letter supports the approval of SR–NASD–98–23, as amended.

The Commission notes that it received a comment letter on a separate NASD rule filing (SR–NASD–97–80) on January 23, 1998, that is relevant to present filing. The letter supported the approval of SR–NASD–97–80, as well a SR–NASD–97–67, which was substantively very similar to the present filing. SR–NASD–97–67, was withdrawn and replaced by the present filing. *See* Letter to Jonathan G. Katz, Secretary, Commission, from Bear, Stearns & Co., Deutsche Morgan Grenfell, Inc., Goldman, Sachs & Co., Lehman Brothers, Inc., Merrill Lynch, Pierce Fenner & Smith, Inc., Morgan Stanley & Co., Inc., Natwest Securities Corporation, Salomon Brothers, Inc., SBC Warburg Dillon Read, Inc., and Smith Barney, Inc., dated January 23, 1998.

[6] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits restrict the number of options contracts that an investor or group of investors acting in concert can exercise within five consecutive business days. Under NASD Rules, exercise limits correspond to position limits, such that investors in options classes on the same side of the market are allowed to exercise, during any five consecutive business days, only the number of options contracts set forth as the applicable position limit for those options classes. *See* NASD Rules 2860(b) (3) and (4).

[7] Currently, the five tiers are for 4,500, 7,500, 10,500, 20,000, and 25,000 contracts NASD rules do not specifically govern how a specific equity option falls within one of the five position limit tiers. Rather, the NASD's position limit established by an options exchange(s) for a particular equity option is the applicable position limit for purpose of the Government's rule.

[8] Standardized options are exchange-traded options issued by the Options Clearing Corporation ("OCC") that have standard terms with respect to strike prices, expiration dates, and the amount of the underlying security. A conventional option is any other option contract not issued, or subject to issuance by, OCC.

[9] *See* Exchange Act Release No. 39032 (September 9, 1997) 62 FR 48683 (September 16, 1997).

[10] SR–NASD–98–15. The Commission notes that SR–NASD–98–15 was approved on March 19, 1998. *See* Exchange Act Release No. 39771 (March 19, 1998), 63 FR 14743 (March 26, 1998).

[11] Rule 2860(b)(3)(A)(vii).

[12] 2860(b)(3)(A)(viii).

Equity Options) the available position limits for conventional equity options.

To illustrate how these proposed amendments would work, consider the following example of stock ABCD, which is subject to a position limit of 25,000 standardized equity option contracts. In this example, a market participant could establish a position of 25,000 standardized option contracts on ABCD and an additional 75,000 conventional option contracts on ABCD on the same side of the market, since conventional and standardized option positions would be disaggregated. In addition, the market participant also may have a position of any size in FLEX Equity Options overlying ABCD, since such FLEX Equity Options would not be aggregated with either the conventional equity options or standardized equity options overlying ABCD. Further, by taking advantage of the Equity Option Hedge Exemption, which permits a market participant to assume a hedged options position that is three times the otherwise applicable position limit, a market participant could increase the number of conventional equity options to 225,000 contracts.

NASD Regulation proposes to modify the terms of the OTC Collar Aggregation Exemption to apply to an entire conventional equity option position, not just the portion that is established pursuant to the Equity Option Hedge Exemption. NASD Regulation believes such an amendment is consistent with the economic logic underlying the OTC Collar Aggregation Exemption, *i.e.*, that if the terms of the exemption are met, the segments of an OTC collar will never both be in-the-money at the same time or exercised. Under current rules, assuming that stock ABCD is subject to a basic position limit of 25,000 contracts, a market participant taking advantage of the Equity Option Hedge Exemption could establish a hedged position on ABCD involving a total of 75,000 conventional equity option contracts (three times the basic limit), including 50,000 contracts that are established under the Equity Option Hedge Exemption. A market participant using the OTC Collar Aggregation Exemption could then establish a conventional position of 50,000 long (short) calls and 50,000 short (long) puts, for a total of 125,000 contracts overlying ABCD. The proposed rule change to the OTC Collar Aggregation Exemption would allow a market participant to establish a collar consisting of two segments, each of which involves a position three times greater than the basic position limit. Consequently, using the example above, a market participant could establish an OTC collar on ABCD involving 75,000 long (short) calls and 75,000 short (long) puts, for a total of 150,000 contracts.[13]

If, however, the basic position limits for conventional options were tripled, as proposed above, the permissible options position established under the OTC Collar Aggregation Exemption would be correspondingly increased. For example, if the market participate in the above example had increased the size of its conventional options position to 225,000 contracts pursuant to the Equity Option Hedge Exemption as proposed above (based upon a limit of three times the 75,000 conventional equity options position limit), the market participant could establish an OTC collar on ABCD involving 225,000 long (short) calls and 225,000 short (long) puts, for a total of 450,000 contracts.

Finally, in addition to the proposed rule changes discussed above, the NASD is proposing to clarify and update the examples contained in IM–2860–1 so that they are consistent with the instant proposal and prior increases in the hedge exemption.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Association, and, in particular, with the requirements of Section 15A(b)(6).[14] Specifically, the Commission believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also believes that the proposed rule changes is consistent with Section 11A of the Act in that it will increase the position limits on conventional equity options, disaggregate conventional equity options from exchange-traded equity options for position limit purposes, and provide that the OTC Collar Aggregation Exemption may be utilized with respect to any conventional equity options position, not just that part of the position that is established pursuant to the NASD's Equity Option Hedge Exemption, and thereby allow market participants in the OTC options market to compete effectively with the participants using standardized options or with entities not subject to position limit rules.

Since the inception of conventional equity options trading, the NASD has had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise.[15] These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulation[16] and for corners or squeezes of the underlying market. In addition, they serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.

The Commission has been careful to balance two competing concerns when considering a self-regulatory organization's position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security. At the same time, the Commission has realized that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[17]

The Commission believes that the proposed rule change will improve the conventional equity options market for several reasons. First, the Commission notes that the NASD's current reporting requirements for all conventional equity options transactions establishing large options positions will apply to such transactions effectuated under the new rule. Rule 2860(b)(5)(ii) imposes

[13] While the OTC Collar Aggregation Exemption is self-effectuating with respect to the hedged components of conventional options positions, NASD Regulation has also permitted members to include non-hedged positions within OTC collars under the terms of the OTC Collar Aggregation Exemption on a pre-approval basis. Accordingly, the instant rule change would turn this pre-approval process for non-hedged components of OTC collars into a self-effectuating process.

[14] 15 U.S.C. 78o–3(b)(6).

[15] As stated earlier, under NASD rules conventional and standardized equity options currently are subject to the same position limits, and all equity options overlying a particular equity security on the same side of the market are aggregated for position limit purposes, regardless of whether the option is a conventional, standardized of FLEX Equity Option.

[16] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

[17] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. at 189–91 (Comm. Print 1978) ("Options Study").

reporting obligations on "each account in which the member has an interest * * * and each customer account, which has established an aggregate position of 200 or more option contracts * * *." Information reported to the NASD is used by the NASD Regulation Market Regulation staff as part of their ongoing market surveillance operations and helps to minimize the risk of any market manipulation or disruption related to the accumulation or disposition of large options positions. It also enables NASD Regulation to identify large positions held or written by a member that could pose a financial risk to the member or its clearing firm.

Second, the tripling of the position limits on conventional equity options will help those investors who utilize conventional equity options, typically large, sophisticated institutional investors, or persons of extremely high net worth, with their extensive hedging needs.[18]

Third, the Commission also believes that the proposed tripling of position limits for conventional equity options will expand the depth and competitiveness of the conventional equity option market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities. Broker-dealers and banks act as dealers in the OTC derivatives market, and compete with each other for counterparty business. The proposal will enable broker-dealers to compete more effectively with banks that are not subject to NASD rules for OTC options transactions. It will also enable NASD members to accommodate better their clients' risk management strategies. The Commission recognizes, however, that the proposal presents substantial increases in OTC options transactions. It will also enable NASD members to accommodate better their clients' risk management strategies. The Commission recognizes, however, that the proposal present substantial increases in OTVC options positions. Although the proposed rule change increases threefold the position limits for conventional equity options, those markets that are relatively less active and not as deep in trading interest will remain subject to the lowest existing position limit, *i.e.*, 4,500×3, or 13,500 option contracts. Moreover, as noted above, the large positions will be reported to the NASD for monitoring. Finally, the Commission notes that the proposed positions for conventional equity options are still capped at a fixed level, whereas there are no position limits for FLEX Equity options.

Fourth, the Commission believes that the disaggregation of conventional equity options from standardized equity options is warranted given that the tripling provision will otherwise be of limited effect. That is, if an investor has reached the limit for standardized equity options and is required to aggregate those options with his conventional equity options, he will reach the total position limit for conventional equity options sooner than if the standardized and conventional equity options were not aggregated. The Commission also notes that, under the rules of the Options Exchanges, FLEX Equity Options, which are very similar to conventional equity options, are not aggregated with standardized equity options for position limit purposes.[19]

Fifth, the Commission notes that in September 1997, it approved the elimination of position and exercise limits for FLEX Equity Options on a two year pilot basis.[20] As stated above, FLEX Equity Options are exchange-traded options issued by the OCC that give investors the ability, within specified limits, to designate certain terms of the option (*i.e.*, the exercise price, exercise style, expiration date, and option type). Conventional equity options are very similar to FLEX Equity Options given that they are also non-uniform and individually negotiated.[21] Traditionally, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission believes that increasing position limits for conventional equity options to three times the position limits for standardized equity options is appropriate given the Commission's previous approach to the expansion of position and exercise limits. The Commission also believes that the proposed rule change will help to foster competition between the OTC market and the Options Exchanges, as well as ensure that OTC market participants are not placed at a competitive disadvantage vis-à-vis the Options Exchanges.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Amendment No. 1 makes minor technical changes to the text of the proposed rule. Specifically, Amendment No. 1 clarifies in the rule language that the Equity Option Hedge Exemption program was approved by the Commission on a pilot basis only until December 31, 1998. Amendment No. 1 also makes certain clerical corrections. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Amendment No 2 corrects a deficiency in the text of the proposed rule. Specifically, Amendment No. 2 clarifies in the rule language that position limits for conventional equity for which there is not standardized equity option contract overlying the security are also to be tripled. Under the current rules, the position limits for conventional equity options overlying a security for which there is no standardized equity options contract is set at 4,500 contracts, or such higher limit for which the underlying security would qualify. As now written, the proposed rule language establishes position limits for conventional equity options at "three times the applicable position limit established for standardized equity options overlying the security," but does not take into account the circumstance where there is no standardized equity option contract overlying the security. Amendment No. 2 proposes language that triples these limits. The Commission believes that accelerated approval of Amendment No. 2 is appropriate given that it clarifies the application of the new position limits in a manner that is consistent with the approach established in the original rule filing. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 and Amendment No. 2 to the proposed rule change, including whether the amendments are consistent

[18] In the Firms' Letter, the commenters indicate that they "have experienced an overwhelming interest by institutional and other accredited investors to enter into collar transactions and other hedging transactions involving conventional options." On several occasions they have been unable "to meet the demand for this hedging activity due to the relatively low [applicable] conventional option position limits." *See* Firms' Letter, *supra*, note 5.

[19] Positions in FLEX Index Options generally are also not aggregated with options on any stocks included in the index or with FLEX Index Option positions on another index. *See, e.g.*, CBOE Rule 24A.7(c).

[20] *See supra* note 9.

[21] Conventional equity options are not, however, issued or subject to issuance by OCC.

with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference 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 No. SR–NASD–98–23 and should be submitted July 10, 1998.

IV. Conclusion

For the foregoing reasons, the Commission finds that NASD Regulation's proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASD–98–23) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16351 Filed 6–18–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40086; File No. SR–NSCC–98–4]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Adopting an Interpretation of the Board of Directors Regarding NSCC's Obligation to Continuously Review Participants to Determine if Participants Are Required to Reapply for Membership Due to a Material Change in Conditions

June 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 24, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–98–4) as described in Items I, II, and II below, which items have been prepare primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would add Addendum T to NSCC's Rules and Procedures regarding NSCC's obligation to continuously review participants to determine if they are required to reapply for membership due to a material change in conditions. A copy of proposed Addendum T is attached as Exhibit A to the rule filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, NSCC will be permitted to (i) reexamine a participant who has undergone a material change in circumstances,[3] (ii) reconsider the participant's continuing status as a participant as if such entity was initially applying for membership when conditions originally in existence at the time a participant was accepted for membership have materially changed, and (iii) require the participant to satisfy any concerns NSCC may have as to the participant's ongoing membership in NSCC as part of such reevaluation. In addition, Addendum T explicitly states that participants have the affirmative obligation to advise NSCC if such material change occurs.

Under the Act and the rules and regulations thereunder, NSCC is obligated to safeguard securities and funds in the possession and control. NSCC believes that this obligation, coupled with the fact that NSCC is the guarantor of participants' transaction submitted to it for clearance and settlement, require that NSCC have flexibility to consider material changes pertaining to such participants and have the ability to take appropriate steps in light of such changes.

When a material change occurs with respect to an existing participant's ownership, control or management, mix of business, use of third party service provides, or regulatory history, among other areas, NSCC is faced with a different risk perspective than that which it faced at the time it approved such participant's application for membership. The NSCC board has concluded that it is in the best interests of NSCC and its membership as a whole that NSCC address these types of changes, including the ability to require the participants to reapply for membership, as if the participant was not already a participant.

NSCC believes that participants change their business mix as their focus in the financial industry change. According to NSCC, enter new businesses, discontinue old ones, change management, change risk policies, or take other actions or steps which could result in an entirely different entity (other than changing the corporate name of such entity) from the one which was approved for NSCC membership. NSCC believes that if it did not have the ability to continually reexamine participants' status, the purpose behind scrutinizing applications and the comfort level provided by such process, would be undermined.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will clarify the rules of NSCC relating to the continuing standards required for membership and NSCC's obligation to safeguard securities and fund within its control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition that is

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[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Proposed Addendum T sets forth three categories where changes may warrant reconsideration: (1) material changes in ownership, control of management, (2) material changes in business lines, including but not limited to, new business lines undertaken, or (3) participation as a defendant in litigation which could reasonably have a direct negative impact on the participant's business. Proposed Addendum T states that these categories are listed as examples and should not be viewed as exclusive in the process.

not necessary to appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–98–3 and should be submitted by July 10, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

Exhibit A

Underlined, boldface text indicates additions

Modify NSCC's Rules as follows:

ADDENDUM T

INTERPRETATION OF THE BOARD OF DIRECTORS
CONTINUING RESPONSIBILITY OF THE CORPORATION

National Securities Clearing Corporation (the "Corporation") is a self-regulatory organization under the Securities Exchange Act of 1934, as amended, and as such has, among others, the obligation to enforce compliance with its rules by its participants. Compliance by participants with the Rules of the Corporation helps to ensure that the Corporation is able to safeguard securities and funds in its possession and to fulfill its obligation as a guarantor of participant's transactions in the Corporation's clearance and settlement systems.

The Corporation's Rules and Procedures establish criteria which applicants must meet to become participants as well as criteria and requirements with respect to continuance, including the ability of the Corporation to require additional assurances as to a participant's ability to meet its commitments as they come due. To fulfill its obligation to ensure the continued eligibility of a clearing participant to utilize the services of the Corporation, the Corporation has employed, among other techniques, a myriad of computerized surveillance programs and interfaces with marketplace self-regulatory organizations and other clearing corporation and depositories.

For more than a decade, the Corporation has recognized that conditions in existence at the time the applicant is accepted for membership may materially change either before the participant has started or subsequent thereto. The Corporation has further recognized that such change in conditions may result in a material change in the firm's risk profile, as determined by the Corporation, thus issues of safety and soundness may cause the Corporation to consider addressing anew the continued membership of some existing participants.

The Board of Directors of the Corporation has determined to clarify, for all concerned, the types of events which may warrant a reconsideration by the Corporation of a participant's continued use of the Corporation's services, beyond simply those circumstances dealing with the immediate ability of a

participant to meet its obligations as they come due (which are already definitively spelled out in the Corporation's Rules). Three categories where changes may warrant reconsideration are listed below as examples and should not be viewed exclusive in the process:

- material changes in ownership, control or management;
- material changes in business lines, including but not limited to, new business lines undertaken; or
- participation as a defendant in litigation which could reasonably have a direct negative impact on the participant's business.

In addition to the above, a firm may fail to meet current entrance standards, whether or not those standards were in effect at the time the firm was admitted. This may, for instance, be due to the development of operational problems or the advent of an adverse regulatory history of the type that would disqualify the firm from initial membership under then current standards.

In the event of the occurrence of any of the above conditions, the Corporation may, among other actions:

a. require that the participant present testimony, facts and/or evidence sufficient to address, to the satisfaction of the Corporation, concerns or questions it may have as to the appropriateness of the participant continuing as such;

b. impose new requirements of a financial or operational nature upon the participant; and/or

c. require the participant to be presented to the Corporation for formal reconsideration of its continued membership as if it were initially applying under then current membership standards (with an adverse determination requiring a reasonable time-frame for the participant to make other clearing arrangements).

All such actions will continue to be subject to appeal, pursuant to the rules of the Corporation. To assist the process of identifying and addressing changes at existing participants, each participant shall have an affirmative duty to notify the Corporation of conditions which may fall within the above categories. Failure to so notify the Corporation shall be deemed, in and of itself, to be a violation of the Corporation's Rules and therefore subject to sanctions.

[FR Doc. 98–16350 Filed 6–18–98; 8:45 am]
BILLING CODE 8010–01–C

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board, Public Meeting

The U. S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Sunday, July 12, 1998, from 11:00 a.m. to 5:00 p.m. at the Reno Small Business Development Center, University of Nevada in Reno, to discuss such matters as may be presented by members and staff of the U. S. Small Business Administration, or others present.

For further information, please write or call Ms. Ellen Thrasher, U. S. Small Business Administration, 409 Third Street, SW, Fourth Floor, Washington, DC 20416, telephone (202) 205–6817.

Dated: June 15, 1998.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–16353 Filed 6–18–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Midwestern States Regional Fairness Board; Public Hearing

The Midwestern States Regional Fairness Board Public Hearing is to be held on August 10, 1998, starting at 1:00 p.m. at the KeyCorp National Headquarters, 127 Public Square, Cleveland, OH 44114, in space being donated by the KeyCorp Banking Group, to receive comments from small businesses concerning regulatory enforcement or compliance taken by Federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

FOR FURTHER INFORMATION CONTACT: Gary P. Peele, telephone (312) 353–0880.

Dated: June 15, 1998.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–16286 Filed 6–18–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Southeastern States Regional Fairness Board; Public Hearing

The Southeastern States Regional Fairness Board Public Hearing is to be held on August 21, 1998, starting at 1:00 p.m. at the BellSouth Building, 333 Commerce, Nashville, TN 37201, in space being donated by the BellSouth Corporation, to receive comments from small businesses concerning regulatory enforcement or compliance taken by Federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information contact: Gary P. Peele, telephone (312) 353–0880.

Dated: June 15, 1998.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–16287 Filed 6–18–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region IV North Florida District; Jacksonville Florida; Advisory Coucil Meeting; Public Meeting

The U. S. Small Business Administration North Florida District Office, Jacksonville, Florida, Advisory Council will hold a public meeting from 12:00 p.m. to 2:00 p.m., July 16, 1998, at the Cafe Tropical, 2441 N. W. 43rd Street, Gainesville, Florida, to discuss such matters as may be presented by members and staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: Claudia D. Taylor, U. S. Small Business Administration, 7825 Baymeadows Way, Suite 100-B, Jacksonville, Florida 32256–7504, telephone (904) 443–1933.

Dated: June 15, 1998.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–16288 Filed 6–18–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting; Public Meeting

The U. S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting at 10:00 a.m. on Tuesday, June 16, 1998, at the Boston District Office, Room 265, to discuss such matters as may be presented by members and staff of the U.S. Small Business Administration, or others present.

For Further Information, please write or call Ms. Mary E. McAleney, District, U. S. Small Business Administration, 10 Causeway Street, Room 265, Boston, Massachusetts 02222–1093, telephone (617) 566–5560.

Dated: June 15, 1998.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–16289 Filed 6–18–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2841]

Delegation of Authority No. 145–1; to the Assistant Secretary for International Narcotics and Law Enforcement Affairs

By virtue of the authority vested in me as Secretary of State, including the authority of section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), I hereby amend Delegation of authority No. 145 as follows.

Section 1(g) is amended (I) in the title by striking "Matters" and inserting in its place "and Law Enforcement Affairs"; (II) in subparagraph 1(g)(1) by striking "section 481" each time it appears and inserting in its place "sections 481 and 487" and by striking "Procurement Regulations (41 CFR Chapter 6)" and inserting in its place "Acquisition Regulation (48 CFR Chapter 6)"; and (III) in subparagraph 1(g)(3) by inserting "and anticrime" after "international narcotics control", to read:

"(g) To the Assistant Secretary for International Narcotics and Law Enforcement Affairs:

"(1) Those functions conferred upon the President by sections 481 and 487 of the act, together with all those authorities contained in the act, to the extent necessary or appropriate to accomplish the purposes of sections 481 and 487 of the act: *Provided*, That Department of State procurement for the International Narcotics Control Program shall be carried out in accordance with Department of State Acquisition Regulation (48 CFR Chapter 6).

"(2) Those functions conferred upon the Secretary of State by the determination of the President pursuant to section 604(a) of the act, dated October 18, 1961 (26 FR 10543), and by section 4 of the Executive Order 11223 of May 12, 1965 (30 FR 6635).

"(3) The functions of negotiating, concluding and terminating international agreements relating to international narcotics control and anticrime programs subject to the concurrences required by the Circular 175 Procedure."

This Delegation of Authority shall be effective upon signature.

Dated: May 31, 1998.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 98–16365 Filed 6–18–98; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF STATE

[Public Notice No. 2839]

State Department Consultation With American Indigenous Groups

The Department of State will hold a consultation between U.S. Government officials, federally recognized American Indian and Alaska Native Tribes, and other interested groups/parties to discuss issues of interest to indigenous groups and to provide tribal leaders with an update on progress on the United Nations (U.N.) and Organization of American States (OAS) draft declarations on the indigenous rights. This consultation is intended to build upon previous consultations held in 1996 and 1997, providing a regular forum for discussions between the Department of State and federally recognized American Indian and Alaska Native Tribes. The consultation, which is open to the general public, is scheduled for Tuesday, July 14 from 8:15 a.m. to 5 p.m. and Wednesday, July 15, from 8:15 a.m. to 5 p.m., at the Department of State in Washington, D.C. A reception will be held following the meeting from 5–7 p.m. at the Department.

The consultation will take place in the Loy Henderson Auditorium, Department of State, 2201 C Street, NW., Washington, DC. Registration begins at 8:15 a.m, on both days, at the main entrance, 2201 C Street, of the Department of State. The public is invited to attend the meetings.

Those interested in attending or seeking additional information should contact Karen Jo McIsaac (202–647–2362; fax: 202–647–9519) in the Bureau of Democracy, Human Rights, and Labor at the Department of State..To ensure that your name is on the list of participants, please contact the Department of State no later than July 10, 1998.

Dated: June 4, 1998.

John Shattuck,

Assistant Secretary, Bureau of Democracy, Human Rights, and Labor, Department of State.

[FR Doc. 98–16366 Filed 6–18–98; 8:45 am]

BILLING CODE 4710–18–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–12]

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 July 9, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Tawana Matthews (202) 267–9783 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 15, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition For Exemption

Docket No.: 29204.

Petitioner: The Boeing Company.

Regulations Affected: 25.562(b)(2), 25.562(c)(5), 25.562(c)(6).

Description of Petition: To exempt The Boeing Company Model MD–17 freighter airplanes from the floor warpage and femur compression test requirements, and from the head injury criteria requirements of 14 CFR 5.562(b)(2), 25.562(c)(5), 25.562(c)(6), for the pilot, co-pilot, and observer's seat.

Dispositions of Petitions

Docket No.: 28541.

Petitioner: Isaac B. Weathers.

Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).

Description of Relief Sought/ Disposition: To permit the petitioner to conduct certain flight instruction and simulated instrument flights to meet the recent instrument experience requirements, in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *GRANT, June 2, 1998, Exemption No. 6526A.*

Docket No.: 29243.

Petitioner: Atlantic Coast Airlines.

Sections of the FAR Affected: 14 CFR 25.562(c)(5) and 25.785(a).

Description of Relief Sought/ Disposition: To allow front row passenger seating on the petitioner's Jetstream Series 4100 Model 4101 airplane. *GRANT, June 2, 1998, Exemption No. 6776.*

Docket No.: 29120.

Petitioner: Air Lab.

Sections of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Air Lab to assign Inspection Procedures Manuals (IPM) to key individuals within departments and to functionally place an adequate number of IPM's for access by all employees, in lieu of providing a copy of the IPM to all supervisory and inspection personnel, subject to certain conditions and limitations. *GRANT, May 18, 1998, Exemption No. 6777.*

Docket No.: 28934.

Petitioner: Covington Aircraft Engines, Inc.

Sections of the FAR Affected: 14 CFR 45.13 (b) and (c).

Description of Relief Sought/ Disposition: To permit Covington, instead of the engine manufacturer, to

replace mutilated or unreadable data plates with a copy of the original data plate on Pratt & Whitney Wasp, Wasp Jr., R985, and R1340 engines when an engine or component is overhauled at its facility. The operation would be accomplished using the conditions specified in Covington's petition in lieu of the procedures set forth in FAA Order 8130.2C for the removal of aircraft engine identification plates and the placement of the same data plate on a different engine assembly. *DENIAL, May 29, 1998, Exemption No. 6778.*

Docket No.: 29112.

Petitioner: Pennsylvania Bureau of Aviation.

Sections of the FAR Affected: 14 CFR 156.5(b).

Description of Relief Sought/ Disposition: To permit the petitioner to use up to 1 percent of the State apportionment annual funds issued during fiscal years 1997 and 1998 for program and administrative training costs under the Airport Improvement Program. *GRANT, May 20, 1998, Exemption No. 6779.*

Docket No.: 27821.

Petitioner: Cedar Rapids Police Department Air Support Division.

Sections of the FAR Affected: 14 CFR 91.209(a) and (d).

Description of Relief Sought/ Disposition: To permit the petitioner 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, subject to certain conditions and limitations. *GRANT, June 2, 1998, Exemption No. 6780.*

Docket No.: 29075.

Petitioner: Mercy Medical Center Redding.

Sections of the FAR Affected: 14 CFR 135.213(a).

Description of Relief Sought/ Disposition: To permit the petitioner to conduct emergency medical system departures in fixed-wing aircraft under instrument flight rules in weather that is at or above visual flight rules minimums from airports at which a weather report is not available from the U.S. National Weather Service (NWS), a source approved by the NWS, or a source approved by the Administrator. *DENIAL, June 2, 1998, Exemption No. 6781.*

Docket No.: 29025.

Petitioner: Northwest Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/ Disposition: To permit the petitioner to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command who is completing the initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing, subject to certain conditions and limitations. *GRANT, June 3, 1998, Exemption No. 6782.*

Docket No.: 29012.

Petitioner: Continental Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/ Disposition: To permit Continental to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command who is completing the initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing, subject to certain conditions and limitations. *GRANT, June 11, 1998, Exemption No. 6783.*

Docket No.: 29151.

Petitioner: Aramco Associated Company.

Sections of the FAR Affected: 14 CFR 91.609(c).

Description of Relief Sought/ Disposition: To permit the petitioner to operate its four Bell Model 212 helicopters in part 91 operations without a digital flight data recorder installed in each of those aircraft, as required by part 91, subject to certain conditions and limitations. *GRANT, June 12, 1998, Exemption No. 6784.*

Docket No.: 29142.

Petitioner: Geo-Seis Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a).

Description of Relief Sought/ Disposition: To permit the petitioner to operate its Bell Model 212 helicopter without an approved digital flight data recorder installed subject to certain conditions and limitations. *GRANT, June 12, 1998, Exemption No. 6785.*

[FR Doc. 98–16360 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Establishment of an Aviation Research Grants Program Involving Primarily Undergraduate Institutions and Technical Colleges

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of criteria.

SUMMARY: The Federal Aviation Administration (FAA) is providing notice of the principal criteria for the awarding of grants under the Research Grants Program Involving Undergraduate Students, as provided under the FAA Research, Engineering, and Development Authorization Act of 1997, Public Law 105–155. The FAA is soliciting proposals for research grants from primarily undergraduate institutions and technical colleges, including Historically Black Colleges and Universities (HBCUs) and Hispanic Serving Institutions (HSIs), for research on subjects of relevance to the FAA.

Grants may be awarded in the following three categories:

1. Research projects to be carried out at primarily undergraduate institutions and technical colleges;

2. Research projects that combine research at primarily undergraduate institutions and technical colleges with other research supported by the FAA; or

3. Research on future training requirements on projected changes in regulatory requirements for aircraft maintenance and power plant licensees.

The principal criteria for the awarding of grants under this program are:

1. The relevance of the proposed research to technical research needs identified by the FAA;

2. The scientific and technical merit of the proposed research; and

3. The potential for participation by undergraduate students in the proposed research.

The FAA explicitly reserves the right to make one award, multiple awards, or no awards under this program.

A solicitation, entitled "Grants for Undergraduate Aviation Research" will be available through the Internet beginning June 12, 1998. The ftp address is: ftp://ftp.tc.faa.gov/Grants/Solicitations/ungrad.doc.

Colleges and universities not eligible under the program described in this notice are encouraged to submit applications under our existing grant program. Interested parties may access the current solicitation, Grants for Aviation Research, Program No. 97.2 at any time throughout the year at the ftp site: ftp://ftp.tc.faa.gov/Grants/Solicitations/solic97.doc.

DATES: The solicitation for applications under this program will be available on the Internet beginning June 12, 1998. The Opening Date for receipt of grant applications is July 01, 1998 and the Closing Date is July 31, 1998. Proposals postmarked on or before the closing date will be accepted for review. Applicants should allow at least 90 days for review and processing.

ADDRESSES: Grant applications should be submitted to Clare J. Nanni, Grants Officer, Aviation Research Grants

Program, Office of Research and Technology Applications, AAR–201, FAA, William J. Hughes Technical Center, Atlantic City International Airport, New Jersey 08405.

FOR FURTHER INFORMATION CONTACT: Clare J. Nanni, Grants Officer, Aviation Research Grants Program, Office of Research and Technology Applications, AAR–201, FAA, William J. Hughes Technical Center, Atlantic City International Airport, New Jersey 08405, e-mail: clare.nanni@faa.dot.gov. Voice: (609) 485–6970, Fax: (609) 485–6509, or the FAA Aviation Research Grants Program hotline at 609–485–8410.

SUPPLEMENTARY INFORMATION: "Research Grants Program Involving Undergraduate Students", appearing at Section 3 of the FAA Research, Engineering, and Development Authorization Act of 1997 (Public Law 105–155), authorizes the FAA to establish a research grants program to utilize primarily undergraduate and technical colleges, including Historically Black Colleges and Universities and Hispanic Serving Institutions, in research on subjects of relevance to the FAA. The central purpose of the FAA Aviation Research Grants Program involving undergraduate students is to encourage the participation of undergraduate students in proposed projects that support innovative research of potential benefit to the long-term growth of civil aviation.

Research Areas

Areas that contribute to the FAA's mission of improving aviation safety, capacity, efficiency, human factors, and security, are as follows:

a. Capacity and Air Traffic Control Technology;

b. Communications, Navigation, and Surveillance;

c. Aviation Weather;

d. Airports;

e. Aircraft Safety Technology;

f. System Security Technology;

g. Human Factors and Aviation medicine;

h. Environment and Energy;

i. Systems Science/Operations Research; and

In addition, research on future training requirements on projected changes in regulatory requirements for aircraft maintenance and power plant licensees are highlighted in the recent legislation. Detailed descriptions of these programs and additional research areas are contained in the program solicitation.

Eligibility

Applications may be submitted by two- and four-year colleges and universities, including HBCUs, HSIs and other minority institutions that meet the following definition of "technical college" or "primarily undergraduate" institutions:

1. Technical College is defined as an institution that offers associate degree programs in arts and science.

2. Primarily undergraduate institutions are such institutions that focus primarily on undergraduate education. Included by the definition are two- and four-year colleges, masters-level institutions, and smaller doctoral institutions that institution-wide did not award a total of more than 20 doctoral degrees during the past two academic years in science and engineering fields supported by the National Science Foundation (NSF).

Proposal Submission

Guidelines for the application format and content are contained in the Solicitation. Every effort will be made to reach a decision and inform the applicant promptly. Unless and until an award is made, the FAA is not responsible for any costs incurred by the proposing organization.

Award Date

Recipients of FAA research grants will be announced on a continuous basis.

Issued in Atlantic County, New Jersey on June 12, 1998.

Jan Brecht-Clark,

Acting Director, Office of Aviation Research, AAR–1.

[FR Doc. 98–16314 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from July 13–16, 1998, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Tower Building, Minneapolis Airport, 6311 34th Avenue, Minneapolis, Minnesota, from July 13–14, and the Fort Snelling Officers Club, Highway 5 and Post Road, building 395, from July 15–16.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Lintner, Executive Director, ATPAC, Strategic Operations/ Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held at the Tower Building, Minneapolis Airport, 6311 34th Avenue, Minneapolis, Minnesota, from July 13–14, 1998, and the Fort Snelling Officers Club, Highway 5 and Post Road, building 395, from July 15–16, 1998.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 9, 1998. The next quarterly meeting of the FAA ATPAC is planned to be held from October 5–8, 1998, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on June 12, 1998.

Thomas Lintner,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 98–16313 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Aircraft Certification Procedures Issues—Revised Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of revised task assignment for the Aviation Rulemaking Advisory Committee.

SUMMARY: Notice is given of a change in a task previously assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Mr. Brian A. Yañez, Federal Aviation Administration, Aircraft Certification Service (AIR–110), 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–9588; fax: (202) 267–5340.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (ARAC) to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area of the ARAC deals with is aircraft certification procedures, which involve the procedures for aircraft certification found in 14 CFR parts 21, 39, and 183 and Special Federal Aviation Regulation No. 36 (SFAR 36), and which are the responsibility of the Director, Aircraft Certification Service.

The Revised Task

This notice is to inform the public that the FAA has revised a task previously assigned to ARAC and supported by the Delegation System Working Group. The revision was requested by ARAC.

Review the current system of delegation functions to determine what would improve the safety, quality, and effectiveness of the system, and making recommendations concerning new or revised rules and advisory, guidance, and other (including legislative and training) collateral materials. The FAA is seeking a comprehensive, up-to-date, systematic approach for delegating certification functions to both individuals and organizations, a smooth transition from the delegation systems currently used to the system recommended, and a system as compatible as practicable with the systems used by the civilian aviation authorities of other countries. Specifically, the FAA desires to consolidate the delegation regulations in subparts J and M of part 21, SFAR 36, and section 183.33, into a new subpart. Revise section 183.15 to reflect a change in duration of delegations and in addition, the designation system would be expanded to include organizations designated to issue operating certificates under 14 CFR parts 133 and 137, air agency certificates under CFR part 141, and training center certificates under 14 CFR part 142.

While the examiners delegation functions relative to certification of aircraft and operations have been added to the overall list of delegations, the FAA does not intend to approve designations for functions that are related to air carrier operations at this time. Some examples of functions of which delegation will not be designated include, (1) Training center certificates for approval of air carrier training programs (14 CFR part 142), (2) determination of operational suitability, (3) approval of master minimum equipment lists, (4) approval of air carrier minimum equipment lists, (5) issuance of repair station certificates (14 CFR part 145), (6) approval of flight crew operating manuals, (7) instructions for continued airworthiness which includes the Maintenance Review Board and associated maintenance documents, and other items deemed inappropriate by the Administrator.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest, in connection with the performance of duties of the FAA. Meetings of ARAC to consider aircraft certification procedures issues will be open to the public. Meetings of the Delegation System Working Group are not open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on June 15, 1996.

Brian A. Yañez,

Assistant Executive Director, Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–16357 Filed 6–18–98; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Ford Airport, Iron Mountain, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Ford Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William H. Marchetti, Airport Manager, of the Dickinson County Board of Commissioners, at the following address: County Courthouse, 701 Stevenson Avenue, P.O. Box 609, Iron Mountain, MI 49801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dickinson County Board of Commissioners, under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Ford Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158)

On March 27, 1998, the FAA determined that the application to use the revenue from a PFC submitted by the Dickinson County Board of

Commissioners was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 14, 1998.

The following is a brief overview of the application.

PFC Application No.: 98–03–U–00–IMT.

Level of the PFC: $3.00.

Actual charge effective date: September 1, 1995.

Estimated charge expiration date: December 31, 2000.

Total approved net PFC revenue: $215,820.00.

Brief description of proposed projects: Install sanitary sewer; rehabilitate runway lighting; construct and light Taxiway "H", GA apron and GA access road. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Not applicable.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Dickinson County Board of Commissioners.

Issued in Des Plaines, Illinois, on June 12, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–16356 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Grand Forks International Airport, Grand Forks, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Grant Forks International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Stephen E. Johnson, Interim Executive Director, of the Grand Forks Regional Airport Authority at the following address; Grand Forks Regional Airport Authority, 2787 Airport Drive, Grand Forks, North Dakota 58203.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Grand Forks Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Grand Forks International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158. On June 2, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Grant Forks Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 1, 1998.

The following is a brief overview of the application.

PFC application number: 98–05–C–00–GFK.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 1998.

Proposed change expiration date: October 31, 2004.

Total estimated PFC revenue: $1,398,163.00.

Brief description of proposed project(s): Expand Air Cargo Apron and Construct Service Road.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/ Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Grand Forks Regional Airport Authority offices at the Grand Forks International Airport.

Issued in Des Plaines, Illinois on June 12, 1998.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–16358 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement Salt Lake and Davis Counties, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) is being prepared for a proposed transportation project in Salt Lake and Davis Counties, Utah. The initial notice of intent was given in the **Federal Register** on March 17, 1997 (Volume 62, Number 51, Pages 12681–12682).

FOR FURTHER INFORMATION CONTACT: Tom Allen, Project Development Engineer, U.S. Department of Transportation, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone (801) 963–0182; Byron Parker, Utah Department of Transportation, 2060 South 2400 West, Salt Lake City, Utah 84104, Telephone (801) 975–4806; or Michael Schwinn, U.S. Army Corps of Engineers, Suite A, 1403 South 600 West, Woods Cross, Utah 84010, Telephone (801) 295–8380.

SUPPLEMENTARY INFORMATION: Changes to the original notice of intent include: the determination of the northern terminus, change of the southern terminus from I–80 and 5600 West to 2100 North and I–215, change of the length of the highway from 17 to 13 miles, and updated information on the alternatives studied in detail and public meetings held. A detailed description of these changes are represented in the following information.

The FHWA, in cooperation with the U.S. Army Corps of Engineers, and the

Utah Department of Transportation is preparing an EIS for transportation improvements in the corridor from 2100 North and I–215 in Salt Lake City, Utah northward and eastward to the I–15/U.S. 89 interchange in Farmington, Utah due to transportation demand studies identifying the need for an additional north-south route in corridor. System connections at each end as well as other appropriate interchanges will be included. The proposed improvement involves construction of approximately 13 miles of limited access, divided highway along a new alignment.

Alternatives considered in this study include: (1) taking no action; (2) transportation system management; (3) intelligent transportation systems; (4) investment in mass transit; (5) reconstruction and widening of I–15 North; and (6) build alternatives. Transportation build alternatives being studied in detail include, but are not limited to: three alternative alignments with options.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Three public meetings have been held. Scoping meetings were held on April 30, 1997 and May 1, 1997. Public meetings presenting alternatives were held on August 20 and 21, 1997, and public meetings presenting impacts of alternatives were held on October 28 and 29, 1997. A public hearing will be held after the draft EIS has been prepared. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

Comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued: June 15, 1998.

Michael G. Ritchie,

Division Administrator.

[FR Doc. 98–16331 Filed 6–18–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20921]

Coach USA, Inc.—Control—Blue Bird Coach Lines, Inc.; Butler Motor Transit, Inc.; Gad-About Tours, Inc.; P&S Transportation, Inc.; Pittsburgh Transportation Charter Services, Inc.; Syracuse and Oswego Coach Lines, Inc.; Tippett Travel, Inc., d/b/a Marie's Charter Bus Lines; Tucker Transportation Co., Inc.; and Utica-Rome Bus Co., Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier, filed an application under 49 U.S.C. 14303 to acquire control of Blue Bird Coach Lines, Inc. (Blue Bird), Butler Motor Transit, Inc. (Butler), Gad-About Tours, Inc. (Gad-About), P&S Transportation, Inc. (P&S), Pittsburgh Transportation Charter Services, Inc. (PTCS), Syracuse and Oswego Coach Lines, Inc. (S&O), Tippett Travel, Inc., d/b/a Marie's Charter Bus Lines (Tippett), Tucker Transportation Co., Inc. (Tucker), and Utica-Rome Bus Co., Inc. (Utica-Rome), all motor passenger carriers. Persons wishing to oppose the application must follow the rules under 49 CFR part 1182, subparts B and C. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by August 3, 1998. Applicant may file a reply by August 24, 1998. If no comments are filed by August 3, 1998, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of comments referring to STB Docket No. MC–F–20921 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of comments to applicant's representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Coach currently controls 45 motor passenger carriers. In this transaction, it seeks to acquire direct control of Blue Bird,[1] Butler,[2] Gad-About,[3] P&S,[4] PTCS,[5] S&O,[6] Tippett,[7] Tucker,[8] and Utica-Rome[9] by acquiring all of the outstanding stock of these carriers. According to applicant, the stock of

[1] Blue Bird is a New York corporation. It holds federally issued operating authority in MC–108531, intrastate operating authority issued by the New York Department of Transportation (NYDOT), the Pennsylvania Public Utilities Commission (PAPUC), the New Jersey Department of Transportation, and the Ohio Public Utilities Commission (OHPUC), and authority issued by the Province of Ontario, Canada. The carrier operates 127 motorcoaches, 21 school buses and 8 vans; and it earned revenues of approximately $14.1 million in Fiscal Year (FY) 1996. Prior to the transfer of its stock into a voting trust, it had been owned by Louis A. Magnano.

[2] Butler is a Pennsylvania corporation. It holds federally issued operating authority in MC–126876 and intrastate authority issued by the PAPUC. The carrier operates 28 buses and 3 sedans; it has 68 employees; and it earned revenues of approximately $4.7 million in FY 1996. Prior to the transfer of its stock into a voting trust, it had been owned by William G. Kaylor, Robert M. Kaylor and Thomas M. Kaylor. Prior to the establishment of a voting trust, Butler owned all of the stock of Gad-About, which Coach is also proposing to acquire in this transaction.

[3] Gad-About is an Ohio corporation. It holds federally issued operating authority in MC–198451 and intrastate authority issued by the OHPUC. The carrier operates 3 buses; it has 14 employees; and it earned revenues of approximately $1.9 million in FY 1996. Prior to the transfer of its stock into a voting trust, it had been owned by Butler.

[4] P&S is a Florida corporation. It holds federally issued operating authority in MC–255382. The carrier operates 30 buses; it has 58 employees; and it earned revenues of approximately $3.7 million in FY 1996. Prior to the transfer of its stock into a voting trust, it was owned by Daniel G. Schambon.

[5] PTCS is a Delaware corporation. It holds federally issued operating authority in MC–319195. The carrier operates 400 vehicles; it has 260 employees; and, together with affiliated companies, it earned revenues of approximately $13 million in FY 1997. Prior to the transfer of its stock into a voting trust, it had been owned by Tyburn Limited, a noncarrier.

[6] S&O is a New York corporation. It holds federally issued operating authority in MC–117805 and intrastate authority issued by the NYDOT. The carrier operates 14 buses; it has 26 employees; and it earned revenues of approximately $1.7 million in 1997. Prior to the transfer of its stock into a voting trust, it had been owned by Russell Ferdinand. The carrier is affiliated through common ownership with Utica-Rome.

[7] Tippett is a Florida corporation. It holds federally issued operating authority in MC–174043. The carrier operates 17 buses, 3 minibuses, and 1 limousine; it has 38 employees; and it earned revenues of approximately $4.4 million for the fiscal year ending June 30, 1997. Prior to the transfer of its stock into a voting trust, it was owned by Marie Louise Tippett.

[8] Tucker is a Florida corporation. It holds federally issued operating authority in MC–223424. The carrier operates 7 buses; it has 24 employees; and it earned revenues of approximately $650,000 for the fiscal year ending May 31, 1997. Prior to the transfer of its stock into a voting trust, it was owned by Benjamin C. Early.

[9] Utica-Rome is a New York corporation. It holds federally issued operating authority in MC–7914 and intrastate operating authority issued by the NYDOT. The carrier operates 13 buses; it has 37 employees; and it earned revenues of approximately $1.6 million in 1997. Prior to the transfer of its stock into a voting trust, it was owned by Russell Ferdinand, who also owned all of the stock of S&O.

each of these carriers is currently held in independent voting trusts to avoid any unlawful control pending disposition of this proceeding.

Applicant submits that there will be no transfer of any federal or state operating authorities held by the acquired carriers. Following the consummation of the control transaction, each of the acquired carriers will continue operating in the same manner as before and, according to applicant, granting the application will not reduce competitive options available to the traveling public. Applicant asserts that the acquired carriers do not compete with one another or, to any meaningful degree, with any other Coach-controlled company. Applicant submits that each of the acquired carriers is relatively small and each faces substantial competition from other bus companies and other transportation modes.

Applicant also submits that granting the application will produce substantial benefits, including interest cost savings from the restructuring of debt and reduced operating costs from Coach's enhanced volume purchasing power. Specifically, applicant claims that the carriers to be acquired will benefit from lower insurance premiums negotiated by Coach and from volume discounts for equipment and fuel. Applicant indicates that Coach will provide each of the carriers to be acquired with centralized legal and accounting functions and coordinated purchasing services. In addition, applicant states that vehicle sharing arrangements will be facilitated through Coach to ensure maximum use and efficient operation of equipment and that coordinated driver training services will be provided. Applicant also states that the proposed transaction will benefit the employees of the acquired carriers and that all collective bargaining agreements will be honored by Coach.

Coach plans to acquire control of additional motor passenger carriers in the coming months. It asserts that the financial benefits and operating efficiencies will be enhanced further by these subsequent transactions. Over the long term, Coach states that it will provide centralized marketing and reservation services for the bus firms that it controls, thereby enhancing the benefits resulting from these control transactions.

Applicant certifies that: (1) Blue Bird, Butler, Gad-About, and P&S hold satisfactory safety ratings from the U.S. Department of Transportation (DOT) and that PTCS, S&O, Tippett, Tucker, and Utica-Rome have not been rated by DOT; (2) each of the acquired carriers has sufficient liability insurance; (3) none of the acquired carriers is either domiciled in Mexico or owned or controlled by persons of that country; and (4) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicant's representatives.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and a procedural schedule will be adopted to reconsider the application. If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

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This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on August 3, 1998, unless timely opposing comments are filed.

4. A copy of this notice will be served on the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530.

Decided: June 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16392 Filed 6–18–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33606]

Minnesota Commercial Railway Company—Acquisition and Operation Exemption—Certain Lines of The Burlington Northern and Santa Fe Railway Company

Minnesota Commercial Railway Company (MC), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 5 miles of rail line owned by The Burlington Northern and Santa Fe Railway Company (BNSF), plus incidental trackage rights to reach certain industries and MC's own trackage.[1] The line is located in Minneapolis, MN, known as the Southeast Minneapolis Switching District (SEMSD).[2]

The transaction was scheduled to be consummated on or shortly after May 28, 1998.

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33606, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eugenia Langan, Esq., Shea & Gardner, 1800 Massachusetts Ave., N.W., Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 11, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16317 Filed 6–18–98; 8:45 am]

BILLING CODE 4915–00–P

[1] MC certifies that its projected revenues will not result in the creation of a Class II or Class I rail carrier.

[2] BNSF classified the SEMSD as industrial trackage, and, consequently, there are no mileposts on the subject trackage.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–369 (Sub-No. 3X)]

Buffalo & Pittsburgh Railroad, Inc.—Abandonment Exemption—in Erie and Cattaraugus Counties, NY

On June 1, 1998, Buffalo & Pittsburgh Railroad, Inc. (B&P) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon two contiguous segments of rail line: (1) from milepost 2.0, at or near Buffalo, NY, to milepost 45.0, at or near Ashford Junction, NY, a distance of 43.0 miles; and (2) from milepost 93.8, at or near Ashford Junction, to milepost 103.0, at or near Salamanca, NY, a distance of 9.2 miles, in Erie and Cattaraugus Counties, NY. The line segments traverse U.S. Postal Service Zip Codes 14224, 14218, 14127, 14098, 14170, 14033, 14055, 14141, 14171, 14731, and 14741. The line segments include the stations of Lackawanna-South Park (milepost 3), Kellogg (milepost 5), East Hamburg (milepost 8), Orchard Park (milepost 9), Colden (milepost 19), East Concord (milepost 26), Springville (milepost 30), West Valley (milepost 39), Ashford Junction (milepost 45), and Ellicottville (milepost 98.1).

The line segments do not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by September 18, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line segments, the segments may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 13, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–369 (Sub-No. 3X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Sebastian Ferrer, 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796. Replies to the B&P petition are due on or before July 13, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 12, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16316 Filed 6–18–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–354 (Sub–No. 2X)]

Rochester & Southern Railroad, Inc.—Abandonment Exemption—in Cattaraugus County, NY

On June 1, 1998, Rochester & Southern Railroad, Inc. (R&S) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 10.41-mile line of railroad, extending from milepost 83.39, at or near Machias, to milepost 93.8, at or near Ashford Junction, in Cattaraugus County, NY. The line traverses U.S. Postal Service Zip Codes 14101 and 14731, and includes the non-agency rail stations of Ashford Junction, located at milepost 93.6, and Machias, located at milepost 83.4.

The line does not contain federally granted rights-of-way. Any documentation in R&S's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by September 18, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 13, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–354 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Sebastian Ferrer, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796. Replies to the R&S petition are due on or before July 13, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who

commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 10, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–15972 Filed 6–18–98; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation.

SUBJECT: Board of Directors.

TIME AND DATE: 8:00 a.m., Wednesday, June 24, 1998.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTER TO BE CONSIDERED: Privatization of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Stuckle at 301/564–3399.

Dated: June 16, 1998.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 98–16517 Filed 6–17–98; 12:17 pm]

BILLING CODE 8720–01–M

federal register

Friday
June 19, 1998

Part II

Department of Education

34 CFR Parts 662, 663, and 664
Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program, Fulbright-Hays Faculty Research Abroad Fellowship Program, and Fulbright-Hays Group Projects Abroad Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 662, 663, and 664

RIN 1840–AC53

Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program, Fulbright-Hays Faculty Research Abroad Fellowship Program, and Fulbright-Hays Group Projects Abroad Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Higher Education Programs in Modern Foreign Language Training and Area Studies—Doctoral Dissertation Research Abroad Fellowship Program, Faculty Research Abroad Fellowship Program, and Group Projects Abroad Program. These amendments are needed as a result of changes in terminology applicable to these programs and changes in the selection criteria. The proposed regulations would change the names of these programs, remove obsolete references, modify the selection criteria, and make other technical changes.

DATES: Comments must be received by the Department on or before July 20, 1998.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Karla Ver Bryck Block, U.S. Department of Education, 600 Independence Avenue, SW., Suite 600C Portals Building, Washington, DC 20202–5331. Comments may also be sent through the Internet to: comments@ed.gov

You must include the term "Fulbright-Hays" in the subject line of your electronic message.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Karla Ver Bryck Block. Telephone: (202) 401–9774. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. To ensure that public comments have maximum effect in developing the final regulations, the Department urges commenters to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange comments in the same order as the proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Suite 600C Portals Building, 1280 Maryland Avenue, 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.

On request the Department supplies 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 docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

To assist the Department in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Background

On March 4, 1995 the President announced a Regulatory Reinvention Initiative to reform the Federal regulatory system. In response to the President's initiative, on August 23, 1996 the Secretary issued an Advance Notice of Proposed Rulemaking (ANPRM) to request public comment on the changes being considered in the Department' programs to simplify regulations and reduce regulatory burden (Regulatory Reinvention, 61 FR 43639, August 23, 1996). Regulations for the International Education Programs in 34 CFR Parts 662 (Higher Education Programs in Modern Foreign Language Training and Area Studies—Doctoral Dissertation Research Abroad Fellowship Program), 663 (Faculty Research Abroad Fellowship Program), and 664 (Group Projects Abroad Program) were included in the ANPRM. The Secretary received no comments on changes proposed in the ANPRM for the International Education Programs.

Proposed Regulatory Changes

As part of the President's Regulatory Reinvention Initiative, the Department is reviewing and revising the regulations governing the Higher Education Programs in Modern Foreign Language Training and Area Studies—Doctoral Dissertation Research Abroad Fellowship Program, Faculty Research Abroad Fellowship Program, and Group Projects Abroad Program. The Secretary is proposing amendments which are needed to improve the application review process and to update the regulations in light of developments in the field of foreign language, area, and international studies, including political developments abroad, modifications in the policies and practices of the J. William Fulbright Foreign Scholarship Board, and interpretations of regulations. In the spirit of reinventing government, the goal of the proposed changes is to markedly reduce burden associated with the regulations.

The proposed regulations would change the names of these programs to align them with how they are popularly referred to in the field. Additionally, the proposed regulations would make changes in the terminology applicable to these programs, remove obsolete references, and make changes in the selection criteria. The proposed regulations would also reorganize the sections, change the names of several section titles, correct errors in the numbering of the sections, and make other technical changes to improve the regulations.

The substantive changes proposed in the regulations are discussed with respect to each part. A number of the substantive changes proposed would affect each of the parts being amended (34 CFR Parts 662, 663, and 664). Therefore, in the discussion of the proposed changes under Part 662, it is noted whether the proposed change would be duplicated in a corresponding section of Parts 663 or 664.

Part 662

The name of Part 662 would be changed to Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program. Throughout Parts 662, 663, and 664 the "Board of Foreign Scholarships" would be changed to "J. William Fulbright Foreign Scholarship

Board" to reflect the change in the name of the board.

Proposed § 662.3 would delete current paragraph (a)(3) to eliminate persons "in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident" as eligible applicants. The proposed change reflects the Secretary's decision that to receive a federally funded fellowship, a person should demonstrate commitment to the United States, either by being a citizen or permanent resident. The proposed change furthers the goal of the program to train people who will then serve in the United States educational field. The proposed change would also apply to §§ 663.3 and 664.3.

Proposed § 662.3 would also delete current paragraph (a)(4) which states that a resident of the Trust Territory of the Pacific Islands is eligible for a fellowship, since these islands are no longer a trust territory. The proposed change would also apply to §§ 663.3 and 664.3.

Proposed § 662.7 would revise the list of terms used in this part that are defined in 34 CFR Part 77, and it would add 34 CFR Part 80. Terms that are not used in this part would be deleted.

Proposed § 662.7(c) would change the definition of "dependent". The proposed regulation would add the requirement that the individual being claimed as a dependent must accompany the recipient to his or her training site for the entire fellowship period. Also, the proposed regulation would narrow the definition of "dependent" to exclude parent(s) of a participant or parents of the participant's spouse. Both changes in the definition are grounded in the need to conserve limited program funds. By requiring that in order to receive a dependent's allowance the dependent be at the training site for the entire fellowship period, the Secretary will preclude the use of program funds for short term visits. The changes in the dependent's definition with regard to parents would bring the program's policy toward dependents more in line with similar fellowship programs. Additionally, only once in more than 30 years of program administration has a dependent's allowance been requested for a parent.

Proposed § 662.7(c) would eliminate the definition for "foreign currencies" since all foreign currency accounts previously available to the Secretary for operation of this program have been exhausted.

All of the proposed changes to § 662.7(c) would also apply to § 663.7(c).

Proposed § 662.10 incorporates the language found in current § 662.21. Paragraph (c) of current § 662.21 which addresses requirements for an applicant who plans to conduct research in the former USSR and Eastern European countries was deleted, since changes in the research climate in those countries have eliminated the need to require an applicant to apply to the International Research and Exchange Board. The proposed change would also apply to § 663.10.

Proposed § 662.20(d) preserves and clarifies the current position of the Department relating to veteran's preference. The regulation would add language to clarify that if two scores are tied and one of the applicants is a veteran, the applicant who is a veteran will receive a preference. The proposed change would also apply to § 663.20(d).

Proposed § 662.21 would revise the selection criteria. The revised criteria would reflect a greater consistency with criteria used in comparable fellowship programs. This would facilitate writing fellowship applications for individuals since the applications would be similar.

There would also be a greater emphasis on foreign language training. Since these programs were originally intended to enhance the foreign language competence of individuals trained in American schools, the criteria would be modified to give greater emphasis to having acquired a foreign language. Paragraph (c)(3) would add the requirement that the applicant be proficient in one or more of the languages of the country or countries of research, excluding English and the applicant's native language. The proposed language most likely would result in a decrease in the number of applications from individuals wishing to conduct research in English and would encourage non-native born United States citizens or resident aliens to acquire an additional foreign language. The Department has experienced a substantial increase in the number of applications for conducting research in English.

The points assigned would be changed to allow the readers greater ability to differentiate among the applications. The proposed changes in points assigned are reflected in § 662.21(a), (b), and (c). Due to the extremely high caliber of applications, there is frequently a clustering of high scores. The proposed point structure would allow readers a broader range in which to assign points. Under current § 662.21 points are assigned in a narrow range and a multiplication factor is applied, which results in significant clustering of like applications.

The Department has consulted with various experts in language and area studies as well as administrators of fellowship programs in developing the proposed revisions to the selection criteria. Their comments and feedback have been incorporated into these proposed changes.

The proposed changes to § 662.21 would also apply to § 663.21.

Proposed § 662.22 incorporates the language from current § 662.33 and would add a new paragraph (b) to prevent an applicant from receiving more than one fellowship under the Fulbright-Hays Act in a given fiscal year. The provision would prevent an applicant from receiving a fellowship from the Department and United States Information Agency (USIA) within the same fiscal year. The proposed change would ensure that limited funds appropriated to the agencies have a broader impact and are not used duplicatively. The proposal reflects the current policy statements of the Foreign Scholarship Board.

Similar to proposed § 662.10, proposed § 662.22 would eliminate language from current § 662.33(a)(2) which addresses requirements for an applicant who plans to conduct research in the USSR and Eastern European countries. Changes in the research climate in those countries have eliminated the need to require an applicant to apply to the International Research and Exchange Board. The proposed change would also apply to § 663.22.

Part 663

The name of Part 663 would be changed to Fulbright-Hays Faculty Research Abroad Fellowship Program.

Section 663.3 outlines who is eligible to receive a fellowship under this program. Current § 663.3(d)(1) and (2) would be deleted from the proposed regulations because they are part of the selection criteria and should not be considered under eligibility.

Part 664

The name of Part 664 would be changed to Fulbright-Hays Group Projects Abroad Program.

Proposed § 664.5 would revise the list of terms used in this part that are defined in EDGAR, 34 CFR Part 77. Terms that are not used in this part would be deleted.

Sections 664.11, 664.12, and 664.13 propose changes in the length of the projects, allowing for shorter project periods. The changes are proposed to allow applicants greater flexibility in carrying out their projects. The current provisions encouraged longer periods in

the field, even when they were not necessary for the successful accomplishment of the project goals. Proposed § 664.11 would change the length of a short term project from six weeks under current regulations, to from four to six weeks. Proposed § 664.12 would change the length of a curriculum development project from six to eight weeks under current regulations, to four to eight weeks. Proposed § 664.13 would change the length of a group research project from two to twelve months under current regulations, to three to twelve months.

In order to be consistent with Parts 662 and 663, proposed § 664.30 would add a new paragraph (d) which establishes that the Secretary will consider for funding only projects that an applicant proposes to carry out in a country in which the United States has diplomatic representation.

Proposed § 664.31(a)(2)(v) and (b)(4) which address the inclusion of underrepresented groups in the selection criteria for applications would be revised to be consistent with the Education Department General Administrative Regulations (EDGAR) (§ 75.210(c)(5) and (d)(1)(iv)). The proposed language would require the applicant to ensure that participants in the Fulbright-Hays Group Projects and its personnel selected for employment are selected without regard to race, color, national origin, gender, age, or handicapping condition.

Proposed § 664.33(b)(1) would allow for greater flexibility in establishing annual per diem rates, consistent with the cost of living in overseas areas. Current regulations require a maintenance stipend to be based on 50 percent of the amount established in the U.S. Department of the State publication "Maximum Travel Per Diem Allowances for Foreign Areas". Proposed § 664.33(b)(1) would eliminate the 50 percent limitation which would permit an upwards or a downwards adjustment based on the cost of living in the host country.

Clarity of the Regulations

Executive Order 12866 requires 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: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical terms or other wording that interferes with their clarity? (3) 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 they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 662.1 *What is the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program*?). (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the proposed regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (room 5121, FB–10B), Washington, DC 20202–2241.

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. The small entities affected would be small institutions of higher education. The proposed regulations would not have a significant economic impact on any of the entities participating in the programs because the regulations impose minimal application and administrative costs necessary to protect Federal funds.

Paperwork Reduction Act of 1995

Sections 662.21, 663.21, and 664.31 contain information collection requirements. As required by 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: *Application for Grants under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program (Part 662), Fulbright-Hays Faculty Research Abroad Fellowship Program (Part 663).*

Under the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) and Faculty Research Abroad (FRA) Programs, individual scholars and eligible institutions apply simultaneously for benefits under a single grant. Individual scholars apply for fellowships; however grants are made to the successful scholars' institutions. Respondents include individuals and institutions of higher education. The data requested are used in determining the academic qualifications and suitability of the individual applicant, potential political sensitivity and feasibility of the project in terms of the host country reaction, research climate, and adequacy of the proposed budget.

The data requested are the minimum necessary to administer the grant in compliance with program regulations. The annual reporting and record keeping burden for: (1) student respondents is estimated to average 30 hours for each response for 600 respondents, totaling 18,000 burden hours; (2) faculty respondents is estimated to average 8 hours for each response for 70 respondents, totaling 560 burden hours; (3) project directors is estimated to average 15 hours for each response for 130 respondents, totaling 1,950 burden hours. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 20,510 hours.

Fulbright-Hays Group Projects Abroad Program (Part 664)

Under these proposed regulations, institutions of higher education, State departments of education, and private nonprofit organizations are eligible to apply for grants to conduct educational projects abroad. Teachers, undergraduate and graduate students, and faculty are selected by grantees to participate in these projects. The proposed regulations will be used to obtain the programmatic and budgetary information needed to evaluate applications and make funding decisions. The data requested are used in determining the need and academic worth of specific projects, political sensitivity and feasibility in terms of host country reaction, and adequacy of the proposed budget.

Advanced intensive language projects, which apply every three years, do not have to submit full-blown proposals each year, only in the initial year for multi-year projects. The annual reporting and record keeping burden for this collection of information is estimated to average 100 hours for each response for 95 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 9,500 hours.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control

number. The valid OMB control numbers assigned to the collection of information in these regulations will be displayed at the end of the affected sections of the final regulations.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them 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.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

These programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects

34 CFR parts 662 and 663

Colleges and universities, Education, Educational research, Educational study programs, Reporting and recordkeeping requirements, Scholarships and fellowships.

34 CFR part 664

Colleges and universities, Education, Educational study programs, Reporting and recordkeeping requirements, Teachers.

(Catalog of Federal Domestic Assistance Numbers: 84.022 Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program; 84.019 Fulbright-Hays Faculty Research Abroad Fellowship Program; and 84.021 Fulbright-Hays Group Projects Abroad Program)

Dated: June 15, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Parts 662, 663, and 664 to read as follows:

PART 662—FULBRIGHT-HAYS DOCTORAL DISSERTATION RESEARCH ABROAD FELLOWSHIP PROGRAM

Subpart A—General

Sec.

Subpart B—Applications

Subpart C—Selection of Fellows

Subpart D—Post-award Requirements for Institutions

Subpart E—Post-award Requirements for Fellows

Authority: Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

Subpart A—General

§ 662.1 What is the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program?

(a) The Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States by providing opportunities for scholars to conduct research abroad.

(b) Under the program, the Secretary awards fellowships, through institutions of higher education, to doctoral candidates who propose to conduct dissertation research abroad in modern foreign languages and area studies.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.2 Who is eligible to receive an institutional grant under this program?

An institution of higher education is eligible to receive an institutional grant.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 662.3 Who is eligible to receive a fellowship under this program?

An individual is eligible to receive a fellowship if the individual—

(a)(1) Is a citizen or national of the United States; or

(2) Is a permanent resident of the United States;

(b)(1) Is a graduate student in good standing at an institution of higher education; and

(2) When the fellowship period begins, is admitted to candidacy in a doctoral degree program in modern foreign languages and area studies at that institution;

(c) Is planning a teaching career in the United States upon completion of his or her doctoral program; and

(d) Possesses sufficient foreign language skills to carry out the dissertation research project.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 662.4 What is the amount of a fellowship?

(a) The Secretary pays—

(1) Travel expenses to and from the residence of the fellow and the country or countries of research;

(2) A maintenance stipend for the fellow and his or her dependents related to cost of living in the host country or countries;

(3) An allowance for research-related expenses overseas, such as books, copying, tuition and affiliation fees, local travel, and other incidental expenses; and

(4) Health and accident insurance premiums.

(b) In addition, the Secretary may pay—

(1) Emergency medical expenses not covered by health and accident insurance; and

(2) The costs of preparing and transporting a fellow or dependent who dies during the term of the fellowship to his or her former home.

(c) The Secretary announces the amount of benefits expected to be available in an application notice published in the **Federal Register**.

(Authority: 22 U.S.C. 2452(b)(6), and 2454(e)(1) and (2))

§ 662.5 What is the duration of a fellowship?

(a) A fellowship is for a period of not fewer than six nor more than twelve months.

(b) A fellowship may not be renewed.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.6 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this part 662; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 81).

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.7 What definitions apply to this program?

(a) Definitions of the following terms as used in this part are contained in 34 CFR Parts 77 and 80:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Secretary

(b) The definition of *institution of higher education* as used in this part is contained in 34 CFR 600.4.

(c) The following definitions of other terms used in this part apply to this program:

Area studies means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

Binational commission means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

Dependent means any of the following individuals who accompany the recipient of a fellowship under this program to his or her training site for the entire fellowship period if the individual receives more than 50 percent of his or her support from the recipient during the fellowship period:

(1) The recipient's spouse.

(2) The recipient's or spouse's children who are unmarried and under age 21.

J. William Fulbright Foreign Scholarship Board means the presidentially-appointed board that is responsible for supervision of the program covered by this part.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

Subpart B—Applications

§ 662.10 How does an individual apply for a fellowship?

(a) An individual applies for a fellowship by submitting an application to the Secretary through the institution of higher education in which the individual is enrolled.

(b) The applicant shall provide sufficient information concerning his or her personal and academic background and proposed research project to enable the Secretary to determine whether the applicant—

(1) Is eligible to receive a fellowship under § 662.3; and

(2) Should be selected to receive a fellowship under subparts C and D of this part.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.11 What is the role of the institution in the application process?

An institution of higher education that participates in this program is responsible for—

(a) Making fellowship application materials available to its students;

(b) Accepting and screening applications in accordance with its own technical and academic criteria; and

(c) Forwarding screened applications to the Secretary and requesting an institutional grant.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart C—Selection of Fellows

§ 662.20 How is a Fulbright-Hays Doctoral Dissertation Research Abroad Fellow selected?

(a) The Secretary considers applications for fellowships under this program that have been screened and submitted by eligible institutions. The Secretary evaluates these applications on the basis of the criteria in § 662.21.

(b) The Secretary does not consider applications to carry out research in a country in which the United States has no diplomatic representation.

(c) In evaluating applications, the Secretary obtains the advice of panels of United States academic specialists in modern foreign languages and area studies.

(d) The Secretary gives preference to applicants who have served in the armed services of the United States if their applications are equivalent to those of other applicants on the basis of the criteria in § 662.21.

(e) The Secretary considers information on budget, political sensitivity, and feasibility from binational commissions or United States diplomatic missions, or both, in the proposed country or countries of research.

(f) The Secretary presents recommendations for recipients of fellowships to the J. William Fulbright Foreign Scholarship Board, which reviews the recommendations and approves recipients.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

§ 662.21 What criteria does the Secretary use to evaluate an application for a fellowship?

(a)(1) The Secretary uses the criteria in this section to evaluate an application for a fellowship.

(2) The maximum score for all of the criteria is 100 points. However, if priority criteria described in paragraph (c) of this section are used, the maximum score is 110 points.

(3) The maximum score for each criterion is shown in parentheses with the criterion.

(b) *Quality of proposed project.* (60 points) The Secretary reviews each application to determine the quality of the research project proposed by the applicant. The Secretary considers—

(1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used;

(2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's originality and importance in terms of the concerns of the discipline;

(3) The preliminary research already completed in the United States and overseas or plans for such research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries;

(4) The justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad;

(5) The applicant's plans to share the results of the research in progress and a copy of the dissertation with scholars and officials of the host country or countries; and

(6) The guidance and supervision of the dissertation advisor or committee at all stages of the project, including guidance in developing the project, understanding research conditions abroad, and acquainting the applicant with research in the field.

(c) *Qualifications of the applicant.* (40 points) The Secretary reviews each application to determine the qualifications of the applicant. The Secretary considers—

(1) The overall strength of the applicant's graduate academic record; (10)

(2) The extent to which the applicant's academic record demonstrates a strength in area studies relevant to the proposed project; (10)

(3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers; (15) and

(4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience, or both. (5)

(d) *Priorities.* (10 points) (1) The Secretary determines the extent to which the application responds to any priority that the Secretary establishes for the selection of fellows in any fiscal year. The Secretary announces any priorities in an application notice published in the **Federal Register**.

(2) Priorities may relate to certain world areas, countries, academic disciplines, languages, topics, or combinations of any of these categories. For example, the Secretary may establish a priority for—

(i) A specific geographic area or country, such as the Caribbean or Poland;

(ii) An academic discipline, such as economics or political science;

(iii) A language, such as Tajik or Indonesian; or

(iv) A topic, such as public health issues or the environment.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

§ 662.22 How does the J. William Fulbright Foreign Scholarship Board select fellows?

(a) The J. William Fulbright Foreign Scholarship Board selects fellows on the basis of the Secretary's recommendations and the information described in § 662.20(e) from binational commissions or United States diplomatic missions.

(b) No applicant for a fellowship may be awarded more than one graduate fellowship under the Fulbright-Hays Act from appropriations for a given fiscal year.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(1))

Subpart D—Post-award Requirements for Institutions

§ 662.30 What are an institution's responsibilities after the award of a grant?

(a) An institution to which the Secretary awards a grant under this part is responsible for administering the grant in accordance with the regulations described in § 662.6.

(b) The institution is responsible for processing individual applications for fellowships in accordance with procedures described in § 662.11.

(c) The institution is responsible for disbursing funds in accordance with procedures described in § 662.4.

(d) The Secretary awards the institution an administrative allowance of $100 for each fellowship listed in the grant award document.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart E—Post-award Requirements for Fellows

§ 662.41 What are a fellow's responsibilities after the award of a fellowship?

As a condition of retaining a fellowship, a fellow shall—

(a) Maintain satisfactory progress in the conduct of his or her research;

(b) Devote full time to research on the approved topic;

(c) Not engage in unauthorized income-producing activities during the period of the fellowship; and

(d) Remain a student in good standing with the grantee institution during the period of the fellowship.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.42 How may a fellowship be revoked?

(a) The fellowship may be revoked only by the J. William Fulbright Foreign Scholarship Board upon the recommendation of the Secretary.

(b) The Secretary may recommend a revocation of a fellowship on the basis of—

(1) The fellow's failure to meet any of the conditions in § 662.41; or

(2) Any violation of the standards of conduct adopted by the J. William Fulbright Foreign Scholarship Board.

(Authority: 22 U.S.C. 2452(b)(6), 2456, Policy Statements of the J. William Fulbright Foreign Scholarship Board, 1990)

PART 663—FULBRIGHT-HAYS FACULTY RESEARCH ABROAD FELLOWSHIP PROGRAM

Subpart A—General

Sec.

Subpart B—Applications

Authority: Sec. 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

Subpart A—General

§ 663.1 What is the Fulbright-Hays Faculty Research Abroad Fellowship Program?

(a) The Fulbright-Hays Faculty Research Abroad Program is designed to contribute to the development and improvement of modern foreign language and area studies in the United States by providing opportunities for scholars to conduct research abroad.

(b) Under the program, the Secretary awards fellowships, through institutions of higher education, to faculty members who propose to conduct research abroad in modern foreign languages and area studies to improve their skill in languages and knowledge of the culture of the people of these countries.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.2 Who is eligible to receive an institutional grant under this program?

An institution of higher education is eligible to receive an institutional grant.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 663.3 Who is eligible to receive a fellowship under this program?

An individual is eligible to receive a fellowship if the individual—

(a)(1) Is a citizen or national of the United States; or

(2) Is a permanent resident of the United States;

(b) Is employed by an institution of higher education;

(c) Has been engaged in teaching relevant to his or her foreign language or area studies specialization for the two years immediately preceding the date of the award;

(d) Proposes research relevant to his or her modern foreign language or area specialization which is not dissertation research for a doctoral degree; and

(e) Possesses sufficient foreign language skills to carry out the research project.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 663.4 What is the amount of a fellowship?

(a) The Secretary pays—

(1) Travel expenses to and from the residence of the fellow and the country or countries of research;

(2) A maintenance stipend for the fellow related to his or her academic year salary; and

(3) An allowance for research-related expenses overseas, such as books, copying, tuition and affiliation fees, local travel, and other incidental expenses.

(b) The Secretary may pay—

(1) Emergency medical expenses not covered by the faculty member's health and accident insurance; and

(2) The costs of preparing and transporting a fellow or dependent who dies during the term of the fellowship to his or her former home.

(c) The Secretary announces the amount of benefits expected to be available in an application notice published in the **Federal Register**.

(Authority: 22 U.S.C. 2452(b)(6), and 2454(e)(1) and (2))

§ 663.5 What is the duration of a fellowship?

(a) A fellowship is for a period of not fewer than three nor more than twelve months.

(b) A fellowship may not be renewed.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.6 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this part 663; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 81).

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.7 What definitions apply to this program?

(a) Definitions of the following terms as used in this part are contained in 34 CFR Parts 77 and 80:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Secretary

(b) The definition of *institution of higher education as used in this part is contained in 34 CFR 600.4.*

(c) The following definitions of other terms used in this program:

Area studies means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

Binational commission means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

Dependent means any of the following individuals who accompany the recipient of a fellowship under this program to his or her training site for the entire fellowship period if the individual receives more than 50 percent of his or her support from the recipient during the fellowship period:

(1) The recipient's spouse.

(2) The recipient's or spouse's children who are unmarried and under age 21.

J. William Fulbright Foreign Scholarship Board means the presidentially-appointed board that is responsible for supervision of the program covered by this part.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

Subpart B—Applications

§ 663.10 How does an individual apply for a fellowship?

(a) An individual applies for a fellowship by submitting an application to the Secretary through the institution of higher education at which the individual is employed.

(b) The applicant shall provide sufficient information concerning his or her personal and academic background and proposed research project to enable the Secretary to determine whether the applicant—

(1) Is eligible to receive a fellowship under § 663.3; and

(2) Should be selected to receive a fellowship under subparts C and D of this part.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.11 What is the role of the institution in the application process?

An institution of higher education that participates in this program is responsible for—

(a) Making fellowship application materials available to its faculty;

(b) Accepting and screening applications in accordance with its own technical and academic criteria; and

(c) Forwarding screened applications to the Secretary through a request for an institutional grant.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart C—Selection of Fellows

§ 663.20 How is a Fulbright-Hays Faculty Research Abroad Fellow selected?

(a) The Secretary considers applications for fellowships under this program that have been screened and submitted by eligible institutions. The Secretary evaluates these applications on the basis of the criteria in § 663.21.

(b) The Secretary does not consider applications to carry out research in a country in which the United States has no diplomatic representation.

(c) In evaluating applications, the Secretary obtains the advice of panels of United States academic specialists in modern foreign languages and area studies.

(d) The Secretary gives preference to applicants who have served in the armed services of the United States if their applications are equivalent to those of other applicants on the basis of the criteria in § 663.21.

(e) The Secretary considers information on budget, political sensitivity, and feasibility from binational commissions or United States diplomatic missions, or both, in the proposed country or countries of research.

(f) The Secretary presents recommendations for recipients of fellowships to the J. William Fulbright Foreign Scholarship Board, which reviews the recommendations and approves recipients.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

§ 663.21 What criteria does the Secretary use to evaluate an application for a fellowship?

(a)(1) The Secretary uses the criteria in this section to evaluate an application for a fellowship.

(2) The maximum score for all of the criteria is 100 points. However, if priority criteria described in paragraph (c) of this section are used, the maximum score is 110 points.

(3) The maximum score for each criterion is shown in parentheses with the criterion.

(b) *Quality of proposed project.* (60 points) The Secretary reviews each application to determine the quality of the research project proposed by the applicant. The Secretary considers—

(1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used;

(2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's importance in terms of the concerns of the discipline;

(3) The preliminary research already completed or plans for research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries;

(4) The justification for overseas field research, and preparations to establish appropriate and sufficient research contacts and affiliations abroad;

(5) The applicant's plans to share the results of the research in progress with scholars and officials of the host country or countries and the American scholarly community; and

(6) The objectives of the project regarding the sponsoring institution's plans for developing or strengthening, or both, curricula in modern foreign languages and area studies.

(c) *Qualifications of the applicant.* (40 points) The Secretary reviews each application to determine the qualifications of the applicant. The Secretary considers—

(1) The overall strength of applicant's academic record (teaching, research, contributions, professional association activities); (10)

(2) The applicant's excellence as a teacher or researcher, or both, in his or her area or areas of specialization; (10)

(3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language), of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers; (15) and

(4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's previous overseas experience, or documentation provided by the sponsoring institution, or both. (5)

(d) *Priorities.* (10 points) (1) The Secretary determines the extent to which the application responds to any priority that the Secretary establishes for the selection of fellows in any fiscal year. The Secretary announces any priorities in an application notice published in the **Federal Register**.

(2) Priorities may relate to certain world areas, countries, academic disciplines, languages, topics, or combinations of any of these categories. For example, the Secretary may establish a priority for—

(i) A specific geographic area or country, such as East Asia or Latvia;

(ii) An academic discipline, such as history or political science;

(iii) A language, such as Hausa or Telegu; or

(iv) A topic, such as religious fundamentalism or migration.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

§ 663.22 How does the J. William Fulbright Foreign Scholarship Board select fellows?

The J. William Fulbright Foreign Scholarship Board selects fellows on the basis of the Secretary's recommendations and the information described in § 663.20(e) from binational commissions or United States diplomatic missions.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(1))

Subpart D—Post-award Requirements for Institutions

§ 663.30 What are an institution's responsibilities after the award of a grant?

(a) An institution to which the Secretary awards a grant under this part is responsible for administering the grant in accordance with the regulations described in § 663.6.

(b) The institution is responsible for processing individual applications for fellowships in accordance with procedures described in § 663.11.

(c) The institution is responsible for disbursing funds in accordance with procedures described in § 663.4.

(d) The Secretary awards the institution an administrative allowance of $100 for each fellowship listed in the grant award document.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart E—Post-award Requirements for Fellows

§ 663.41 What are a fellow's responsibilities after the award of a fellowship?

As a condition of retaining a fellowship, a fellow shall—

(a) Maintain satisfactory progress in the conduct of his or her research;

(b) Devote full time to research on the approved topic;

(c) Not engage in unauthorized income-producing activities during the period of the fellowship; and

(d) Remain employed by the grantee institution during the period of the fellowship.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.42 How may a fellowship be revoked?

(a) The fellowship may be revoked only by the J. William Fulbright Foreign Scholarship Board upon the recommendation of the Secretary.

(b) The Secretary may recommend a revocation of a fellowship on the basis of—

(1) The fellow's failure to meet any of the conditions in § 663.41; or

(2) Any violation of the standards of conduct adopted by the J. William Fulbright Foreign Scholarship Board.

(Authority: 22 U.S.C. 2452(b)(6), 2456, Policy Statements of the J. William Fulbright Foreign Scholarship Board, 1990)

PART 664—FULBRIGHT-HAYS GROUP PROJECTS ABROAD PROGRAM

Subpart A—General

Sec.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

Subpart C—How Does the Secretary Make a Grant?

Subpart D—What Conditions Must Be Met by a Grantee?

Authority: 22 U.S.C. 2452(b)(6), unless otherwise noted.

Subpart A—General

§ 664.1 What is the Fulbright-Hays Group Projects Abroad Program?

(a) The Fulbright-Hays Group Projects Abroad Program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States by providing opportunities for teachers, students, and faculty to study in foreign countries.

(b) Under the program, the Secretary awards grants to eligible institutions, departments, and organizations to conduct overseas group projects in research, training, and curriculum development.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.2 Who is eligible to apply for assistance under the Fulbright-Hays Group Projects Abroad Program?

The following are eligible to apply for assistance under this part:

(a) Institutions of higher education;

(b) State departments of education;

(c) Private non-profit educational organizations; and

(d) Consortia of institutions, departments, and organizations described in paragraphs (a), (b), or (c) of this section.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.3 Who is eligible to participate in projects funded under the Fulbright-Hays Group Projects Abroad Program?

An individual is eligible to participate in a Fulbright-Hays Group Projects Abroad, if the individual—

(a)(1) Is a citizen or national of the United States; or

(2) Is a permanent resident of the United States; and

(b)(1) Is a faculty member who teaches modern foreign languages or area studies in an institution of higher education;

(2) Is a teacher in an elementary or secondary school;

(3) Is an experienced education administrator responsible for planning, conducting, or supervising programs in modern foreign languages or area studies at the elementary, secondary, or postsecondary level; or

(4) Is a graduate student, or a junior or senior in an institution of higher education, who plans a teaching career in modern foreign languages or area studies.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.4 What regulations apply to the Fulbright-Hays Group Projects Abroad Program?

The following regulations apply to this program:

(a) The regulations in this part 664; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 81).

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1), 2456(a)(2))

§ 664.5 What definitions apply to the Fulbright-Hays Group Projects Abroad Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
EDGAR
Equipment
Facilities
Grant
Grantee
Nonprofit
Project
Private
Public
Secretary
State
State educational agency
Supplies

(Authority: 22 U.S.C. 2452(b)(6))

(b) *Definitions that apply to this program:* The following definitions apply to the Fulbright-Hays Group Projects Abroad Program:

Area studies means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

Binational commission means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

Institution of higher education means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

J. William Fulbright Foreign Scholarship Board means the presidentially appointed board which is responsible for supervision of the program covered by this part.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 664.10 What kinds of projects does the Secretary assist?

The Secretary assists projects which are designed to develop or improve programs in modern foreign language or area studies at the elementary, secondary, or postsecondary level by supporting overseas projects in research, training, and curriculum development by groups of individuals engaged in a common endeavor. Projects may include, as described in §§ 664.11 through 664.14, short-term seminars, curriculum development teams, group research or study, and advanced intensive language programs.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.11 What is a short-term seminar project?

A short-term seminar project is—

(a) Designed to help integrate international studies into an institution's or school system's general curriculum; and

(b) Normally four to six weeks in length and focuses on a particular aspect of area study, such as, for example, the culture of the area or a portion of the culture.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.12 What is a curriculum development project?

(a) A curriculum development project—

(1) Is designed to permit faculty and administrators in institutions of higher education and elementary and secondary schools, and administrators in State departments of education the opportunity to spend generally from four to eight weeks in a foreign country acquiring resource materials for curriculum development in modern foreign language and area studies; and

(2) Must provide for the systematic use and dissemination in the United States of the acquired materials.

(b) For the purpose of this section, resource materials include artifacts, books, documents, educational films, museum reproductions, recordings, and other instructional material.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.13 What is a group research or study project?

(a)(1) A group research or study project is designed to permit a group of faculty of an institution of higher education and graduate and undergraduate students to undertake research or study in a foreign country.

(2) The period of research or study in a foreign country is generally from three to twelve months.

(b) As a prerequisite to participating in a research or training project, participants—

(1) Must possess the requisite language proficiency to conduct the research or study, and disciplinary competence in their area of research; and

(2) In a project of a semester or longer, shall have completed, at a minimum, one semester of intensive language training and one course in area studies relevant to the projects.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.14 What is an advanced overseas intensive language training project?

(a)(1) An advanced overseas intensive language project is designed to take advantage of the opportunities present in the foreign country that are not present in the United States when providing intensive advanced foreign language training.

(2) Project activities may be carried out during a full year, an academic year, a semester, a trimester, a quarter, or a summer.

(3) Generally, language training must be given at the advanced level, i.e., at the level equivalent to that provided to students who have successfully completed two academic years of language training.

(4) The language to be studied must be indigenous to the host country and maximum use must be made of local institutions and personnel.

(b) Generally, participants in projects under this program must have successfully completed at least two academic years of training in the language to be studied.

(Authority: 22 U.S.C. 2452(b)(6))

Subpart C—How Does the Secretary Make a Grant?

§ 664.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a Group Project Abroad under the criteria in § 664.31.

(b) In general, the Secretary awards up to 95 possible points for these criteria. However, if priority criteria are used, the Secretary awards up to 110 possible points. The maximum possible points for each criterion are shown in parentheses.

(c) All selections by the Secretary are subject to review and final approval by the J. William Fulbright Foreign Scholarship Board.

(d) The Secretary does not recommend a project to the J. William Fulbright Foreign Scholarship Board if the applicant proposes to carry it out in a country in which the United States does not have diplomatic representation.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

§ 664.31 What selection criteria does the Secretary use?

The Secretary uses the criteria in this section to evaluate applications for the purpose of recommending to the J. William Fulbright Foreign Scholarship Board projects for funding under this part. The criteria are weighted and may total 105 points:

(a) *Plan of operation.* (Maximum 25 points).

(1) The Secretary reviews each application for information to determine the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(b) *Quality of key personnel.* (Maximum 15 points).

(1) The Secretary reviews each application for information to determine the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the

project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows that the facilities, equipment, and supplies that the applicant plans to use are adequate.

(f) *Specific program criteria.* (Maximum 30 points).

(1) In addition to the general selection criteria contained in this section, the Secretary reviews each application for information that shows that the project meets the specific program criteria.

(2) The Secretary looks for information that shows—

(i) The potential impact of the project on the development of the study of modern foreign languages and area studies in American education. (Maximum 15 points).

(ii) The project's relevance to the applicant's educational goals and its relationship to its program development in modern foreign languages and area studies. (Maximum 5 points).

(iii) The extent to which direct experience abroad is necessary to achieve the project's objectives and the effectiveness with which relevant host country resources will be utilized. (Maximum 10 points).

(g) *Priorities.* (Maximum 15 points) The Secretary looks for information that shows the extent to which the project addresses program priorities in the field of modern foreign languages and area studies for that year.

(Authority: 22 U.S.C. 2452(b)(6); 2456(a)(2))

§ 664.32 What priorities may the Secretary establish?

(a) The Secretary may establish for each funding competition one or more of the following priorities:

(1) Categories of projects described in § 664.10.

(2) Specific languages, topics, countries or geographic regions of the world; for example, Chinese and Arabic, Curriculum Development in Multicultural Education and Transitions from Planned Economies to Market Economies, Brazil and Nigeria, Middle East and South Asia.

(3) Levels of education; for example, elementary and secondary, postsecondary, or postgraduate.

(b) The Secretary announces any priorities in the application notice published in the **Federal Register**.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

§ 664.33 What costs does the Secretary pay?

(a) The Secretary pays only part of the cost of a project funded under this part. Other than travel costs, the Secretary does not pay any of the costs for project-related expenses within the United States.

(b) The Secretary pays the cost of the following—

(1) A maintenance stipend related to the cost of living in the host country or countries;

(2) Round-trip international travel;

(3) A local travel allowance for necessary project-related transportation within the country of study, exclusive of the purchase of transportation equipment;

(4) Purchase of project-related artifacts, books, and other teaching materials in the country of study;

(5) Rent for instructional facilities in the country of study;

(6) Clerical and professional services performed by resident instructional personnel in the country of study; and

(7) Other expenses in the country of study, if necessary for the project's success and approved in advance by the Secretary.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart D—What Conditions Must Be Met by a Grantee?

§ 664.40 Can participation in a Fulbright-Hays Group Projects Abroad be terminated?

(a) Participation may be terminated only by the J. William Fulbright Foreign Scholarship Board upon the recommendation of the Secretary.

(b) The Secretary may recommend a termination of participation on the basis of failure by the grantee to ensure that participants adhere to the standards of conduct adopted by the J. William Fulbright Foreign Scholarship Board.

(Authority: 22 U.S.C. 2452(b)(6), 2456, Policy Statements of the J. William Fulbright Foreign Scholarship Board, 1990)

[FR Doc. 98–16266 Filed 6–18–98; 8:45 am]
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federal register

Friday
June 19, 1998

Part III

Department of Labor

29 CFR Parts 402 et al.

Office of Labor-Management Standards; Technical Amendments of Rules Relating to Labor-Management Standards and Standards of Conduct for Federal Sector Labor Organizations; Final Rule

DEPARTMENT OF LABOR

29 CFR Parts 402, 403, 404, 406, 408, 409, 417, 452, 453, 457, and 458

RIN 1215–AB22

Office of Labor-Management Standards, Technical Amendments of Rules Relating to Labor-Management Standards and Standards of Conduct for Federal Sector Labor Organizations

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document makes a number of technical amendments to the Department of Labor's regulations at Chapter IV of title 29 of the Code of Federal Regulations. These amendments are necessary to ensure that the regulations conform to prior regulatory revisions and organizational changes, and to correct typographical and other errors.

EFFECTIVE DATE: June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, Room N–5605, Washington, D.C. 20210, (202) 219–7373 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Chapter IV of title 29 of the Code of Federal Regulations contains the regulations implementing the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) and the standards of conduct for federal sector labor organizations. An internal review of Chapter IV disclosed the need to make a number of technical corrections and amendments to the regulations.

First, section 408.6 is amended to delete the reference to Form LM–1A. That reporting form had previously been used by unions to disclose changes in their constitution and bylaws and changes to the information reported on Form LM–1. Form LM–1A was eliminated in the final rule published in the **Federal Register** on December 21, 1993, 58 FR 67594, 67599. However, that final rule inadvertently neglected to revise section 408.6 to eliminate the reference to Form LM–1A.

Second, due to a reorganization in the Department of Labor pursuant to Secretary's Order No. 5–96 (62 FR 107), the Office of Management and Budget (OMB) assigned new control numbers approving the reporting forms required by the LMRDA and the standards of conduct regulations. Accordingly, the regulations are amended to cite the new OMB control numbers.

Third, sections 417.2(a), 457.15, and 457.16, which define positions in the Office of Labor-Management Standards (OLMS), are amended to clarify that OLMS is a unit within the Employment Standards Administration pursuant to the reorganization established in Secretary's Order No. 5–96 (62 FR 107).

Fourth, sections 458.53 and 458.85 are amended to change the words "area office" to "district office." This revision is necessary because of a reorganization within OLMS which changed the name of its field offices.

Fifth, section 417.7, 417.21, and 458.85, which deal with obtaining transcripts for hearings before an administrative law judge, are amended to change the reference to "29 CFR 70.62" to "part 70 of this title." The Department amended 29 CFR part 70 in a final rule published on May 30, 1989, 54 FR 23144, and section 70.62 no longer exists.

The other revisions in this final rule correct typographical and grammatical errors and make minor stylistic changes.

Publication in Final

The undersigned has determined that this rulemaking need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553. The portion of this rulemaking that reflects agency organization, procedure, and practice is exempt under section 553(b)(A) of the APA. For the portion of this rulemaking that makes technical amendments and corrections, there is good cause for finding that notice and public procedure is unnecessary and contrary to the public interest, pursuant to section 553(b)(B) of the APA.

Effective Date

The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication since this rule is technical and nonsubstantive, merely reflects agency organization, practice, and procedure, and makes amendments required by statute and technical amendments and corrections. Therefore, these amendments shall be effective upon publication. See 5 U.S.C. 553(d).

Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, pertaining to regulatory flexibility analysis do not apply. See 5 U.S.C. 601(2). Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

This rule contains no additional information collection requirements. The information collection requirements in the regulations to which this rule makes technical amendments have been approved by the Office of Management and Budget (OMB control number 1215–0188).

D. Small Business Regulatory Enforcement Fairness Act

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

Further, since the Department has determined, for good cause, that publication of a proposed rule and solicitation of comments on this rule is not necessary, under 5 U.S.C. 808(2), this final rule is effective immediately

upon publication as stated previously in this notice.

E. Unfunded Mandates Reform Act

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

List of Subjects

29 CFR Parts 417 and 452

Labor unions.

29 CFR Parts 402, 403, 404, and 408

Labor unions, Reporting and recordkeeping requirements.

29 CFR 405 and 406

Labor management relations, Reporting and recordkeeping requirements.

29 CFR 409

Insurance companies, Reporting and recordkeeping requirements.

29 CFR Part 453

Labor unions, Surety bonds.

29 CFR Parts 457 and 458

Administrative practice and procedure, Labor unions, Reporting and recordkeeping requirements.

Adoption of Amendments of Regulations

In consideration of the foregoing, the Office of Labor-Management Standards, Employment Standards Administration, Department of Labor hereby amends Chapter IV of title 29 of the Code of Federal Regulations as set forth below.

CHAPTER IV—OFFICE OF LABOR-MANAGEMENT STANDARDS, DEPARTMENT OF LABOR

PART 402—LABOR ORGANIZATION INFORMATION REPORTS

1–2. The authority citation for part 402 continues to read as follows:

Authority: Secs. 201, 207, 208, 73 Stat. 524, 529 (29 U.S.C. 431, 437, 438); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 402.13 [Amended]

3. Section 402.13 is amended by changing the OMB control number at the end of the section to "1215–0188."

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

4. The authority citation for part 403 continues to read as follows:

Authority: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 403.11 [Amended]

5. Section 403.11 is amended by changing the OMB control number at the end of the section to "1215–0188."

PART 404—LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORTS

6. The authority citation for part 404 continues to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 404.9 [Amended]

7. Section 404.9 is amended by changing the OMB control number at the end of the section to "1215–0188."

PART 405—EMPLOYER REPORTS

8. The authority citation for part 405 continues to read as follows:

Authority: Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 405.11 [Amended]

9. Section 405.11 is amended by changing the OMB control number at the end of the section to "1215–0188."

PART 406—REPORTING BY LABOR RELATIONS CONSULTANTS AND OTHER PERSONS, CERTAIN AGREEMENTS WITH EMPLOYERS

10. The authority citation for part 406 continues to read as follows:

Authority: Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 406.1 [Amended]

11. Section 406.1(b) is amended by changing the word "designated" in the second sentence to "designates."

PART 408—LABOR ORGANIZATION TRUSTEESHIP REPORTS

12. The authority citation for part 408 continues to read as follows:

Authority: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

13. Section 408.6 is revised to read as follows:

§ 408.6 Amendments to the Labor Organization Information Report filed by or on behalf of the subordinate labor organization.

During the continuance of a trusteeship, the labor organization which has assumed trusteeship over a subordinate labor organization shall file with the Office of Labor-Management Standards on behalf of the subordinate labor organization any change in the information required by part 402 of this chapter in accordance with the procedure set out in § 402.4.

PART 409—REPORTS BY SURETY COMPANIES

14. The authority citation for part 409 continues to read as follows:

Authority: Secs. 207, 208, 211; 79 Stat. 888; 88 Stat. 852 (29 U.S.C. 437, 438, 441); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 409.7 [Amended]

15. Section 409.7 is amended by changing the OMB control number at the end of the section to "1215–0188."

PART 417—PROCEDURE FOR REMOVAL OF LOCAL LABOR ORGANIZATION OFFICERS

16. The authority citation for part 417 continues to read as follows:

Authority: Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

17. In § 417.2, paragraph (a) is revised to read as follows:

§ 417.2 Definitions.

(a) "Chief, DOE" means the Chief of the Division of Enforcement within the Office of Labor-Management Standards, Employment Standards Administration.

* * * * *

§ 417.7 [Amended]

18. Section 417.7 is amended by changing "29 CFR 70.62" to "part 70 of this title."

§ 417.21 [Amended]

19. Section 417.21 is amended by changing "29 CFR 70.62" to "part 70 of this title."

§ 417.22 [Amended]

20. The heading for section 417.22 is amended by changing the word "organizations" to "organization."

PART 452—GENERAL STATEMENT CONCERNING THE ELECTION PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

21. The authority citation for part 452 continues to read as follows:

Authority: Secs. 401, 402, 73 Stat. 532, 534 (29 U.S.C. 481, 482); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 452.2 [Amended]

22. Section 452.2 is amended by changing the words "the title" to "title IV."

§ 452.5 [Amended]

23. Section 452.5 is amended by changing the parenthetical at the end of footnote 6 from "(1966)" to "(S.D.N.Y 1966)."

§ 452.12 [Amended]

24. Section 452.12 is amended by changing the last word in footnote 13 from "title" to "chapter."

§ 452.77 [Amended]

25. Section 452.77 is amended by changing the word "rules" to "ruled" in the second sentence.

§ 452.99 [Amended]

26. Section 452.99 is amended by changing the word "residents" to "residence" in the second to last sentence.

PART 453—GENERAL STATEMENT CONCERNING THE BONDING REQUIREMENTS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

27. The authority citation for part 453 continues to read as follows:

Authority: Sec. 502, 73 Stat. 536; 79 Stat. 888 (29 U.S.C. 502); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

28. The centered heading before section 453.2 is amended by removing the number "1" after the word "BONDED."

§ 453.21 [Amended]

29. Section 453.21(a) is amended by changing the word "is," which appears in the third sentence after the words "It appears, therefore, that," to "it."

PART 457—GENERAL

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

Authority: 5 U.S.C. 7120, 7134; 22 U.S.C. 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

31. Section 457.15 is revised to read as follows:

§ 457.15 District Director.

District Director means the Director of a district office within the Office of Labor-Management Standards, Employment Standards Administration.

32. Section 457.16 is revised to read as follows:

§ 457.16 Chief, DOE.

Chief, DOE means the Chief of the Division of Enforcement within the Office of Labor-Management Standards, Employment Standards Administration.

PART 458—STANDARDS OF CONDUCT

33. The authority citation for part 458 continues to read as follows:

Authority: 5 U.S.C. 7105, 7111, 7120, 7134; 22 U.S.C. 4107, 4111, 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 5–96 (62 FR 107, January 2, 1997).

§ 458.3 [Amended]

34. Section 458.3 is amended by changing the OMB control number in the parenthetical statement after the text to "1215–0188."

§ 458.33 [Amended]

35. Section 458.53 is amended by changing the words "area office" to "district office."

§ 458.85 [Amended]

36. Section 458.85 is amended by changing the words "Area Office" to "district office."

37. Section 458.85 is further amended by changing "29 CFR 70.62(c)" to "part 70 of this title."

Signed in Washington, D.C. this 12th day of June, 1998.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

[FR Doc. 98–16276 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–86–P

federal register

Friday
June 19, 1998

Part IV

Environmental Protection Agency

40 CFR Parts 63, 261, and 270
Hazardous Waste Combustors; Revised Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 261, and 270

[EPA F–98–RCSF–FFFFF; FRL–6110–3]

RIN 2050–AE01

Hazardous Waste Combustors; Revised Standards; Final Rule—Part 1: RCRA Comparable Fuel Exclusion; Permit Modifications for Hazardous Waste Combustion Units; Notification of Intent To Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On April 19, 1996, EPA proposed revisions for air emission standards for certain hazardous waste combustion units. Today's rule finalizes some elements of that proposal. These elements include a conditional exclusion from RCRA for fuels which are produced from a hazardous waste, but which are comparable to some currently used fossil fuels; a new RCRA permit modification provision which is intended to make it easier for facilities to make changes to their existing RCRA permits when adding air pollution control equipment or making other changes in equipment or operation needed to comply with the upcoming air emission standards; notification requirements for sources which intend to comply with the final rule; and allowances for extensions to the compliance period to promote the installation of cost effective pollution prevention technologies to replace or supplement emission control technologies for meeting the emission standards.

EFFECTIVE DATE: This rule is effective on June 19, 1998.

ADDRESSES: The public docket for this rulemaking is available for public inspection at EPA's RCRA Docket, located at Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The regulatory docket for this final rule contains a number of background materials. To obtain a list of these items, contact the RCRA Docket at 703–603–9230 and request the list of references in EPA Docket #F–98–RCSF–FFFFF.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline between 9:00 a.m.–6:00 p.m. EST, at 800–424–9346 (toll-free); 703–412–9810 (from Government phones or if in the Washington, D.C. local calling area); or 800–553–7672 (for the hearing impaired). For more detailed information on specific aspects of the rulemaking, contact Mary Jo Krolewski on the comparable fuel exclusion at (703) 308–7754, Tricia Buzzell on permit modifications at (703) 308–8632, James Lounsbury on waste minimization and pollution prevention at (703) 308–8463, David Hockey on the notification of intent to comply at (703) 308–8846, or by writing, to U.S. Environmental Protection Agency, Office of Solid Waste, Permits and State Programs Division, 401 M St., S.W. (Mailcode 5303W), Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: This rule is available on the Internet. Please follow these instructions to access the rule electronically:

From the World Wide Web (WWW), type either
http://www.epa.gov/epaoswer/hazwaste/combust/fastrack.

EPA's "Pollution Prevention Facility Planning Guide" (May, 1992; NTIS #PB92–213206) describes the series of analytical steps that are often used by companies to identify waste minimization measures. Additional EPA references include: "Waste Minimization Opportunity Assessment Manual (EPA 625/7–88/003, July 1988), Interim Final "Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program In Place," (May 1993), "An Introduction to Environmental Accounting As a Business Management Tool" (EPA 742–R–95–001, June 1995), the "P2/Finance User's Manual: Pollution Prevention Financial Analysis and Cost Evaluation System for Lotus 1–2–3 (EPA 742–B–94–003, January 1994), and Enviro$ense, an electronic library of information on pollution prevention, technical assistance, and environmental compliance. Many of these and other documents can be accessed by contacting the RCRA Hotline toll-free at 1–800–424–9346. Enviro$ense can be accessed by contacting a system operator at (703) 908–2007, or on the Internet at http://wastenot.inel.gov/enviro-sense. Information on State waste minimization programs can be obtained through Enviro$ense, directly from the State pollution prevention program offices, or from the National Pollution Prevention Roundtable at E-mail address 75152.1416@compuserve.com, by phone at 202–466–7272 in Washington, D.C.

The official record for this action is kept in a paper format. Accordingly, EPA has transferred all electronic comments received into paper form and placed them into the official record, with all the comments received in writing. The official record is maintained at the address in the **ADDRESSES** section at the beginning of this document.

EPA's responses to comments have been incorporated in a "Response to Comments" document, which has been placed into the official record for this rulemaking. The major comments and responses are discussed in the Response to Comment sections of this preamble.

The contents of today's preamble are listed in the following outline:

I. Authority

These regulations are being finalized under the authority of sections 1004, 1006, 2002, 3001, 3004, 3005, and 7004 of the Solid Waste Disposal Act of 1965, as amended, including amendments by the Resource Conservation and Recovery Act.

II. Scope of the Final Rule

On April 19, 1996, EPA proposed rules to control emissions of HAPs from hazardous waste-burning incinerators, cement kilns, and light weight aggregate kilns. (61 FR 17358) After promulgation of the proposal, the Agency issued the following notices of data availability (NODA): NODA 1 (Peer review and Comparable fuels)—August 23, 1996: 61 FR 43501; NODA 2 (Revised emissions database)—January 7, 1997: 62 FR 960; Continuous Emissions Monitoring Systems (CEMS) NODA—March 21, 1997: 62 FR 13775; NODA 3 (MACT standards and implementation)—May 2, 1997: 62 FR 24212; and NODA 4 (Comparable fuels data)—September 9, 1997: 62 FR 47402.

Today's final rule addresses four elements of the April 19, 1996 (61 FR 17358) proposal to revise the standards for hazardous waste combustors. The remaining issues of the proposal will be addressed in final rules in the near future.

III. Comparable Fuels Exclusion

Under this final rule, EPA is excluding from the regulatory definition of solid waste hazardous waste-derived fuels that meet specification levels comparable to fossil fuels for concentrations of hazardous constituents and for physical properties that affect burning.[1] The exclusion would apply to the comparable fuel from the point it is generated and would be claimed by the person generating the comparable fuel (which person can include a hazardous waste treater). With respect to the fuels, generators of the comparable fuel would have to comply with sampling and analysis, notification and certification, and recordkeeping requirements in order for their fuels to be excluded. The exclusion potentially applies to gaseous and liquid hazardous waste-derived fuels. However, this exclusion does not apply to solids or to used oil, which is subject to special standards under 40 CFR Part 279.

Today's rule is consistent with EPA's goal to develop a comparable fuel specification which is of use to the regulated community but assures that an excluded waste-derived fuel is similar in composition to commercially available fuel and therefore poses no greater risk than burning fossil fuel. Accordingly, EPA is using a "benchmark approach" to identify a specification that would ensure that constituent concentrations and physical properties of excluded waste-derived fuel are comparable to those of fossil fuels.

The rationale for the Agency's approach is that if a hazardous waste-derived fuel is comparable to a fossil fuel in terms of hazardous and other key constituents and has a heating value indicative of a fuel, EPA has discretion to classify such material as a fuel product, not as a waste. Given that a comparable fuel would have legitimate energy value and the same hazardous constituents in comparable concentrations to those in fossil fuel (and satisfies other parameters related to comparability as well), classifying such material as a fuel product and not as a waste promotes RCRA's resource recovery goals without creating any risk greater than those posed by the commonly used commercial fuels. Under these circumstances, EPA can permissibly classify a comparable fuel as a non-waste. See 46 FR 44971 (August 8, 1981) (exemption from Subtitle C regulation for spent pickle liquor used as a wastewater treatment agent in part because of its similarity in composition to the commercial acids that would be used in its place); 50 FR 49180, 49181, 49183 (November 29, 1985) (explanation of a similar type of benchmark approach in establishing used oil fuel specification); 53 FR at 31164 (August 18, 1988) (exemption for certain hazardous waste-derived fertilizers due to similarity to the commercial fertilizers that would be used in their place).

Put another way, EPA can reasonably determine that a material which is a legitimate fuel and which contains hazardous constituents at levels comparable to fossil fuels is not being "discarded" within the meaning of RCRA section 1004 (27). "Discarded" itself is an ambiguous term, see *American Petroleum Inst.* v. *EPA*, 906 F. 2d 729, 741 (D.C. Cir. 1990). EPA's interpretation that hazardous waste-derived fuels which are comparable to fossil fuels need not be considered to be "discarded" serves the statutory objective of encouraging resource recovery. RCRA section 1003 (a) (10). In addition, burning of such fuels does not present the element of discarding hazardous constituents through combustion that underlies the typical classification of hazardous waste-derived fuels as a solid waste. 50 Fed. Reg. at 629–630 (Jan. 4, 1985). This is because, as noted, hazardous constituent concentration levels are comparable to those in fossil fuels.

[1] We note that DOW Chemical Company (Dow) in a petition to the Administrator, dated August 10, 1995, specifically requested that the Agency develop a generic exclusion for "materials that are burned for energy recovery in on-site boilers which do not exceed the levels of fossil fuel constituents* * *." (Petition, at p.3). This final rule also responds to that petition.

The case law further makes clear that EPA may classify secondary materials as "discarded" based, at least in part, upon whether such materials may be considered part of the waste management problem. *American Mining Congress* v. *EPA*, 907 F. 2d 1179, 1186 (D.C. Cir. 1990). Today's rule contains conditions to assure that burning of comparable fuels will not become part of the waste management problem. The chief condition is limitation on burning to industrial furnaces (as defined in 260. 10), industrial and utility boilers, and hazardous waste incinerators. Another condition prevents specification limits for hazardous constituents being achieved by means of dilution, so that the total volume of hazardous constituents emitted from burning comparable fuels would remain comparable to those from burning fossil fuels. The rule also contains notification and record keeping conditions which assure that the fuels meet the specification and will be burned in the requisite type of unit, and that this can be verified objectively by third persons.

EPA notes that today's final rule is consistent with the main approach discussed in the Dow petition (see footnote 1 above), which also points out a number of benefits that would result from promulgating this type of exclusion: (1) Support for the statutory goal of promoting beneficial energy recovery and resource conservation; (2) reduction of unnecessary regulatory burden and allowing all parties to focus resources on higher permitting and regulatory priorities; and (3) demonstration of a common-sense approach to regulation. Dow's petition contained data on the chemical and physical aspects of the fuel for which the petition was submitted. Based on these data and additional data submitted during the comment period, it appears that the waste petitioned for exclusion by Dow meets the individual physical and chemical comparable fuel specifications set forth in this rule. Today's rule does not exclude Dow's wastestreams or other wastestreams for which commenters submitted data that may meet the specifications of the final rule. It remains the responsibility of the generator to comply with the specifications of the comparable fuel exclusion stipulated by the State RCRA implementing authority.

A. EPA's Approach to Establishing Benchmark Constituent Levels

1. The Benchmark Approach

EPA considered using risk to human health and the environment as the way to determine the scope and levels of a "clean fuels" specification. However, the Agency encountered several technical and implementation problems using a purely risk-based approach to develop a national rule. Specifically, EPA has insufficient data relating to the types of waste burned and the risks they pose to develop a fully protective and complete "clean fuels" exemption. EPA also does not have sufficient data to determine the relationship between the amount of "clean fuel" burned and emissions, especially of dioxins and other non-dioxin PICs. EPA also does not know how emissions (likely uncontrolled) at the multitude of actual facilities that would burn an excluded fuel would compare to emissions from the example facilities that EPA would use to derive a "clean fuel" specification. (Emissions and/or risks at a given facility could be higher than those of the example facilities given site-specific considerations.) Without considering all reasonable, possible emission scenarios, which is not feasible for the Agency at this time, the Agency is not prepared today to address these potential risks[2].

The Chemical Manufacturers Association (CMA) submitted a proposal to exempt certain "clean" liquid wastes from RCRA regulation. (61 FR at 17469) Unlike EPA's benchmark-based comparable fuel approach, the CMA approach would establish "clean fuel" specifications for mercury, LVM, and SVM metals based on the technology-based MACT emissions standards proposed for hazardous waste combustors on April 19, 1996. As just discussed above, EPA is concerned about using risk to establish a "clean fuel" specification. EPA does not have data available documenting that emissions from burning a "clean fuel" would not pose a significant risk for the potential combustion and management scenarios in which the clean fuel exclusion from RCRA might be used. Therefore, EPA will not be adopting CMA's proposal in today's rule, but may address aspects of the CMA concept in future actions if appropriate and feasible.

The Agency instead developed a comparable fuel specification, based on the level of hazardous and other constituents normally found in fossil fuels. EPA refers to this as the benchmark approach. For this approach, EPA set a comparable fuel specification such that concentrations of hazardous constituents in the comparable fuel could be no greater than the concentration of hazardous constituents normally occurring in commercial fossil fuels. Thus, EPA expects that the comparable fuel would pose no greater risk when burned than a fossil fuel and would at the same time be physically comparable to a fossil fuel, leading to the conclusion that EPA may classify these materials as products, not wastes. See proposal for more details (61 FR 17460, April 19, 1996).

Some commenters argued that by using a benchmark approach, EPA had failed to assess potential risks to human health and the environment resulting from the exclusion. Commenters argued that EPA cannot determine that there are no adverse risks by the comparison to fossil fuels. EPA disagrees with commenters conclusions concerning the need to determine absolute risk. In this final rule, EPA is setting a comparable fuel specification with concentrations of hazardous constituents no greater than the concentrations of hazardous constituents occurring in fossil fuels. Thus, EPA reasonably expects—based on the methodology used to establish the specification—that the comparable fuel will pose no greater risk when burned than a fossil fuel and concomitant energy recovery benefits will be realized from reusing the waste to displace fossil fuels. The Agency concludes it has discretion in exercising jurisdiction over hazardous waste-derived fuels that are essentially the same as fossil fuel, since there would likely not be environmental benefits from regulating those hazardous waste-derived fuels (i.e., burners would likely just choose to burn fossil fuels). Indeed, as explained below, many commercial fuels could be less "clean" than the comparable fuels, so that substitution of some commercial fuels could be a net deterrent. See 50 FR at 49186 (November 29, 1985) where EPA discussed similar considerations when developing a specification for used oil fuel. See also discussion above as to why such fuels need not be considered to be "discarded". EPA has therefore decided not to regulate comparable hazardous waste-derived fuels meeting the benchmark specifications as hazardous waste under RCRA.

Furthermore, the Agency notes that the comparable fuel exclusion promulgated today is the first phase in addressing the "clean fuels" issue. Although EPA has identified problems with commenters' alternatives, there is

[2] It is possible to determine on an individual basis that particular waste-derived fuel should be excluded from RCRA on risk-based grounds. See 63 FR at 18533 (April 15, 1998) where EPA finalized such an exclusion for a waste fuel which could be generated by the pulp and paper industry. However, EPA cautions that making such a demonstration is difficult (because of potential uncertainties regarding combustion conditions and exposure patterns) and resource-intensive for the Agency to evaluate, and would still involve rulemaking.

room for further expansion of the comparable or clean fuel concept. EPA will continue to work with the regulated community to identify areas to expand the approach taken in today's final rulemaking.

2. Selection of the Benchmark Fuels

Since commercially available fossil fuels are diverse, EPA considered a range of fuels upon which to base its benchmark fuel selection. Available fuels ranged from gases, such as natural gas and propane, to liquids (such as gasoline and fuel oils) to solids (such as coal, coke, and peat). The Agency proposed a benchmark based on liquid fossil fuels (gasoline, No.2 fuel oil, and No.6 fuel oil). (61 FR at 17462)

Commenters argued that EPA should consider solid fossil fuels in developing the benchmark specifications. Commenters believe that materials such as coal are fuels that are widely used throughout the U.S. and failing to consider these materials ignores legitimate fuels used by certain industries. EPA disagrees with commenters' requests to include solid fossil fuels in its benchmark specification. From an environmental standpoint, the comparable fuel specification, which would exclude a hazardous waste-derived fuel from RCRA subtitle C regulation, should not be based on fossil fuels that have high levels of toxic constituents that will not be destroyed or detoxified by burning (e.g., metals and halogens). Data show that solid fossil fuels have comparatively higher metal [3] and possibly halogen levels than liquid fossil fuels [4]. Metals and halogens are not destroyed in the combustion process unlike organic constituents which are commonly destroyed or detoxified through combustion. Comparison with this type of fuel could easily result in a least common denominator approach whereby a hazardous waste-derived fuel would be "comparable" if it was no more dangerous to burn than the most contaminated fossil fuels. Such "comparability" is not congruent with the overall objective of RCRA to protect human health and the environment and is inconsistent with the specific directive to regulate combustion of hazardous waste-derived fuels where necessary to protect human health and the environment. (RCRA section 3004(q)). Thus, while EPA has chosen to use a benchmark rather than a risk-based approach, the Agency has chosen benchmark fuels that, in general, have lower contaminant levels for constituents that are not destroyed. Therefore, in today's rule, EPA is not using solid fossil fuels as part of the comparative benchmark.

EPA also will not be using a gas fuels as benchmarks. Basing the comparable fuel specification on a gas fuel would be overly conservative and have no utility to the regulated industry. (The reader should note that EPA is promulgating an exclusion for a particular type of hazardous waste-derived fuel, namely a type of synthesis gas ("syngas") meeting particular specifications (see Section D below). This hazardous waste derived gas can be used as a fuel and an exclusion provides beneficial resource recovery.) Liquid fuels, on the other hand, are widely used by industry, readily combusted, and do not present the inconsistencies of solid or gaseous fuels. Simply put, the Agency, in assessing comparability, is not required to base a specification on either the most or least contaminated fossil fuels, but may reasonably choose a median, in this case, representative fuel oils. In this final rule, EPA is selecting only liquid fuels for its benchmark fuel specification.

With regard to liquid fuels, commenters argued that EPA should consider as benchmark fuels non-petroleum liquid based fuels such as turpentine and tall oil. One commenter recommended that EPA identify turpentine as a benchmark fuel because it has a very high Btu value and is used as a fuel (and a manufacturing feedstock) both within and outside the forest products industry. Another commenter pointed out that tall oil is not only used in commerce as a traditional fuel, but that EPA has previously noted that tall oil is a legitimate non-waste fuel under the BIF rule low risk waiver exemption (LRWE) and DRE trial burn exemptions (56 FR 7193, February 21, 1991).

While EPA is interested in establishing a broad-based benchmark of liquid fuels, EPA disagrees that turpentine should be included in the benchmark specification. Turpentine is not a widely used commercial fuel. There are no ASTM standards for turpentine fuel which specify the minimum properties which must be met for the product to be considered as a commercial fuel. By contrast, there are ASTM specifications for each of the petroleum fossil fuels EPA is using as a benchmark.

EPA does agree with the commenter that tall oil is used in commerce as a traditional fuel and could be used as a benchmark fuel. At the time of the proposal, EPA had no data on tall oil. The commenter did submit one set of data that EPA was unable to use because it did not meet EPA data quality standards. Therefore, at this time, EPA will not include tall oil in its benchmark fuels.

Finally, some commenters did not support the use of gasoline for setting comparable fuel specifications, because it is not typically utilized in industrial boilers and furnaces. Gasoline is typically limited used in internal combustion engines, and the commenter did not anticipate that industry or individuals will utilize hazardous waste-derived fuels in automobiles, trucks and buses. EPA disagrees that gasoline should be excluded as one of the benchmark fuels. The Agency notes that gasoline is a widely used, commercially available, liquid fuel and EPA does not believe that our selection is necessarily limited to fuel burned in boilers or industrial furnaces. EPA has chosen its benchmark fuels so that the resulting comparable fuel when substituted would have hazardous constituents lower than the fuel it replaces. However, because the comparable fuel will not be substituted for use in gasoline applications (the exclusion is restricted to air regulated stationary combustion units, see Section H below), the rationale for the inclusion of gasoline differs. The Agency believes that gasoline provides a reasonable upper boundary for volatile organics, which are fuel-worthy constituents. The Agency notes that unlike some solid fuels, gasoline has low concentrations of metals. When compared to lighter fuel oils (e.g., No. 2 fuel oil), the gasoline specification has higher specifications for only the detected volatile organics, which are readily burnable compounds.

B. Options for the Benchmark Approach

At proposal, EPA presented several options for deciding what fossil fuel(s) data to use as the benchmark. The options range from developing a suite of comparable fuel specifications based on individual benchmark fuels (i.e., gasoline, No. 2, No. 4, No. 6) to basing the specification on composite values derived from the analysis of all benchmark fuels. (61 FR at 17643).

EPA took comment on individual benchmark fuel specifications based on gasoline, No. 2, and No. 6 fuel oil, using the 90th percentile values for the basis of the individual specifications. Under this approach, individual fuel specification(s) could be implemented

[3] A smaller fraction of metals in coal partitions to emissions than for liquid fuels. Given that most potentially comparable fuels are liquids, allowing metals at the concentrations present in coal could result in substantially higher metals emissions.

[4] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

in one of two ways. First, a facility could use any of the individual benchmark specifications, without regard to what fuel it currently burns. The second approach is to link the comparable fuel specification to the type of fuel burned at the facility and being displaced by the comparable fuel. Under a composite fuel benchmark approach, EPA took comment on using: (1) The 90th percentile aggregate values for the benchmark fuels; and (2) the 50th percentile aggregate values for the benchmark fuels. (61 FR at 17643).

1. Selection of Percentile Level

To calculate benchmark specifications, EPA obtained 27 fossil fuel samples, comprised of eight gasoline, eleven No. 2, one No. 4, and seven No. 6 fuel oil samples. Due to the small sample sizes of each fuel type, EPA initially used a nonparametric rank order statistical approach to analyze the fuel data. Rank order involved ordering the data for each constituent from lowest to highest concentration, assigning each data point a percentile value from lowest to highest percentile, respectively. Results were then calculated from the data percentiles. Because there were different numbers of samples for each fuel type, EPA was concerned that the fuel with the largest number of samples would dominate the composite database. To address this issue, EPA's statistical analysis "normalized" the number of samples, i.e., treated each fuel type in the composite equally without regard to the number of samples taken.[5] See *Kennecott* v. *EPA*, 780 F.2d 445, 457 (4th Cir. 1985) (upholding this statistical methodology). The fuel samples were weighted equally because this weighting reflects the fact that benchmark fuels can be used interchangeably in stationary combustion units. In addition, as noted in the next section, equal weighting prevented over-estimation of either metals and semi-volatiles in No. 6 fuel oil or volatiles in the higher end fractions.

One commenter argued that EPA's proposed constituent-by-constituent comparison approach is flawed because it ignores the compounding effect of joint probability. The commenter has examined the rank order statistics technique EPA used and has concluded that the percentile values for the individual constituents must be set higher for all of them to meet the overall percentile value simultaneously. For example, a candidate comparable fuel taken from the same reservoir as a benchmark fuel would, because of random variability in constituent concentrations, have a 23 percent chance of "failing" a comparison to a benchmark (at the 90th percentile) that has 14 constituents above the detection limits. Thus the commenter argued that the proposed constituent-by-constituent comparison would have little utility to the regulated community.

While EPA believes there is some interdependence among individual constituents and that the principle of joint probability cannot be strictly applied, EPA is inclined to agree with the commenter. At the time of proposal, EPA believed that a 50th percentile analysis represented a midpoint of potential benchmark fuels that were studied. EPA also believed that a 90th percentile analysis represented a reasonable upper bound of what is found in all fuels capturing variability both with each fuel category and in the case of the composite approach, between categories. However, when the individual fuel samples were compared to the benchmark specifications, EPA found that at the 50th percentile composite *none* of the virgin fuel samples met the specification and at the 90th percentile composite only 40 percent met the specification. This appears to confirm the commenter's concern over joint probability, and reflects on the degree to which the comparable fuels exclusion would actually be useable. It was EPA's goal to base the comparable fuel specifications on the 99th percentile, a level near which 90 percent of EPA's individual fuel samples would meet the specification. However, the size of the data base precluded the calculating of a 99th percentile constituent specification. Therefore, in this case, the Agency used the largest measured value to approximate an upper percentile. In the future, EPA may choose alternative methods of evaluating any new data that may be submitted suggesting that these specifications need to be modified. After re-calculating the specification taking joint probability into account, the composite at the largest value more closely represents what EPA intended to propose with the 90th percentile, a reasonable upper bound that is also useable in practice. The 90th percentile closely represents what EPA intended with the proposed 50th percentile, i.e., a midpoint.

Some commenters did support the 50th percentile because they argued it was more protective. The majority of commenters supported the 90th percentile and some commenters argued for the use of a higher percentile, i.e., 95th or 99th. Because none of EPA's own fuel samples meet this specification, the 50th percentile is overly conservative. If EPA selected the 50th percentile, comparable fuels would have to be "cleaner" than *all* commercial liquid fuels (or at least all of those in the Agency's current database), which would greatly restrict the utility of the provision. Also, with such a strict approach, additional quantities of virgin oils with higher contaminant levels would be burned, leading to greater emissions than if a higher percentile was chosen. Therefore, EPA agrees with commenters that a higher percentile better reflects the liquid fossil fuels burned nationally and is a better benchmark.

After considering the issue of joint probability, EPA has decided to promulgate a composite specification based on the largest measured value to approximate what 90 percent of individual benchmark fuels are likely to meet. This approach has the virtue of being representative of a range of fuels that are burned nationally in combustion devices.

Based on the proposal, EPA had the option of choosing between an individual fuel specification approach and a composite approach. The majority of commenters supported using the composite specification plus the suite of individual fuel specifications that could be used irrespective of the fuel displaced.

The composite approach has advantages over the individual fuel specification approach. One issue associated with the single fuel specification approach is that gasoline has relatively higher levels of volatile organic compounds while No. 6 fuel oil has higher levels of semi-volatile organic compounds and metals. If a potential comparable fuel were to have a volatile organic constituent concentration below the gasoline specification but higher than the others and a particular metal concentration lower than the No. 6 fuel oil specification but higher than gasoline, it would not be a comparable fuel since it meets no single specification entirely. Therefore, EPA is concerned that establishing specifications under this

[5] For the gasoline sample analysis, the resulting detection limits for volatile organic compounds were an order of magnitude higher than the other fuel specifications. EPA believes analysis of comparable fuels will more likely result in detection limits much lower than gasoline and similar to those associated with analysis of fuel oils. To address this issue, EPA has performed an analysis of a fuel oil-only composite (one which does not include gasoline in the composite) to use as a surrogate for the volatile organic gasoline non-detect values. Therefore, the volatile organic gasoline non-detect values used in the development of the composite and individual gasoline specification were based on this fuel oil-only composite.

option would significantly limit the utility of the exclusion without any obvious advantage in terms of the technical basis of the specifications themselves.

Compositing all the fuels has the advantage that it may better reflect the range of fuel choices and potential for fuel-switching available nationally to burners. A facility would be allowed to use the composite fuel specification regardless of which fuel(s) it burns. In addition, the composite well represents the constituent makeup of liquid fossil fuels currently burned nationally. Because allowing individual specifications would unnecessarily complicate the Agency's implementation oversight, EPA has decided not to allow the individual specifications as an alternative. Furthermore, EPA notes that because it has chosen to promulgate constituent standards for comparable fuels based on the largest measured value, the composite approach will provide industry with greater flexibility in using the exclusion. A composite specification provides a simpler regulatory framework, which would facilitate implementation of the exclusion. Therefore, in this final rule, EPA is promulgating a composite specification for comparable fuels.

C. Parameters for the Comparable Fuel Specification

Using the benchmark approach discussed above, EPA is promulgating a set of technical specifications. The specifications address the following [6]:

(1) Physical specifications:

—Heating value (BTU/lb);

—Kinematic viscosity (centistokes, cs, as-fired),

(2) General constituent specifications for:

—Total Halogens (ppmw, expressed as Cl)

—Nitrogen, total (ppmw), and

(3) Individual hazardous constituent specifications, for:

—Individual Metals (ppmw),

—Individual Appendix VIII Toxic Organics (ppmw)

The constituent specifications and heating value would apply to both gases and liquids. The kinematic viscosity would not apply to gases. (See Section D, below, which discusses synthesis gases specifically.)

1. Physical Specifications

a. *Heating Value.* The Agency is concerned with the acceptability of the potential fuel and wants to ensure that comparable fuels have a legitimate use as a fuel. As discussed below, the comparable fuels exclusion only applies to waste fuels that are ultimately burned. In addition, the Agency has relied on a heating value of 5,000 Btu/lbm (11,500 J/g) as a reasonable heating value specification for determining if a waste is being burned for energy recovery; that is, wastes with this Btu value or higher are considered to be burned for energy recovery. (See § 266.103(c)(2)(ii). 50 FR at 49173n.24 (November 29, 1985)). [7] This type of minimum Btu value specification is appropriate here as well as for the overall fuel (note that this is a different issue than finding the appropriate Btu value by which to correctly determine if the individual constituent specifications are being met, discussed below). EPA is thus setting a 5,000 Btu/lbm limit today as a minimum heating value for a comparable fuel to ensure that comparable fuels are in fact legitimate fuels. See § 261.38(a)(1)(i).

b. Kinematic viscosity. Viscosity is an important specification to help ensure that a comparable fuel is as readily burnable as the benchmark fuel. Viscosity is important to the proper atomization and feed to the burning device and is an important design specification of the burner assembly. EPA proposed two options for setting a viscosity specification: (1) Using a value derived from the analyses EPA conducted; or (2) using the ASTM viscosity specification for fuel oil. (61 FR at 17465). Under the ASTM option for the composite fuel viscosity specification, EPA took comment on using the second highest ASTM viscosity specification. This would have the effect of not considering the extremes, viscosity of No. 6 fuel oil (50.0 cs at 100°C) and using as the specification the viscosity of No. 4 fuel oil (24.0 cs at 40°C).

Given the choice of EPA-derived viscosity values and ASTM values, the majority of commenters supported the use of the ASTM physical specification for viscosity. In addition, several commenters argued that the viscosity specification should apply at the point (temperature) that the fuel is fired rather than the point of generation. Commenters pointed out that it is common practice to reduce the as-fired viscosity to promote good atomization and combustion through blending with less viscous fuels or by warming the fuel to above-ambient temperature before firing. For example, while No. 6 fuel oil has an elevated viscosity at ambient conditions, it is typically stored and fired at temperatures which promote atomization and combustion.

EPA is persuaded by commenters that basing our viscosity specification on No. 4 fuel oil would possibly limit comparable fuels similar to No. 6 fuel oil (one of the benchmark fuels) from qualifying for the exclusion. EPA agrees that the viscosity specification should be based on ASTM standard for No. 6 fuel oil (50 cs at 100°C). The ASTM standard represents the typical temperature and viscosity at which No.6 fuel oil is fired. Thus, it is appropriate for a comparable fuel, when fired, to have the same viscosity as No. 6 fuel when fired. This will allow for a specification that is achievable for all liquid fossil fuels.

Therefore, in this final rule, EPA is promulgating a kinematic viscosity specification of 50 cs, as-fired . The specification for viscosity will only pertain to non-gaseous fuels, because gases are inherently less viscous than liquids. See § 261.38(a)(1)(ii).

c. Flashpoint (proposed, but not promulgated). EPA proposed two options for setting a minimum flashpoint specification: (1) Using a value derived from the analyses EPA conducted; or (2) using the requirements for flashpoint specified by ASTM. Under the ASTM option for the composite fuel flashpoint specification, EPA took comment on using the second lowest flash point as the specifications. (61 FR at 17465). This would have the effect of not considering the extremes, flash point of gasoline (−42°C) and using as the specification the flash point of No. 2 fuel oil (38°C).

Several commenters opposed setting specifications for flash point. Commenters argued that DOT and OSHA have developed and promulgated regulations that control the hazards such materials can pose. Commenters also argued that the specification would preclude burning materials that are normally fuels such as methanol. EPA agrees with commenters that DOT (49 CFR Parts 171 through 180) and OSHA (29 CFR Part 1910) regulations adequately address the transportation and handing of low flashpoint material and setting a flashpoint specification under RCRA would be unnecessarily redundant with no ostensible gain in protectiveness. In addition, by limiting the exclusion to units subject to Federal/State/local air emission requirements, comparable fuels will be burned in units subject to OSHA requirements. (See Section H, below,

[6] Note that ppmw is an alternate way of expressing the units mg/kg.

[7] The 5,000 Btu/lb measure is not, however, an unvarying measure of legitimate versus insufficient energy recovery. See, e.g., 48 FR at 1158 (March 16, 1983).

which discusses this requirement.) Therefore, EPA is not establishing a flashpoint specification for the final rule.

2. General Constituent Specifications

In determining general constituent specifications and in determining individual hazardous constituent specifications (see following discussion), the Agency is concerned with the overall environmental loading. Comparable fuels could have lower heating value than the fossil fuels they would displace. In these situations, more comparable fuel would be burned to achieve the same heat input, with the result that more hazardous constituents would be fired and emitted (e.g., halogenated organic compounds and metals) than if fossil fuel were to be burned. This would lead to greater environmental loading of potentially toxic substances, which is not in keeping with the intent of the comparable fuels exclusion nor with RCRA's overall protectiveness goals.

To address environmental loading, the approach used in this final rule is to establish a minimum heating value specification comparable to the BTU content of the benchmark fossil fuel(s). The Agency is establishing the specification(s) for comparable fuels at a heating value of 10,000 BTU/lb, which is near to what liquid commercial fuels contain.[8] EPA chose 10,000 BTU/lb because it is typical of current hazardous waste burned for energy recovery.[9] However, candidate comparable fuels when generated initially can have heating values very different than 10,000 BTU/lb. Therefore, under this final rule, when determining whether a waste meets the comparable fuel constituent specifications, a generator must first correct the constituent levels in the candidate waste to a 10,000 BTU/lb heating value basis prior to comparing them to the comparable fuel specification tables. In this way, a facility that burns a comparable fuel would not be feeding more total mass of hazardous constituents than if it burned fossil fuels.[10]

a. Specification Levels for Halogenated Compounds. I. Summary. For the final rule, EPA is using its composite benchmark approach to establish a total halogen specification and allowing compliance with a total organic halogen limit in lieu of complying with limits on individual Appendix VIII halogenated compounds. Therefore, a comparable fuels generator would have the option of complying: (a) with a total organic halogen specification of 25 ppm plus the total PCB specification or (b) with the all of the individual Appendix VIII specifications for halogen compounds. In addition, in both cases, the generator would also have to comply with the total halogen limit (which includes both organic and inorganic halogens) of 540 ppm and with a total PCB specification (non-detect at a minimum required detection limit of 1.4 ppm). See § 261.38(a)(2), Table 1.

Compliance with a total organic halogen specification in lieu of limits on individual halogenated compounds will ensure that measurable levels of halogenated compounds will be no greater than in benchmark fuels. In addition, the total organic halogen specification will result in less sampling and analysis costs. Finally, the total halogen limit (both organic and inorganic) will create a presumption that halogenated products of incomplete combustion (PICs) generated from burning a comparable fuel will not be emitted at higher levels than from burning a benchmark fossil fuel.

ii. Total Halogen Rationale. Although total halogens are not listed in Appendix VIII, Part 261, EPA proposed a total halogen specification to establish a presumption that halogenated products of incomplete combustion (PICs) generated from burning a comparable fuel would not be emitted at higher levels than from burning a benchmark fossil fuel. See proposal (61 FR at 17461) and subsequent notices of data availability (61 FR 43502, August 23, 1996 and 61 FR 47402, September 9, 1997). PICs resulting from the burning of halogenated organic compounds can pose a particular hazard to human health and the environment.[11] Using the benchmark approach, EPA proposed a composite fuel total halogen limit of 25 ppm.

At the time of the proposal, EPA intended to establish a total halogen limit that included both organic and inorganic halogens. However, the total halogen data used by EPA in the proposed rule for its No. 4 and No. 6 fuel oils were based on analytical methods measuring only total organic halogens, not both organic and inorganic halogens. Commenters raised concerns about including total halogen data that did not include inorganic halogens because it did not represent typical halogen content found in benchmark fuels. EPA was persuaded by commenters' arguments and noticed additional total halogen data gathered from its own database (i.e., Certifications of Compliance (CoC) required by the Boilers and Industrial Furnace Rule) and data submitted by one commenter. In addition, EPA will continue to use its original gasoline and No. 2 fuel oil halogen data, which included both organic and inorganic halogens. Using the additional data, the total halogen specification would be 540 ppm for the composite benchmark data. For further discussion, see NODA 61 FR at 47402.

In response to EPA's NODA, commenters argued that some of the data should not be used to establish the total halogen specification due to the use of inappropriate analytic methods. In particular, commenters believe that CoC data from two facilities (Huntsman Polypropylene Corporation and American Cyanamid) should not be included because the analytical method used measured organic halogens only. In addition, commenters believe that CoC data from another facility (Dow Chemical) should not be included because the detection limit of the method used to analyze for total halogens (ASTM Standard D 808) is not sensitive below 1000 ppm, and unless some other, more sensitive analytical method were followed afterward, the method could not have been effective at the levels reported. EPA is persuaded by these commenters' arguments and has excluded the data from these three facilities from its halogen data set. Using this revised data set, the total halogen specification would be 540 ppm for the composite benchmark data. For the final rule, EPA is promulgating a total halogen specification of 540 ppm.

In response to the initial proposal, some commenters argued that EPA should consider solid fuels like wood and coal in the development of a total halogen specification. As discussed above, EPA has decided not to include solid fuels in its benchmark specification. Thus, EPA is not inclined to consider using solid fuels to set one of the specifications. Also, EPA is concerned about the formation of halogenated PICs from comparable fuels containing halogens. At this time, EPA has no data to support a conclusion that the higher halogen levels in solid fuels would not cause an increase in

[8] Constituent levels presented in today's final rule have been corrected from the fuel's heating value (approximately 20,000 BTU/lb) to 10,000 BTU/lb.

[9] Consult USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

[10] Note that the heating value correction would apply only to allowable constituent levels in fuels, not to detection limits. Detection limits would not be corrected for heating value.

[11] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

halogenated PIC formation compared to benchmark fuels.

The Agency also received comment on an emissions-based equivalency determination to qualify for the total halogen specification. One commenter argued that the Agency should consider the commenter's candidate comparable fuel as a comparable fuel even though it cannot meet the comparable fuel specification for total halogens. The Agency considered the situation but, as indicated in the September 9, 1997 NODA (62 FR at 47403), continues to maintain that an emissions-based equivalency determination to the halogen specification on a national regulatory basis would be inappropriate and infeasible at this time.

In response to EPA's NODA, the commenter argued that an equivalency determination would not be administratively complex and that it could involve a demonstration by the person applying for the equivalency determination that the chemistry of the fuel is such that it is incapable of forming halogenated PICs. EPA is not persuaded by the commenter's arguments. For hydrocarbon-based fuels, combustion conditions (such as oxygen level, mixing, temperature, etc.) will have an impact on non-chlorinated and/or chlorinated PIC emissions. Additionally, chlorine in both inorganic and organic forms in the waste fuel can contribute to chlorinated PIC emissions. Dioxin/furans and other chlorinated PICs have been detected from sources burning both inorganic (e.g., salts) and/or organic chloride (e.g., plastics) containing wastes.[12] Furthermore, if the Agency were to develop an equivalency determination for total halogens, the implementation details needed in a national regulation to ensure proper combustion of halogenated wastes would be numerous, including, for example, provisions on burner operating parameters, performance testing, and monitoring. These details would almost certainly result in a complicated conditional exclusion from the definition of solid waste that is viewed as both potentially unworkable and very difficult to implement on a national basis.

Therefore, EPA is not inclined at this time to consider developing any national equivalency determination to the total halogen specification. At some future point, perhaps as the Agency's understanding of cause-and-effect relationships regarding emissions from a wider variety of sources grows, EPA may be able to address aspects of the commenter's recommendations if appropriate and feasible.

iii. Total Organic Halogen Rationale. As an additional part of its proposal, EPA invited comment on whether a total halogen specification could act as a surrogate for limits on individual halogenated compounds found in Appendix VIII. In this case, EPA's proposed limit of 25 ppm for total organic halogens would act as the surrogate for the individual halogenated organics. Commenters supported the surrogate approach and indicated that it would reduce the testing and recordkeeping costs on the regulated community. EPA agrees that this approach will simplify the comparable fuels specification and possibly mean fewer and less costly sampling and analyses of comparable fuel streams for generators.

However, some commenters raised concerns that a total halogen analysis will not be an effective screen for some of the more hazardous halogenated Appendix VIII constituents which could constitute a potential risk at low detection levels (e.g., tetrachlorodibenzo-p-dioxins). EPA calculated the equivalent constituent concentrations using the minimum detection limit values for these hazardous halogenated organics and determined that the 25 ppm total organic halogen limit will be an effective screen for all of the chlorinated dibenzofurans and chlorinated dibenzodioxins (i.e., the tetra- through octa-congeners). The minimum detection limits calculated for these congeners ranged from 30 to 150 ppm and the 25 ppm organic halogen specification will limit these congeners' concentrations to below those minimum detection limits. Additional factors in this decision to use the 25 ppm halogen limit as a screen for dioxins include the following:

(1) In particular, waste codes F020, F021, F022, F023, F026 and F028 have been designated as "inherently waste-like" under 40 CFR 261.2(d) and therefore are not eligible for the comparable fuel exclusion;

(2) Wastes listed because they contain dioxins would also be expected to contain significant levels of other halogenated organics. (The reader should note that the compounds in question are typically formed from the breakdown and reaction of other halogenated organics.) The higher concentrations of these other halogenated organics would drive the total organic halogen content of the waste up and, thus, the contribution of any chlorinated dibenzofurans and dioxins would have to be significantly less than the 25 ppm limit; and

(3) Waste codes expected to contain significant levels of other halogenated organics can be readily discerned from their list descriptions in 40 CFR 261 Subpart D (e.g., F001 and F002 solvent wastes are defined as halogenated solvents; F024 includes waste from production of halogenated organics.) In addition, Appendix III to Part 268 lists the halogenated organics typically found in hazardous wastes and that are subject to land disposal restrictions under 40 CFR 268.32. By comparing these, a person implementing today's rule could easily determine the most likely waste codes that could contain halogenated organics in excess of the 25 ppm limit, and thus easily identify wastes not eligible for the comparable fuels exclusion. See also Section E below for point of generation and blending/treatment discussions.

Commenters are also concerned that the use of a total organic halogen surrogate will possibly mask illegal PCB disposal. Since low analytical detection limits for PCBs (i.e., 1.4 ppm) in the benchmark fuel matrices have been well-demonstrated, the 25 ppm total organic halogen limit would not be a sufficient screen. Since PCBs are relatively common halogenated contaminants in fuel-like wastes and the probability of finding them is non-trivial, EPA is keeping the limits on PCBs to ensure levels no greater than from benchmark fuels. EPA also points out that there are several relatively inexpensive analytical screening methods that have been developed specifically for the determination of total PCBs.

With regard to analysis methodology, commenters have indicated that the test method (ASTM Method 4929) used by EPA to analyze for organic halogens may not be appropriate to analyze their candidate comparable fuel. EPA recognizes that the methods used in its own analysis of the benchmark fuels may not be appropriate for some candidate comparable fuels. Thus, in the final rule EPA is allowing the use of alternate methods or modifications to current methods that meet the performance based criteria in section § 261.38(c)(7). It is the responsibility of the generator to ensure that the sampling and analysis is unbiased, precise, and representative of the waste. For further details, see Section G. Sampling and Analysis, below.

b. Specification Levels for Nitrogenated Compounds. Although total nitrogen is not listed on Appendix VIII, Part 261, EPA proposed a total

[12] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

nitrogen specification to ensure that nitrogenated products of incomplete combustion (PICs) from burning a comparable fuel would not be emitted at higher levels than from burning a benchmark fossil fuel. See proposal (61 FR at 17462) and a subsequent notice of data availability (61 FR 43502, August 23, 1996). PICs resulting from burning nitrogenated organic compounds can also pose a particular hazard to human health and the environment.[13]

Commenters generally did not address the issue of formation of nitrogenated PICs. Instead, most commenters disagreed with the need to establish a specification for nitrogen under RCRA's comparable fuel specification when this pollutant (as NOx) is controlled under the Clean Air Act (CAA). Commenters argued that EPA has the authority under the CAA to control certain criteria pollutants, such as nitrogen oxides and, in fact, has promulgated primary and secondary National Ambient Air Quality Standards (NAAQS) for oxides of nitrogen. EPA believes that a total nitrogen specification is necessary. The counter-arguments advanced do not address EPA's rationale for establishing a total nitrogen limit. The CAA NAAQS do not themselves ensure control of individual combustion units in a manner that prevents formation of nitrogenated PICs, nor do they ensure that a hazardous waste-derived fuel would contain no greater amounts of nitrogenated compounds than fossil fuels. EPA is therefore establishing a total nitrogen specification to ensure that concentrations of nitrogenated PICs in comparable fuels will be no greater than in benchmark fuels.

As an additional part of its proposal, similar to total halogens, EPA invited comment on whether a total nitrogen specification could act as a surrogate for limits on individual nitrogenated compounds found in Appendix VIII. EPA believes that a surrogate approach would simplify the comparable fuels specification and possibly mean fewer and less costly sampling and analyses of comparable fuel streams for generators. However, analysis of EPA's composite data results in a total nitrogen specification of 4,900 ppm. The detection limits for EPA's analysis of individual nitrogenated compounds in its benchmark fuels ranged from 1 to 2200 ppm. Since detection limits for nitrogenated compounds in the benchmark fuels have been demonstrated well below 4,900 ppm, a total nitrogen specification would not be a sufficient screen for individual Appendix VIII nitrogenated compounds.

Therefore, for nitrogen compounds, EPA is promulgating a total nitrogen specification of 4,900 ppm with individual Appendix VIII nitrogen specifications. See § 261.38(a)(2), Table 1. This approach ensures that levels of individual nitrogenated compounds and the total nitrogen concentration are no greater than the benchmark fuels and creates a presumption that concentrations of nitrogenated PICs from burning a comparable fuel are no greater than burning a benchmark fuel.

3. Individual Hazardous Constituent Specifications

To limit the Part 261, Appendix VIII constituents in comparable fuels to those found in benchmark fossil fuels, the Agency calculated concentration limits using the Agency's analysis of individual benchmark fuel samples. Where EPA did not detect a particular Appendix VIII constituent in the benchmark fuel, the Agency set the constituent specification using one of two approaches. For constituents that the Agency did not detect and did not have reason to believe would be present in a benchmark fuel (e.g., halogenated organics), the comparable fuel specification is "non-detect" with an associated, specified minimum required detection limit for each compound. The detection limit is a statistically-derived level based on the quantification limit determined for each sample. While these constituents should not be present, the Agency will allow non-detects lower than the detection limits that EPA was able to obtain. However, EPA will not allow measured or quantified results below the specified minimum required detection limit where "non-detect" is the comparable fuel specification. For metals, hydrocarbons, and oxygenates, the Agency followed a different approach, which is described below.

a. Individual CAA and Appendix VIII Metals. EPA proposed concentration levels or minimum required detection limits for all CAA metals and RCRA Appendix VIII metals (61 FR at 17460). Commenters argued that the Agency should modify its approach with respect to non-detect levels and allow the hazardous constituent to be present in the comparable fuel up to the detection limit. In particular, commenters argued that metals are expected to be present in petroleum products, resulting from the formation process or the production process, and, therefore, it is reasonable to assume that non-detect metals in EPA's benchmark analysis would be present up to the detection limit. EPA agrees that metals could be present in fossil fuels but below EPA's detection limits. Therefore, the final rule allows metals to be present at any concentration less than or equal to the detection limits in EPA's analysis.

In addition, as proposed, EPA is setting limits for two metals that are not found on Part 261, Appendix VIII: cobalt and manganese. EPA included these metals in the analysis because they are listed in the Clean Air Act as hazardous air pollutants (HAPs). See CAA, section 112(b) and proposal (61 FR at 17460). By including these metal HAPs and the RCRA metals listed on Appendix VIII, Part 261, the Agency will ensure that the specification limits all toxic metals of concern in hazardous wastes to levels present in the benchmark fossil fuels. Therefore, EPA is promulgating constituent levels for the all CAA metals and RCRA Appendix VIII metals at the largest value composite of EPA fossil fuel data. See § 261.38(a)(2), Table 1.

b. Individual Appendix VIII Toxic Organics. EPA is promulgating constituent levels or minimum required detection limits for all Part 261, Appendix VIII, toxic organic constituents, unless otherwise noted. See § 261.38(a)(2), Table 1. Some Appendix VIII compounds were not analyzed because a routine analytical method is not available. Because EPA did not analyze for some compounds in Appendix VIII, EPA will not be promulgating standards for these remaining Appendix VIII constituents. These compounds are not listed in today's specifications, and a comparable fuel generator will not have to comply with specifications for these compounds. EPA believes it highly unlikely that a hazardous waste-derived fuel would contain only these undetectable Appendix VIII constituents.

i. Specification Levels for Undetected Pure Hydrocarbons. EPA proposed allowing pure hydrocarbons on Appendix VIII to be present at any concentration less than or equal to the detection limits in EPA's analysis. Since fossil fuels are comprised almost entirely of pure hydrocarbons [14] in varying concentrations, it is possible that many pure hydrocarbons in Appendix VIII, Part 261, could be present in fossil fuel but below detection limits. These materials, which include compounds such as fluoranthene, might not even be considered solid wastes when burned in

[13] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

[14] Excluding sulfur, carbon and hydrogen comprise 99.6 to 100% of liquid fossil fuels.

their pure carbon form since they are themselves products. See § 261.2(c)(2)(ii), and see proposal (61 FR at 17461).

Some commenters argued that no comparable fuels specifications should be established for pure hydrocarbon compounds because pure hydrocarbons will burn cleanly. EPA disagrees for the purpose of today's rule because establishing no limits for Appendix VIII hydrocarbons would depart from the basic comparable benchmark approach and even relatively clean-burning compounds may produce some toxic emissions. EPA's analysis confirms that these compounds are not present in the benchmark fuels above the minimum detection limits. However, it is reasonable to assume that the "non-detect" pure hydrocarbons could in fact be present in fossil fuels up to the detection limit since fossil fuels are comprised entirely of pure hydrocarbons. Therefore, the final rule allows hydrocarbons in Appendix VIII to be present at any concentration less than or equal to the detection limits in EPA's analysis. See § 261.38(a)(2), Table 1.

Some commenters argued that toluene, a typical fuel component, should be allowed without limitation in comparable fuels. As discussed above for all hydrocarbons, EPA disagrees with not establishing any limits on toluene, or establishing a different specification not based on fuel data, because this would depart from the comparable benchmark approach. EPA has established the toluene specification at the fuel data-based concentration found in its benchmark fuel analysis. However, because toluene can be a fuel component, setting a different data-based specification for toluene may be warranted at some point in the future, and therefore EPA will continue to remain open to considering further action.

ii. Specification Levels for Undetected Oxygenates. In addition to the pure hydrocarbon compounds, EPA invited comment on whether oxygenates should be allowed up to the detection limits in EPA's analysis and on what would be an appropriate minimum oxygen-to-carbon ratio to identify an oxygenate. (61 FR at 17461). Oxygenates are organic compounds comprised solely of hydrogen, carbon, and oxygen and can serve as fuels or fuel additives. Examples of oxygenates (not in Appendix VIII and thus not RCRA regulated) include alcohols such as ethanol, and ethers such as methyl tert-butyl ether (MTBE). Appendix VIII oxygenates are not routinely found in fossil fuels and only a few oxygenates were detected in EPA's sampling and analysis program.

Several commenters supported allowing oxygenates at any concentration less than or equal to the detection limit but also argued that EPA should go a step further and set no specification limits for oxygenated compounds. Commenters argued that oxygenates (like isobutyl alcohol) burn well and promote good combustion of other constituents in a fuel. Again, for the purpose of today's rule, EPA disagrees with not establishing any limits on oxygenates because this would depart from the basic comparable benchmark approach. EPA's analysis confirms that these compounds are not present in the benchmark fuel above the minimum detection limits and establishing a specification without fuel data containing oxygenates would depart from the comparable fuel approach. Furthermore, oxygenates are listed on Appendix VIII for their toxicity and in particular, one group of organic oxygenates, organic peroxides, can be extremely hazardous to manage. However, since most oxygenates burn well and are not likely to produce significant PICs, EPA will allow these compounds at any concentration less than or equal to the detection limits found in EPA's analysis.

EPA notes that the Clean Air Act provides for the use of some oxygenates (like isobutyl alcohol) as additives in unleaded gasoline and it may be appropriate to consider their use in a comparable fuel. However, at the time of this final rulemaking, EPA had no fuel data in which these oxygenates were used as gasoline additives and thus was not able to set a specification different than in today's final rule. As discussed above, any approach without using fuel data would depart from the comparable fuel approach. However, setting data-based specifications for certain oxygenates may be warranted at some point in the future, and therefore EPA will continue to remain open to considering further action.

With regard to a minimum oxygen-to-carbon ratio to define an oxygenate, one commenter recommended defining oxygenates simply as aliphatic compounds comprised of carbon, hydrogen, and oxygen. If EPA was intent on defining an oxygen-to-carbon ratio, other commenters recommended a ratio of 0.266, which is the ratio for MTBE. Defining an oxygenate with a minimum oxygen-to-carbon ratio or limiting the definition to only aliphatics is more conservative than necessary. Instead, EPA is defining an oxygenate as any compound comprised solely of hydrogen, carbon, and oxygen.

In summary, the final rule allows oxygenates, defined as any compound comprised solely of hydrogen, carbon, and oxygen, at any concentration less than or equal to the detection limits in EPA's analysis. See § 261.38(a)(2), Table 1.

D. Parameters for the Synthesis Gas Fuel Exclusion

In today's final rule, EPA is also excluding from the regulatory definition of solid waste (and, therefore regulation as hazardous waste) a particular type of hazardous waste-derived fuel, namely a type of synthesis gas ("syngas") fuel meeting particular specifications. The exclusion applies to syngas that results from the thermal reaction of hazardous wastes by a process designed to generate both hydrogen gas (H_2) and carbon monoxide (CO) as usable fuel. See proposal (61 FR at 17465).

Some commenters stated that synthesis gas fuels are beyond EPA's regulatory authority because they are uncontained gases. EPA has broad statutory authority to regulate fuels produced from hazardous wastes. RCRA section 3004 (q) (1); see also *Horsehead Resource Development Co.* v. *Browner*, 16 F. 3d 1246, 1262 (D.C. Cir. 1994) (broadly construing this authority). The fact that syngas (by definition) is a gas, rather than a solid or liquid, does not appear to raise jurisdictional issues. It is still produced from the hazardous wastes that are being processed thermally. See § 261. 2 (c) (2) (A) and (B) (defining such materials as solid wastes). EPA believes its authority to be clear under these provisions.

EPA also received a number of comments from persons operating synthetic gasification processes within the petroleum industry. These comments also argued that the Agency was without legal authority to regulate the fuel output of these processes even if the processes use hazardous waste as a feed material. The Agency has in fact adjudicated the status under existing regulations of such a unit, indicating that while both the process and the fuel output are within RCRA subtitle C jurisdiction, the process is a type of exempt recycling unit under 40 CFR 261.6(c)(1) and the fuel is also exempt under § 261.6(a)(3). Letter of Michael Shapiro (Director of Office of Solid Waste) to William Spratlin (Director RCRA Division EPA Region VII) (May 25, 1995).

Upon reflection, it appears that these petroleum gasification operations may be similar to other within-petroleum industry recycling activities that EPA has proposed to exclude from Subtitle C jurisdiction in the petroleum listing rule

proposed on November 20, 1995. 60 *FR* 57747. It therefore appears more appropriate to consider this overall jurisdictional issue in the context of that rulemaking. However, EPA is not at this time limiting the synthetic gas fuel exclusion insofar as it potentially applies to the output of gasification operations conducted as part of normal petroleum refining (SIC Code 2911). Thus, these syngas fuels can also be eligible for the exclusion in today's rule.

To ensure that any excluded hazardous waste-derived syngas contains low levels of hazardous compounds relative to levels in fossil fuels, the Agency is setting a series of syngas specifications addressing:

(1) physical specifications:

—Minimum Btu value (Btu/scf);

(2) general constituent specifications for:

—Total halogen (ppmv)
—Total nitrogen (ppmv)
—Hydrogen Sulfide (ppmv)

(3) individual hazardous constituent specifications, for:

—Individual Appendix VIII constituents (ppmv)

1. Physical Specifications

a. Minimum Btu value. Like the comparable fuel specification, EPA proposed that syngas fuel have a minimum Btu value of 5,000 Btu/lb. Commenters had several concerns with this specification. First, commenters noted that the heating value of a gas is almost universally measured in units of Btu per unit volume ("scf"). Second, commenters argued that due to the efficiencies of combustion, a gas can be used as a fuel even though its heating value, when expressed in terms of Btu per pound, is less than 5000. Commenters argued that using fuels with significantly higher Btu per scf could actually degrade efficiency of gas turbine electric generation systems and increase air emissions. For example, syngas with a heating value of 5000 Btu per pound would have to be diluted to reduce its heating value to enable a combustion turbine to meet NO_X emission limits. Furthermore, commenters argued that in many potential applications, syngas produced from hazardous waste would be used as a substitute for syngas produced from fossil fuels or syngas produced from non-hazardous secondary materials. Syngas produced from coal, coke, and certain types of secondary materials, with heating values less than 5000 Btu per pound (when expressed in these terms), are currently used as fuels.

EPA agrees with commenters' concerns with regard to the heating value of syngas. To set an appropriate heating value, EPA investigated the heating values of syngas currently manufactured for use as a fuel.[15] For fuel usage related purposes, syngas is classified as either medium- or low-Btu gases (medium-Btu generally being produced with pure oxygen, low-Btu generally with air). Medium-Btu syngas generated from the gasification of fuels (including coal, fuel oil, biomass, municipal solid wastes, plastics, etc.) with pure oxygen typically has heating values from 200 to 400 Btu/scf. Medium-Btu syngas can typically be used as a fuel for power production in a gas turbine. Low-Btu syngas generated from the gasification of fuels with air has heating values from about 100 to 200 Btu/scf. In most cases, low-Btu syngas does not achieve temperature and expansion ratios needed for thermodynamically efficient power generation. Low-Btu syngas is usually mixed with higher energy sources and is not generally desired for most applications. However, EPA notes that there are certain specifically designed gas turbines (with very large "silo" combustion chambers) that can handle very low-Btu (100 Btu/scf) syngases for power generation. Thus, a heating value of 100 Btu/scf is reasonable for syngas because it represents fuels used as legitimate energy sources. Therefore, EPA is establishing a minimum Btu value of 100 Btu/scf for synthesis gas. See § 261.38(b)(1).

2. General Constituent Specifications

a. Total Halogen Specification. As proposed, EPA is promulgating a total halogen specification for synthesis gas fuels of less than 1 ppmv. Like comparable fuels, EPA is establishing a total halogen specification to limit the formation of halogenated PICs from the burning of the hazardous waste-derived syngas fuel. EPA has looked at syngas manufactured from non-hazardous waste sources, such as coal, and concludes that 1 ppmv is a reasonable specification for total halogen for a synthesis gas fuel. See § 261.38(b)(2).

b. Total Nitrogen Specification. EPA proposed a total nitrogen specification of less than 1 ppmv of total nitrogen, other than diatomic nitrogen (N_2). Like comparable fuels, EPA was concerned about the formation of nitrogenated PICs from the nitrogen contained in the hazardous waste-derived syngas fuel. Commenters argued that regardless of whether nitrogen is present in the syngas, when syngas is burned, NO, NO_2 and NO_X will always form, as nitrogen present in the air combines with oxygen in the syngas, the air or both. In addition, commenters argued that the Agency or authorized states already regulate the emissions of these air pollutants through the issuance of air permits. Furthermore, commenters argued that nitrogen in the syngas would not lead to the formation of PICs.

EPA disagrees with the commenters that a total nitrogen specification is unnecessary and believes that the comments did not address EPA's rationale for a total nitrogen limit. EPA is establishing a total nitrogen specification to limit the formation of nitrogenated PICs. Diatomic nitrogen is not included in a total nitrogen specification because only organic-bound nitrogen compounds are expected to form PICs. However, a total nitrogen specification based on syngas used as a fuel is a more appropriate specification. EPA has looked at syngas currently manufactured for use as a fuel to establish a total nitrogen specification. Nitrogen compounds in syngas (other than N_2) are mostly in the form of HCN or NH_3. Syngas manufactured from coal can have HCN and NH_3 levels of 100 to 300 ppmv.[16] A total nitrogen specification of 300 ppmv would ensure that concentrations of nitrogenated PICs in waste-derived syngas will be no greater than syngas manufactured from coal. Therefore, in today's final rule, EPA is promulgating a total nitrogen specification of 300 ppmv, other than diatomic nitrogen (N_2) for synthesis gas fuel. See § 261.38(b)(3).

c. Hydrogen Sulfide Specification. EPA proposed a hydrogen sulfide (H_2S) specification of 10 ppmv for syngas fuels. Commenters argued that the H_2S specification is not necessary because the Clean Air Act has specifications that restrict the amount of sulfur that can be emitted by sources that would likely burn syngas fuel (i.e., boilers, combustion turbines). In addition, commenters argued that the potential of facilities that burn syngas as a fuel to emit sulfur compounds is low in comparison to facilities burning fossil fuels. For example, facilities that produce power by burning syngas produced from the gasification of coal emit approximately one-fifth of the level of sulfur compounds emitted by similar facilities burning coal.

EPA disagrees with the commenters that no hydrogen sulfide specification

[15] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Standards, Development of Comparable Fuels Specifications", May 1998.

[16] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Rule, Development of Comparable Fuels Specifications", May 1998.

should be promulgated. EPA is establishing the syngas exclusion by limiting Part 261 Appendix VIII constituents, one of which is hydrogen sulfide. However, a more appropriate specification would be based on current applications where syngas is used as a fuel, rather than the proposed specification of 10 ppmv. To set an appropriate hydrogen sulfide specification, EPA investigated the hydrogen sulfide levels in syngases currently manufactured from non-hazardous waste sources for use as a fuel.

The sulfur content of the material used to produce the syngas is converted to almost entirely H_2S in the gasification process, with smaller amounts of carbonyl sulfide (COS). Syngas produced from low sulfur content material does not contain appreciable H_2S. The H_2S content of high sulfur coal-based syngas can be over 1000 ppmv. However, in these cases, H_2S is removed during the gasification process. The amount of H_2S removal is dependent on how the syngas will be used. In the case of syngas used for chemical feedstock, the H_2S removal can be to a level under 1 ppmv. For the case of syngas used for fuel, H_2S removal can range to levels between 50 and 200 ppmv (above 200 ppmv leads to corrosion of down stream gas handling equipment, such as turbine blades.[17] Thus, 200 ppmv represents the level of H_2S in gas currently used in applications where syngas is used as a fuel. Therefore, in this final rule, EPA is promulgating a H_2S specification of 200 ppmv for synthesis gas fuels. See § 261.38(b)(4). EPA further notes that H_2S removal is considered as part of the gasification process and a syngas generator is required to meet the H_2S specification after this removal process.

3. Individual Hazardous Constituent Specifications

As proposed, EPA is promulgating specifications of less than 1 ppmv for each hazardous constituent listed in Appendix VIII of part 261 (that could reasonably be expected to be in the gas). Having received no comments to the contrary, this a reasonable specification for Appendix VIII constituents in a synthesis gas fuel. See § 261.38(b)(5). Since EPA is promulgating a total halogen specification for syngas and since this specification ensures that the excluded syngas has less than 1 ppmv of individual halogenated compounds, a syngas generator would not be expected to analyze for the individual halogenated compounds in Appendix VIII. However, a syngas generator would be expected to analyze for the individual nitrogenated compounds in Appendix VIII since a total nitrogen specification of 300 ppmv would not ensure that individual nitrogenated compounds would be limited to 1 ppmv. In addition, a syngas generator would be expected to analyze for the Appendix VIII constituents identified in the comparable fuels specification. See § 261.38(a)(2) Table 1.

E. Meeting the Comparable Fuel Specifications

1. Potential Applicability of Today's Rule to Specific Waste Codes

The probability of today's rule being applicable to any specific hazardous waste is highly dependent upon the waste codes assigned to that waste as well as the industry generating the waste. In developing the Land Disposal Restrictions (40 CFR part 268) and in developing the listings of hazardous wastes (40 CFR part 261), the majority of the listed hazardous wastes were analyzed for concentrations of specific hazardous constituents. EPA has already determined that the majority of listed hazardous wastes (i.e., those having codes beginning with "F", "K", "U" or "P") are known to contain at least one of the hazardous constituents that are restricted by today's rule to "non-detect" levels. Appendix VII to Part 261 provides a partial list of hazardous constituents that are known to be present in each Listed Waste code, and the Treatment Standards for Hazardous Wastes (40 CFR 268.40) indicate constituents (and concentrations) that are specifically regulated for land disposal for each waste code. The majority of these constituents and waste codes are restricted to "non-detect" levels in today's rule and so a potential comparable fuel containing these constituents either could not be used, or would have to be treated so that the hazardous constituents are removed or destroyed to non-detect levels. See treatment discussion below, Section E.4. It is possible, however, that an organic solvent or oil could carry one of these codes, based on the derived-from rule only, and could comply with the limits in today's rule. As such, EPA did not restrict the application of today's rule to any waste code, except in the case of wastes listed for the presence of dioxins or furans. See 261.38(c)(12). However, EPA does not expect that corrosive or reactive wastes would be candidate comparable fuels because of the detrimental impacts on the burning unit that would occur.

At the same time, there are specific listed waste codes that EPA expects to contain only those constituents for which today's rule sets maximum allowable concentrations. As such, some wastes with these codes would be likely candidates for compliance with the corresponding constituent limits. These applicable wastes are primarily expected to be: ignitable solvent wastes (F003 and F005), wastes from petroleum production (F037, F038, and K048–51), and wastes from coking operations (K060, K087, K141–145, K147 and K148). Table 1 also lists a set of U waste codes and their corresponding constituents that may be applicable depending upon their concentrations.

It is expected that today's rule will primarily be applied to wastes that are classified as hazardous only because they exhibit the hazardous characteristic of ignitability (D001) and/or corrosivity (D002). In comparing the regulatory levels for characteristic metal wastes (D004–D011) and the corresponding allowable limits for these metals in today's rule, there is an extremely small window of applicability for some wastes identified as D006 (cadmium) or D009 (mercury) and likewise a relatively small window of applicability for some D008 wastes (lead). All other characteristic metal wastes fail the limit restrictions for metals. D003 wastes that are classified as hazardous due to their cyanide (CN) content are expected, for the most part, to fail to meet the specification for total nitrogen. Except for D018 wastes (benzene), wastes that are characteristic for organics (D012–D043) are also expected to be unable to comply with either the limits or the "non-detect" requirements.

All wastes consisting primarily of alcohols (e.g., ethanol or isopropanol), petroleum distillates, oils, or other ignitable organic liquids) are the most likely candidates for applying today's rule. This is quite logical in that these chemicals tend to have good fuel value when compared to the fuels examined for today's rule. The most probable listed wastes that are expected to be able to comply with today's rule are F003 and F005 solvents (except those F005 wastes containing carbon disulfide, pyridine, or nitrobenzene). There are an additional number of "U" wastes identified in Table 2 that are also good candidates for compliance with today's rule. These chemicals are either hydrocarbons or oxygenated hydrocarbons for which today's rule does not establish any limits.

Because of the potential for cross-contamination, wastes from facilities

[17] For further discussion see USEPA, "Final Technical Support Document for HWC MACT Rule, Development of Comparable Fuels Specifications", May 1998.

(e.g., pesticide manufacturers and halogenated solvent manufacturers) known to manufacture concentrated forms of the chemicals restricted by today's rule, are the most likely to require closer scrutiny and testing. However, wastes generated by these facilities that are not expected to be cross-contaminated would include non-contact solvents, hydraulic or lubricating oils, and solvent-based wastes from the production of unregulated constituents.

TABLE 1.—LISTED "U" WASTES WITH CORRESPONDING CONSTITUENT LIMITS

Constituent for which the code was listed	Waste code
Acetophenone	U004
Benz[a]anthacene	U018
Benzene	U019
Benzo(a)pyrene	U022
Bis(2-ethylhexyl) phthalate	U028
Chrysene	U050
Creosote	U051
Cresol cresylic acid (total cresols)	U052
Dibenz[a,h]anthracene	U063
Di-n-butyl phthalate	U069
Diethyl phthalate	U088
7,12-Dimethylbenz[a]anthracene	U094
Di-n-octyl phthalate	U107
Fluoranthene	U120
Indeno(1,2,3-cd) pyrene	U137
3-Methylcholanthrene	U157
Naphthalene	U165
Toluene	U220
Acrolein	P003
Allyl alcohol	P005
Endothall	P088
Propargyl alcohol	P102
Ethyl methacrylate	U118
Isobutyl alcohol	U140
Isosafrole	U141
Methyl ethyl ketone [2-Butanone] [MEK].	U159
Methyl methacrylate	U162
1,4-Naphthoquinone	U166
Phenol	U188
Safrole	U203
2-Ethoxyethanol [Ethylene glycol monoethyl ether].	U359

TABLE 2.—LISTED "U" WASTES WITH NO CORRESPONDING CONSTITUENT LIMITS

Constituent for which the waste was listed	Waste code
Acetaldehyde [Ethanal]	U001
Acetone [2-Propanone]	U002
2-Acetylaminofluorene [2-AAF]	U005
Acrylic acid	U008
Benz[c]acridine	U016
n-Butyl alcohol [n-Butanol]	U031
Carbon oxyfluoride	U033
Crotonaldehyde	U053
Cumene [Isopropyl benzene]	U055
Cyclohexane	U056
Cyclohexanone	U057

TABLE 2.—LISTED "U" WASTES WITH NO CORRESPONDING CONSTITUENT LIMITS—Continued

Constituent for which the waste was listed	Waste code
Dibenzo[a,i]pyrene	U064
1,2:3,4-Diepoxybutane [2,2'-Bioxirane]	U085
∝,∝-Dimethyl benzyl hydroperoxide	U096
2,4-Dimethylphenol	U101
Dimethyl phthalate	U102
1,4-Dioxane [1,4-Diethyleneoxide]	U108
Ethyl acetate	U112
Ethyl acrylate	U113
Ethylene oxide	U115
Ethyl ether	U117
Formaldehyde	U122
Formic Acid	U123
Furan	U124
Furfural	U125
Glycidylaldehyde	U126
Maleic anhydride	U147
Methanol	U154
Methyl ethyl ketone peroxide	U160
Methyl isobutyl ketone [4-Methyl-2-pentanone].	U161
Paraldehyde	U182
1,3-Pentadiene	U186
Phthalic anhydride	U190
Quinone [p-Benzoquinone]	U197
Resorcinol	U201
Tetrahydrofuran	U213
Xylenes, mixed isomers [Xyenes, total].	U239

2. General

The proposal provided several methods by which a hazardous waste could qualify as a comparable fuel. The final rule retains these methods and adds clarifying conditions to ensure that the methods do not violate existing policy with regard to blending and treatment. The person claiming that a hazardous waste meets the exclusion criteria of this rule will be referred to as the "comparable fuel generator," in the case of excluded liquid fuel, or "syngas fuel generator," in the case of excluded syngas fuel. In today's final rule, a hazardous waste can meet the comparable fuel hazardous constituent, heating value and viscosity specifications of § 261.38(a) in several ways. However, in each case, the generator claiming the exclusion is responsible for demonstrating eligibility. In addition, just meeting the hazardous constituent, heating value and viscosity specifications would not qualify a hazardous waste for the exclusion. The implementation requirements of § 261.38(c) (e.g., notification, certification, sampling and analysis, recordkeeping) must also be satisfied for a hazardous waste to be excluded as a comparable fuel.

A waste can meet the § 261.38(a)(2) hazardous constituent specification if the hazardous waste "as generated," i.e. without any processing, blending or other alteration: (a) Meets the hazardous constituent specification; or (b) does not meet the hazardous constituent specification, but undergoes treatment, pursuant to § 261.38(c)(4), so that the hazardous constituents of concern are destroyed or removed to concentrations that meet the exclusion specification.

A waste can meet the § 261.38(1)(i) heating value specification if the hazardous waste as generated without processing: (a) Meets the heating value specification; or (b) does not meet the hazardous constituent specification, but undergoes treatment, pursuant to § 261.38(c)(4), that destroys or removes material to increase the heating value to meet the exclusion specification.

A waste can meet the § 261.38(a)(1)(ii) viscosity specification if the hazardous waste as generated without processing: (a) Meets the viscosity specification; (b) does not meet the viscosity specification, but through blending, pursuant to § 261.38(c)(3) with fossil fuel, another excluded comparable fuel, or other non-waste changes the viscosity to meet the exclusion specification; or (c) does not meet the viscosity specification, but undergoes treatment, pursuant to § 261.38(c)(4) that destroys or removes material to decrease the viscosity to meet the exclusion specification.

3. Blending

Commenters supported allowing the blending of a hazardous waste that meets the constituent and heating value specifications for the purpose of decreasing viscosity. However, commenters were concerned that blending could dilute toxic constituents and said that blending should only be allowed if toxic constituents in the hazardous waste would not be diluted. In today's final rule, the Agency allows an as-generated hazardous waste, which meets the hazardous constituent and heating value specifications, but does not meet the viscosity specification, to be blended to meet the viscosity specification (see § 261.38(a)). The generator must document that the hazardous waste, as generated without processing, meets the hazardous constituent and heating value specifications prior to any blending. It is also the responsibility of the generator to document that the blending does not violate the dilution prohibition of § 261.38(c)(6). This provision states that the hazardous constituent and heating

value specifications cannot be met through dilution; i.e. they can only be met through treatment which destroys or removes hazardous constituents, or by the waste as-generated. See generally 61 FR at 15586–87 (April 8, 1996) (extending dilution prohibition in § 268.3 to include combustion of inorganic wastes). Allowing blending to meet the hazardous constituent or heating value specification simply increases the amounts of hazardous constituents emitted when the fuels are burned, and would increase these amounts above those emitted if fossil fuels were burned instead. This is at inconsistent with the whole premise of comparable fuels, and also is inconsistent with the section 3004(m) hazardous waste treatment provisions (which, although not directly applicable, articulate important overall statutory objectives) which require hazardous constituents to be removed or destroyed by treatment, not diluted. *Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 16 (D.C. Cir. 1992). As noted earlier, such burning can be viewed as part of the waste management problem, and EPA may validly condition the exclusion to prevent that result.

Blending of a hazardous waste pursuant to § 261.38(c)(3) to meets the viscosity specification obviously may be performed only in regulated units: at a permitted RCRA treatment, storage facility; a regulated interim status treatment, storage facility; or at a 90-day generator unit meeting the requirements of § 262.34.

4. Treatment

Commenters also supported the proposal to allow a hazardous waste to be treated to meet the comparable fuel specifications. Many of the same commenters also expressed concerns that any treatment allowed should reduce emissions of hazardous constituents, i.e. treatment must destroy or remove the constituents or materials of concern. The Agency agrees, and § 261.38(c)(4) specifically states that only treatment which destroys or removes hazardous constituents or materials is permissible. Moreover, as noted above, the waste remains subject to subtitle C control during treatment and thus treatment can only occur in regulated units. (Treatment by blending to meet the viscosity specification likewise can only occur in regulated units, for the same reason.)

It is the responsibility of the generator claiming the exclusion to demonstrate eligibility. See generally § 261.2(f). It should be noted that just meeting the hazardous constituent, heating value and viscosity specifications would not qualify a hazardous waste for the exclusion; the implementation requirements of § 261.38(c) (e.g., notices, certification, sampling and analysis, recordkeeping, etc.) also must be satisfied for a hazardous waste to be excluded as a comparable fuel. The person that treats the hazardous waste to generate a comparable fuel must also demonstrate that the treatment of the hazardous waste destroys or removes the hazardous constituents or materials of concern from the waste. The treater must: (1) Document that the unit that will treat the hazardous waste has been demonstrated to effectively remove or destroy the hazardous constituents (at the levels present in the waste) or materials of concern from the type of waste being treated; or (2) treat the waste in a unit that removes or destroys the constituents of concern, then reanalyze the waste, in accordance with the requirements of § 261.38(c)(8), to document that the constituent specifications have been satisfied.

If a hazardous waste is treated to produce a comparable fuel, only the waste-derived fuel would be excluded from RCRA subtitle C regulation upon a determination that it met the specification. The hazardous waste would be regulated under Subtitle C from the point of generation until the generation of a comparable fuel that meets the exclusion specifications and implementation requirements. This means that the generation, transport, storage, and treatment of the hazardous waste, until exclusion as a comparable fuel, remains subject to applicable Subtitle C regulations.

In addition, residuals from the treatment of a hazardous waste remain solid waste and, if hazardous, are subject to applicable Subtitle C regulations. Thus, if comparable fuel is produced from treatment of listed hazardous waste, the wastes from that process are automatically hazardous by virtue of the derived from rule. (See the derived-from rule in § 261.2(d).)

F. Meeting the Syngas Specifications

Commenters felt the proposal was not very specific in describing ways in which a syngas fuel could be generated from hazardous waste. The final rule makes clear that a hazardous waste can meet the syngas fuel constituent and heating value specifications through the treatment of the hazardous waste. As with comparable fuels, it is the responsibility of the generator claiming the exclusion to demonstrate eligibility. The treatment of a hazardous waste to generate a syngas fuel can occur in either: (1) A unit subject to applicable Subtitle C treatment, storage and disposal requirements (i.e., Parts § 264, § 265 or § 262.34); or (2) a recycling unit exempt under § 261.6(c).

The generator of the syngas fuel must demonstrate that the treatment of the hazardous waste destroys or removes the hazardous constituent of concern from the waste. A generator of syngas fuel from the treatment of hazardous waste must: (1) Document that the unit that will process the hazardous waste has been demonstrated to effectively remove or destroy the hazardous constituents of concern from the type of waste being treated; and (2) process the hazardous waste in a unit that removes or destroys the constituents of concern, then analyze the waste in accordance with the requirements of § 261.38(c)(8) to document that the exclusion specifications have been satisfied. If a hazardous waste is processed to produce a syngas fuel that meets the exclusion specifications, only the syngas fuel would be excluded from RCRA subtitle C regulation.

In addition, residuals from the treatment of a hazardous waste to generate an excluded syngas fuel remain solid waste and are subject to applicable Subtitle C regulations if they are also hazardous wastes. Residuals from the treatment of a listed hazardous waste to generate a syngas fuel remain hazardous wastes due to the derived-from rule: the residuals are derived from treatment of listed hazardous wastes.

G. Sampling and Analysis

Commenters expressed concern that the Agency proposed: (1) To initially require sampling and analysis for all Appendix VIII constituents; (2) to require the use of SW–846 methods to conduct sampling and analysis of Appendix VIII constituents; and (3) to also require the use of the same methods for syngas as for comparable fuels. In response to commenters concerns, the Agency is finalizing the following approaches to sampling and analysis of comparable fuel and syngas fuel.

1. Use of Process Knowledge

A majority of commenters believed that EPA should allow the use of process knowledge under limited circumstances in determining which constituents to test for in the initial scan as well as any follow up testing. The Agency agrees with commenters. Generators of hazardous wastes should have adequate knowledge of their waste to allow the use of process knowledge in determining which constituents may and may not be present in their waste.

The use of process knowledge may only be used by the original generator of

the hazardous waste. If the generator of the hazardous waste and generator of the comparable/syngas fuel are different, then the generator of the comparable/syngas fuel may not use process knowledge to determine that constituents are not present in the waste. The generator of the comparable/syngas fuel, if not the original generator of the hazardous waste, must test for all of the constituents and properties in § 261.38(a)(2) Table 1 of the regulations. This is because the Agency believes that only the original generator may have intimate knowledge of the constituents in the waste to make such a determination. See § 268.7, where EPA uses the same approach for analyzing compliance with LDR treatment standards; *see also Hazardous Waste Treatment Council* v. *EPA*, 886 F. 2d 355, 368–71 (D.C. Cir. 1989) (upholding this approach).

Therefore, the final rule allows the use of process knowledge under certain circumstances. Today's rule requires testing for all constituents except those the initial generator of the hazardous waste determines should not be present in the waste. The following cannot be determined to "not be present" in the waste: (1) A hazardous constituent that causes the waste to exhibit the toxicity characteristic for the waste or hazardous constituents that were the basis for the listing of the waste; (2) a hazardous constituent detected in previous analysis of the waste; (3) a hazardous constituent introduced into the process that generates the waste; or (4) a hazardous constituent that is a byproduct or side reaction to the process that generates the waste.

It is the responsibility of the original generator/comparable fuel generator to document their claim that specific hazardous constituents meet the exclusion specifications based on process knowledge. Regardless of which method a generator uses, testing or process knowledge, the generator is responsible for ensuring that the waste meets all constituent specifications at all times. If at any time the comparable fuel fails to meet any of the specifications, that fuel is in violation of Subtitle C requirements.

2. Waste Analysis Plan

As in the proposal, the final rule requires comparable fuel generators to develop a waste analysis plan prior to sampling and analysis of their hazardous waste to determine if the waste meets the exclusion specifications. This is consistent with the usual requirement throughout the Subtitle C rules that persons generating and treating hazardous waste must prepare a waste analysis plan. See, e.g. § 264.13 (general waste analysis plans) and § 268.7(a)(4) (requiring even generators using 90-day units for treatment to prepare waste analysis plans with respect to hazardous waste prohibited from land disposal). To ensure that the chemical/physical measurements of the waste are sufficient, accurate and precise, the Agency is requiring comparable fuel generators to develop a waste analysis plan, and suggest doing so in accordance with Agency guidance. Chapter Nine of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846) addresses the development and implementation of a scientifically credible sampling plan. Chapter One of SW–846 describes the basic elements to be included in a Quality Assurance Project Plan (QAPP), as well as information describing basic quality assurance (QA) and quality control (QC) procedures. Chapter Two of SW–846 aids the analyst in choosing the appropriate methods for samples, based upon sample matrix and the analytes to be determined.

Comparable fuel generators may want to follow the SW–846 guidance in developing their waste analysis plans. As specified in the recordkeeping section of the rule (§ 261.38(c)(10)) the generator also must have documentation of the: (1) Sampling, analysis, and statistical analysis protocols that were employed; (2) sensitivity and bias of the measurement process; (3) precision of the analytical results for each batch of waste tested; and (4) results of the statistical analysis.

3. Methods To Analyze Comparable Fuels

In the proposal, EPA required the use of SW–846 methods for the sampling and analysis of wastes to determine if the waste meets the comparable fuel exclusion constituent specifications. Based on commenter response and the Agency's overall increased use of alternative methods to those specified in SW–846, the final rule allows the use of alternate methods that meet the performance based criteria in section § 261.38(c)(8).

The approach allows comparable/syngas fuel generators to use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis is unbiased, precise, and representative of the waste. For the waste to be eligible for exclusion, a generator must demonstrate that: (1) Each constituent of concern is not present above the specified specification level at the 95% upper confidence limit around the mean; and (2) the analysis could have detected the presence of the constituent at or below the specified specification level at the 95% upper confidence limit around the mean. (See Guidance for Data Quality Assessment—Practical Methods for Data Analysis, EPA QA/G–9, January 1998, EPA/600/R–96/084).

The Agency will consider that the exclusion level was achieved in the waste matrix if an analysis in which the constituent is spiked at the exclusion level indicates that the analyte is present at that level within analytical method performance limits (e.g., bias and precision). In order to determine the performance limits for a method, EPA recommends following the quality control (QC) guidance provided in Chapters One and Two of SW–846, and the additional QC guidance provided in the individual methods.

The Office of Solid Waste's (OSW) standing policy on the Appropriate Selection and Performance of Analytical Methods for Waste Matrices Considered to be "Difficult-to-Analyze" was stated in a January 31, 1996 memorandum from Barnes Johnson, Director of the Economics, Methods, and Risk Assessment Division, to James Berlow, Director of the Hazardous Waste Minimization and Management Division. The following excerpts are appropriate to this rulemaking.

Inadequate recovery of target analytes from the RCRA-regulated waste matrices of concern demonstrates that the analytical conditions selected are inappropriate for the intended application. Proper selection of an appropriate analytical method and analytical conditions (as allowed by the scope of that method) are demonstrated by adequate recovery of spiked analytes (or surrogate analytes) and reproducible results. Quality control data obtained must also reflect consistency with the data quality objectives and intent of the analysis.

(a) For extractable organics in standard RCRA matrices, e.g., groundwater, aqueous leachates, soils, OSW considers a sample preparation method appropriate for use if it generates an analyte recovery of 70% or greater (Method 8270C, Sec. 1.1). For extractable organics in "difficult matrices", e.g., sludges, ash, stabilized wastes, OSW considers a sample preparation method appropriate for use if it generates an analyte recovery of 50% or greater.

(b) For volatile organics, using relative recoveries, i.e., standard curves established by purge-and-trap, or other

techniques for the preparation of standards, OSW considers a sample preparation method appropriate if it generates a relative analyte recovery of 80% or greater (Methods 8260B, 8015B).

(c) For inorganic analytes in almost all matrices, an absolute recovery and precision of 80–120% can generally be achieved with the proper choice of acid digestion procedure and determinative method for the analyte of interest."

4. Syngas Waste Analysis Plan and Analysis Methods

a. General. EPA is concerned that tested and generally accepted methods may not exist for the sampling and analysis of gases from pressurized systems that will ensure an accurate, unbiased, and precise representation of the hazardous constituents present in the gas.

Hazardous constituents present in a gas at high pressure and high temperature may be difficult to analyze accurately due to possible physical and chemical changes in the constituents when a sample is drawn into a low pressure and temperature environment for analysis. For example, some constituents, while present as a gas under high pressure and temperature, may solubilize into liquids that have condensed or adhere to the sampling components as the pressure and temperature drops in the sampling device. If this were to occur, the analysis of the sampled gas would not accurately represent the concentrations of the constituents in the original gas.

The Agency also shares the general concern stated in comments that enforcement of the exclusion specifications could be compromised because of the difficulty in applying or potential absence of accepted sampling and analysis methods for these gases. Therefore, the final rule requires syngas generators to submit for approval, prior to sampling and analysis, a waste analysis plan to the appropriate regulatory authority (see § 261.38(c)(7)(iii)). At a minimum, the plan must specify: (1) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of those parameters; (2) the test methods which will be used to test for these parameters; (3) the sampling method which will be used to obtain a representative sample of the waste to be analyzed; and (4) the frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and (5) if process knowledge is used in the waste determination, any information prepared by the facility owner or operator in making such determination.

b. Analysis. A syngas fuel generator also may use the performance-based approach (§ 261.38(c)(8)) to demonstrate that the performance of the methods selected is appropriate to meet the exclusion specifications (as described in 3 above). Guidance on demonstration of appropriate method performance can be found in Chapter One of SW–846 and the Quality Control sections of the individual methods.

5. Non-Detects

EPA proposed that for a waste to meet a non-detect standard, the analysis must achieve a detection limit equal to or less than the EPA specified number and also not detect the constituent of concern in the waste (61 FR 17358). However, some commenters believe that the Agency should develop numerical levels for each parameter in the benchmark where results are "non-detect." They are concerned that a potential comparable fuel that has any measurable levels of Appendix VIII constituents below the Agency's detection limits would not qualify as a comparable fuel.

The final rule maintains the proposed approach for non-detect constituent specifications, except in the case of metals, hydrocarbons and oxygenates (see Section C. above). The Agency believes that allowing concentrations of constituents not found in the benchmark fuels to be present in the comparable fuel is counter to the comparable approach and could allow higher emissions of toxic compounds from burning excluded waste than from benchmark fuels. Additionally, commenters noted that the detection limit, referenced as the "maximum" detection limit, should more accurately be referred to as the "minimum" detection limit that must be achieved. The Agency agrees and the final rule requires that analysis for a constituent with a specification of non-detect must: (1) Meet a detection limit at or less than the minimum required detection limit listed for the constituent; and (2) not detect the constituent of concern in the waste (see § 261.38(a) and (b)).

Commenters also indicated that it may be difficult to achieve the detection limits specified for the non-detect specifications. The Agency continues to believe that the detection limits can be met. This is due in part to the fact that the detection limits are primarily based on the limits found for the No. 6 fuel oil analysis. EPA believes that the matrix for No. 6 fuel oil is a more difficult matrix to analyze than what the Agency believes will be the matrix for the majority of comparable fuels—a light solvent matrix. In addition, to assist generators who may have difficult matrices to analyze, the final rule provides the latitude to use any method that will ensure an unbiased and precise analysis of the waste.

H. Notification, Certification, and Documentation

1. Who Must Make the Exclusion Notification

The person claiming that a hazardous waste meets the exclusion criteria of this rule is known as the "comparable fuel generator" in the case of excluded liquid fuel or "syngas fuel generator" in the case of excluded syngas fuel. The comparable/syngas fuel generator need not be the person who originally generates the hazardous waste. The comparable/syngas fuel generator can be the first person who documents and certifies that a specific hazardous waste meets the exclusion criteria.

2. Notification Requirements

Most commenters agreed with the proposal that a one-time notification was appropriate; however, some commenters said that the exclusion should not be self-implementing and should require some type of review and approval by the implementing authority. The Agency continues to believe that a one-time notification in combination with the other requirements of this section, gives sufficient notice to the regulating officials (i.e., State RCRA and CAA officials). Since this is a self-implementing exclusion, in order to ensure delivery, the notification must be sent certified mail and until the notification of exclusion is received the waste is still a hazardous waste and must be managed as such. Only after the receipt of such notification that the hazardous waste-derived fuel meets the requirements of this rule is the waste excluded and free to be managed in accordance with the requirements for a comparable or syngas fuel. If a comparable/syngas fuel generator loses its exclusion, the generator must renotify for the exclusion, after coming into compliance with the requirements of this section. If necessary the generator must also comply with any applicable Subtitle C requirements for the waste.

a. EPA Regional or State Notification. Prior to managing any waste as an excluded comparable/syngas fuel under this section, the generator must send to, in States not authorized to implement this Section, the EPA Regional RCRA and CAA Directors, and, in authorized States, to the State RCRA and CAA Directors. The notification of the exclusion claim should be sent via

certified mail, or other mail service that provides written confirmation of delivery. Notification of the RCRA and CAA Directors will provide notification of the exclusion and appropriate documentation to both the RCRA and CAA implementing officials. The Agency's intent is for copies of the exclusion information to reach both the RCRA and CAA implementing officials because of the nature of this exclusion—a RCRA excluded waste being burned in CAA regulated units. If the comparable/syngas is to be burned in a State other than the generating State, then the comparable/syngas fuel generator must also provide notification to that State's or Region's RCRA and CAA Directors.

The notification shall contain the following items: (1) The name, address, and RCRA ID number of the person/facility claiming the exclusion; (2) the applicable EPA Hazardous Waste Codes for the hazardous waste; (3) the name and address of the units, meeting the requirements of § 261.38(c)(2), that will burn the comparable/syngas fuel; and (4) the following statement signed and submitted by the person claiming the exclusion or his authorized representative:

"Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 have been met for all waste identified in this notification. Copies of the records and information required at 40 CFR 261.38(c)(10) are available at the comparable/syngas fuel generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

b. Public Notification. As a self-implementing exclusion effective upon receipt of the notification by the implementing authority, there is no decision prior to exclusion being made by the implementing authority regarding the waste. The opportunity exists at all times for the public to bring to the implementing authority's attention any circumstance that might aid that authority in its monitoring and enforcement efforts. The public, furthermore, would have the ability to bring a citizen suit for a claimant's failure to comply with any requirement of the exclusion. Based on comments received on the proposal, the Agency believes that requiring the comparable/syngas fuel burner to provide a simple public notification of an exclusion claim would aid the public in its efforts. In most cases, the Agency believes the burner will also be the generator of the fuel.

Therefore, under the final rule, the comparable/syngas fuel burner must submit for publication in a major newspaper of general circulation local to the site where the comparable/syngas fuel will be burned, a notice entitled "Notification of Burning of Comparable/Syngas Fuel Excluded Under the Resource Conservation and Recovery Act" containing the following information: (1) Name, address, and RCRA ID number of the claimant's facility; (2) name and address of the unit(s) that will burn the comparable/syngas fuel; (3) a brief, general description of the manufacturing, treatment, or other process generating the comparable/syngas fuel; (4) an estimate of the average and maximum monthly and annual quantity of the waste claimed to be excluded; (5) name and mailing address of the State or Regional Directors to whom the claim is being submitted. This notification must be published in the newspaper prior to the burning of the comparable/syngas fuel. Notification is only necessary once for each waste stream excluded.

c. Burner Certification. As proposed, the final rule requires comparable/syngas fuel to be burned only in units subject to Federal/State/local air emission requirements. The Agency believes that limiting the burning of comparable/syngas fuels to industrial furnaces or industrial boilers, or hazardous waste incinerators, along with a certification from the burner, would ensure that the fuel was burned in a unit subject to Federal/State/local air emission regulations. Industrial furnaces or industrial boilers, or hazardous waste incinerators are believed to be a universe of units that are capable of handling comparable/syngas fuels and that would be subject to Federal/State/local air emission requirements. In response to comments, the Agency believes that these excluded hazardous wastes are best handled and burned in the types of units specified in § 261.38(c)(2). To ensure that comparable/syngas fuels burned off-site are burned in a unit specified in § 261.38(c)(2) (see discussion below), the Agency is requiring the generator to obtain from the burner a one-time written, signed certification that: (1) The comparable/syngas fuel will be burned only in an industrial furnace or boiler, or hazardous waste incinerator subject to Federal, State, or local air emission requirements; (2) identifies the name and address of the units that will burn the comparable/syngas fuel; and (3) the state in which the burner is located is authorized to exclude wastes as comparable fuels (i.e., under the provisions of § 261.38). This requirement coupled with the requirement to notify the State or Regional Directors will enable regulatory officials to take any measure that may be appropriate to ensure that excluded fuel is burned in conformance with applicable regulations and so does not become part of the waste management problem.

If the generator or burner intends to change the unit where the comparable/syngas fuel is burned (i.e., burn a comparable/syngas fuel in a unit that has not previously been included in a certification), then prior to burning, the generator must again follow the requirements for: (1) Obtaining a burner certification; (2) notifying the public; and (3) submitting a revised notification to the State or Regional Directors. Once the revised notification has been received by the State or Regional Directors and the notification has been published in the newspaper, the generator/burner may burn the fuel as an excluded waste.

I. Exclusion Status

Some commenters requested clarification of the regulatory status of the comparable/syngas fuel if the conditions of the exclusion were not met. After the exclusion for a waste has become effective, the conditions of the exclusion must continue to be met in order to maintain the exclusion.

Separate and distinct from any requirement or condition established in this final rule, all generators—including comparable/syngas fuel generators under this exclusion—have a continuing obligation to identify whether they are generating a hazardous waste and to notify the appropriate government official if they are generating a hazardous waste. Section 3010; 40 CFR 262.11. If a comparable fuel claimed as excluded under today's rule fails to meet the exclusion requirements of sections § 261.38(a)–(c), that comparable/syngas fuel and subsequently generated comparable/syngas fuel would be required to be managed as a hazardous waste—including compliance with all notification requirements—until testing demonstrated that the waste was below the exclusion specifications.

A comparable/syngas fuel that is not ultimately burned remains a hazardous waste and is subject to all applicable Subtitle C regulations (unless another exclusion from RCRA applies). As stated

in the proposal, the only allowable treatment or disposal method for a comparable/syngas fuel is burning. Any disposal method other than burning is a RCRA violation, unless the comparable/syngas fuel is properly managed as a hazardous waste meeting applicable Subtitle C regulations. The implications of not burning are that any prior management of the waste was subject to Subtitle C requirements.

Excluded comparable/syngas fuel generators, transporters and burners are subject to the speculative accumulation requirements under § 261.2(c)(4). Thus, there must be turnover of a given percentage of comparable fuel stock each calendar year, and the persons holding such fuels must be able to demonstrate that such turnover is occurring. See § 261.2(f). Since ultimate users are notified that they are receiving comparable fuels, they may feasibly comply with this requirement by documenting how much such fuel is received when it is burned.

If a generator knows or should have known that a waste fails to meet the constituent specifications, the exclusion ends as of the point of determination and the material must be managed as a hazardous waste.

J. Recordkeeping

1. General

Some commenters believed that the recordkeeping requirements in the proposal were excessive, while others felt they were too lenient. The Agency, however, believes that because of the self-implementing nature of this exclusion, maintenance of the proper information on-site is essential to the proper implementation of the exclusion.

The final rule requires the comparable/syngas fuel generator to maintain the following files (see § 261.38(c)(10)) at the facility generating the fuel: (1) All information required to be submitted to the State RCRA and CAA Directors as part of the notification of the claim: (i) the name, address, and RCRA ID number of the person claiming the exclusion; (ii) the applicable EPA Hazardous Waste Codes for the hazardous waste; (2) a brief description of the process that originally generated the hazardous waste and process that generated the excluded fuel; (3) an estimate of the average and maximum monthly and annual quantities of each waste claimed to be excluded; (4) documentation for any claim that a constituent is not present in the hazardous waste as required under § 261.38(8); (5) the results of all analyses and all quantitation limits achieved for the fuel; (6) documentation as required for the treatment or blending of a waste to meet the exclusion specifications; (7) a certification from the burner if the waste is to be shipped off-site; and (8) the certification signed by the person claiming the exclusion or his authorized representative.

The generator must also maintain documentation of the waste analysis plan and the results of the sampling and analysis that includes the following: (1) the dates and times waste samples were obtained, and the dates the samples were analyzed; (2) the names and qualifications of the person(s) who obtained the samples; (3) a description of the temporal and spatial locations of the samples; (4) the name and address of the laboratory facility at which analyses of the samples were performed; (5) a description of the analytical methods used, including any clean-up and sample preparation methods; (6) all quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred; (7) all laboratory analytical results demonstrating that the exclusion specifications have been met for the waste; and (8) all laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in § 261.38(c)(11) and also provides for the availability of the documentation to the generator upon request. These records and those required for off-site shipments must be maintained for the period of three years. A generator must maintain a current waste analysis plan during that three year period.

2. Off-Site Shipments

The final rule requires that for each shipment of comparable/syngas fuel a generator sends off-site for burning in an industrial furnace or boiler, or hazardous waste incinerator, a record of the shipment must be kept by the generator on-site. Because these fuels are not required to be accompanied by a manifest, it is the Agency's belief, supported by commenters, that to ensure that comparable/syngas fuels are transported to and burned in only those units approved for such burning some type of tracking mechanism is warranted. Therefore, the final rule requires for off-site shipments the following information be maintained by the generator on-site: (1) The name and address of the facility receiving the comparable/syngas fuel for burning; (2) the quantity of comparable/syngas fuel delivered; (3) the date of shipment or delivery; (4) a cross-reference to the record of comparable/syngas fuel analysis or other information used to make the determination that the comparable/syngas fuel meets the specifications; and (5) the one-time certification by the burner.

K. Transportation and Storage

Commenters concurred with the Agency's belief that the Department of Transportation (DOT) and the Occupational Safety and Health Agency (OSHA) requirements for the transportation and handling of comparable/syngas fuels will be adequate to ensure the safe management of these excluded fuels. The final rule does not require comparable/syngas fuel handlers to comply with the RCRA storage and transportation requirements. It should be noted that excluded comparable/syngas fuel transporters are required to comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR parts 171 through 180.

Anyone who stores an excluded comparable/syngas fuel (e.g., generator, transporter, burner) is required to comply with all applicable requirements under the Occupational Safety and Health Agency regulations in 29 CFR part 1910. The occupational safety and health standards for flammable and combustible liquids can be found in Subpart H—Hazardous Materials section 1910.106 and standards for compressed gases in section 1910.101.

L. Comparable Fuels Exclusion and Waste Minimization

1. Introduction

In its April 1996 NPRM (61 FR 17464), EPA solicited comment on the effects of the comparable fuels provision on facilities' efforts to promote pollution prevention and waste minimization measures (i.e., source reduction and environmentally sound recycling). In particular, EPA wanted to determine the extent to which companies might: (1) Shift from hazardous waste recycling practices to burning wastes as fuel in broader markets; (2) continue to recycle these wastes for product recovery; (3) undertake source reduction for those wastes currently failing the comparable fuel specifications; or (4) continue to burn the excluded waste fuel in either an hazardous waste incinerator, light weight aggregate kiln, or cement kiln.

EPA received many comments on this issue, most of which indicated there

would probably be a shift from recycling toward combustion, but the Agency received very little quantitative information that would allow the Agency to assess the extent and impact of potential shifts. Consequently, EPA used data from the RCRA Biennial Reporting System, which is a census of waste stream information from all large quantity hazardous waste generators, and the National Hazardous Waste Constituent Survey (NHWCS), which contains data on the composition and properties of waste streams for certain industries, to develop two approaches for assessing the impacts of the comparable fuels provision on pollution prevention and recycling. This approach is described in the next section.

The results of EPA's analysis conclude that about three-fourths of hazardous wastes now meeting the comparable fuels specifications are already being combusted; the remainder (about one-fourth) is recycled. The 70,000 tons of hazardous wastes, that qualify for the comparable fuels exclusion and are currently recycled annually, could shift to the comparable fuels market, if all generators responded the same way, a possibility which seems unlikely. This figure represents less than a one percent annual increase in the amount of hazardous waste combusted, but it represents a decrease of about 20% in the amount of hazardous wastes recycled annually.

If the comparable fuels provision were implemented alone, a 20% decrease in recycling might appear to have a negative effect on pollution prevention and waste minimization. However, as one commenter pointed out, some generators will install pollution prevention and waste minimization measures (i.e., to prevent high levels of constituents from becoming part of the waste) in order to qualify for the comparable fuels exclusion. This would have the effect of increasing pollution prevention. Furthermore, EPA fully expects that the increased cost of upcoming MACT standards will cause the regulated community to seek cost effective pollution prevention and waste minimization solutions to offset the higher costs (a response seen, for example, in the RCRA land disposal restrictions program). EPA is examining this effect in the regulatory impact analysis for the upcoming MACT standards. On balance, the impact of the comparable fuels provision on pollution prevention and waste minimization in the context of MACT standards appears to be negligible.

2. Major Concerns of Commenters

EPA received comments generally expressing either concerns or support for the exclusion. There was some concern that the comparable fuels exclusion would lead to combustion of spent solvents and other high-energy wastes low in halogens and metals that would otherwise be recovered as product. Conversely, others supported the exclusion pointing to incentives it may create to source reduce and conserve resources by replacing fossil fuels with comparable fuels. In addition, concerns were raised over the role of energy recovery in the waste management hierarchy, and the impact of fuel blending on comparable fuels.

Impact on Source Reduction and Recycling: Several commenters stated that EPA failed to investigate whether the comparable fuels exclusion would encourage combustion of wastes now being recycled. Some of these commenters took positions on how the comparable fuels exclusion would impact the recycling-combustion balance. One group claimed that the comparable fuels exclusion would encourage combustion at the expense of recycling. A smaller group of commenters stated that the comparable fuels exclusion would offer an incentive for generators to use more source reduction to lower the levels of toxic constituents to the specification levels. The commenters provided little quantitative information describing these changes.

As noted above, EPA used data from the RCRA Biennial Reporting System (BRS), which is a census of waste stream information from all large quantity hazardous waste generators, and the National Hazardous Waste Constituent Survey (NHWCS), which contains data on the composition and properties of waste streams for certain industries, to develop two approaches for assessing the impacts of the comparable fuels provision on pollution prevention and recycling. Results from both analyses indicate that about three-fourths of wastes likely to meet the comparable fuel specifications are already combusted rather than recycled, and that the remaining wastes could shift from the current recycling market to the comparable fuels depending on the economics and individual company preferences. The methodologies used are summarized below. A full discussion of these analyses is provided in the docket.

Analysis #1: EPA searched the 1993 BRS data to identify waste streams that would be most likely contain wastes that could meet comparable fuel specifications for energy value and low levels of contaminants. EPA focused its search on D001/ignitable wastes because this waste typically contains spent nonhalogenated solvents. EPA also used the BRS data to determine how these wastes were managed after generation, and found that about three-fourths of D001 wastes are combusted, while the remaining one-fourth goes to recycling for solvent recovery.

Analysis #2: Using waste stream specific laboratory analysis data from the NHWCS, EPA identified those waste streams in the survey that meet the comparable fuels specifications for about half of the recycled wastes reported in the BRS. Using this data, EPA was able to estimate the total amount of recycled wastes that could be comparable fuels, and how much waste currently sent to combustion meets the comparable fuels specifications. Analysis of these estimates indicates that about 75% of waste streams meeting the comparable fuels criteria is combusted while the remainder is recycled.

The "Economic Analysis Report for the Combustion MACT Fast-Track Rulemaking" (contained in the docket) predicts savings to generators who can begin to combust hazardous wastes as comparable fuels rather than as hazardous wastes. EPA believes this offers generators incentives to achieve the comparable fuels specifications through source reduction. However, since the costs of source reduction initiatives vary widely from facility to facility, EPA could not reliably estimate net cost savings that facilities could achieve by turning hazardous wastes into comparable fuels through upstream source reduction. Therefore we did not attempt such an estimation.

In addition, many solvent recycling facilities could begin to combust streams meeting the comparable fuels specifications instead of continuing to recycle them. EPA's comparison of recycling costs and revenues with costs for combusting these streams as comparable fuels indicate that in many cases facilities may find the combustion option more economical. Since solvent recycling costs and revenues vary considerably from facility to facility and also fluctuate in time according to the market values of virgin solvent (fuel costs also fluctuate), EPA could not and did not estimate the extent of this shift. Individual facilities may continue to recycle wastes rather than combust them as comparable fuels.

Recycling and the Waste Management Hierarchy: Some commenters stated that letting wastes similar to fuels be burned is evidence of an Agency preference for

combustion over recycling. EPA disagrees: The comparable fuels exclusion is based on the fact that some hazardous waste fuels very closely resemble fossil fuels and do not warrant the full slate of RCRA Subtitle C controls. This does not suggest that the Agency has altered its commitment to the hierarchy. The underpinning of the comparable fuels exclusion is simply a determination on the degree of regulatory oversight needed for fuel-like waste materials, which does not translate to any change of view on the waste management hierarchy.

Burning for Energy Recovery: Some commenters claim that burning for energy recovery is waste minimization. While EPA is clearly providing greater flexibility to burn wastes that closely resemble virgin fuels, EPA distinguishes this from waste minimization. Waste minimization includes source reduction and environmentally sound recycling, but does not include any "method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume." (40 CFR 260.10)(emphasis added).

Blenders and Third Parties: Some commenters expressed concern that EPA would allow blending of hazardous wastes to meet the concentration specifications for a comparable fuel, thereby raising the issue of dilution to avoid RCRA regulation. Similarly, commenters objected to allowing third parties, such as fuel blenders, to handle and blend wastes between generation and combustion. Commenters pointed out that blending and third-party involvement would constitute impermissible dilution. It would also undermine any incentive to minimize the volume or toxicity of these wastes. The Agency agrees that blending hazardous wastes to bring them within the comparable fuels concentration specifications would constitute dilution which is not only impermissible but also would likely inhibit waste minimization. Today's rule explicitly prohibits any blending or other "treatment" which does not remove or destroy hazardous constituents. Blending of two wastes already meeting the comparable fuels specifications is, however, allowed only to achieve the viscosity specification. The rationale for this limited use of blending is discussed in that section of today's preamble.

Opportunities for Source Reduction: One commenter commented that the Standards for the Management of Used Oil (40 CFR Part 279) offered generators an incentive for keeping used oil streams clean by requiring oil exceeding certain concentration specifications for metals and chlorine to be managed as hazardous waste, and predicts that the comparable fuels exclusion will result in similar incentives for source reductions to achieve the comparable fuel exclusion criteria, particularly for generators of D001 (ignitable) wastes. EPA agrees with this view, but did not receive industry-specific information from commenters with which to complete an analysis of this issue.

IV. RCRA Permit Modifications for Hazardous Waste Combustion Units

A. Introduction

The Clean Air Act (CAA) sets a maximum time frame of three years for facility owners or operators to comply with Maximum Achievable Control Technology (MACT) emission standards once final standards are published in the **Federal Register**. EPA expects that many facility owners or operators will need to make changes to their process(es) in order to come into compliance with the new standards. For facilities operating under a RCRA permit, these changes may have to be incorporated into the permit before they may be put in place at the facility. To facilitate meeting the three year deadline, EPA is revising the RCRA permit modification procedures to explicitly address changes to a facility's design or operations that are necessary to comply with the new MACT emission standards. The revised modification process offers streamlined procedures that will help facility owners and operators meet two compliance concerns—compliance with their RCRA permits and compliance with the new MACT standards.

EPA anticipates that a substantial number of requests to modify facility design or operations will be submitted in a relatively short period of time following promulgation of the final MACT standards. Although the states could always use their current modification process, the revised procedures offer a potentially more viable way for states to handle the anticipated volume of requests in a more timely manner.

In most cases, state permitting agencies have been authorized by EPA to issue and modify RCRA permits. Authorized states that wish to implement the revised procedures may have to modify their state procedures, consistent with today's rule, before they may use the streamlined procedures to respond to MACT-related modification requests from facility owners or operators. Once the final MACT standards are promulgated, facility owners and operators have three years to begin operating under the lower emissions levels. The Agency believes that these three years are better used for processing modification requests, and subsequently implementing the necessary changes, than for modifying state regulations and going through the authorization process. By promulgating the revised procedures on an expedited schedule (i.e., before the final MACT standards), EPA hopes to provide ample time for states to develop comparable standards and obtain EPA authorization before they need to process MACT-related modification requests from facility owners or operators. It should be noted that states which currently have temporary authorization procedures equivalent to the federal 40 CFR 270.42(e) procedures may also use these, in many cases, to approve facility changes needed to come into compliance with MACT standards. However, these procedures would allow operation under the modified conditions only up to 180 days (with a possible extension of up to 180 additional days), followed by a full class 2 or 3 permit modification. Therefore, EPA encourages states to adopt procedures comparable to those in today's rule.

Combining the streamlined modification procedures with the expedited schedule for promulgating them sets up a procedural framework to promote compliance with the MACT standards. But even this combination does not guarantee that other factors will not ultimately interfere with a facility's efforts to comply. As part of a common sense approach to implementing, and enforcing, its programs, EPA would like to make sure that the consequences of non-compliance are commensurate with the causes. With regard to the three-year deadline for operating under the lower emissions levels required by MACT, EPA is further examining potential consequences of non-compliance, particularly if the causes are beyond the facility's control (e.g., a permitting agency's administrative procedures or workload cause delays, necessary equipment is back ordered, or testing contractors are unavailable). For example, the Agency is looking into the possibility of using standard

enforcement procedures under the Clean Air Act (CAA), rather than requiring more stringent consequences through regulations (e.g., requiring a facility to stop burning hazardous waste until it receives a permit or revoking a permit). The potential consequences of non-compliance are discussed in more detail in the Revised Technical Standards for Hazardous Waste Combustion Facilities; Proposed Rule, Notice of Data Availability (62 FR 24212, May 2, 1997).

EPA is not going to pursue any of the three companion implementation options discussed in the proposed rule (see 61 FR 17456, April 19, 1996). Those options were intended to address possible permit implementation conflicts which may have occurred if a State did not become authorized to carry out the provisions of the proposed MACT rule in time to handle necessary modifications. By promulgating the revised modification procedures prior to the remainder of the proposed rule, EPA anticipates that States will have adequate time to receive authorization to process the requisite modifications. Thus, the need to put in place a separate implementation mechanism no longer exists. Today's rule does not address any of the longer-term implementation options discussed in the proposed rule (e.g., placing the MACT standards in a Clean Air Act permit, in a RCRA permit, or in both permits). Implementation will be discussed in the final rule promulgating revised standards for hazardous waste combustors.

B. Overview

1. Background on RCRA Permit Modification Procedures

Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards that are "necessary to protect human health and the environment." EPA, or EPA-authorized States, implement these standards by issuing RCRA permits to these types of facilities. Once a permit has been issued to a facility, the facility must operate in compliance with the conditions in the permit; any subsequent changes to the facility's design or operations are incorporated into the permit in accordance with the Agency's, or authorized State's, permit modification procedures.

EPA's regulations concerning permit modifications requested by facility owners or operators are set forth in 40 CFR 270.42. The regulations break the types of potential modifications into three classes (see § 270.42 Appendix I). Class 1 modifications cover administrative or routine changes, including replacing equipment with functionally equivalent equipment. They are relatively straightforward and in most cases do not require Agency approval before being made. Class 2 modifications cover somewhat more complex changes, for example, to address common variations in the types and quantities of wastes managed, where the changes can be implemented without substantially altering the design specifications or management practices prescribed by the permit. Class 3 modifications involve substantial changes to facility operating conditions or waste management practices and are subject to principally the same review and public participation procedures as permit applications. Each class of modification request requires varying degrees of facility preparation, Agency review time, and public involvement. The various degrees have a significant impact on the amount of time needed to put the change into effect. For example, Class 1 modifications typically can be implemented in a very short time, where Class 2 and 3 modifications may take several years.

Prior to promulgating the Class 1, 2, 3 procedures, modifications were divided into two categories, major and minor. States authorized to implement the RCRA program were not required to adopt the Class 1, 2, 3 procedures, since they were considered less stringent than the predecessor major/minor system. As a result, both systems are in use today. EPA would like to point out that, in converting to the new system, many of the modifications that had been designated as minor were placed into Class 1, or Class 1 with prior Agency approval. EPA presumes that modifications listed in Appendix I as Class 1, or Class 1 requiring prior Agency approval, are most likely processed as minor modifications in states that continue to use that system.

2. Shortcomings of the Current Procedures

EPA did not consider, in developing the modification classes and procedures, that changes to RCRA permit conditions might be necessary in order to comply with other environmental statutes. Similarly, the Agency did not anticipate changes to comply with upgrades to existing regulations (although the process was developed to include changes for new regulations). EPA developed the Class 1 through 3 modification scheme within the context of the RCRA program to provide both incentives to facility owners and operators to pursue facility changes that lead to improved management of hazardous wastes, and greater flexibility for timely processing of change requests, e.g., by tailoring the level of review to the type of change (see Permit Modifications for Hazardous Waste Management Facilities; Final Rule, 53 FR 37912, September 28, 1988). EPA is now concerned, however, that the RCRA permit modification procedures, as a practical matter, will not allow enough time to meet statutory deadlines for implementing new standards under the Clean Air Act.

3. How Today's Rule Impacts the Procedures

EPA proposed several options for amending RCRA permit modification procedures to accommodate the Clean Air Act requirement that facilities comply with MACT standards within three years of publishing a final rule in the **Federal Register** (61 FR 17454, April 19, 1996). In all five of the proposed options, the Agency tried to balance the need to develop a process that would enable facilities to comply with more stringent emissions standards within the allotted time with the need to provide adequate opportunities for public participation in the process. The level of regulatory oversight that would take place under each option was also discussed. The Agency requested comments on the proposed options, as well as on any combinations thereof, or any other feasible approaches.

EPA has decided to finalize, with some adjustments, its originally proposed recommended approach, i.e., to establish a new section in the permit modification table for changes to existing permit conditions necessary to come into compliance with MACT standards. This approach best meets the Agency's objective of implementing a process that enables facilities to meet the three year statutory deadline. This approach also allows for public notification of the modification request.

Today's final rule establishes a new section in Appendix I of 40 CFR 270.42 for technology changes that are necessary for a facility to achieve compliance with the MACT standards. The new section is designated as Class 1 modifications, with prior Agency approval. As such, the Agency will have an opportunity to review the proposed physical and operational changes to the facility before they are implemented, in order to ensure that these changes do not have other undesirable consequences. Agency experience suggests that steps intended to reduce emissions may not, in all cases, lead to overall enhanced environmental protection. For example, decreasing combustion temperature as a way to

decrease air pollution control device (ACPD) inlet temperature, in order to reduce dioxin emissions could increase organic emissions by allowing poor combustion.

The new section in 40 CFR 270.42 Appendix I, specifically, section L(9) "Technology Changes Needed to Meet MACT Standards Under 40 CFR Part 63 Subpart EEE—National Emissions Standards for Hazardous Air Pollutants From Hazardous Waste Combustors," is limited to technology changes to existing permits to allow a facility to come into compliance with the new Part 63 standards. General retrofitting changes outside the framework of meeting MACT-related technology, or subsequent changes for maintaining compliance with Part 63 standards, are outside the scope of this category. The permitting agency director will determine whether the types of modifications requested qualify as "technology changes needed to meet standards under 40 CFR part 63 Subpart EEE." The Agency anticipates that the distinction between technology changes necessary to allow a facility to operate under the lower emissions levels and general retrofitting changes will be clear. EPA expects that the same types of changes to comply with the MACT standards will be needed at most facilities, thus the requests submitted under section L(9) should be fairly uniform.

EPA, in response to public comments, is also incorporating a time default into the modification procedures for changes requested under section L(9) only. Section 270.42(a) is being amended to add a paragraph specifying that the permitting agency Director has 90 days, with a possible one-time 30 day extension, to make a decision about modifications requested under section L(9). If the Director does not make a decision, then the permittee may consider the request approved. EPA is also requiring owners or operators to comply with the requirements for the Notification of Intent to Comply (NIC) (see 40 CFR 63.1211) in order to benefit from the streamlined modification process.

C. Discussion of RCRA Permit Modifications Procedures for Facilities Coming Into Compliance With MACT requirements

1. Summary of Proposed Options

EPA is in the process of developing final MACT standards imposing more stringent (lower) emissions levels for hazardous waste combustion activities; facilities will have to operate in compliance with these standards within three years of their promulgation, with a possible one year extension (for a total of four years). The Agency expects that a large number of facilities will need to modify their design or operations to meet the more stringent emissions standards required under MACT. For example, incinerators that currently operate above the MACT emissions standard for particulate matter (PM) might have to add electrostatic precipitators (ESP) or baghouses to reduce emissions; similarly, incinerators that need to reduce dioxin emissions to meet the MACT standards may need to implement additional controls on temperature or employ carbon injection; or light weight aggregate kilns (LWAKs) with high acid gas emissions may need to add a control technology, such as wet scrubbers.

For these facilities to remain in compliance with their RCRA permits, they will need to modify their permits to allow any design or operational changes needed to achieve compliance with the MACT standards. The Agency proposed five options for handling these "MACT related" RCRA permit modifications. The options, which varied with regard to the level of procedural requirements and administrative review required, were: (1) Provide facilities with "self-implementing" authority to proceed with necessary changes without Agency review; (2) categorize the changes needed to comply with MACT standards as Class 1 modifications that do not require prior Agency approval; (3) categorize the changes as Class 1 modifications that do require prior Agency approval (this option was discussed in the proposal as the recommended option); (4) categorize the changes as Class 1 modifications requiring prior Agency approval, but give the Director authority to elevate change requests to Class 2; and, (5) retain the current scheme for modifying the RCRA permits. Under the current scheme, the MACT-related changes would likely be categorized as Class 2 or 3 modifications.

2. Summary of Public Comments

In general, there were three recurring themes in the comments received by the Agency in this area. First, commenters expressed concern about being able to meet the three year time frame. They cited, as reasons, (1) that three years are insufficient to allow state agencies to obtain authorization for the rule and to subsequently process the anticipated volume of modification requests, and (2) that the modification procedures themselves are too long. Secondly, commenters emphasized the need to allow sufficient public participation, but with the caveat that the modification process not be unduly delayed by public participation activities (this being yet another factor in potentially being unable to meet the three year deadline). Finally, commenters were concerned that the consequences of non-compliance are too severe (e.g., having to stop burning), given that delays in achieving compliance could be the result of permitting agencies being unable to process modification requests in a timely manner (and not a consequence of the facility's activities).

The Agency received a wide variety of comments on the options themselves. Each of the proposed options received support, with most commenters favoring the first three options for their more streamlined procedures. A few commenters suggested that incorporating a time limit into the modification review process would aid in coming into compliance with the MACT standards. Many commenters expressed the importance of developing a streamlined permit modification process that would allow facilities to make the necessary technology upgrades in a timely fashion, while retaining enough regulatory oversight to ensure that the changes have a proper degree of "buy-in" by the permitting agency. Some commenters expressed concern that options 4 and 5 would delay implementation of MACT-related changes beyond the three year deadline mandated by Congress. A few commenters preferred options 4 and 5 since they incorporate a greater degree of public participation into the review process. Additionally, some commenters thought that options 4 and 5 might be more readily accepted by and implemented in authorized States that chose to remain with the original permit modification structure composed of minor and major changes. [Note: States were not required to adopt the Class 1, 2, 3 structure since it was determined to be less stringent than the major/minor structure.]

Finally, some commenters requested that the Agency consider as a possible alternative that a Class 3 modification could be reclassified as Class 2 for the purposes of MACT compliance.

3. Response to Comments and Discussion of Final Provisions

EPA agrees with commenters that streamlined modification procedures for MACT-related changes are essential. The three year time frame for complying with the MACT standards has been set by Congress; it is the Agency's responsibility to ensure that facilities are able to comply with those

requirements without violating other areas of their environmental responsibilities, like their RCRA permit. As discussed earlier, EPA anticipates that many facilities will need to make some changes to meet the lower emissions levels imposed by MACT, and that these changes will have to be incorporated into their RCRA permits. EPA does not want the RCRA permit modification procedures to hinder a facility's ability to comply with MACT.

As discussed in the Section B.1. Background on RCRA Permit Modifications Procedures, Class 1 modifications may be done quickly, whereas Class 2 or 3 modifications may take several years to process. The combination of the time normally required to completely process Class 2 or 3 modification requests, and the anticipated volume of requests from facilities striving to meet MACT emission levels, would make meeting the three year deadline unrealistic. Permitting agencies would not have the resources to meet the workload demand. This leads EPA to concur with commenters on the need to embrace a more streamlined approach than would be provided by options 4 or 5. Similarly, EPA chose not to pursue the option suggested by some commenters to reclassify changes from Class 3 to Class 2. A streamlined approach is consistent with general efforts within the Agency (e.g., through the Permits Improvement Team) to improve the permitting process by focusing on performance standards rather than on a detailed review of the technology requirements.

The Agency acknowledges the validity of the concerns expressed by some commenters that the options offering the more streamlined procedures offer fewer opportunities for public participation. It is important to strike an appropriate balance between streamlined modification procedures that promote coming into compliance sooner with more stringent standards and public participation. The Agency has repeatedly emphasized its commitment to a common-sense approach to permitting—one that minimizes regulatory burden and provides flexibility to tailor activities to specific situations. In carrying this commitment to today's rule, EPA wants to ensure three things; (1) that the permit modification process is not an obstacle for complying with the MACT standards; (2) that facilities are not forced to operate outside of their permitted conditions in order to comply with MACT standards; and (3) that public participation is not streamlined out of the process.

EPA believes that Option 3, with some modifications, provides the best framework for meeting these objectives and responding to public comments. This option was supported by many commenters, particularly because the streamlined procedures will facilitate meeting the three year deadline for complying with the more stringent emission levels. There has been a precedent set in the past for streamlining the modifications process. To ensure that facilities implemented timely changes necessary to meet land disposal restriction (LDR) levels for newly listed or newly identified hazardous waste, the Agency designated the modifications needed to meet the LDR levels for newly identified wastes as Class 1 modifications (see 54 FR 9596, March 7, 1989).

The prior agency approval under Option 3 provides the regulatory oversight requested by commenters, since the permitting agency will have the opportunity to review the proposed physical and operational changes to the facility before they are implemented. EPA concurs with commenters who encouraged retaining some amount of regulatory oversight in the modifications. As discussed previously, sometimes changes to one part of a facility's design or operations that have a positive effect, like reducing one type of emissions, may cause detrimental effects to other parts of the facility's operations. It is important for permitting agencies to have the opportunity to review proposed changes to make sure they do not lead to other undesirable impacts.

Some commenters expressed concern, however, that a facility's ability to begin implementing the change(s) might be delayed by requiring regulatory oversight (i.e., if the Agency failed to respond to the request in a timely manner). EPA recognizes the validity of this concern, given the anticipated volume of requests from facilities striving to meet the new emissions standards; therefore, the Agency is incorporating a time default for reviewing the requests into the final modification process. The time default for review, codified in a new paragraph 270.42(a)(4), specifies that if a determination to approve or deny the Class 1 permit modification request submitted under item L(9) is not made within 90 days (with the possibility of a one-time extension for up to 30 days) from the time the request was received by the permitting agency, the request is to be considered approved, and the facility can proceed with the modification(s). In some situations, the Director of the permitting agency may deny a request, for example, if the request contained insufficient information upon which to base a decision. The permittee could revise its request to address the shortfalls and resubmit it to the permitting agency. Such a resubmittal would initiate a new 90 day review period.

EPA anticipates that the incorporation of the time default, coupled with the fact that the revised modification procedures are being promulgated on an expedited schedule, will alleviate commenters' concerns about non-compliance. Although the consequences of non-compliance are outside the scope of this rule, this approach (streamlined modification procedures coupled with expedited promulgation) establishes a procedural framework through which there is a greater chance that permitting agencies will not cause undue delays in facilities' compliance with the MACT standards. Under the new streamlined process, permitting agencies should be able to process the modification requests with sufficient time remaining for facility owners or operators to make the changes within the three year time frame.

Some commenters expressed concern that option 3 does not provide the same levels of public participation that would be available through options 4 and 5. Those options would require facilities to request Class 2 or 3 permit modifications for MACT-related changes. The procedures for Class 2 and 3 modifications include public meetings, notices, and comment periods. Class 1 modifications, even those requiring prior Agency approval, only require that the facility owner or operator send a notice of the change to the facility mailing list within 90 days of approval being given.

EPA is committed to enhancing public participation in all of its processes, and has established additional requirements in today's rule to provide opportunities, beyond the public notice requirements associated with Class 1 (with prior approval) modifications, to involve the public in permitting changes required to comply with MACT standards. These opportunities are being incorporated into requirements for a Notification of Intent to Comply (NIC), discussed in more detail in Section V. One goal of the NIC development process is to promote interaction between the facility and its host community, for example, by requiring the facility to host an informal meeting with the community before submitting the final NIC to the permitting agency. Since the NIC must describe anticipated activities for coming into compliance with the MACT

standards, the technology changes that trigger the RCRA permit modification would be a natural component of the NIC and the public meeting. EPA expects that the meeting will be similar in style and intent to the pre-application meetings required under 40 CFR 124.31.

The final rule requires facility owners or operators to complete the NIC in order to benefit from the streamlined modification procedures. This requirement means that owners or operators will need to submit a final NIC either before, or at the same time as, they submit the modification request. If they do not comply with the NIC requirements, they will need to follow the otherwise applicable modification scheme, i.e., the permitting agency Director will likely reclassify their request to Class 2 or 3. EPA is not requiring documentation in the modification request that the permittee completed the NIC. Since both items are submitted to the permitting agency, EPA assumes the permitting agency will be aware of whether the permittee has indeed complied with the NIC requirements.

EPA expects that information about anticipated changes to facility design or operations to comply with the more stringent standards will be included in the NIC, and thus will be available for public review and discussion during the NIC public meeting. Through this meeting, communities have an early vehicle for learning, among other things, about potential changes to facility design and operations necessary to meet the lower emission levels. Of course, in accordance with the current requirements concerning Class 1 modifications, the permittee must also inform the public about the modifications within 90 days of their approval by the permitting agency (see 40 CFR 270.42(a)(1)(ii)).

EPA would like to point out that although similar information about facility design or operation changes may be included in both the NIC and the modification request, the Agency does not believe it is redundant to have both documents. The two have different purposes, and the formats and levels of detail may differ accordingly. The modification request would most likely differ from the NIC, since the request has to tie directly to the permit itself. For example, the NIC may talk in general terms about adding baghouses to reduce emissions, but the modification request would have to specifically cite the section(s) of the permit being modified to include information on the baghouses.

Today's requirements would not, of course, preclude additional public participation activities beyond the regulations, where appropriate on a facility-specific basis. At certain RCRA facilities, in fact, permitting agencies and facilities have implemented a variety of public involvement activities, such as additional fact sheets or information availability sessions, that have helped affected communities to understand and participate in permit decision-making. EPA has published a practical how-to guidance manual designed to help all stakeholders in the permitting process (permit writers, industry, and communities) determine what types of public participation activities might be helpful. The RCRA Public Participation Manual (EPA530-R-96–007, September 1996) also offers tips on how to conduct a wide variety of activities. Supplemental public participation activities on a site-specific level, geared for a particular facility's operations and tailored to meet the host community needs, could be used to augment community understanding of the changes taking place to comply with MACT standards. In closing, EPA would like to reiterate that facilities are making changes to meet more stringent standards. Requiring facilities to comply with lower emissions levels in a relatively short time frame does offer significant benefits to public health and the environment that the Agency believes communities will generally welcome.

In response to the comments that options 4 and 5 might be more compatible with permit modification procedures in authorized states, EPA is aware that States have to evaluate new regulations in terms of their specific structures. Promulgating the revised modification procedures in today's rule, however, will provide ample time for states to obtain authorization before they actually begin processing modification requests following promulgation of the final MACT standards. EPA encourages states to expedite their requests for authorization to implement the provisions in today's rule. EPA expects that States using the Class 1, 2, 3 modification system would incorporate the provisions by reference, and that States using the major/minor system would incorporate the provisions as minor modifications. As discussed in Section B.1. Background on RCRA Permit Modification Procedures, many changes that were formerly classified as minor were converted to Class 1, or Class 1 requiring prior Agency approval. Thus, EPA believes it is consistent for states using the major/minor system to incorporate this category of changes into the minor classification.

If the states cannot adopt an approach that ensures expeditious implementation of the MACT standards, however, then the Agency expects that changes necessary to comply with MACT standards may well be accomplished under a compliance order, with a specified schedule to come into compliance.

F. RCRA Changes in Interim Status Procedures

RCRA facilities operating under interim status are allowed to implement certain facility changes in accordance with requirements and procedures set forth in 40 CFR 270.72(a). (Note: EPA anticipates that the types of changes a facility may need to make to comply with the MACT standards would be allowable under this section). Section 270.72(b) imposes a limit, however, by stating that the changes cannot amount to "reconstruction" (defined in the regulation as "when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility"). As discussed in the preamble to the proposed rule, the Agency does not anticipate that the costs to perform facility changes necessary to come into compliance with the MACT standards would exceed the 50 percent reconstruction limit. However, since the limit is cumulative for all changes at the interim status facility, there could conceivably be situations where the cost for MACT-related changes might push a facility over the limit.

To ensure that the reconstruction clause does not present an obstacle for interim status facilities trying to implement changes to meet the new emissions levels, the Agency proposed adding a new paragraph to § 270.72(b) exempting changes necessary to comply with the MACT standards from the reconstruction limit. The Agency did not receive any adverse comments, and so is finalizing this provision in today's rule.

It is important to note that facilities operating under interim status will, like permitted facilities, be required to comply with the NIC requirements. Thus, the public will have the opportunity to review planned changes as part of the NIC and to participate in the public meeting. EPA anticipates that owners or operators of interim status facilities will hold the meeting and complete the NIC before proceeding with any changes to facility design or operations necessary to comply with the MACT standards.

V. Notification of Intent To Comply and Progress Report

A. Background

In the proposed rule (61 FR 17358), the Agency requested comments on strategies to identify and encourage or require affected sources to comply with the final emission standards at the earliest possible date. The Agency also asked for views on how best to determine when a source can realistically conclude whether it will comply with the final standards. A number of commenters suggested that the Agency require a submission from affected sources that would identify whether the facility intends to comply with the final standards, and outline the procedures the facility would employ to achieve compliance. This primary purpose of this submission (referred to by the commenters as a "Notification of Intent to Comply") would be to identify the sources that will choose as a compliance strategy to stop burning hazardous waste, so that those sources could be required to terminate waste burning activities as soon as possible following the effective date of the final Hazardous Waste Combustor (HWC) rule.

Other commenters suggested that EPA require submission of a plan that outlines the procedures a facility will follow to comply with the final standards. However, the purpose of this submission would be to begin an early process of communication between the public and the facility through the public disclosure of the facility's compliance strategy to meet the final HWC standards.

The Agency reviewed these comments and found the suggestions for an early notification persuasive. In the Notice of Data Availability (NODA) published in the **Federal Register** on May 2, 1997 (Revised Technical Standards for Hazardous Waste Combustion Facilities; Proposed Rule, 62 FR 24241), EPA described its strategy to promote early compliance planning through a Public and Regulatory Notice of Intent to Comply (PRNIC). The discussion laid out a process by which an affected source would be required to develop a draft document including anticipated plans for coming into compliance with the new emissions standards, hold an informal meeting with the public to discuss the draft planning document, and to subsequently provide a final planning document to the permitting agency. The information to be covered in the document and during the meeting would include such topics as a description of waste minimization and pollution control technique(s) being considered and their effectiveness, a description of emission monitoring techniques being considered, and an outline of key dates for activities the source would need to accomplish in order to operate within the MACT standards.

The intended purpose of the PRNIC, as described in the NODA, was twofold. First, the PRNIC was intended to provide for public involvement in a source's compliance planning process. EPA envisioned that this involvement would also serve to offset public participation opportunities that may be "lost" if a source is able to take advantage of the new streamlined RCRA modification procedures for HWCs, since modifications required under RCRA would naturally be part of the source's overall plan for achieving compliance with the standards. Secondly, the PRNIC would provide an expeditious notice to the permitting Agency as to whether sources would be able to come into compliance with the new standards. Having information about plans for compliance might prove helpful to permitting agencies in planning the most efficient use of their resources during the three year compliance period.

B. Summary of Final Provisions

EPA is moving forward with an early compliance planning requirement. However, the final rule contains certain changes from the PRNIC discussed in the NODA; the Agency has revised the requirements based on public comments received following the NODA's publication and based as well on the original proposal. EPA is finalizing new requirements in § 63.1211 for facility owners and operators to develop and submit a Notification of Intent to Comply (NIC), and in § 63.1212 to develop and submit a Progress Report. Section 63.9(h) "notification of compliance status" requires facilities to submit such notification when a source becomes subject to a relevant CAA standard. As such, today's requirement is an enhancement of this requirement to give notification of intent to comply prior to the three year compliance date of the emissions standards. The source can use the NIC to notify either the source's intent to come into compliance with the new standards, or the source's intent not to come into compliance with the new standards. The NIC must be submitted to the permitting agency within a year of the final standards being promulgated, and the Progress Report within two years.

As proposed, the primary purpose of the NIC is to serve as a planning and outreach tool for achieving compliance with the MACT standards. The contents of the NIC, set forth in § 63.1211(a)(1), are similar to those presented in the NODA discussion on the PRNIC with modifications based on comments received on the NODA. Also as discussed in the NODA, sources will have to make a draft of the document available to the public as part of the process of developing the NIC. They will also have to provide notice of and conduct an informal meeting with the public to discuss anticipated plans for achieving compliance with the standards. The purpose of the Progress Report is to help permitting agencies determine if sources are making reasonable headway in their efforts to come into compliance. In deciding on this approach to compliance planning—the NIC followed by the Progress Report—EPA determined (1) that one year is sufficient time for a source to establish its general "plan of attack" for achieving compliance, and (2) that during the second year a source should be well on its way to making necessary modifications, if it plans to meet the MACT limits, or to making alternate arrangements for handling the hazardous waste, if it does not intend to meet the MACT limits.

The final rule does not contain provisions for updates to the final NIC following a significant change in the facility's implementation strategy, as considered in the NODA. Since the Agency decided to implement a requirement for a Progress Report at the end of the second year, there is no purpose served by having a revised NIC. EPA anticipates that any significant changes to a facility's compliance plan would necessarily be reflected in the Progress Report.

C. Discussion of Public Comments and Final NIC Provisions

1. General.

The majority of commenters supported the concept of early compliance planning, particularly with regard to the public involvement component. Those advocating early involvement indicated that the PRNIC concept appears reasonable, not overly burdensome, and represents a positive step to ensure public involvement in the MACT process. Many lauded the Agency's effort to bring the spirit of the recently promulgated RCRA enhanced public participation requirements (see 69 FR 63417 (Dec. 11, 1995)) to the MACT arena and the strong RCRA goal of public participation for decisions involving permitted hazardous waste management facilities (RCRA section 7004(b)). Commenters opposing the

additional public involvement required as part of the PRNIC development process stated that the activities (e.g., the public meeting) would create more controversy and impose additional burdens on both sources and permitting agencies at a time when they will be faced with a substantial workload. Some commenters expressed concern that the additional activities would provide no real benefit, since neither the permitting agencies nor the public have authority to disapprove of a source's chosen control options, as long as the source operates within the MACT limits. One commenter noted that the concept of a PRNIC was unprecedented for CAA sources; they said a PRNIC was not required under the CAA and it was beyond EPA's authority to impose such a requirement.

The Agency agrees with commenters who recognize the value of early public involvement. EPA has repeatedly emphasized its commitment to enhancing public participation in all of its programs (see National Waste Minimization and Combustion Strategy and Enhanced Public Participation Rule). Experience has shown that hazardous waste combustors spark a tremendous amount of legitimate public interest; many communities have expressed a desire to be involved at all stages of combustor operations and permitting activities. Given this background, EPA fully expects the promulgation of the final MACT standards to receive significant and appropriate public scrutiny. As one commenter points out, HWCs are already subject to RCRA regulations, and many of them operate under risk-based permits that were subject to extensive public review. EPA anticipates that the fact that HWCs will now be regulated under CAA is likely to remain of vital interest. People will know that new emissions limits are being imposed, and will want to know how the source plans on meeting them. The NIC provides this information, and the NIC meeting opens the door for the public to communicate directly with the owners or operators.

EPA does not share the concern expressed by commenters that the public involvement activities impose a substantial burden with no commensurate benefit. The effort associated with drafting a NIC and holding the NIC meeting is not overly burdensome. Facilities will most likely need to compile the information for their own uses, in order to effectively decide which compliance option(s) they will pursue. Making the information available to the public and discussing it during an informal meeting could provide benefits in many areas, even if the permitting agency and the public do not have the authority to approve or disapprove of the compliance method(s) ultimately selected. For example, it could save time and money at the end of the permitting process. Talking to people early on about what can and cannot be accomplished in a given situation, asking their input on decisions that need to be made, and explaining the rationale behind decisions that have already been made, can lead to fewer challenges on draft permit conditions. EPA also believes the public could provide useful information to owners or operators that might contribute to a quality plan for achieving compliance with the MACT standards. The level of knowledge on environmental matters exhibited by the public (at public meetings, in correspondence, for example) appears to be increasing. As the public's knowledge base grows, so might the quality of input they can provide into technical decisions.

EPA disagrees also that there is no precedent for the concepts inherent in the NIC, and that EPA does not have authority to impose such a requirement. Since EPA has chosen to provide the maximum amount of time for compliance allowed under the CAA (3 years), requiring sources to identify their compliance plans is particularly appropriate. As stated before, EPA is committed to enhancing public involvement in environmental matters. Providing the compliance plans to the public is one of many ways the Agency is implementing this policy. Precedent for early public involvement has been set both in the Agency's Hazardous Waste Minimization and Combustion Strategy and in the enhanced RCRA public participation requirements promulgated in December, 1995 (see 69 FR 63417, December 11, 1995).

2. Purpose of the NIC

As discussed in the background part of this section, the original purpose of the PRNIC was to promote public involvement and to assist in compliance planning. Commenters supported these goals, which continue to be the compelling motives for adopting the NIC requirement. The primary purpose of the NIC is thus to serve as a planning tool for achieving compliance with the MACT standards. In other words, the NIC is designed to ensure that facility owners or operators get an early start on evaluating their options for meeting the new standards, and to serve as a vehicle for public involvement. EPA's intent is to facilitate dialogue regarding a facility's compliance strategy. The NIC also serves the purpose of having sources identify to the regulators and the public their intent to comply or not to comply with the applicable emission control requirements of this Subpart. The NIC and public meeting will foster mutual understanding of the compliance options, including consideration of both technical (e.g., equipment changes to upgrade air pollution control devices) and operational (e.g, process changes to minimize waste generation) alternatives. Ideally, it will also result in the selection of a method that will meet the goals of both the facility and the community.

The NIC will not serve as a basis for requiring facilities to cease burning hazardous waste if they intend to comply with the emission standards of this Subpart. If, however, a facility indicates in its NIC that it does not intend to meet the emission standards of this Subpart, then the source must stop burning hazardous waste within two years of the standards being promulgated. This requirement is discussed in more detail in Section D. Discussion of Public Comments and Progress Report. EPA would like to clarify that its intent has never been to shut a source down completely. The source might be required to cease burning hazardous waste; however, it would not be precluded from burning non-hazardous waste or other alternative fuels. However, those sources who indicate in the NIC their intent not to comply with the applicable emission control requirements of this Subpart will be required to stop burning hazardous waste within two years of the effective date of the emission control requirements.

Although the NIC will not be used to cause sources to stop burning, there are enforceable requirements associated with it. Sources must provide a draft NIC for public review, advertise and conduct an informal meeting, and submit a final NIC to the permitting agency. If these activities do not take place within the time frames specified in the regulations, sources will be in violation of the requirements, and subject to appropriate enforcement action. The key milestone dates contained in the schedule submitted with the NIC are not enforceable, however; the requirement to submit a schedule containing key dates is the enforceable requirement.

Finally, one commenter suggested that the NIC be used to identify RCRA permit conditions that would "disappear" when MACT limits are set. EPA is not using the NIC for this purpose. EPA will address permitting

schemes, and the process for transitioning from a RCRA permit to a Title V permit, in the final rule promulgating MACT standards for HWCs. The NIC is not the appropriate vehicle for accomplishing this task.

3. Timing

In the PRNIC discussion in the May 2, 1997 NODA, EPA said that the final PRNIC would be due to the permitting agency within 270 days following the effective date of the final MACT standards. A draft of the document would have to be available within 210 days, and at least 30 days before the informal public meeting was to be held.

Although several of commenters considered the time frame too long, many others said it would be difficult to prepare a quality compliance planning document so quickly. They also expressed concern about meeting with the public at such an early stage. The commenters' position was that any draft plan put together within 7 months after the standards are finalized would be tentative only. They were reluctant to go to the public with a tentative plan that was likely to change significantly before it was final.

EPA agrees with commenters that the time frames are tight. In order to be operating within the new limits by the end of the compliance period, it is imperative to start the planning process immediately. In recognition of commenters' concerns about preparing the draft plan, EPA is extending the time frames in the final rule. In accordance with the provisions in § 63.1211, the final NIC will be due to the permitting agency within one year of promulgation of the final standards. The NIC meeting must be held no later than 10 months following promulgation, and the draft NIC made available at least 30 days before the meeting is held. So, facilities basically have 2 extra months to prepare a draft document, and 3 extra months to submit a final NIC to the permitting agency. The revised time frames should provide sufficient time not only to prepare the initial draft, but also to revise it, as appropriate, to reflect discussions from the public meeting and final engineering decisions about the source's operation.

The Agency understands the concerns expressed by commenters about sharing draft material with the public. However, EPA does not expect, nor should facilities or the public expect, the draft NIC to describe all of the technical aspects of the compliance options in extensive detail. Similarly, discussion of the options at the public meeting should not focus on minute details. The purpose of sharing the draft and discussing the options at the public meeting is to capture major ideas in a planning document, to facilitate dialogue regarding a facility's compliance strategy, and to discuss possible courses of action. The information in the draft NIC should be sufficient to stimulate this level of discussion. The more in-depth technical discussion can be incorporated into the final document. Since all sources are required to have the final NIC submitted to the permitting agency one year after the final standards are promulgated, anyone may request a copy of it from the permitting agency at that time.

4. NIC Meeting

EPA is requiring facilities to provide notice of and host an informal meeting with the community to discuss anticipated plans for complying with the MACT emissions standards (see § 63.1211(b)). The meeting must take place within 10 months of the final standards being promulgated. At least 30 days before the meeting takes place, the facility must provide public notice of the meeting, and must make the draft NIC available for public review.

Commenters were generally supportive of EPA's intent to require a public meeting to discuss compliance planning. Some commenters had specific concerns, ranging from the timing issues addressed above, to the methods for providing notice, and the potential for being required to conduct several redundant meetings to meet various purposes.

EPA had listed three mechanisms in the NODA for providing notice of the public meeting: a display ad in a newspaper, a sign at the facility, and a broadcast announcement. These were the same mechanisms used to provide notice of the RCRA pre-application meeting, and EPA believes they are appropriate for the NIC meeting as well. At least one commenter thought the mechanisms were too broad, and that a notice via newspaper and a sign at the facility would be enough. Another commenter suggested that a notice be sent to the facility mailing list as well. EPA decided not to limit the notice methods for the NIC meeting, but did add the facility mailing list to the methods in § 63.1211(b)(3). Each of these notices must include the date, time and location of the meeting, a brief description of the purpose, a brief description of the facility, a statement asking people who need special access to notify the facility in advance, the name of a contact for the NIC, and a statement describing how the draft NIC can be obtained.

Commenters who were concerned about redundant public meetings described a few possible scenarios. For example, in states that do not adopt the streamlined RCRA modification procedures a facility might be required to conduct a public meeting as part of a Class 2 or 3 RCRA modification, as well as the NIC meeting. Federal facilities might have public meeting requirements under the National Environmental Policy Act (NEPA). Other facilities might be facing RCRA pre-application meetings, either for initial permits or those up for renewal. Or, some facilities might have routine meetings scheduled with communities as part of Responsible Care or Good Neighbor agreements.

It is not EPA's intent in imposing the NIC meeting requirement to create duplicative requirements for public meetings. To do so would burden both the facility and the public. Everyone's time is valuable, and most people would probably prefer not to go to several meetings if one will do. EPA recognizes this, and would like to clarify that nothing in today's rule precludes a facility from combining meetings as long as the purposes of each are served. EPA sees combining events, particularly public involvement activities, as a first step in moving towards a multi-media approach to environmental management. Thus, if a facility has to complete a class 2 or 3 RCRA modification because it is located in a state that has not adopted the RCRA streamlined modification process, EPA would expect, and fully encourage, the facility to set up one meeting that would serve both the RCRA requirements and the CAA NIC requirements. The same is true for combining the NIC meeting with a RCRA pre-application meeting, if the facility has to host one for either an initial RCRA permit or because its permit is up for renewal, or with other types of public meetings the facility may have scheduled.

A few commenters expressed concerns about responding to public comments on the draft NIC, either during or following the public meeting. They cited time as the driving reason for this concern; they suggested their time would be better spent finalizing their plans for complying than formally responding to comments. One commenter noted that it was unclear in the NODA whether the draft NIC would be available prior to the meeting. In response, EPA would like to clarify that facilities are not required to formally respond to any comments, oral or written. However, it is important to keep in mind that the public may request a copy of the final NIC, and will

be reviewing the facility's final plans for coming into compliance. Facilities must also submit a summary of the meeting to the permitting agency as part of the final NIC, so the permitting agency will be apprised of the discussions that took place. EPA believes that this provides incentive for the facility to address any significant issues raised by the public in the NIC meeting.

EPA expects that the exchange between the facility and the community that takes place during the meeting will be much like it is for RCRA pre-application meetings. That is, the Agency intends for the meeting to provide an open, flexible and informal occasion for the facility and the public to discuss various aspects of the facility's compliance strategy. The Agency anticipates that the facility and the public will share ideas, and build a framework for a solid working relationship. The final NIC should reflect, to the extent appropriate, ideas or suggestions raised by the public.

The final provisions in § 63.1211 clarify that the draft NIC must be made available to the public at least 30 days before the meeting is to take place. This will provide sufficient time for people to review the facility's intended strategy. EPA did not prescribe in the regulations the manner in which the draft NIC must be provided. There is not a "one-size-fits-all" approach to getting information out to the public. It is more logical to allow the facility to make that decision in the context of their particular situations. For example, if a facility has an information repository established, the draft NIC may be made available there. Or they could make it available upon request, since the name, phone number, and address of the NIC contact must be in the meeting notice.

5. Relation Between NIC and Other Notification Requirements

The requirements for the NIC are being promulgated in a new subpart applicable to HWCs in the Part 63 CAA regulations. Several commenters did not believe it necessary to add these new requirements, arguing that existing provisions under both the CAA and RCRA would fulfill the purpose of the NIC. They cited the initial notification requirements in § 63.9(b), the notifications of compliance status in § 63.9(h), Title V permit application requirements in § 70.5(c), and RCRA public involvement requirements in § 270.42 (permit modification procedures).

EPA has reviewed the requirements in each of these sections, and is not persuaded that the information or the timing of the submittals are sufficient to meet the objectives of the NIC. In terms of the information, the NIC actually seems to fall between the initial notification and the notification of compliance status. The information included in the NIC supplements the initial notification requirements in 40 CFR Part 63.9(b). The initial notification requirements in § 63.9(b) address basic information such as name and address of the owner and the source, and a brief description of the source. The focus is on the source as it exists, not as it may need to be modified to meet new standards. The information in the NIC provides this next step—it focuses on what types of changes might have to take place in order to achieve the emission limits set by MACT. The types of changes may be physical, such as adding or replacing air pollution control devices, or they may be operational, for example, achieving lower emissions by minimizing the waste generated elsewhere that is subsequently used as fuel for the combustor.

The information required in the NIC will enable the public to engage in a meaningful dialogue about the facility's compliance strategy, including a discussion of the various options under consideration. For example, when a facility identifies and describes the type of control technique(s) being considered, it would be ideal for the facility to have examined all of the waste minimization and/or pollution control options available, including emission control through process modification, feed restriction, and pollution control equipment, (e.g., Hg control by production process changes, recovery, segregation, feedrate restriction, carbon injection, carbon bed, wet scrubbing, etc.). The compliance notification requirements in § 63.9(h), on the other hand, have a different objective. They focus not on options for coming into compliance, but rather on how compliance will be demonstrated and monitored.

EPA chose not to tie the NIC requirements to the Title V permitting process. In terms of timing, the Title V process may not always be appropriate. It is important to keep in mind that MACT standards set forth in Part 63 are self-implementing; activities associated with them often take place outside of the permitting process. When MACT standards are promulgated, sources must begin adhering to the regulations, regardless of where they stand in the Title V permit process. For example, sources that already have Title V permits do not have to reopen them until renewal, if they are within 3 years of the expiration date. This time frame obviously is too long to meet the goals of the NIC. In addition, Title V permits contain all applicable requirements for all sources at a facility. To use the Title V process just for hazardous waste combustors is not practical.

The Agency has also determined that the information requirements for Title V applications do not meet the spirit of the NIC. Like the § 63.9(h) compliance notification requirements, the Title V information does not address options for achieving compliance, particularly with regard to waste minimization and pollution prevention techniques being considered. Of course, the NIC is not intended to be the primary vehicle for waste minimization or pollution prevention planning. EPA expects that these are ongoing areas of exploration for facilities. EPA does expect, however, that to the extent these may be used to achieve compliance with the MACT standards, facilities will investigate them as viable options and will discuss them as such with the public.

Some commenters suggested that facilities having to follow Class 2 or 3 RCRA permit modification procedures (e.g., because they are located in states that do not adopt the RCRA streamlined modification procedures) not be required to submit a NIC, since public meetings are a required step in those procedures. Another suggested that RCRA interim status facilities not be subject to NIC requirements, because they are not "losing" any public involvement in a modification process (since they have no permit to modify). EPA disagrees with these suggestions. The NIC is broader in scope than just facility modifications that may have to be incorporated into a RCRA permit or that may be accomplished by following the procedures in 40 CFR 270.72(a) for allowable changes under interim status. The NIC is intended to lay out for discussion the source's overall plan for achieving compliance; this goal is relevant regardless of whether the facility is operating under a permit or under interim status. Facility changes under RCRA would just be one piece of the overall document, and one segment of the public discussion. As stated in the previous section, however, there is nothing in today's rule that precludes a facility having to follow Class 2 or 3 permit modification procedures from combining the public meeting required as part of the modification process with the public meeting required as part of the NIC process. EPA would expect, and fully encourage, a facility in this situation to set up one meeting that would serve both purposes.

D. Discussion of Public Comments and Progress Report

1. Overview

The Clean Air Act requires the Administrator to establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard, except as provided via a one year extension. CAA section 112(i)(3). EPA believes that compliance as expeditiously as practicable will have numerous benefits for human health and the environment. In particular, for those sources that do not intend to ultimately come into compliance with the emission standards of this Subpart, expeditious compliance would be achieved by ceasing to burn hazardous waste. The Agency anticipates that numerous sources will choose not to come into compliance with the requirements of this rule, and will cease burning hazardous waste prior to issuance of the rule or at some later date, but prior to the compliance date. This section is intended to expeditiously limit the burning of hazardous waste by those sources who do not intend to come into compliance with the requirements of the emission standards of this Subpart, but continue to burn hazardous waste after the effective date of the emission standards of this Subpart. These sources are, quite simply, able to meet the standards earlier than the three years allowed for sources which will continue to burn hazardous waste. Thus, for this class of facilities, EPA is creating a means of compliance "as expeditiously as practicable" (CAA section 112(i)(3)).

In the April 1996 proposal, the Agency invited comment on how sources could be identified and strategies that could be used to encourage or require these types of sources to comply at the earliest possible date. Several commenters suggested methods to require sources to identify their intent to comply or not comply with the emission standards soon after the promulgation of the final rule for these standards. They also suggested that those sources that did not intend to come into compliance would be required to stop burning hazardous waste.

2. Summary of Progress Report Requirements

The Agency has adopted in the final rule a variation of the concept commenters suggested along the lines of the April 1996 concept EPA proposed. The final rule requires those sources subject to the rule to signify in their NIC an intent to comply or not to comply with the requirements of the emission standards of this Subpart. Sources who make the decision not to comply with the rule must stop burning hazardous waste on or before two years after the effective date of the emission standards of this Subpart. The Agency believes that two years is an adequate length of time for these sources to arrange for alternate management of their hazardous waste through process changes to minimize the waste, use of alternate on-site management, or the use of off-site management. Those sources who intend to come into compliance with the emission standards will have the full three years to come into compliance as intended by the statute.

The sources who do not intend to comply with this rule must include in their NIC a schedule that includes key dates for the steps to be taken to stop burning hazardous waste. Key dates include the date for submittal of RCRA closure documents. The types of closure documents that would need to be submitted will most likely vary depending on the source's status. For example, if a source is in interim status, it may need to submit a closure plan. If the source is permitted, it will probably need to update its closure plan (that is part of the permit); thus, the "document" may be a permit modification request.

a. Submittal. Commenters suggested that sources submit progress reports to track source's actions toward compliance. The Agency also believes that a progress report would be a useful tool to evaluate a source's progress toward compliance. In the final rule, EPA requires those sources to submit to the regulatory authority a progress report on or before two years after the effective date of the emission standards of this Subpart. Any sources burning waste on and/or after two years following the effective date of the emission standards of this Subpart will be required to submit a progress report.

b. Demonstration. The Agency believes that any source which intends to come into compliance with the emission standards of this Subpart, except for those sources in compliance on the effective date of the emission standards of this Subpart, will be required to make modifications to the source to come into compliance. To gauge the progress of these modifications, the final rule requires sources to submit with their progress report information demonstrating that the source has: (1) Completed engineering design for any physical modifications to the source needed to comply with the emissions standards of this Subpart; (2) Submitted applicable construction applications to the applicable regulatory authority; and (3) Entered into a binding contractual commitment to purchase, fabricate, and install any equipment, devices, and ancillary structures needed to comply with the emission requirements of this Subpart. Those sources which fail to make this demonstration in their progress report or who fail to submit a progress report shall stop burning hazardous waste on or before the date two years after the effective date of this Subpart.

Because the types of modifications that sources will have to make are anticipated to require the commitment of substantial resources, sources are required to demonstrate that they have entered into a binding contractual commitment to purchase the resources necessary to make those modifications. Some examples of binding contractual commitments follow; however, EPA may judge other demonstrations adequate on a case-by-case basis. In some cases, EPA will allow evidence of an in-house construction plan to satisfy the demonstration. If on-site labor by facility personnel will be used, a statement of commitment must be provided by upper management, and such other evidence of a commitment as is available, such as company memoranda or annual budgets committing funds, purchase orders, or copies of contracts with any suppliers of equipment or materials. EPA expects that, in most cases, sources will use off-site resources in their modifications. To demonstrate commitment in these cases, sources must provide copies of binding contracts with companies to perform tasks or supply equipment that will facilitate bringing the source into compliance.

There may be a limited number of sources who intend to come into compliance, but will not need to undertake any of the activities identified in the demonstration criteria above to do so. These sources are required to submit instead documentation: (1) Demonstrating that the source, at the time of the progress report, is in compliance with the emissions requirements; or (2) specifying the steps that will be taken to bring the source into compliance, without undertaking any of the activities identified in the demonstration criteria. The Agency anticipates that few if any sources will not need to enter into binding contracts in order to come into compliance with the emission standards of this Subpart.

Those sources who indicated in the NIC their intent not to comply with the

emission control requirements of this Subpart must still submit a progress report. These sources, however, must only indicate that they have stopped burning hazardous waste and have submitted the required RCRA closure documents.

c. Schedule. To determine that facilities are undertaking the steps necessary to come into compliance by the compliance date, the progress report shall contain a schedule. This schedule must take into account the key dates listed in 63.1211(a)(1)(ii) for projects that will bring the source into compliance with the emission standards. The schedule must cover the time frame from the submittal of the progress report through the compliance date of the emission standards. EPA is requiring that the following key dates, as applicable to each source, be contained in their schedule: (1) Bid and award dates for construction contracts and equipment supply contractors; (2) milestones such as ground breaking, completion of drawings and specifications, equipment deliveries, intermediate construction completions, and testing; (3) the dates on which applications were submitted for or obtained operating and construction permits or licenses; (4) the dates by which approvals of any permits or licenses applied for are anticipated; and (5) the projected date by which the source will be in compliance with emission standards. The Agency anticipates that many sources will be able to update the schedule included with their NIC in submitting a schedule for the progress report.

d. Sources That Do Not Intend To Comply. The Agency anticipates that some facilities, which intended to comply at the time of their NIC submittal, may make the determination not to comply based on engineering studies or evaluations by the time of their progress report submittal. Those sources that signify in their progress report, submitted on or any time before two years after the effective date of the emission standards of this Subpart, their intention not to comply with the requirements of this Subpart must stop burning hazardous waste on or before the date two years after the effective date of the emissions standards of this Subpart. Sources who, at the time of their NIC submittal, have any belief or concern that they may decide not to comply with the emission standards should consider planning alternate waste management alternatives well in advance of the two year stop burning deadline.

e. Facilities with Multiple Sources. Commenters stated that some facilities may have multiple units at the same site subject to the MACT requirements. These facilities may decide to bring a portion of the sources into compliance and cease burning hazardous waste in the other portion of their sources. If a facility did decide to upgrade one or more units, it may be necessary to utilize the remaining unit, in which it intended to stop burning hazardous waste prior to the compliance date, to handle the capacity of the unit being upgraded until the installation of controls was complete. The commenters believed that it was unjustified to close a source at the two year deadline in the case where a source: (1) Was designated for closure at or before the three year compliance date; and (2) was handling the waste from another on-site source being upgraded to comply with the MACT standards or in order to install source reduction modifications eliminating the need for further combustion of wastes.

The Agency agrees that the intent of the requirement for sources that did not intend to comply to stop burning hazardous waste should not apply to these types of sources. Therefore, the requirement to stop burning hazardous waste at the two year deadline does not apply to a source if: (1) The source was designated in the NIC as a source that would stop burning hazardous waste on or before the compliance date; and (2) the source was shown in the NIC to be necessary to handle the capacity of another on-site source while that source was unable to handle the waste and undergoing modifications to come into compliance with the emission standards of this Subpart or in order to install source reduction modifications eliminating the need for further combustion of wastes.

E. Certification

To ensure that information submitted by a source is true and accurate, all NIC and progress reports submitted shall contain the following certification signed and dated by an authorized representative of the source: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

An authorized representative should be a responsible corporate officer (for a corporation), a general partner (for a partnership), the proprietor (of a sole proprietorship), or a principal executive officer or ranking elected official (for a municipality, State, Federal, or other public agency).

F. Extension of the Compliance Date

The CAA provides sources that intend to come into compliance, but because of the need to install controls will not meet the compliance date, the ability to request an extension of the compliance date for one year. The Agency believes facilities that choose to install process changes (which are essentially pollution prevention or waste minimization measures) and/or other controls that are appropriate for meeting MACT standards are eligible to request a one year extension of the compliance date to install these controls (CAA Section 112(i)(3)(B)). Facilities that request an extension to install pollution prevention and/or waste minimization measures may use part 63.1216 below, which describes the pollution prevention related information to be submitted. Facilities that request an extension for installing only end-of-pipe emission controls may use part 63.6(i)(4) requirements. In either case, the extension request shall be filed at least one year prior to the compliance date of this Subpart.

G. Sources Which Become Affected Sources After the Effective Date of This Subpart

The Agency is concerned that there may be sources who become subject to the emission standards of this Subpart after the effective date of the emission standards of this Subpart. The following is intended to clarify the requirements and time frames that must be met by such sources. A source which begins to burn hazardous waste after the effective date of the emission standards of this Subpart, therefore becoming an affected source, but prior to 9 months after the effective date of the emission standards of this Subpart, shall comply with all the requirements of this section and associated time frames for public meetings and document submittals.

A source which intends to begin burning hazardous waste after 9 months after the effective date of the emission standards of this Subpart, therefore becoming an affected source, shall meet all the requirements concerning the NIC and progress report prior to burning hazardous waste. Such sources shall make a draft NIC available, notice their public meeting, hold their public meeting, and submit a final NIC prior to burning hazardous waste. Such sources also shall submit their progress report at

the time of the submittal of their final NIC.

VI. Waste Minimization and Pollution Prevention

A. Overview

Pollution prevention is widely recognized as the most preferable form of environmental management. Indeed, the Clean Air Act, the Pollution Prevention Act, and the Resource Conservation and Recovery Act explicitly make pollution prevention the preferred tool in our nation's environmental management toolbox. The States have been strong leaders as well in moving pollution prevention to the forefront. Over the past decade, 30 states have passed legislation that promotes pollution prevention.[18] Those States have embarked on a variety of programs that move pollution prevention more into the mainstream of their environmental management strategies—ranging from pollution prevention based permits and inspections, to mandatory pollution prevention planning programs, to voluntary partnerships and technical assistance. Nearly every State operates some form of pollution prevention technical assistance program to help companies reduce as much waste as possible at the source.

EPA has embarked on several experimental programs, including, for example, Project XL and the Common Sense Initiative, to identify barriers in Federal regulations that impede cleaner, cheaper, smarter environmental solutions, and to demonstrate ways of redrafting regulations to provide greater flexibility in solving environmental problems.

In 1994, EPA began an extensive outreach effort to begin identifying pollution prevention barriers and incentives affecting hazardous waste combustion. Over the course of the past four years, EPA has worked extensively with the States, industry, environmental groups, and citizens, in many dozens of discussions and correspondences to explore a broad range of approaches to pollution prevention in the combustion arena. Today's rulemaking puts in place several incentive based pollution prevention and waste minimization incentives that derive from that long term effort, and that will provide the regulated community with additional flexibility to use pollution prevention technologies where it makes sense to do so. Some barriers were identified that are not easily solvable within the limits of the Clean Air Act, such as time limits on compliance that sometimes force companies to install end-of-pipe emission controls, instead of pollution prevention process changes, because they are faster and less risky to install. Nevertheless, today's rule suggests an approach that can address even this problem.

Today's rule contains incentives that provides the regulated community:

—several months of planning time before the MACT compliance period begins to explore cost effective pollution prevention alternatives that might reduce the cost of hazardous waste combustion,

—the opportunity to extend the compliance period by one year where the additional time is needed to install pollution prevention controls that reduce the amount of hazardous waste entering combustion units, and

—the opportunity to engender public support on pollution prevention alternatives that reduce the amount of waste that will be combusted.

The six pollution prevention alternatives EPA published for comment, the comments received and a description of the incentives contained in today's rule are discussed further below.

B. Background

The goals of the Clean Air Act clearly express Congress' intent to use pollution prevention as a fundamental tool for protecting our nation's air resources:

"A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local government actions, consistent with the provisions of this chapter, for pollution prevention." (Clean Air Act, Section 101 (c)).''

"Air pollution prevention (that is, the reduction or elimination , through any measures, of the amount of pollutants produced or created at the source) * * * is the primary responsibility of States and local governments." (Clean Air Act, Section 101 (a)(3)).''

Congress' intent in the CAA is consistent, if not identical, to the policies set in the Pollution Prevention Act of 1990 (PPA) and the Hazardous and Solid Waste Amendments to RCRA of 1984, RCRA Section 1003(b) and Section 6602 (a).

More specifically, we note the definition of pollution prevention as used in the CAA is best captured in the operational definition used in Section 112 (d)(2). This section requires EPA to consider pollution prevention techniques in addition to "end of pipe" emission controls and other methods in the setting of MACT standards. Pollution prevention is used here to include: "measures, processes, methods, systems, or techniques including, but not limited to, measures which * * * (A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitutions of materials or other modifications, * * * or (D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) * * *''

To avoid some of the historical confusion that has occurred over the definitions of pollution prevention and waste minimization, it is useful to compare the CAA definition to those in the PPA and in the Hazardous and Solid Waste Amendments to RCRA of 1984.

The PPA (at Section 6603(5)(A)) defines pollution prevention as source reduction activities, which includes any practice that reduces the amount of hazardous substance, pollutant or contaminant entering a waste stream, or otherwise prior to recycling, treatment or disposal. It includes such activities as: equipment or technology modifications, reformulation or redesign of products, substitution of raw materials, improvements in work practices, maintenance, training, and inventory control. The meaning contained in the PPA is essentially the same meaning referred to in Section 112(d)(2) of the CAA. Both focus on reducing waste generation at the source by making changes in the way things are manufactured.

The PPA excludes from pollution prevention any practice which "alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service." (Section 6603(5)(B). In essence, this definition excludes waste management, recycling (except for closed loop recycling that is integrated into production processes), burning for energy recovery, waste treatment, and disposal.

Since many of the facilities affected by today's rulemaking are simultaneously regulated by RCRA, it is important to also explain the use of the term waste minimization, under RCRA.

Waste minimization includes pollution prevention (or source reduction) and environmentally sound recycling, i.e., recycling that does not constitute disposal (see 40 CFR 261.1(c)). It does not include treatment—i.e, any "method, technique, or process, including neutralization,

[18] *Pollution Prevention 1997, A National Progress Report* (June, 1997). U.S. Environmental Protection Agency, EPA 742–R–97–00, Washington, D.C.

designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume." (40 CFR 260.10). RCRA also contains requirements for hazardous waste generators and permitted waste management facilities to make routine certifications that they have a "waste minimization program in place," and large generators must also report waste minimization activities biennially.

The environmental literature and public statements of many companies provide strong evidence of the potential benefits to industry and the environment that result from using pollution prevention over waste generation and management. For example, pollution prevention techniques can help companies reduce the amount of raw materials purchased and the amount of waste generated. These reductions can reduce the amount spent on waste management and can also reduce worker exposure to hazardous substances. Pollution prevention can help companies improve product yield and find ways to recover materials that might otherwise be destroyed or landfilled.

The literature also points to barriers that may impede a company's ability to pursue pollution prevention. Barriers may include, for example: little or no access to technical information on pollution prevention technologies, concern over the impact of process changes on product quality, a lack of access to capital, requirements in existing environmental regulations that conflict with pollution prevention objectives.

Today's regulation focuses on reducing several potential regulatory barriers that could interfere with pollution prevention solutions. The incentive based approach contained in today's rule is explained further below.

C. Summary of Proposed Pollution Prevention/Waste Minimization Incentives and Comments Received

EPA requested comment on six alternatives for promoting pollution prevention and waste minimization at hazardous waste incinerators, cement kilns and LWAKs. Three were proposed in the Agency's April 1996 NPRM and three were proposed in the Agency's Notice of Data Availability (NODA) published in the Federal Register on May 2, 1997 (Revised Technical Standards for Hazardous Waste Combustion Facilities; Proposed Rule, 62 FR 24241). All six incentive based alternatives were designed to promote the identification and installation of pollution prevention and waste minimization techniques that reduce or eliminate the amount and/or toxicity of hazardous wastes entering combustion feedstreams, either as an alternative to end-of-pipe combustion measures, or in combination with combustion measures, to meet MACT standards.

Two of the six alternatives proposed focused on using waste minimization facility planning as a tool that would cause regulated facilities to identify pollution prevention/waste minimization measures that could be used to reduce the amount and/or the toxicity of hazardous wastes entering combustion feedstreams. Two additional alternatives focused on extending compliance deadlines to allow additional time for companies to fully explore pollution prevention/waste minimization measures and combustion measures that may be necessary to meet MACT standards. A fifth alternative requested comment on an approach that would harness the power of public involvement during the initial stage of corporate compliance planning. The sixth alternative proposed promulgating pollution prevention and waste minimization incentives several months before the MACT standards are promulgated—which would provide companies several months of advance planning time before the MACT compliance period begins. The alternatives were not designed to be exclusive. Today's rule promulgates a combination of three of these options, encourages States to adopt two others, and recommends an alternative voluntary approach for the sixth. The options, comments received and EPA's response to major comments are discussed below. EPA's response to each comment is contained in the docket.

EPA received over 40 comments on the options contained in the April 1996 NPRM and the NODA. Most of the commenters addressed one or more of the following topics:

—Time-based incentives, including the opportunity to enter into enforcement agreements beyond four years,
—The effectiveness of pollution prevention planning and planning criteria,
—Perceived effectiveness of pollution prevention in the context of this rulemaking,
—Setting MACT standards based on pollution prevention/waste minimization,
—Public review of pollution prevention and waste minimization,
—The role of pollution prevention and waste minimization in waste management,
—The definition of pollution prevention and waste minimization, and
—Applicability of pollution prevention incentives to commercial facilities.

EPA asked for comments on the appropriateness of two options requiring pollution prevention/waste minimization facility planning. One option would require facilities to complete a waste minimization facility plan that identifies alternatives for reducing the amount of hazardous waste managed by combustion. While this approach would not require facilities to select any particular pollution prevention technology, it presumes that going through the process of exploring alternatives would cause a company to consider more pollution prevention options than they would have otherwise and select any that are cost-effective.

In the second waste minimization planning option, EPA proposed to allow States and EPA Regions (in cases where States are do not have an approved CAA Title V program) to require pollution prevention planning on a case-by-case basis. Determining which facilities should be required to complete a pollution prevention/waste minimization facility plan could take into account several factors, including, for example, whether an existing state program had already accomplished this objective, the extent to which this requirement may be too burdensome for some states, and the extent to which facility specific conditions indicate emissions could be controlled by feed stream management and waste minimization at the source.

A variety of commenters addressed this issue. Four states and one state association commented pollution prevention/waste minimization should be the highest priority waste management approach, though they had diverse and sometimes conflicting opinions about the specific options proposed. One State commented that mandatory planning should be required for all facilities that generate and combust waste on-site, and that planning should be required on a case-by-case basis for commercial off-site combustion facilities. One State and the State association stated that the mandatory planning requirement should be expanded to include all facilities that generate waste managed by combustion. A fourth State said that no waste minimization incentives should be included in this rule because the

regulated community has had many years to reduce waste generation through pollution prevention/ waste minimization, and should have already considered waste minimization as an approach to compliance. One state did not comment specifically on the pollution prevention planning options but was in favor of encouraging pollution prevention incentives in this rule.

This diversity of opinion among States leads EPA to believe that the pollution prevention/waste minimization incentives contained in this rule must allow broad flexibility for State programs. EPA is also aware, from discussions outside the context of this rulemaking, that some states are specifically opposed to mandatory pollution prevention requirements, and a few states have not yet established pollution prevention programs.

Several dozen comments were received from industry. Most of the comments from companies who generate and combust waste on-site were in favor of pollution prevention/ waste minimization as the most desirable form of waste management. However, most were opposed or silent regarding required pollution prevention planning. Only one argued that mandatory pollution prevention planning is not appropriate, and that the case by case option provides greater flexibility and is therefore more appropriate.

Commercial combustion facilities generally oppose pollution prevention planning requirements because they have virtually no control over what types or how much waste their customers generate for combustion. However, one company argued strongly for the Agency to require mandatory pollution prevention planning by all regulated units to identify pollution prevention alternatives that eliminate or reduce the amount and toxicity of combusted wastes. The commenter further argued that pollution prevention should be used to leverage the closing of combustion units where wastes could more effectively be eliminated or reduced. Another commercial company believes EPA should implement "good actor" incentives for companies that educate their customers regarding available waste minimization resources. Such incentives could include reduced inspection frequencies, reduced performance testing, and a recognition program. This approach was not suggested by any other commenters. EPA believes this approach might be appropriate for further exploration at a later time. One Federal agency commented in favor of a case-by-case approach.

EPA considered several factors regarding this approach. First, the CAA clearly envisions States as the primary implementers of the Title V program, and the pollution prevention programs operated by the States are clearly diverse. While 15 States have enacted mandatory pollution prevention planning programs, the remaining States continue to emphasize voluntary pollution prevention programs and technical assistance to encourage pollution prevention.

Available data shows that mandatory pollution prevention planning can be an effective State tool. It is not clear how effective this approach would be for a broad array of states. In a review of seven states that have chosen to implement mandatory pollution prevention planning programs, the National Pollution Roundtable concludes that mandatory pollution prevention planning produces beneficial results for the regulated community and the environment, and encourages other states to consider this direction.[19] However, New Jersey (one of the seven States reviewed) notes in a separate report that its companies began making significant reductions through pollution prevention well before the State passed legislation requiring mandatory pollution prevention planning. In this case, the State is not able to pinpoint why this occurred.[20]

Of the 21 commercial hazardous waste incinerators and the 141 on-site hazardous waste incinerators (i.e., incinerators co-located with a company manufacturing facilities), 58 percent are located in states which have legislated pollution prevention programs already in place. Nearly all of the remaining facilities are located in States that provide pollution prevention technical assistance. In addition, all of these facilities are co-regulated by RCRA and have been required since 1984 to certify on an annual basis, that they have a waste minimization program in place. Therefore, it is not clear what additional pollution prevention benefits would result from a mandatory requirement. Based on its analysis, EPA believes that a federal requirement for pollution prevention planning is not appropriate.

EPA also considered the impact Federal pollution prevention planning requirements would have on the Agency's paperwork reduction commitments. EPA is committed to decreasing its information collection request budget. In light of the baseline requirements and voluntary programs States have already established in this area, EPA concludes this requirement would increase federal paperwork without necessarily creating a commensurate improvement in environmental quality.

EPA has also expanded the availability of voluntary pollution prevention incentives available—which in turn reduce the need for mandatory federal pollution prevention requirements. For example, EPA has recently released the "Waste Minimization Prioritization Tool."[21] This tool is an easy-to-use computer program that allows industrial, government and public users to quickly identify their highest hazard wastes as targets for pollution prevention efforts. The tool allows the user to enter information on particular waste streams and develop a screening-level assessment of chemicals based on their persistence, bioaccumulation potential, and human and ecological toxicity. The system ranks about 900 chemicals that have "complete" data on chemical persistence, bioaccumulation potential, and human and ecological toxicity, and it includes partial data for 3,800 others. This tool has received much review and is targeted for widespread distribution in the regulated community.

EPA continues to provide $5–$8 million dollars per year in grant funds to States that develop innovative pollution prevention approaches, and EPA is promoting pollution prevention innovation in States through the National Environmental Performance Partnership System (NEPPS). NEPPS agreements give the States flexibility to combine individual program grants to maximize achieve environmental goals, including using funds for pollution prevention that have historically been used for end-of-pipe pollution controls. Texas, New Jersey, and Ohio (which oversee a total of 45 hazardous waste incinerators) are among the states that signed NEPPS agreements in 1996. Thirty states were scheduled to negotiate NEPPS agreements in 1997.

In addition, a variety of government-industry partnerships are producing pollution prevention results. For example, 163 industry members of Texas' Clean Industries 2000 program

[19] "Facility Pollution Prevention Planning Requirements: An Overview of State Program Evaluations," National Pollution Prevention Round table (August 8, 1997), Washington, D.C. 20036.

[20] Aucott, M., Wachspress, D., & Herb J., (May, 1996). "Industrial Pollution Prevention in New Jersey," New Jersey Department of Environmental Protection, Trenton, N.J.

[21] "Waste Minimization Prioritization Tool, Version 1.0: User's Guide and System Documentation," (EPA 530–R–97–019, June, 1997). U.S. Environmental Protection Agency, Washington, D.C.

are committed to reducing emissions of Toxic Release Inventory (TRI) chemicals by 50 percent by the year 2000. A twenty-nine percent reduction was reached by the year 1994.

Balancing all of the above factors, EPA believes mandatory and case-by-case pollution prevention planning approaches are not necessary to achieve the pollution prevention goals of the CAA. A combination of strong incentives and broad flexibility for States and the regulated community, including some of the options discussed below and contained in today's rule, will accomplish the pollution prevention goals of the CAA.

Two options were proposed that would allow the MACT compliance period to be extended for facilities that demonstrate the need for extra time to install pollution prevention measures. One of these options would allow facilities to apply for a one-year compliance extension to the MACT compliance period under Section 112(i)(3)(B) where additional time is needed to install pollution prevention or waste minimization measures that reduce or eliminate hazardous wastes entering the combustion feedstreams of regulated facilities. Of course, such applications must still be evaluated on a case-by-case basis CAA 112(b)(3). However, the following discussion provides an indication of how EPA might evaluate such applications based on pollution prevention.

Facilities that apply for this one-year extension would be required to provide a description of the pollution prevention/waste minimization measures that would significantly reduce or eliminate the volume and/or toxicity of hazardous wastes entering combustion feedstreams, a reduction goal (i.e., how much waste will no longer enter combustion feedstreams of the regulated unit(s)), a discussion of additional combustion or other treatment technology that will be installed to meet MACT standards, and a schedule of milestones necessary to achieve compliance. The pollution prevention/waste minimization measures installed could be used either alone to meet MACT standards (e.g., in cases where elimination of certain combusted waste streams will either achieve MACT standards for the regulated unit(s), or will eliminate the need for the regulated unit(s)), or in combination with combustion or other treatment technologies that enable the facility to comply with MACT standards. We emphasize that identifying expected reductions in combustion feedstreams is required, but identifying reductions in emissions as a result of installing pollution prevention measures is not required. EPA recognizes this would not be practical. The compliance date for facilities that are granted a one year extension by the permitting agency would be four years after the promulgation of MACT standards, rather than three years after the date of promulgation.

EPA recognized in its proposal that States operate very diverse pollution prevention programs. However, to ensure some degree of consistency in granting one year extensions, EPA proposed four flexible factors to be considered in approving or denying requests for one-year compliance extensions for hazardous waste burning incinerators, LWAKs, and cement kilns. These factors included: (1) The extent to which the process changes (including waste minimization measures) proposed as a basis for the extension reduce or eliminate hazardous wastes entering combustion feed streams and are technologically and economically feasible, (2) whether the magnitude of the reductions in hazardous wastes entering combustion feed streams through process changes are significant enough to warrant granting an extension, (3) a clear demonstration that reductions of hazardous wastes entering combustion feed streams are not shifted as increases in pollutants emitted through other regulated media, and (4) a demonstration that the design and installation of process changes, which include waste minimization measures, and other measures that are necessary for compliance cannot otherwise be installed within the three year compliance period.

EPA received no adverse comments on the four factors for ensuring consistency. Companies that operate on-site units (many of which are large chemical plants which operate complex production processes and which generate diverse and complex waste streams) commented that they prefer to use pollution prevention and waste minimization measures wherever they are cost effective. However, in the instant rulemaking, the dual tasks of designing, testing and installing pollution prevention process changes and combustion or other treatment equipment is not practical in a three year compliance period plus a one-year extension. Some commented that meeting the compliance date may often force companies to install combustion controls at great expense and forego exploration of pollution prevention options.

The four states and one State association that commented on the compliance extension options had diverse opinions. Two states commented that pollution prevention/waste minimization should be encouraged in this rulemaking. However, they believe three years plus a one-year extension may not be enough time for companies to identify and install waste minimization measures. A third State said that pollution prevention/waste minimization incentives should not be included in this rule because companies have had more than ample time to pursue pollution prevention/waste minimization as an approach to compliance. A fourth State and State association commented that facilities have had ample time to identify and install pollution prevention solutions—however, one year compliance extensions should be considered in cases where it will promote further pollution prevention.

Two commercial hazardous waste treatment organizations commented that a one-year extension for pollution prevention/waste minimization purposes is not appropriate since the companies generating the waste have had several years to consider pollution prevention and waste minimization measures as a waste management alternative.

EPA believes that compliance extensions provide a strong incentive for pollution prevention, and provide States additional flexibility. EPA agrees that, in some cases, three years plus a one-year extension may not be sufficient time to identify and install waste minimization measures that achieve compliance. However, the one year extension is the maximum allowable under the CAA. EPA disagrees with the commenters opposing the extension because pollution prevention and waste minimization should be viewed as an on-going process that adopts new pollution prevention technologies as they become available. In some cases, the economics of complying with new MACT standards may make pollution prevention more cost-effective than it would have otherwise been.

In today's rule, EPA has chosen to implement the one-year compliance extension approach. In evaluating extension requests, EPA urges permitting agencies to give first preference to facilities that request the extra time to install pollution prevention measures (either alone or in addition to combustion controls) over facilities that request an extension only for installing combustion controls. EPA has also simplified the factors that must be considered by permitting agencies in making determinations for one year extensions by making them identical to

the factors facilities must include in requests for extensions.

In its 1997 NODA, EPA encouraged facilities that wish to apply for a one-year extension to coordinate the development the application for extension with the information contained in Notice of Intent to Comply (NIC), which is also described in today's rulemaking. Based on the comments received from industry and States noting the need for extra time to consider and then install pollution prevention measures, EPA would expect to see a reasonable degree of consistency between pollution prevention alternatives discussed in the NIC and pollution prevention technologies identified in a subsequent request for a one year extension to install pollution prevention technologies. Requests for a one-year compliance extension from facilities who did not address pollution prevention in the NIC should be viewed with caution to guard against last minute attempts to delay compliance.

The second compliance extension option, proposed in the 1997 NODA, would allow certain facilities to enter into a written consent agreement or consent order in cases where pollution prevention/waste minimization technologies would significantly reduce wastes entering combustion feed streams, but would take more than four years (i.e., three years plus a one-year extension). EPA could use this alternative using the principles articulated in the Agency's "Policy on Encouraging Self-Policing and Voluntary Correction" (also known as the "Audit Policy" 60 FR 66706, December 22, 1995).

Very few commenters addressed this option. Some industry commenters expressed limited interest in this approach, since entering into a consent agreement would provide no shield against citizen suits.

EPA agrees that longer than four years may be needed in some cases. However, based on the comments received and after further evaluation, the Agency has decided not to pursue this proposal as part of this rulemaking. Instead, EPA believes its Project XL program provides a better opportunity for EPA to work with companies who are interested in undertaking projects which hold the promise of superior environmental results in exchange for regulatory flexibility. The XL program is also designed to include public involvement early in the process, which would hopefully reduce the likelihood of citizen suits. Project XL proposals should be developed and submitted well in advance of the deadline for meeting this MACT standard, possibly before the promulgation of MACT standards. See the May 22, 1995 **Federal Register** Notice [FRL–5197–9] for further information on developing and submitting a proposal.

EPA proposed a fifth pollution prevention/waste minimization incentive in the 1997 NODA which focused on harnessing the power of public involvement to encourage companies to consider pollution prevention alternatives. The NODA proposed to require facilities to make public, within ten months after promulgation of the MACT standards, a draft Notice of Intent to Comply (NIC) that contains a description of technologies that will be used to achieve compliance with MACT standards, including pollution prevention and waste minimization technologies. Regulated facilities would also be required to hold a public meeting on its compliance plan and to submit a final NIC to the permitting agency no later than one year after the promulgation of standards. In this setting, the public would be able to review a company's draft compliance plan and make known its concerns and views regarding the use of pollution prevention, combustion or other treatment methods.

Several commenters responded to the pollution prevention/waste minimization components of the NIC proposal. One industry trade organization commented that the NIC requirements are unnecessary since its members already participate in a responsible care program that includes pollution prevention and community involvement. Another commenter argued strongly that the public involvement opportunity provided by the NIC process is inadequate, and that the point at which the public interacts with the facility is too late to influence decisions to encourage the installation of pollution prevention technology that may reduce or eliminate the need for combustion.

It is crucial to provide the public with information and a public meeting on the pollution prevention/waste minimization and combustion measures that are planned at individual facilities. The NIC process occurs early enough in the compliance process to provide meaningful public involvement, and the NIC process provides a strong lever for citizens to voice their opinions. The pollution prevention aspects of the NIC requirements are further discussed in the NIC portion of today's preamble.

The sixth pollution prevention/waste minimization option proposed involved promulgating a "fast track" rule in advance of MACT standards to provide the regulated community time to explore, plan and possibly begin implementation of pollution prevention and waste minimization measures several months before the promulgation of MACT standards.

One commenter strongly urged this option because it provides facilities with additional planning time to identify pollution prevention options before the MACT compliance period begins. Although no other commenters specifically addressed this option, EPA believes it provides States additional flexibility, and comports with the variety of comments that expressed general support for pollution prevention as a top priority environmental management strategy.

D. Waste Minimization Incentives Contained in Today's Rule

Today's rulemaking provides three incentives to encourage the use of pollution prevention measures to reduce or amount and/or toxicity of hazardous wastes entering combustion feedstreams. Wastes that cannot be reduced at the source should be recycled in an environmentally sound manner, i.e., in a manner that does not constitute disposal. Wastes that cannot be reduced at the source or recycled should be either burned for energy recovery, treated, or disposed in accordance with environmental standards. Today's incentive based approach encourages and rewards facilities that significantly reduce the amount of combusted hazardous waste using pollution prevention measures as a method for achieving MACT standards, and it provides the flexibility needed by the States to build on or expand existing pollution prevention programs.

Today's rule (at Section 63.1216) allows owners/operators of hazardous waste burning incinerators, cement kilns and lightweight aggregate kilns to request a one-year extension to the MACT compliance period in cases where additional time is needed to install pollution prevention and waste minimization measures that reduce the amount of hazardous waste entering combustion feedstreams. The Administrator or State with an approved Title V program is authorized to grant one-year extensions for this purpose under Section 112(i)(3)(B) of the CAA. Pollution prevention and waste minimization measures that can be considered in this determination include: process changes (including closed loop recycling), raw material substitutions, design changes, equipment changes, work practice changes, changes in operational standards or other similar measures that

EPA or State permitting agencies may determine is pollution prevention or waste minimization. Waste minimization activities that may be considered for an extension include pollution prevention activities and recycling measures, as defined in 40 CFR 261.1(c) and conducted in accordance with RCRA regulations.

The term recycling, as defined in defined in 40 CFR 260.10 does not include burning for energy recovery or treatment activities. Therefore, burning for energy recovery will not be considered for an extension. Companies who burn for energy recovery are presumed, in accordance with their RCRA waste minimization program in place certification (discussed above), to have determined that wastes burned for energy recovery could not be economically source reduced or recycled prior to burning. EPA believes this approach is completely consistent with past Agency policy and provides the regulated community with greater flexibility in managing its non-product outputs.

Requests for a one-year extension must reasonably document that the waste minimization measures, and whatever additional compliance measures are necessary to achieve compliance, could not otherwise be installed in time to meet the three-year compliance period. Stronger consideration should be given to requests that contain, for example: (1) A schedule to redesign a production process that eliminates the use of solvents and the generation of spent solvents (which are currently combusted in an on-site hazardous waste incinerator), (2) a commitment to reduce by 25% the amount of hazardous wastes entering the incinerator feedstream (as a result of the waste minimization process change), (3) a description and schedule for designing and installing combustion controls to treat remaining wastes, and (4) evidence that the extension reflects the reality that the design specs and schedule for the remaining combustion controls can not be completed or installed without first having information on waste minimization related feedstream changes. In contrast, requests that propose to simply send wastes off-site for recycling, for example, without first exploring on-site process changes or operating practices, should receive little or no consideration for an extension because there is nothing in this action that would require extensive time.

Decisions to grant one-year extensions will be made by EPA or state programs that have delegated the authority to implement and enforce the emission standard for that source. In light of the wide range of approaches States employ regarding waste minimization planning, it is appropriate to encourage some degree of consistency in how these decisions are made, without superseding State approaches. Therefore, EPA is requiring that permitting agencies must consider all of the information required in Section 63.1216 in approving or denying requests for one-year compliance extensions for hazardous waste burning incinerators, LWAKs, and cement kilns. EPA will also work with States to develop separate guidance, with examples, of how to review requests for an extension, based on pollution prevention/waste minimization efforts.

The second pollution prevention/waste minimization incentive promulgated in today's rule is the requirement for regulated facilities to include in their Notice of Intent to Comply (NIC) a description of pollution prevention and waste minimization activities proposed to reduce the amount and/or toxicity of hazardous waste entering the facility's combustion feedstream(s). This approach will harness the power of public involvement, through the NIC review and public meeting process, to encourage facilities to consider pollution prevention measures in their MACT compliance plan. The requirements for the NIC process are described in today's preamble.

It is important to note here that companies should consider coordinating the development of a NIC process with any subsequent requests for a one year extension. For example, it would seem logical that pollution prevention measures identified in the NIC (prepared in the first year of the compliance period), would also appear in a subsequent request for a one year extension (prepared in the second year of the compliance period). In contrast, requests for a one year extension from companies that did not consider pollution prevention in their NIC might be looked at with more caution.

As a third pollution prevention incentive, EPA is promulgating today's rule several months in advance of promulgating MACT standards to provide companies with several valuable months of advance planning time to identify waste minimization measures can be used to meet, or assist in meeting MACT standards. The timing of today's rule, therefore, serves as a valuable pollution prevention incentive.

Taken together, the tailored incentives contained in today's rule provide strong encouragement for regulated companies to pursue cost effective pollution prevention and waste minimization measures in their individual approaches to meeting MACT standards.

As a final note, a substantial amount of free technical information, assistance and guidance on pollution prevention and waste minimization is available from the Federal government and States, and from a variety of private sources. EPA's "Pollution Prevention Facility Planning Guide" (May, 1992; NTIS # PB92–213206) describes the series of analytical steps that are often used by companies to identify waste minimization measures. Additional EPA references include: "Waste Minimization Opportunity Assessment Manual (EPA 625/7–88/003, July 1988), Interim Final "Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program In Place,"(May 1993), "An Introduction to Environmental Accounting As a Business Management Tool" (EPA 742–R–95–001, June 1995), the "P2/Finance User's Manual: Pollution Prevention Financial Analysis and Cost Evaluation System for Lotus 1–2–3 (EPA 742–B–94–003, January 1994), and Enviro$ense, an electronic library of information on pollution prevention, technical assistance, and environmental compliance. Many of these and other documents can be accessed by contacting the RCRA Hotline toll-free at 1–800–424–9346. Enviro$ense can be accessed by contacting a system operator at (703) 908–2007, or on the Internet at http://wastenot.inel.gov/enviro-sense. Information on State waste minimization programs can be obtained through Enviro$ense, directly from the State pollution prevention program offices, or from the National Pollution Prevention Roundtable at E-mail address 75152.1416@compuserve.com, by phone at 202–466–7272 in Washington, D.C.

VII. State Authority

A. RCRA State Authorization

Under RCRA section 3006, EPA may authorize a State to administer and enforce the RCRA hazardous waste program. See 40 CFR part 271. After receiving authorization, the State administers the program in lieu of the Federal government, although EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003. Because the new Federal requirements in today's final rule are promulgated under non-HSWA authority, they are not Federally enforceable in an authorized State until the State has adopted equivalent (or more stringent) standards under its authorized laws and regulations, and those changes have

been approved by EPA. See RCRA section 3006, 42 U.S.C. 6926. Thus, upon their effective date, these requirements will be applicable only in those States that do not have authorization.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. RCRA section 3009 allows States to impose standards that are more stringent than those in the Federal program (see also 40 CFR 271.1(i)(1)). Thus, for those Federal changes that are less stringent, or reduce the scope of the Federal program, States are not required to modify their programs. The revisions to the Federal RCRA Subtitle C program that are promulgated today are considered to be less stringent than the existing Federal regulations. However, EPA believes that their adoption by States will greatly enhance the implementation of the upcoming MACT standards, and ease the permitting burden on the States. Thus, EPA strongly urges States to adopt all aspects of today's final rule as quickly as their legislative and regulatory processes will allow.

B. Program Delegation Under the Clean Air Act

Today's final rule adds notification procedures for hazardous waste combustors under Title III. Specifically, today's rule requires sources to provide to the permitting agency a Notification of Intent to Comply (NIC) within a year following promulgation of new emissions standards in 40 CFR part 63 Subpart EEE, and a Progress Report within two years. As part of the process of developing a NIC, the source is also required to conduct additional public involvement activities, in particular an informal meeting with the community. Section 112(l) of the Clean Air Act allows EPA to approve State rules or programs for the implementation and enforcement of emission standards and other requirements for air pollutants subject to section 112. Under this authority, EPA has developed delegation procedures and requirements located at 40 CFR Part 63, Subpart E, for NESHAPS under Title III of the CAA (See 57 FR 32250, July 21, 1992).

Submission of rules or programs by States under 40 CFR Part 63 is voluntary. Once a State receives approval from EPA for a standard under section 112(l) of the CAA, the State is delegated the authority to implement and enforce the approved State rules or programs in lieu of the otherwise applicable federal rules (the approved State standard would be federally enforceable). States may also apply for a partial Title III program, such that the State is not required to adopt all rules promulgated in 40 CFR Part 63. EPA will administer any rules federally promulgated under section 112 of the CAA that have not been delegated to the State.

VIII. Administrative Requirements/ Compliance With Executive Order

A. Regulatory Impact Analysis Under Executive Order 12866

Under Executive Order No. 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create 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.

EPA has determined that today's final rule is not "significant" under points one through three above. The Agency is sensitive, however, to interpretations that may define today's action as "significant" under point number four above, due to the nature of the policy issues raised and recognizes today's action as significant. The Agency has examined economic impacts potentially associated with the three key elements of today's action: the comparable fuel exclusion, waste minimization incentives, and streamlined RCRA permitting modifications. The comparable fuels exclusion in today's final rule will result in national annual cost savings to generators ranging from approximately $11 to $36 million, net of the cost of gaining the exclusion. Blending and combustion facilities, however, are estimated to experience reduced receipts for managing hazardous wastes, coupled with the costs of replacing these materials with more expensive substitutes. The combined impact is estimated to cost these firms an additional $3 to $13 million per year. Today's action also allows sources to apply for up to a one year extension of the three-year compliance period for implementation of waste minimization procedures. Overall, this extension is likely to provide a greater incentive for facilities with on-site combustion units to implement waste minimization options rather than to continue burning hazardous wastes and implement appropriate control technologies. The degree to which this incentive will change the waste burning behavior of combustion facilities is undetermined. EPA is also implementing streamlined procedures for modifying RCRA permits at hazardous waste combustion units. Only those states that regulate combustion units and choose to adopt the streamlined modification system would have to undergo rulemaking and authorization for the streamlined permitting process. The Agency estimates that approximately half of the states with MACT-regulated combustion units will not alter their current permitting system. Based on the average cost to a state for rulemaking and authorization, the Agency estimates aggregate national costs for those states that would modify their systems at a one-time cost of no more than $685,000. In addition to rulemaking and authorization costs, the aggregate national cost for permit review may be as high as $3.8 million. For more information on the cost impacts of today's final rule, see the Economic Analysis Report for the Combustion MACT Fast-Track Rulemaking, March 1998, which is part of the docket for this rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those "businesses, organizations and governmental jurisdictions subject to regulation."

EPA has determined that today's rule will primarily affect large scale facilities. Furthermore, since today's final notice generally provides savings

over current requirements, EPA believes that any small entities engaged in activity covered by the rule will not be adversely affected. Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C., I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. A more detailed discussion of small entity impacts is presented in the Economic Analysis Report.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0073.

The incremental annual public reporting and record keeping burden for this collection of information is estimated to be 55,196 hours at a cost of about $5,164,000. For those generators applying for the comparable/syngas fuel exclusion, the average annual respondent reporting burden is estimated to be 0.5 hours per facility and the average annual record keeping burden is estimated to be 47.3 hours per facility. For burners of comparable/syngas fuels, there is no reporting burden and the annual record keeping burden is 8.0 hours per facility. For HWCs complying with the notification of intent to comply regulations, the average annual reporting burden is 300.5 hours per facility and the average annual record keeping burden is 9.0 hours per facility.

This estimate 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 respond to collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

During its review of the proposed rule ICR, OMB offered comments concerning the burdens associated with the proposed testing requirements and records retention for the comparable fuel/syngas exclusion. In the final rule, EPA is allowing generators to use process knowledge and requiring testing for only those constituents the generator determines should be in the waste. The frequency of the testing will be specified by the generator in the waste analysis plan. With regards to records retention, the final rule will require the retention of records of all comparable and syngas fuel-related information for three years. EPA also received several public comments on the final rule ICR which was noticed on January 28, 1998 at 63 FR 4249. EPA has responded to those comments in the supporting statement for the ICR.

EPA estimates that the addition of the comparable fuels exclusion will cause the BIF universe to decrease by 25 facilities. Although the burden reduction is not reflected in the ICR, EPA expects reporting and recordkeeping requirements for BIFs to decrease by 70,743 hours (18 percent) and $7,493,221 (15 percent) annually. EPA will revise the ICR to reflect this burden reduction when it finalizes the emissions standards for hazardous waste combustors.

EPA is also amending the table of currently approved ICR control numbers issued by OMB for various regulations. This amendment updates the table to display accurately this final rule. This display of the OMB control numbers and their subsequent codification in the Code of Federal Regulations (CFR) at 40 CFR Part 9 satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR Part 1320.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M Street, S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local 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 one year. When a written statement is needed for an EPA rule, 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 requirements 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, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated that the total potential cost to State, local, and Tribal governments would not exceed approximately $4.5 million over ten years. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

IX. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2), therefore, the effective date of the rule is not affected.

X. Environmental Justice

A. Applicability of Executive Order 12898

EPA is committed to address environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Potential Effects

Today's final rule is not expected to cause any disproportionate impacts to minority or low income communities versus affluent or non-minority communities.

XI. Children's Health

Executive Order 13045: The Executive Order 13045 applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency

This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and safety Risks (62 FR 19885, April 23, 1997), because: (a) "This is not an economically significant regulatory action as defined by E.O. 12866."

XII. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed 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, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA is not finalizing any new test methods or other technical standards as part of today's final rule. Thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

List of Subjects

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and record keeping requirements.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Emergency responses, Hazardous materials transportation, Hazardous waste, Permit application requirements, Permit modifications, Reporting and recordkeeping requirements.

Dated: June 5, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR Parts 63, 261, and 270 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.*

2. Part 63 is amended by adding Subpart EEE, to read as follows:

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

Sec.

§ 63.1211 Notification requirements.

(a) *Notification of Intent To Comply (NIC).* (1) All hazardous waste combustors subject to this subpart shall prepare a Notification of Intent to Comply that includes the following information:

(i) General information:

(A) The name and address of the owner/operator and the source;

(B) Whether the source is a major or an area source;

(C) Waste minimization and emission control technique(s) being considered;

(D) Emission monitoring technique(s) being considered;

(E) Waste minimization and emission control technique(s) effectiveness;

(F) A description of the evaluation criteria used or to be used to select waste minimization and/or emission control technique(s); and

(G) A statement that the source intends to comply with this subpart by controlling emissions from the combustion of hazardous waste pursuant to the standards of this subpart.

(ii) Information on key activities and estimated dates for these activities that will bring the source into compliance with emission control requirements of this subpart. The submission of key activities and dates is not intended to be static and may be revised by the source during the period the NIC is in effect. Revisions shall be submitted to the regulatory authority and be made available to the public. The following are the key activities and dates that shall be included:

(A) The dates for beginning and completion of engineering studies to evaluate emission control systems or process changes for emissions;

(B) The date by which contracts for emission control systems or process changes for emission control will be awarded, or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

(C) The date by which construction applications will be submitted;

(D) The date by which on-site construction, installation of emission control equipment, or process change is to be initiated;

(E) The date by which on-site construction, installation of emission control equipment, or process change is to be completed; and

(F) The date by which final compliance is to be achieved. The individual dates and milestones listed in paragraphs (a)(1)(ii)(A) through (F) of this section as part of the NIC are not requirements and therefore are not enforceable deadlines; the Agency is

requiring paragraphs (a)(1)(ii)(A) through (F) of this section as part of the NIC only to inform the public of the source's intentions towards coming into compliance.

(iii) A summary of the public meeting required under paragraph (b) of this section.

(iv) For any source that does not intend to comply, but will not stop burning hazardous waste as required under paragraph (c) of this section, a certification that the designated source will:

(A) Stop burning hazardous waste on or before the compliance date of the emission standards of this Subpart; and

(B) Be necessary to combust the hazardous waste from another on-site source, during the year prior to the compliance date of the emission standards of this Subpart, because that other source is:

(*1*) Installing equipment to come into compliance with the emission standards of this Subpart; or

(*2*) Installing source reduction modifications to eliminate the need for further combustion of wastes.

(2) A draft of the NIC must be made available for public review no later than 30 days prior to the public meeting required under paragraph (b)(1) of this section.

(3) The final NIC must be submitted to the permitting agency no later than one year following the effective date of the emission standards of this subpart.

(b) *NIC Public Meeting and Notice.* (1) Prior to the submission of the NIC to the permitting agency, and no later than 10 months after the effective date of the emission standards of this subpart, the source shall hold at least one informal meeting with the public to discuss anticipated activities described in the draft NIC for achieving compliance with the MACT standards promulgated in this subpart. The source must post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(2) The source shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b)(1) of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as part of the final NIC, in accordance with paragraph (a)(1)(iii) of this section.

(3) The source must provide public notice of the NIC meeting at least 30 days prior to the meeting. The source shall provide public notice in all of the following forms:

(i) *Newspaper advertisement.* The source shall publish a notice in a newspaper of general circulation in the county or equivalent jurisdiction of the source. In addition, the source shall publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdiction where such publication would be necessary to inform the affected public. The notice must be published as a display advertisement.

(ii) *Visible and accessible sign.* The source shall post a notice on a clearly marked sign at or near the source. If the source places the sign on the source's property, then the sign must be large enough to be readable from the nearest spot where the public would pass by the source.

(iii) *Broadcast media announcement.* The source shall broadcast a notice at least once on at least one local radio station or television station.

(iv) *Notice to the facility mailing list.* The source shall provide a copy of the notice to the facility mailing list in accordance with § 124.10(c)(1)(ix) of this chapter.

(4) The notices required under paragraph (b)(3) of this section must include:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the source and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the source location;

(iv) A statement encouraging people to contact the source at least 72 hours before the meeting if they need special access to participate in the meeting;

(v) A statement describing how the draft NIC can be obtained; and

(vi) The name, address, and telephone number of a contact person for the NIC.

(c) *Sources that do not intend to comply.* Those sources subject to the requirements of this subpart, except those sources meeting the requirements of paragraph (a)(1)(iv) of this section:

(1) Who signify in their NIC an intent not to comply with the requirements of this Subpart, must stop burning hazardous waste on or before two years after the effective date of the emmission standards of this subpart;

(2) Who do not intend to comply with this subpart must include in their NIC a schedule that includes key dates for the steps to be taken to stop burning hazardous waste. Key dates include the date for submittal of RCRA closure documents.

§ 63.1212 Progress reports.

(a) *General.* Not later than two years after the effective date of the emission standards of this subpart, all sources subject to this Subpart except those hazardous waste combustion sources that comply with paragraph (b)(2) of this section shall:

(1) Complete engineering design for any physical modifications to the source needed to comply with the emissions standards of this subpart;

(2) Submit applicable construction applications to the applicable regulatory authority; and

(3) Enter into a binding contractual commitment to purchase, fabricate, and install any equipment, devices, and ancillary structures needed to comply with the emission requirements of this subpart.

(b) *Demonstration* (1) Hazardous waste combustion sources shall submit to the regulatory authority a progress report on or before two years after the effective date of the emission standards of this subpart which contains information demonstrating that the source has met the requirements of paragraph (a) of this section. This information will be used by the regulatory authority to determine if the source has made adequate progress towards compliance with the applicable emission standards.

(2) Sources that intend to come into compliance with the emissions standards of this subpart, but can do so without undertaking any of the activities described in paragraph (a) of this section, shall submit documentation either:

(i) Demonstrating that the source, at the time of the progress report, is in compliance with the emissions requirements; or

(ii) Specifying the steps that will be taken to bring the source into compliance, without undertaking any of the activities listed in paragraphs (a)(1) through (3) of this section.

(3) Sources that fail to comply with paragraph (a) above or paragraph (b)(2) of this section shall stop burning hazardous waste on or before the date two years after the effective date of the emission standards of this subpart.

(c) *Schedule.* (1) The progress report shall contain a detailed schedule that lists key dates for all projects that will bring the source into compliance with the requirements of this subpart (i.e., key dates for the activities required under paragraphs (b)(1)(i) through (iii) of this section). Dates shall cover the time frame from the progress report through the compliance date of the emission standards of this subpart.

(2) The schedule shall contain the following dates:

(i) Bid and award dates for construction contracts and equipment supply contractors;

(ii) Milestones such as ground breaking, completion of drawings and specifications, equipment deliveries, intermediate construction completions, and testing;

(iii) The dates on which applications were submitted for or obtained operating and construction permits or licenses;

(iv) The dates by which approvals of any permits or licenses are anticipated; and

(v) The projected date by which the source will be in compliance with the requirements of this subpart.

(d) *Notice of intent to comply.* The progress report shall contain a statement that the source intends or does not intend to come into compliance with the applicable emission control requirements of this subpart.

(e) *Sources that do not intend to comply.* (1) Sources that: indicated in their NIC their intent not to comply with this subpart and stop burning hazardous waste prior to the submittal of a progress report; or meet the requirements of paragraph (a)(1)(iv) of this section are not required to include the requirements of paragraphs (b) and (c) of this section to their progress report, but shall include in their progress report: the date on which the source stopped burning hazardous waste; and the date(s) on which RCRA closure documents were submitted.

(2) Those sources that signify in the progress report, submitted not later than two years after the effective date of the emission standards of this subpart, their intention not to comply with the requirements of this subpart must stop burning hazardous waste on or before the date two years after the effective date of the emission standards of this subpart.

§ 63.1213 Certification.

(a) The Notice of Intent to Comply (NIC) and Progress Report submitted shall contain the following certification signed and dated by an authorized representative of the source:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(b) An authorized representative should be a responsible corporate officer (for a corporation), a general partner (for a partnership), the proprietor (of a sole proprietorship), or a principal executive officer or ranking elected official (for a municipality, State, Federal, or other public agency).

§ 63.1214 Extension of the compliance date.

(a) A source that intends to come into compliance with the requirements of this subpart, but due to the installation of controls will not meet the compliance date, may request an extension of the compliance date for one year.

(b) Sources subject to this subpart shall follow the requirements of § 63.6(i)(4) or § 63.1216 to request an extension of the compliance date.

§ 63.1215 Sources that become affected sources after the effective date of the emission standards of this subpart.

(a) A source that begins to burn hazardous waste after the effective date of the emission standards of this subpart, therefore becoming an affected source, but prior to 9 months after the effective date of the emission standards of this subpart shall comply with all the requirements of §§ 63.1211 through 63.1213 and associated time frames for public meetings and document submittals.

(b) A source that intends to begin burning hazardous waste more than 9 months after the effective date of the emission standards of this subpart, therefore becoming an affected source, shall meet all the requirements of §§ 63.1211 through 63.1213 prior to burning hazardous waste.

(1) Such sources shall make a draft NIC available, notice their public meeting, hold their public meeting, and submit a final NIC prior to burning hazardous waste.

(2) Such sources also shall submit their progress report at the time of the submittal of their final NIC.

§ 63.1216 Extension of the compliance date to install pollution prevention or waste minimization controls.

(a) *Applicability.* The owner or operator of any source subject to the requirements of this subpart may request from the Administrator or State with an approved Title V program an extension of one year to comply with the emission standards in this subpart, if the owner or operator can reasonably document that the installation of pollution prevention or waste minimization measures will significantly reduce the amount and/or toxicity of hazardous wastes entering the feedstream(s) of the combustion device(s) subject to this subpart, and that the facility could not otherwise install the necessary control measures and comply within three years after the effective date of the emission standards of this subpart.

(b) *Requirements for requesting an extension.* Requests for a one-year extension must be in writing, must be received not later than 12 months before the affected source's compliance date, and must contain the following information:

(1) A description of pollution prevention or waste minimization controls that, when installed, will significantly reduce the amount and/or toxicity of hazardous wastes entering the feedstream(s) of the combustion device(s) subject to this subpart. Pollution prevention or waste minimization measures may include: equipment or technology modifications, reformulation or redesign of products, substitution of raw materials, improvements in work practices, maintenance, training, inventory control, or recycling practices conducted as defined in 40 CFR 261.1(c);

(2) A description of other pollution controls to be installed that are necessary to comply with the emission standards;

(3) A reduction goal or estimate of the annual reductions in quantity and/or toxicity of hazardous waste(s) entering combustion feedstream(s) that will occur by installing the proposed pollution prevention or waste minimization measures;

(4) A comparison of reductions in the amounts and/or toxicity of hazardous wastes combusted after installation of pollution prevention or waste minimization measures to the amounts and/or toxicity of hazardous wastes combusted prior to the installation of these measures; and, if the difference is less than a fifteen percent reduction, a comparison to pollution prevention and waste minimization reductions recorded during the previous five years;

(5) Reasonable documentation that installation of the pollution prevention or waste minimization changes will not result in a net increase (except for documented increases in production) of hazardous constituents released to the environment through other emissions, wastes or effluents;

(6) Reasonable documentation that the design and installation of waste minimization and other measures that are necessary for compliance cannot otherwise be installed within the three year compliance period, and

(7) The information required in 40 CFR 63.6(i)(6)(i)(B) through (D).

(8) Documentation prepared under an existing State required pollution prevention program that contains the information may be enclosed with a

request for extension in lieu of paragraphs (b)(1) through (7) of this section.

(c) *Approval of request for extension of compliance.* Based on the information provided in any request made under paragraph (a) of this section, the Administrator or State with an approved Title V program may grant an extension of compliance with the emission standards identified in paragraph (a) of this section. The extension will be in writing in accordance with §§ 63.6(i)(10)(i) through 63.6(i)(10)(v)(A). EPA and States must consider the information required in paragraph (a) of this section in approving or denying requests for one-year compliance extensions.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.4 is amended by adding paragraph (a)(16) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(16) Comparable fuels or comparable syngas fuels (i.e., comparable/syngas fuels) that meet the requirements of § 261.38.

* * * * *

3. Section 261.38 is added to read as follows:

§ 261.38 Comparable/Syngas Fuel Exclusion.

Wastes that meet the following comparable/syngas fuel requirements are not solid wastes:

(a) *Comparable fuel specifications.*—(1) *Physical specifications.*—(i) *Heating value.* The heating value must exceed 5,000 BTU/lbs. (11,500 J/g).

(ii) *Viscosity.* The viscosity must not exceed: 50 cs, as-fired.

(2) *Constituent specifications.* For compounds listed in table 1 to this section the specification levels and, where non-detect is the specification, minimum required detection limits are: (see Table 1).

(b) *Synthesis gas fuel specification.*—Synthesis gas fuel (i.e., syngas fuel) that is generated from hazardous waste must:

(1) Have a minimum Btu value of 100 Btu/Scf;

(2) Contain less than 1 ppmv of total halogen;

(3) Contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N_2);

(4) Contain less than 200 ppmv of hydrogen sulfide; and

(5) Contain less than 1 ppmv of each hazardous constituent in the target list of Appendix VIII constituents of this part.

TABLE 1 TO § 261.38: DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Total Nitrogen as N	na	4900	
Total Halogens as Cl	na	540	
Total Organic Halogens as Cl	na	25 or individual halogenated organics listed below.	
Polychlorinated biphenyls, total [Arocolors, total][a]	1336–36–3	Non-detect	1.4
Cyanide, total	57–12–5	Non-detect	1.0
Metals:			
Antimony, total	7440–36–0	7.9	
Arsenic, total	7440–38–2	0.23	
Barium, total	7440–39–3	23	
Beryllium, total	7440–41–7	1.2	
Cadmium, total	7440–43–9	1.2	
Chromium, total	7440–47–3	2.3	
Cobalt	7440–48–4	4.6	
Lead, total	7439–92–1	31	
Manganese	7439–96–5	1.2	
Mercury, total	7439–97–6	0.24	
Nickel, total	7440–02–0	58	
Selenium, total	7782–49–2	0.15	
Silver, total	7440–22–4	2.3	
Thallium, total	7440–28–0	23	
Hydrocarbons:			
Benzo[a]anthracene	56–55–3	1100	
Benzene	71–43–2	4100	
Benzo[b]fluoranthene	205–99–2	960	
Benzo[k]fluoranthene	207–08–9	1900	
Benzo[a]pyrene	50–32–8	960	
Chrysene	218–01–9	1400	
Dibenzo[a,h]anthracene	53–70–3	960	
7,12-Dimethylbenz[a]anthracene	57–97–6	1900	
Fluoranthene	206–44–0	1900	
Indeno(1,2,3-cd)pyrene	193–39–5	960	
3-Methylcholanthrene	56–49–5	1900	
Naphthalene	91–20–3	3200	
Toluene	108–88–3	36000	
Oxygetes:			

TABLE 1 TO § 261.38: DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Acetophenone	98–86–2	1900	
Acrolein	107–02–8	37	
Allyl alcohol	107–18–6	30	
Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate]	117–81–7	1900	
Butyl benzyl phthalate	85–68–7	1900	
o-Cresol [2-Methyl phenol]	95–48–7	220	
m-Cresol [3-Methyl phenol]	108–39–4	220	
p-Cresol [4-Methyl phenol]	106–44–5	220	
Di-n-butyl phthalate	84–74–2	1900	
Diethyl phthalate	84–66–2	1900	
2,4-Dimethylphenol	105–67–9	1900	
Dimethyl phthalate	131–11–3	1900	
Di-n-octyl phthalate	117–84–0	960	
Endothall	145–73–3	100	
Ethyl methacrylate	97–63–2	37	
2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110–80–5	100	
Isobutyl alcohol	78–83–1	37	
Isosafrole	120–58–1	1900	
Methyl ethyl ketone [2-Butanone]	78–93–3	37.	
Methyl methacrylate	80–62–6	37.	
1,4-Naphthoquinone	130–15–4	1900.	
Phenol	108–95–2	1900.	
Propargyl alcohol [2-Propyn-l-ol]	107–19–7	30.	
Safrole	94–59–7	1900.	
Sulfoted Organics:			
Carbon disulfide	75–15–0	Non-detect ..	37
Disulfoton	298–04–4	Non-detect ..	1900
Ethyl methanesulfonate	62–50–0	Non-detect ..	1900
Methyl methanesulfonate	66–27–3	Non-detect ..	1900
Phorate	298–02–2	Non-detect ..	1900
1,3-Propane sultone	1120–71–4	Non-detect ..	100
Tetraethyldithiopyrophosphate [Sulfotepp]	3689–24–5	Non-detect ..	1900
Thiophenol [Benzenethiol]	108–98–5	Non-detect ..	30
O,O,O-Triethyl phosphorothioate	126–68–1	Non-detect ..	1900
Nitrogenated Organics:			
Acetonitrile [Methyl cyanide]	75–05–8	Non-detect ..	37
2-Acetylaminofluorene [2-AAF]	53–96–3	Non-detect ..	1900
Acrylonitrile	107–13–1	Non-detect ..	37
4-Aminobiphenyl	92–67–1	Non-detect ..	1900
4-Aminopyridine	504–24–5	Non-detect ..	100
Aniline	62–53–3	Non-detect ..	1900
Benzidine	92–87–5	Non-detect ..	1900
Dibenz[a,j]acridine	224–42–0	Non-detect ..	1900
O,O-Diethyl O-pyrazinyl phophoro-thioate [Thionazin]	297–97–2	Non-detect ..	1900
Dimethoate	60–51–5	Non-detect ..	1900
p-(Dimethylamino)azobenzene [4-Dimethylaminoazobenzene]	60–11–7	Non-detect ..	1900
3,3′-Dimethylbenzidine	119–93–7	Non-detect ..	1900
α,α-Dimethylphenethylamine	122–09–8	Non-detect ..	1900
3,3′-Dimethoxybenzidine	119–90–4	Non-detect ..	100
1,3-Dinitrobenzene [m-Dinitrobenzene]	99–65–0	Non-detect ..	1900
4,6-Dinitro-o-cresol	534–52–1	Non-detect ..	1900
2,4-Dinitrophenol	51–28–5	Non-detect ..	1900
2,4-Dinitrotoluene	121–14–2	Non-detect ..	1900
2,6-Dinitrotoluene	606–20–2	Non-detect ..	1900
Dinoseb [2-sec-Butyl-4,6-dinitrophenol]	88–85–7	Non-detect ..	1900
Diphenylamine	122–39–4	Non-detect ..	1900
Ethyl carbamate [Urethane]	51–79–6	Non-detect ..	100
Ethylenethiourea (2-Imidazolidinethione)	96–45–7	Non-detect ..	110
Famphur	52–85–7	Non-detect ..	1900
Methacrylonitrile	126–98–7	Non-detect ..	37
Methapyrilene	91–80–5	Non-detect ..	1900
Methomyl	16752–77–5	Non-detect ..	57
2-Methyllactonitrile [Acetone cyanohydrin]	75–86–5	Non-detect ..	100
Methyl parathion	298–00–0	Non-detect ..	1900
MNNG (N-Metyl-N-nitroso-N'-nitroguanidine)	70–25–7	Non-detect ..	110
1-Naphthylamine, [α-Naphthylamine]	134–32–7	Non-detect ..	1900
2-Naphthylamine, [β-Naphthylamine]	91–59–8	Non-detect ..	1900
Nicotine	54–11–5	Non-detect ..	100

TABLE 1 TO § 261.38: DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
4-Nitroaniline, [p-Nitroaniline]	100–01–6	Non-detect ..	1900
Nitrobenzene	98–95–3	Non-detect ..	1900
p-Nitrophenol, [p-Nitrophenol]	100–02–7	Non-detect ..	1900
5-Nitro-o-toluidine	99–55–8	Non-detect ..	1900
N-Nitrosodi-n-butylamine	924–16–3	Non-detect ..	1900
N-Nitrosodiethylamine	55–18–5	Non-detect ..	1900
N-Nitrosodiphenylamine, [Diphenylnitrosamine]	86–30–6	Non-detect ..	1900
N-Nitroso-N-methylethylamine	10595–95–6	Non-detect ..	1900
N-Nitrosomorpholine	59–89–2	Non-detect ..	1900
N-Nitrosopiperidine	100–75–4	Non-detect ..	1900
N-Nitrosopyrrolidine	930–55–2	Non-detect ..	1900
2-Nitropropane	79–46–9	Non-detect ..	30
Parathion	56–38–2	Non-detect ..	1900
Phenacetin	62–44–2	Non-detect ..	1900
1,4-Phenylene diamine, [p-Phenylenediamine]	106–50–3	Non-detect ..	1900
N-Phenylthiourea	103–85–5	Non-detect ..	57
2-Picoline [alpha-Picoline]	109–06–8	Non-detect ..	1900
Propythioracil [6-Propyl-2-thiouracil]	51–52–5	Non-detect ..	100
Pyridine	110–86–1	Non-detect ..	1900
Strychnine	57–24–9	Non-detect ..	100
Thioacetamide	62–55–5	Non-detect ..	57
Thiofanox	39196–18–4	Non-detect ..	100
Thiourea	62–56–6	Non-detect ..	57
Toluene-2,4-diamine [2,4-Diaminotoluene]	95–80–7	Non-detect ..	57
Toluene-2,6-diamine [2,6-Diaminotoluene]	823–40–5	Non-detect ..	57
o-Toluidine	95–53–4	Non-detect ..	2200
p-Toluidine	106–49–0	Non-detect ..	100
1,3,5-Trinitrobenzne, [sym-Trinitobenzene]	99–35–4	Non-detect ..	2000
Halogenated Organics[b]:			
Allyl chloride	107–05–1	Non-detect ..	37
Aramite	104–57–8	Non-detect ..	1900
Benzal chloride [Dichloromethyl benzene]	98–87–3	Non-detect ..	100
Benzyl chloride	100–44–77	Non-detect ..	100
Bis(2-chloroethyl)ether [Dichloroethyl ether]	111–44–4	Non-detect ..	1900
Bromoform [Tribromomethane]	75–25–2	Non-detect ..	37
Bromomethane [Methyl bromide]	74–83–9	Non-detect ..	37
4-Bromophenyl phenyl ether [p-Bromo diphenyl ether]	101–55–3	Non-detect ..	1900
Carbon tetrachloride	56–23–5	Non-detect ..	37
Chlordane	57–74–9	Non-detect ..	14
p-Chloroaniline	106–47–8	Non-detect ..	1900
Chlorobenzene	108–90–7	Non-detect ..	37
Chlorobenzilate	510–15–6	Non-detect ..	1900
p-Chloro-m-cresol	59–50–7	Non-detect ..	1900
2-Chloroethyl vinyl ether	110–75–8	Non-detect ..	37
Chloroform	67–66–3	Non-detect ..	37
Chloromethane [Methyl chloride]	74–87–3	Non-detect ..	37
2-Chlorophthalene [beta-Chlorophthalene]	91–58–7	Non-detect ..	1900
2-Chlorophenol [o-Chlorophenol]	95–57–8	Non-detect ..	1900
Chloroprene [2-Chloro-1,3-butadiene]	1126–99–8	Non-detect ..	37
2,4-D [2,4-Dichlorophenoxyacetic acid]	94–75–7	Non-detect ..	7.0
Diallate	2303–16–4	Non-detect ..	1900
1,2-Dibromo-3-chloropropane	96–12–8	Non-detect ..	37
1,2-Dichlorobenzene [o-Dichlorobenzene]	95–50–1	Non-detect ..	1900
1,3-Dichlorobenzene [m-Dichlorobenzene]	541–73–1	Non-detect ..	1900
1,4-Dichlorobenzene [p-Dichlorobenzene]	106–46–7	Non-detect ..	1900
3,3′-Dichlorobenzidine	91–94–1	Non-detect ..	1900
Dichlorodifluoromethane [CFC–12]	75–71–8	Non-detect ..	37
1,2-Dichloroethane [Ethylene dichloride]	107–06–2	Non-detect ..	37
1,1-Dichloroethylene [Vinylidene chloride]	75–35–4	Non-detect ..	37
Dichloromethoxy ethane [Bis(2-chloroethoxy)methane	111–91–1	Non-detect ..	1900
2,4-Dichlorophenol	120–83–2	Non-detect ..	1900
2,6-Dichlorophenol	87–65–0	Non-detect ..	1900
1,2-Dichloropropane [Propylene dichloride]	78–87–5	Non-detect ..	37
cis-1,3-Dichloropropylene	10061–01–5	Non-detect ..	37
trans-1,3-Dichloropropylene	10061–02–6	Non-detect ..	37
1,3-Dichloro-2-propanol	96–23–1	Non-detect ..	30
Endosulfan I	959–98–8	Non-detect ..	1.4
Endosulfan II	33213–65–9	Non-detect ..	1.4

TABLE 1 TO § 261.38: DETECTION AND DETECTION LIMIT VALUES FOR COMPARABLE FUEL SPECIFICATION—Continued

Chemical name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Endrin	72–20–8	Non-detect ..	1.4
Endrin aldehyde	7421–93–4	Non-detect ..	1.4
Endrin Ketone	53494–70–5	Non-detect ..	1.4
Epichlorohydrin [1-Chloro-2,3-epoxy propane]	106–89–8	Non-detect ..	30
Ethylidene dichloride [1,1-Dichloroethane]	75–34–3	Non-detect ..	37
2-Fluoroacetamide	640–19–7	Non-detect ..	100
Heptachlor	76–44–8	Non-detect ..	1.4
Heptachlor epoxide	1024–57–3	Non-detect ..	2.8
Hexachlorobenzene	118–74–1	Non-detect ..	1900
Hexachloro-1,3-butadiene [Hexachlorobutadiene]	87–68–3	Non-detect ..	1900
Hexachlorocyclopentadiene	77–47–4	Non-detect ..	1900
Hexachloroethane	67–72–1	Non-detect ..	1900
Hexachlorophene	70–30–4	Non-detect ..	1000
Hexachloropropene [Hexachloropropylene]	1888–71–7	Non-detect ..	1900
Isodrin	465–73–6	Non-detect ..	1900
Kepone [Chlordecone]	143–50–0	Non-detect ..	3600
Lindane [gamma-Hexachlorocyclohexane] [gamma-BHC]	58–89–9	non-detect ...	1.4
Methylene chloride [Dichloromethane]	75–09–2	non-detect ...	37
4,4'-methylene-bis(2-chloroaniline)	101–14–4	non-detect ...	100
Methyl iodide [Iodomethane]	74–88–4	non-detect ...	37
Pentachlorobenzene	608–93–5	non-detect ...	1900
Pentachloroethane	76–01–7	non-detect ...	37
Pentachloronitrobenzene [PCNB] [Quintobenzene] [Quintozene]	82–68–8	non-detect ...	1900
Pentachlorophenol	87–86–5	non-detect ...	1900
Pronamide	23950–58–5	non-detect ...	1900
Silvex [2,4,5-Trichlorophenoxypropionic acid]	93–72–1	non-detect ...	7.0
2,3,7,8-Tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD]	1746–01–6	non-detect ...	30
1,2,4,5-Tetrachlorobenzene	95–94–3	non-detect ...	1900
1,1,2,2-Tetrachloroethane	79–34–5	non-detect ...	37
Tetrachloroethylene [Perchloroethylene]	127–18–4	non-detect ...	37
2,3,4,6-Tetrachlorophenol	58–90–2	non-detect ...	1900
1,2,4-Trichlorobenzene	120–82–1	non-detect ...	1900
1,1,1-Trichloroethane [Methyl chloroform]	71–55–6	non-detect ...	37
1,1,2-Trichloroethane [Vinyl trichloride]	79–00–5	non-detect ...	37
Trichloroethylene	79–01–6	non-detect ...	37
Trichlorofluoromethane [Trichlormonofluoromethane]	75–69–4	non-detect ...	37
2,4,5-Trichlorophenol	95–95–4	non-detect ...	1900
2,4,6-Trichlorophenol	88–06–2	non-detect ...	1900
1,2,3-Trichloropropane	96–18–4	non-detect ...	37
Vinyl Chloride	75–01–4	non-detect ...	37

[a] Absence of PCBs can also be demonstrated by using appropriate screening methods, e.g., immunoassay kit for PCB in oils (Method 4020) or colorimetric analysis for PCBs in oil (Method 9079).

[b] Some minimum required detection limits are above the total halogen limit of 540 ppm. The detection limits reflect what was achieved during EPA testing and analysis and also analytical complexity associated with measuring all halogen compounds on Appendix VIII at low levels. EPA recognizes that in practice the presence of these compounds will be functionally limited by the molecular weight and the total halogen limit of 540 ppm.

(c) *Implementation.*—Waste that meets the comparable or syngas fuel specifications provided by paragraphs (a) or (b) of this section (these constituent levels must be achieved by the comparable fuel when generated, or as a result of treatment or blending, as provided in paragraphs (c)(3) or (4) of this section) is excluded from the definition of solid waste provided that the following requirements are met:

(1) *Notices*—For purposes of this section, the person claiming and qualifying for the exclusion is called the comparable/syngas fuel generator and the person burning the comparable/syngas fuel is called the comparable/syngas burner. The person who generates the comparable fuel or syngas fuel must claim and certify to the exclusion.

(i) State RCRA and CAA Directors in Authorized States or Regional RCRA and CAA Directors in Unauthorized States.—

(A) The generator must submit a one-time notice to the Regional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the comparable/syngas fuel will be burned, certifying compliance with the conditions of the exclusion and providing documentation as required by paragraph (c)(1)(i)(C) of this section;

(B) If the generator is a company that generates comparable/syngas fuel at more than one facility, the generator shall specify at which sites the comparable/syngas fuel will be generated;

(C) A comparable/syngas fuel generator's notification to the Directors must contain the following items:

(*1*) The name, address, and RCRA ID number of the person/facility claiming the exclusion;

(*2*) The applicable EPA Hazardous Waste Codes for the hazardous waste;

(*3*) Name and address of the units, meeting the requirements of paragraph (c)(2) of this section, that will burn the comparable/syngas fuel; and

(*4*) The following statement is signed and submitted by the person claiming the exclusion or his authorized representative:

Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 have been met for all waste identified in this notification. Copies of the records and information required at 40 CFR 261.28(c)(10) are available at the comparable/syngas fuel generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(ii) Public notice.—Prior to burning an excluded comparable/syngas fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Comparable/Syngas Fuel Excluded Under the Resource Conservation and Recovery Act" containing the following information:

(A) Name, address, and RCRA ID number of the generating facility;

(B) Name and address of the unit(s) that will burn the comparable/syngas fuel;

(C) A brief, general description of the manufacturing, treatment, or other process generating the comparable/ syngas fuel;

(D) An estimate of the average and maximum monthly and annual quantity of the waste claimed to be excluded; and

(E) Name and mailing address of the Regional or State Directors to whom the claim was submitted.

(2) *Burning.*—The comparable/syngas fuel exclusion for fuels meeting the requirements of paragraphs (a) or (b) and (c)(1) of this section applies only if the fuel is burned in the following units that also shall be subject to Federal/ State/local air emission requirements, including all applicable CAA MACT requirements:

(i) Industrial furnaces as defined in § 260.10 of this chapter;

(ii) Boilers, as defined in § 260.10 of this chapter, that are further defined as follows:

(A) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

(B) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of this chapter or applicable CAA MACT standards.

(3) *Blending to meet the viscosity specification.*—A hazardous waste blended to meet the viscosity specification shall:

(i) As generated and prior to any blending, manipulation, or processing meet the constituent and heating value specifications of paragraphs (a)(1)(i) and (a)(2) of this section;

(ii) Be blended at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this chapter; and

(iii) Not violate the dilution prohibition of paragraph (c)(6) of this chapter.

(4) *Treatment to meet the comparable fuel exclusion specifications.*—(i) A hazardous waste may be treated to meet the exclusion specifications of paragraphs (a)(1) and (2) of this section provided the treatment:

(A) Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this Chapter; and

(C) Does not violate the dilution prohibition of paragraph (c)(6) of this seciton.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a comparable fuel remain a hazardous waste.

(5) *Generation of a syngas fuel.*—(i) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of paragraph (b) of this section provided the processing:

(A) Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264 and 265, or § 262.34 of this chapter or is an exempt recycling unit pursuant to § 261.6(c) of this chapter; and

(C) Does not violate the dilution prohibition of paragraph (c)(6) of this chapter.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a syngas fuel remain a hazardous waste.

(6) *Dilution prohibition for comparable and syngas fuels.*—No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the exclusion specifications of paragraph (a)(1)(i), (a)(2) or (b) of this section.

(7) *Waste analysis plans.* The generator of a comparable/syngas fuel shall develop and follow a written waste analysis plan which describes the procedures for sampling and analysis of the hazardous waste to be excluded. The waste analysis plan shall be developed in accordance with the applicable sections of the "Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods" (SW–846). The plan shall be followed and retained at the facility excluding the waste.

(i) At a minimum, the plan must specify:

(A) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of those parameters;

(B) The test methods which will be used to test for these parameters;

(C) The sampling method which will be used to obtain a representative sample of the waste to be analyzed;

(D) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(E) If process knowledge is used in the waste determination, any information prepared by the generator in making such determination.

(ii) The waste analysis plan shall also contain records of the following:

(A) The dates and times waste samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory results demonstrating that the exclusion specifications have been met for the waste; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the

documentation to be maintained by the laboratory for the period specified in paragraph (c)(11) of this section and also provides for the availability of the documentation to the claimant upon request.

(iii) Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of a syngas fuel as an excluded waste, a waste analysis plan containing the elements of paragraph (c)(7)(i) of this section to the appropriate regulatory authority. The approval of waste analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the waste analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

(8) *Comparable fuel sampling and analysis.* (i) General. For each waste for which an exclusion is claimed, the generator of the hazardous waste must test for all the constituents on appendix VIII to this part, except those that the generator determines, based on testing or knowledge, should not be present in the waste. The generator is required to document the basis of each determination that a constituent should not be present. The generator may not determine that any of the following categories of constituents should not be present:

(A) A constituent that triggered the toxicity characteristic for the waste constituents that were the basis of the listing of the waste stream, or constituents for which there is a treatment standard for the waste code in 40 CFR 268.40;

(B) A constituent detected in previous analysis of the waste;

(C) Constituents introduced into the process that generates the waste; or

(D) Constituents that are byproducts or side reactions to the process that generates the waste.

Note to paragraph (c)(8): Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the waste above the exclusion specifications.

(ii) For each waste for which the exclusion is claimed where the generator of the comparable/syngas fuel is not the original generator of the hazardous waste, the generator of the comparable/syngas fuel may not use process knowledge pursuant to paragraph (c)(8)(i) of this section and must test to determine that all of the constituent specifications of paragraphs (a)(2) and (b) of this section have been met.

(iii) The comparable/syngas fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the waste. For the waste to be eligible for exclusion, a generator must demonstrate that:

(A) Each constituent of concern is not present in the waste above the specification level at the 95% upper confidence limit around the mean; and

(B) The analysis could have detected the presence of the constituent at or below the specification level at the 95% upper confidence limit around the mean.

(iv) Nothing in this paragraph preempts, overrides or otherwise negates the provision in § 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.

(vi) The generator must conduct sampling and analysis in accordance with their waste analysis plan developed under paragraph (c)(7) of this section.

(vii) Syngas fuel and comparable fuel that has not been blended in order to meet the kinematic viscosity specifications shall be analyzed as generated.

(viii) If a comparable fuel is blended in order to meet the kinematic viscosity specifications, the generator shall:

(A) Analyze the fuel as generated to ensure that it meets the constituent and heating value specifications; and

(B) After blending, analyze the fuel again to ensure that the blended fuel continues to meet all comparable/syngas fuel specifications.

(ix) Excluded comparable/syngas fuel must be re-tested, at a minimum, annually and must be retested after a process change that could change the chemical or physical properties of the waste.

(9) *Speculative accumulation.* Any persons handling a comparable/syngas fuel are subject to the speculative accumulation test under § 261.2(c)(4) of this chapter.

(10) *Records.* The generator must maintain records of the following information on-site:

(i) All information required to be submitted to the implementing authority as part of the notification of the claim:

(A) The owner/operator name, address, and RCRA facility ID number of the person claiming the exclusion;

(B) The applicable EPA Hazardous Waste Codes for each hazardous waste excluded as a fuel; and

(C) The certification signed by the person claiming the exclusion or his authorized representative.

(ii) A brief description of the process that generated the hazardous waste and process that generated the excluded fuel, if not the same;

(iii) An estimate of the average and maximum monthly and annual quantities of each waste claimed to be excluded;

(iv) Documentation for any claim that a constituent is not present in the hazardous waste as required under paragraph (c)(8)(i) of this section;

(v) The results of all analyses and all detection limits achieved as required under paragraph (c)(8) of this section;

(vi) If the excluded waste was generated through treatment or blending, documentation as required under paragraph (c)(3) or (4) of this section;

(vii) If the waste is to be shipped off-site, a certification from the burner as required under paragraph (c)(12) of this section;

(viii) A waste analysis plan and the results of the sampling and analysis that includes the following:

(A) The dates and times waste samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory analytical results demonstrating that the exclusion specifications have been met for the waste; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (c)(11) of this section and also

provides for the availability of the documentation to the claimant upon request; and

(ix) If the generator ships comparable/syngas fuel off-site for burning, the generator must retain for each shipment the following information on-site:

(A) The name and address of the facility receiving the comparable/syngas fuel for burning;

(B) The quantity of comparable/syngas fuel shipped and delivered;

(C) The date of shipment or delivery;

(D) A cross-reference to the record of comparable/syngas fuel analysis or other information used to make the determination that the comparable/syngas fuel meets the specifications as required under paragraph (c)(8) of this section; and

(E) A one-time certification by the burner as required under paragraph (c)(12) of this section.

(11) *Records retention.* Records must be maintained for the period of three years. A generator must maintain a current waste analysis plan during that three year period.

(12) *Burner certification.* Prior to submitting a notification to the State and Regional Directors, a comparable/syngas fuel generator who intends to ship their fuel off-site for burning must obtain a one-time written, signed statement from the burner:

(i) Certifying that the comparable/syngas fuel will only be burned in an industrial furnace or boiler, utility boiler, or hazardous waste incinerator, as required under paragraph (c)(2) of this section;

(ii) Identifying the name and address of the units that will burn the comparable/syngas fuel; and

(iii) Certifying that the state in which the burner is located is authorized to exclude wastes as comparable/syngas fuel under the provisions of this section.

(13) *Ineligible waste codes.* Wastes that are listed because of presence of dioxins or furans, as set out in Appendix VII of this part, are not eligible for this exclusion, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to full RCRA hazardous waste management requirements.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart D—Changes to Permits

2. Section 270.42 is amended by adding a new paragraph (j) to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(j) *Combustion facility changes to meet part 63 MACT standards.* The following procedures apply to hazardous waste combustion facility permit modifications requested under Appendix I of this section, section L(9).

(1) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1211 before a permit modification can be requested under this section.

(2) If the Director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The Director may, at his or her discretion, extend this 90 day deadline one time for up to 30 days by notifying the facility owner or operator.

3. In § 270.42 Appendix I is amended by adding entry L(9) to read as follows:

Appendix I to § 270.42—Classification of Permit Modification

Modification	Class
L. Incinerators, Boilers and Industrial Furnaces	[1] 1
. . . . .	
9. Technology Changes Needed to meet Standards under 40 CFR part 63 (Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of § 270.42(i) are followed	
. . . . .	

[1] Class 1 modifications requiring Agency prior approval.

* * * * *

Subpart G—Interim Status

4. Section 270.72 is amended by adding paragraph (b)(8) to read as follows:

§ 270.72 Changes during interim status.

* * * * *

(b) * * *

(8) Changes necessary to comply with standards under 40 CFR part 63, Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

[FR Doc. 98–15843 Filed 6–18–98; 8:45 am]
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federal register

Friday
June 19, 1998

Part V

Department of Education

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research: Reinviting Applications and Pre-application Meeting for a New Award for a Rehabilitation Engineering Research Center for Fiscal Year 1998; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133E]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research, Notice Reinviting Applications and Pre-application Meeting for a New Award for a Rehabilitation Engineering Research Center (RERC) for Fiscal Year (FY) 1998

Purpose: On March 9, 1998 a notice was published in the **Federal Register** (63 FR 11562) inviting applications for a new FY 1998 award for a RERC on communication enhancement. Satisfactory applications were not received for this priority area. There is a continuing need for this project.

The purposes of this notice are to: (1) reinvite applications for a RERC on communication enhancement for FY 1998; and (2) invite interested parties to participate in a pre-application meeting to discuss the funding priority and receive technical assistance through individual consultation and information about the funding priority.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations, institutions of higher education; and Indian tribes and tribal organizations.

Applications Available: June 19, 1998.

Pre-Application Meetings: Interested parties are invited to participate in a pre-application meeting to discuss the funding priority for a RERC on communication enhancement and to receive technical assistance through individual consultation and information about the funding priority. The pre-application meeting will be held on Monday, July 20, 1998 at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St. SW, Washington, DC between 10:00 a.m. and 12:00 a.m. NIDRR staff will also be available at this location from 1:30 p.m. to 5:00 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priority. NIDRR will make alternate arrangements to accommodate interested parties who are unable to attend the pre-application meeting in person.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR Part 350; and (c) the notice of final priorities published on March 9, 1998 in the **Federal Register** (63 FR 11554); and the notice inviting applications published on March 9, 1998 in the **Federal Register** (63 FR 11562).

Deadline for Transmittal of Applications: August 19, 1998.

Maximum Award Amount Per Year: $900,000.

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Estimated Number of Awards: 1

Note: The estimate of funding level and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: 60 months.

FOR FURTHER INFORMATION CONTACT: In order to obtain further information about the funding priority and the pre-application meeting on the RERC on communication enhancement contact William Peterson, U.S. Department of Education, Room 3425 Switzer Building, 600 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 205–9192. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136.

In order to obtain an application package, contact Donna Nangle, U.S. Department of Education, Room 3423 Switzer Building, 600 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 761a and 762.

Dated: June 16, 1998.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 98–16400 Filed 6–18–98; 8:45 am]

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H.R. 824/P.L. 105–179

To redesignate the Federal building located at 717 Madison Place, NW., in the District of Columbia, as the "Howard T. Markey National Courts Building". (June 16, 1998; 112 Stat. 510)

H.R. 3565/P.L. 105–180

Care for Police Survivors Act of 1998 (June 16, 1998; 112 Stat. 511)

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Bulletproof Vest Partnership Grant Act of 1998 (June 16, 1998; 112 Stat. 512)

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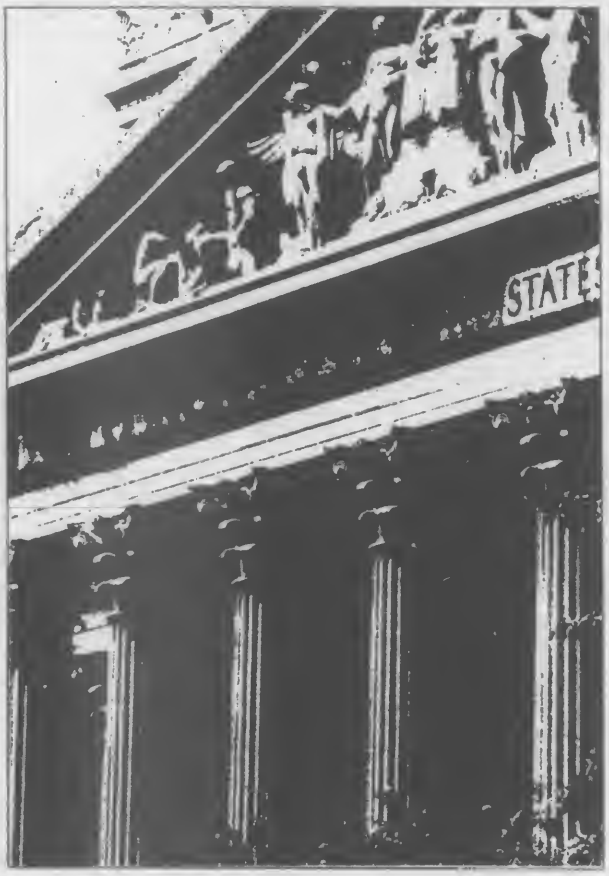

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