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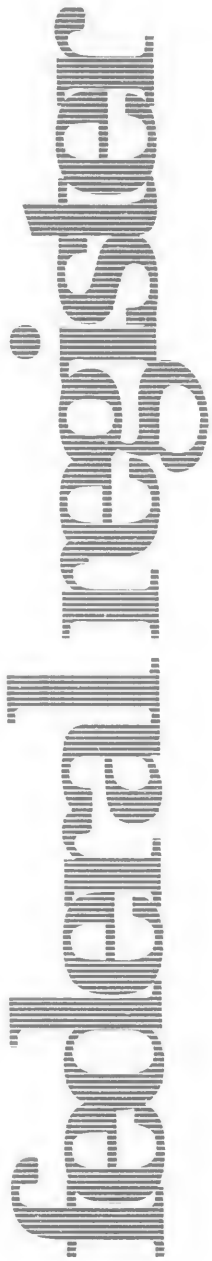

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Thursday, July 30, 1998

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 70

[Docket No. PY–97–004]

Voluntary Poultry and Rabbit Grading Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the regulations governing the voluntary poultry and rabbit grading programs. The revisions simplify the definition about feathers on poultry, provide an alternative grademark for poultry and rabbit products, provide for the use of a "Prepared From" grademark to officially identify specialized products that originate from officially graded poultry, change the sample plan used by graders, and increase the lighting intensity required at grading stations. From time to time, sections in the regulations are affected by changes in processing technology and marketing. This rule updates the regulations to reflect these changes.

DATES: This rule is effective August 31, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas C. Bailey, Chief, Standardization Branch, (202) 720–3506.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities as defined in the RFA (5 U.S.C. 601). There are some 200 plants using the Agency's voluntary poultry grading services and many of them are small entities.

The definition *Free from protruding pinfeathers, diminutive feathers, or hairs* is simplified by removing the words "pinfeathers" and "diminutive," words no longer commonly used when discussing feathers and poultry quality. Additionally, in the definition for *Ready-to-cook poultry*, the word "pinfeathers" is changed to "feathers." These changes merely reflect current practices and should not have any additional economic impact on entities using voluntary poultry grading services.

Poultry and rabbit processors will be allowed to use a shield displayed in three colors on packaging materials to officially identify USDA graded poultry and rabbits. Similarly, producers of products originating from A quality poultry, for which there are no U.S. grade standards, will be allowed to use a "Prepared From" grademark on packaging materials. The use of these alternative forms of the USDA grademark gives processors greater flexibility in packaging and marketing their products. Since these alternative grademarks are used at the processors' discretion, any economic impact caused by their use is by the choice of the processors.

Changing the sampling plan will enable graders to select a more representative sample upon which to base grading decisions. The economic impact should be no greater than under the current sampling plan. Increasing the lighting intensity required at grading stations will enhance the grader's ability to visually evaluate products. Both changes will provide processors with fairer, more accurate evaluations. Better lighting could also help avoid the economic burden of reprocessing product or diverting product unnecessarily downgraded because of inadequate lighting. The costs, if any, for increasing the lighting intensity should be minor.

For the above reasons, the Agency has certified that this action will not have a significant impact on a substantial number of small entities.

Background and Comments

Poultry and rabbit grading are voluntary programs provided under the Agricultural Marketing Act of 1946, as amended, and are offered on a fee-for-service basis. They are designed to assist the orderly marketing of poultry and rabbits by providing for the official certification of quality, quantity, class, temperature, packaging, and other factors. Changes in processing technology and marketing require that the regulations governing poultry and rabbit grading be updated from time to time.

A proposed rule to amend the voluntary poultry and rabbit grading regulations was published in the **Federal Register** (62 FR 63471) on December 1, 1997. Comments on the proposed rule were solicited from interested parties until January 30, 1998. During the 60-day comment period, the Agency received one comment. It was from a State department of agriculture in support of the proposed changes.

Freedom from feathers is one of the factors considered in poultry grading. In the definition *Free from protruding pinfeathers, diminutive feathers, or hairs* (§ 70.1), the words "pinfeathers" and "diminutive" are removed. These words are no longer commonly used when discussing feathers and poultry quality. Nor are they needed to achieve the quality standards set by the regulations. To be consistent, in the definition *Ready-to-cook poultry*, the word *"pinfeathers" is changed to "feathers."*

The Agency will permit the use of alternative grademarks (§ 70.51) so that processors wanting to use them can have additional flexibility in packaging and marketing their products. Processors wanting to use a USDA grademark to identify their consumer-pack USDA graded poultry and rabbit products could use a new grademark that contains horizontal bands of three colors. Processors who use USDA Grade A poultry to produce specialized poultry products, for which there are no U.S. grade standards, could use a "Prepared From" grademark on the

specialized poultry products. The section is also reorganized for clarity.

The regulations contain a sampling plan to guide graders when they select samples upon which to base grading decisions (§ 70.80(b)). The sampling plan is changed so that the sample size more closely reflects the size of the lot being sampled, thereby fostering a more representative sample of each lot.

The regulations also specify the lighting intensity required at grading stations in the processing plants (§ 70.110). The lighting intensity is increased from 50-foot candles to 100-foot candles to improve the graders ability to visually evaluate the products being graded. This is the same intensity as that required by USDA's Food Safety and Inspection Service at all of their inspection stations.

List of Subjects in 7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, Title 7, Code of Federal Regulations part 70 is amended as follows:

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

1. The heading for part 70 is revised to read as set forth above:

2. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

3. In § 70.1, the definition for *Ready-to-cook poultry* is amended by removing the word "pinfeathers" and adding in its place the word "feathers" and the definition for *Free from protruding pinfeathers, diminutive feathers, or hairs* is revised to read as follows:

§ 70.1 Definitions.

* * * * *

Free from protruding feathers or hairs means that a poultry carcass, part, or poultry product with the skin on is free from protruding feathers or hairs which are visible to a grader during an examination at normal operating speeds. However, a poultry carcass, part, or poultry product may be considered as being free from protruding feathers or hairs if it has a generally clean appearance and if not more than an occasional protruding feather or hair is evidenced during a more careful examination.

* * * * *

4. Section 70.51 is revised to read as follows:

§ 70.51 Form of grademark and information required.

(a) *Form of official identification symbol and grademark.* (1) The shield set forth in Figure 1 of this section shall be the official identification symbol for purposes of this part and when used, imitated, or simulated in any manner in connection with poultry or rabbits, shall be deemed prima facia to constitute a representation that the product has been officially graded for the purposes of § 70.2.

(2) Except as otherwise authorized, the grademark permitted to be used to officially identify USDA consumer-graded poultry and rabbit products shall be of the form and design indicated in Figures 2 through 4 of this section. The shield shall be of sufficient size so that the printing and other information contained therein is legible and in approximately the same proportion as shown in these figures.

(3) The "Prepared From" grademark in Figure 5 of this section may be used to identify specialized poultry products for which there are no official U.S. grade standards, provided that these products are approved by the Agency and are prepared from U.S. Consumer Grade A poultry carcasses, parts, or other products that comply with the requirements of AMS § 70.220. All poultry products shall be processed and labeled in accordance with 9 CFR part 381.

(b) *Information required on grademark.* (1) Except as otherwise authorized by the Administrator, each grademark used shall include the letters "USDA" and the U.S. grade of the product it identifies, such as "A Grade," as shown in Figure 2 of this section. Such information shall be printed with the shield and the wording within the shield in contrasting colors in a manner such that the design is legible and conspicuous on the material upon which it is printed.

(2) Except as otherwise authorized, the bands of the shield in Figure 4 of this section shall be displayed in three colors, with the color of the top, middle, and bottom bands being blue, white, and red, respectively.

(3) The "Prepared From" grademark in Figure 5 of this section may be any one of the designs shown in Figures 2 through 4 of this section. The text outside the shield shall be conspicuous, legible, and in approximately the same proportion and close proximity to the shield as shown in Figure 5 of this section.

(c) *Products that may be individually grademarked.* The grademarks set forth in Figures 2 through 4 of this section may be applied individually to ready-to-cook poultry, rabbits, and specified poultry food products for which consumer grades are provided in the U.S. Classes, Standards, and Grades for Poultry and Rabbits, AMS 70.200 and 70.300 *et seq.*, respectively, or to the containers in which such products are enclosed for the purpose of display and sale to household consumers, only when such products qualify for the particular grade indicated in accordance with the consumer grades.

BILLING CODE 3410–02–P

Figure 1

Figure 2

Figure 3

Figure 4

Figure 5

BILLING CODE 3410–02–C

5. In § 70.80, the chart is revised to read as follows:

§ 70.80 General.

* * * * *

Containers in lot	Containers in sample
1–4	All.
5–50	4.
51–100	5.
101–200	6.
201–400	7.
401–600	8.
For each additional 100 containers, or fraction thereof, in excess of 600 containers.	Include one additional container.

6. In § 70.110, paragraph (b) is revised to read as follows:

§ 70.110 Requirements for sanitation, facilities, and operating procedures in official plants.

* * * * *

(b) With respect to grading services, there shall be a minimum of 100-foot candles of light intensity at grading stations; and acceptable means, when necessary, of maintaining control and identity of products segregated for quality, class, condition, weight, lot, or any other factor which may be used to distinguish one type of product from another.

Dated: July 23, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–20321 Filed 7–29–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400 and 402

RIN 0563–AB68

General Administrative Regulations, Subpart U; and Catastrophic Risk Protection Endorsement; Regulations for the 1999 and Subsequent Reinsurance Years

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations, Subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act and the Catastrophic Risk Protection Endorsement to conform with the statutory mandates of the Agricultural Research, Extension, and Education Reform Act of 1998 (1998 Research Act).

EFFECTIVE DATE: This rule is effective July 1, 1998. Written comments and opinions on this rule will be accepted until the close of business September 28, 1998, and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

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

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

This action amends FCIC's regulations in accordance with the 1998 Research Act. This rule is being published on an emergency basis so that affected producers have the opportunity to make timely decisions regarding their insurance plans for the 1999 crop year for crops with sales closing dates subsequent to the enactment of the 1998 Research Act. The 1998 Research Act was signed by the President on June 23, 1998. The first sales closing date subsequent to the date of signing is July 31, 1998, for raisins in California. This emergency situation makes timely compliance with sections 6 (3)(B)(ii) and (3)(C) of Executive Order 12866 impractical due to the short time to make this rule effective prior to that sales closing date. FCIC will complete the required cost-benefit analysis within 90 days of the publication of this rule in the **Federal Register** and will make such analysis available to the public.

Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 5 U.S.C. Secs. 801–808)

This rule has been designated by the Office of Information and Regulatory Affairs, OMB, as a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (Small Business Act). However, section 808 of the Small Business Act exempts a rule from the 60 day delay in effectiveness of a rule where an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The Administrator of the Risk Management Agency (RMA) has determined that there is good cause for making this rule effective less than 60 days after submission of the rule to each House of Congress and to the Comptroller General because a delay would be contrary to the public interest.

There are producers affected by this rule that must make critical risk management decisions and the deadline for the first 1999 crop year decisions is less than 60 days from the July 1, 1998, effective date of the 1998 Research Act. A delay in the effective date of this rule will create instability and inequity within the program as producers attempt to determine whether they are affected and it will create separate classes of producers who are subjected to the increased administrative fees and those who are not.

Further, RMA was required to revise the Standard Reinsurance Agreement before the July 1, 1998, start of the 1999 reinsurance year to implement the provisions of the 1998 Research Act. If this rule is delayed, it will create administrative problems for the 1999 reinsurance year because the reinsured companies will be subject to the provisions of the 1998 Research Act but some of their insureds will not.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above-referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the

private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not require any more action on the part of the small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This interim rule implements revisions to this part mandated by the Federal Crop Insurance Act, as amended by the 1998 Research Act, enacted June 23, 1998. The 1998 Research Act requires the provisions be implemented for the 1999 and subsequent reinsurance years. Crop insurance policies with a sales closing date prior to the effective date of this rule will not be affected by these provisions until the 2000 reinsurance year. Crop insurance policies with a sales closing date on or after the effective date of this rule will have revised administrative fees. Since the changes to the policy made by this rule are required by statute, it is impractical and contrary to the public interest to publish this rule for notice and comment prior to making the rule effective. However, comments are solicited for 60 days after the date of publication in the **Federal Register** and will be considered by FCIC before this rule is made final.

FCIC amends subpart U by revising the definition of "debt" to remove the provision that states that a debt does not include the nonpayment of catastrophic risk protection coverage administrative fees.

FCIC amends the Catastrophic Risk Protection Endorsement as follows:

1. Section 1—Revise the definition of "administrative fee" for clarity.

2. Section 2—Delete the provisions regarding the termination of the policy for failure to pay catastrophic risk protection (CAT) administrative fees since those provisions have now been incorporated into the Basic Provisions.

3. Section 6—Revise this section to specify that the administrative fee for CAT coverage for each crop in the county will be $10 plus the greater of either $50 or 10 percent of the premium under your CAT policy. Also revise the date CAT fees will be due to coincide with when the premium is due for additional coverage. This rule eliminates all references to refunding administrative fees in the event that the producer decided to change coverage levels prior to the sales closing date since fees would not have been paid. Also, this rule makes the provisions concerning the payment of administrative fees in the year of application consistent with the payment of administrative fees for limited coverage. This rule also eliminates the termination provisions since they have been incorporated into the Basic Provisions.

List of Subjects in 7 CFR Parts 400 and 402

Administrative practice and procedure, Claims, Crop insurance; Fraud, Reporting and record keeping requirements; Catastrophic risk protection endorsement, Insurance provisions.

Interim Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR parts 400 and 402 as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS—SUBPART U—INELIGIBILITY FOR PROGRAMS UNDER THE FEDERAL CROP INSURANCE ACT

1. The authority citation for 7 CFR part 400 continues to read as follows:

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

2. In § 400.677, revise the definition of "debt" to read as follows:

§ 400.677 Definitions.

* * * * *

Debt. An amount of money which has been determined by an appropriate agency official to be owed, by any person, to FCIC or an insurance provider under any program administered under the Act based on evidence submitted by the insurance provider. The debt may have arisen from an overpayment, premium or administrative fee nonpayment, interest, penalties, or other causes.

* * * * *

PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT; REGULATIONS FOR THE 1999 AND SUBSEQUENT REINSURANCE YEARS

3. The authority citation for 7 CFR part 402 continues to read as follows:

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

4. The part heading is revised as set forth above.

5. Revise the introductory text of § 402.4 to read as follows:

§ 402.4 Catastrophic Risk Protection Endorsement Provisions

The Catastrophic Risk Protection Endorsement Provisions for the 1999 and succeeding reinsurance years are as follows:

* * * * *

6. In § 402.4, amend the endorsement provisions as follows:

A. In section 1, revise the definition of "administrative fee" to read as follows:

§ 402.4 Catastrophic Risk Protection Endorsement Provisions.

* * * * *

Catastrophic Risk Protection Endorsement

* * * * *

1. Definitions.

* * * * *

Administrative fee. An amount the producer must pay for catastrophic coverage each crop year on a per crop and county basis as specified in section 6.

B. Remove section 2(d).

C. Revise section 6(b) to read as follows:

* * * * *

6. Annual Premium and Administrative Fees

* * * * *

(b) In return for catastrophic risk protection coverage, you must pay an administrative fee to the insurance provider within 30 days after you have been billed (You will be billed by the billing date stated in the Special Provisions);

(1) The administrative fee owed for each crop in the county is equal to $10 plus the greater of either $50 or 10 percent of the premium subsidy provided for the catastrophic risk protection coverage.

(2) Payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop (if you falsely file a zero acreage report you may be subject to criminal and administrative sanctions).

* * * * *

D. Remove section 6(e).

E. Redesignate section 6(f) as section 6(e) and revise to read as follows:

* * * * *

(e) If the administrative fee is not paid when due, you, and all persons with an insurable interest in the crop under the same contract, may be ineligible for certain other USDA program benefits as set out in section 12, and all such benefits already received for the crop year must be refunded.

* * * * *

Signed in Washington, D.C., on July 24, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–20352 Filed 7–27–98; 5:10 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400 and 457

RIN 0563–AB67

General Administrative Regulations, Subpart T-Federal Crop Insurance Reform, Insurance Implementation; Regulations for the 1999 and Subsequent Reinsurance Years; and the Common Crop Insurance Regulations; Basic Provisions; and Various Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends subpart T in the General Administrative Regulations and the Common Crop Insurance Regulations, Basic Provisions, to conform with the statutory mandates of the Agricultural Research, Extension, and Education Reform Act of 1998 (1998 Research Act) and to move those provisions that are terms of insurance from subpart T into the Basic Provisions. In this rule, FCIC will also remove those provisions of subpart T that have been moved to the Basic Provisions.

EFFECTIVE DATE: This rule is effective July 1, 1998. Written comments and opinions on this rule will be accepted until the close of business September 28, 1998, and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

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

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

This action amends FCIC's regulations in accordance with the 1998 Research Act. This rule is being published on an emergency basis so that affected producers have the opportunity to make timely decisions regarding their insurance plans for the 1999 crop year for crops with sales closing dates subsequent to the enactment of the 1998 Research Act. The 1998 Research Act was signed by the President on June 23, 1998. The first sales closing date subsequent to the date of signing is July 31, 1998, for raisins in California. This emergency situation makes timely compliance with sections 6 (3)(B)(ii) and (3)(C) of Executive Order 12866 impractical due to the short time to make this rule effective prior to that sales closing date. FCIC will complete the required cost-benefit analysis within 90 days of the publication of this rule in the **Federal Register** and will make such analysis available to the public.

Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 5 U.S.C. Secs. 801–808)

This rule has been designated by the Office of Information and Regulatory Affairs, OMB, as a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (Small Business Act). However, section 808 of the Small Business Act exempts a rule from the 60 day delay in effectiveness of a rule where an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The Administrator of the Risk Management Agency (RMA) has determined that there is good cause for making this rule effective less than 60 days after submission of the rule to each House of Congress and to the Comptroller General because a delay would be contrary to the public interest.

There are producers affected by this rule that must make critical risk management decisions and the deadline for the first 1999 crop year decisions is less than 60 days from the July 1, 1998, effective date of the 1998 Research Act. A delay in the effective date of this rule will create instability and inequity within the program as producers attempt to determine whether they are affected and it will create separate classes of producers who are subjected to the increased administrative fees and those who are not.

Further, RMA was required to revise the Standard Reinsurance Agreement before the July 1, 1998, start of the 1999 reinsurance year to implement the provisions of the 1998 Research Act. If this rule is delayed, it will create

administrative problems for the 1999 reinsurance year because the reinsured companies will be subject to the provisions of the 1998 Research Act but some of their insureds will not.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above-referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not require any more action on the part of the small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This interim rule implements revisions to these parts mandated by the Federal Crop Insurance Act, as amended by the 1998 Research Act, enacted June 23, 1998. The 1998 Research Act requires the provisions be implemented for the 1999 and subsequent reinsurance years. Crop insurance policies with a sales closing date prior to the effective date of this rule will not be affected by these provisions until the 2000 reinsurance year. Crop insurance policies with a sales closing date after the effective date of this rule will have revised administrative fees. Since the changes to the policy made by this rule are required by statute, it is impractical and contrary to the public interest to publish this rule for notice and comment prior to making the rule effective. However, comments are solicited for 60 days after the date of publication in the **Federal Register** and will be considered by FCIC before this rule is made final.

FCIC amends subpart T by deleting the provisions regarding available coverage, administrative fees, and election of benefits that are being incorporated into the Basic Provisions.

FCIC amends the Basic Provisions as follows:

1. Section 1 is amended to add definitions of the terms "additional coverage," "administrative fee," "catastrophic risk protection," "Catastrophic Risk Protection Endorsement," "limited coverage," and "limited resource farmer" for clarity.

2. Section 2 is amended to incorporate the provisions from subpart T regarding the termination of a policy when a producer fails to pay administrative fees when they are due and revising the provisions in accordance with the 1998 Research Act.

3. Section 3 is amended to incorporate the provisions from subpart T involving the coverage available for catastrophic risk protection, limited and additional coverage levels.

4. Section 7 is amended to incorporate provisions from subpart T involving administrative fees that must be paid for limited and additional coverage policies and revising the amounts of such fees in accordance with the 1998 Research Act.

5. Section 15 is amended to incorporate the provisions from subpart T involving the reduction of an indemnity to reflect costs not incurred by the producer.

6. A new section 35 is added to incorporate provisions from subpart T that provide options that are available to insureds when they are eligible for benefits under their crop insurance policy and another USDA program for the same loss.

List of Subjects in 7 CFR Parts 400 and 457

Crop insurance, Administrative practice and procedure, Claims, Reporting and record keeping requirements; Common Crop Insurance Regulations; Basic Provisions; and Various Crop Insurance Provisions.

Interim Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR parts 400 and 457 as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart T—Federal Crop Insurance Reform, Insurance Implementation; Regulations for the 1999 and Subsequent Reinsurance Years

1. The authority citation for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. The subpart heading for subpart T is revised as set forth above.

3. In § 400.651, revise the definition of "administrative fee" to read as follows:

§ 400.651 Definitions.

* * * * *

Administrative fee. An amount the producer must pay for catastrophic, limited, and additional coverage each crop year on a per crop and county basis as specified in the Basic Provisions or the Catastrophic Risk Protection Endorsement.

* * * * *

4. Remove sections 400.655 and 400.656 and redesignate §§ 400.657 through 400.659 as §§ 400.655 through 400.657.

PART 457—COMMON CROP INSURANCE REGULATIONS

5. The authority citation for 7 CFR part 457 continues to read as follows:

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

6. In § 457.8, amend the policy as follows:

A. Amend section 1 to add the definitions of "additional coverage," "administrative fee," "catastrophic risk protection," "Catastrophic Risk Protection Endorsement," "limited coverage," and "limited resource farmer" to read as follows:

§ 457.8 The application and policy.

* * * * *

Common Crop Insurance Policy

* * * * *

1. * * *

Additional coverage. Plans of crop insurance providing a level of coverage equal to or greater than 65 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC.

Administrative fee. An amount the producer must pay for catastrophic risk protection, limited, and additional coverage for each crop year as specified in section 7 and the Catastrophic Risk Protection Endorsement.

* * * * *

Catastrophic risk protection. The minimum level of coverage offered by FCIC that is required before a person may qualify for certain other USDA program benefits unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

Catastrophic Risk Protection Endorsement. The part of the crop insurance policy that contains provisions of insurance that are specific to catastrophic risk protection.

* * * * *

Limited coverage. Plans of insurance offering coverage that is equal to or greater than 50 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC, but less than 65 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC.

Limited resource farmer. A producer or operator of a farm, with an annual gross income of $20,000 or less derived from all sources, including income from a spouse or other members of the household, for each of the prior two years. Notwithstanding the previous sentence, a producer on a farm or farms of less than 25 acres aggregated for all crops, where a majority of the producer's gross income is derived from such farm or farms, but the producer's gross income from farming operations does not exceed $20,000, will be considered a limited resource farmer.

B. Amend section 2 by adding a new subsection (i) and revising sections 2(e) introductory text and 2(e)(1) to read as follows:

* * * * *

(e) If any amount due, including administrative fees or premium, is not paid on or before the termination date for the crop for which such amount is due:

(1) For a policy with unpaid administrative fees or premium, the policy will terminate effective on the termination date immediately subsequent to the billing date for the crop year;

* * * * *

(i) When obtaining catastrophic, limited, or additional coverage, a producer must provide information regarding crop insurance coverage on any crop previously obtained at any other local FSA office or from an approved insurance provider, including the date such insurance was obtained and the amount of the administrative fee.

C. Amend section 3 by adding new subsections (f), (g), and (h) to read as follows:

* * * * *

(f) The producer must obtain the same level of coverage (catastrophic risk protection, limited or additional) for all acreage of the crop in the county unless one of the following applies:

(1) The applicable crop policy allows the producer the option to separately insure individual crop types or varieties. In this case, each individual type or variety insured by the producer will be subject to separate administrative fees. For example, if two grape varieties in California are insured under the Catastrophic Risk Protection Endorsement and two varieties are insured under a limited coverage policy, a separate administrative fee will be charged for each of the four varieties. Although insurance may be elected by type or variety in these instances, failure to insure a type or variety that is of economic significance may result in the denial of other farm program benefits unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(2) The producer with limited or additional coverage for the crop in the county has acreage that has been designated as "high risk" by FCIC. Such producers will be able to obtain a High Risk Land Exclusion Option for the high risk land under the limited or additional coverage policies and insure the high risk acreage under a separate Catastrophic Risk Protection Endorsement, provided that the Catastrophic Risk Protection Endorsement is obtained from the same insurance provider from which the limited or additional coverage was obtained.

(g) Hail and fire coverage may be excluded from the covered causes of loss for a crop policy only if additional coverage is selected.

(h) Any person may sign any document relative to crop insurance coverage on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or such other legally sufficient document authorizing such person to sign.

D. Amend section 7 by revising the heading and adding a new subsection (e) to read as follows:

* * * * *

7. Annual Premium and Administrative Fees.

* * * * *

(e) In addition to the premium charged:

(1) If you elect limited coverage, you must pay an administrative fee each crop year of $50 per crop per county, not to exceed $200 per county, or $600 for all counties in which the producer has elected to obtain limited coverage.

(2) If you elect additional coverage, you must pay an administrative fee of $20 per crop for each crop year in which crop insurance coverage remains in effect.

(3) The administrative fee must be paid no later than the time that premium is due.

(4) Payment of an administrative fee will not be required if the insured files a bona fide zero acreage report on or before the acreage reporting date for the crop. Any producer who falsely files a zero acreage report may be subject to criminal and administrative sanctions.

(5) The administrative fee for limited coverage will be waived if you qualify as a limited resource farmer.

(6) The administrative fee for additional coverage is not refundable, is not subject to any limits, and may not be waived.

(7) Failure to pay the administrative fees when due may make you ineligible for certain other USDA benefits.

E. Amend section 15 by adding a new subsection (d) to read as follows:

* * * * *

(d) The amount of an indemnity that may be determined under the applicable provisions of your crop policy may be reduced by an amount, determined in accordance with the Crop Provisions or Special Provisions, to reflect out-of-pocket expenses that were not incurred by the producer as a result of not planting, caring for, or harvesting the crop. Indemnities paid for acreage prevented from planting will be based on a reduced guarantee as provided for in the crop policy and will not be further reduced to reflect expenses not incurred.

F. Add a new section 35 to read as follows:

* * * * *

35. Multiple Benefits.

(a) If you are eligible to receive an indemnity under a limited or additional coverage plan of insurance and are also eligible to receive benefits for the same loss under any other USDA program, you may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law.

(b) The total amount received from all such sources may not exceed the amount of your actual loss. The total amount of the actual loss is the difference between the fair market value of the insured commodity before and after the loss, based on your production records and the highest price election or amount of insurance available for the crop.

(c) FSA will determine and pay the additional amount due you for any applicable USDA program after first considering the amount of any crop insurance indemnity.

(d) Farm ownership and operating loans may be obtained from USDA in addition to crop insurance indemnities.

* * * * *

Signed in Washington, D.C., on July 24, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–20353 Filed 7–27–98; 5:10 pm]

BILLING CODE 3410–08–P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–0869]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted a rule amending Regulation DD (Truth in Savings); the action makes final an interim rule adopted in January 1995. The amendment permits institutions to disclose an annual percentage yield (APY) equal to the contract interest rate for time accounts with maturities greater than one year that do not compound but that require interest distributions at least annually.

EFFECTIVE DATE: August 28, 1998.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Attorney, or Obrea Otey Poindexter, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System at (202) 452–2412 or 452–3667; for the hearing impaired *only* contact Diane Jenkins, Telecommunications Device for the Deaf at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Savings Act (TISA) was enacted in December 1991. The Board published a final regulation, Regulation DD, to implement the act on September 21, 1992 (57 FR 43337) (correction notice at 57 FR 46480, October 9, 1992). Compliance with the regulation became mandatory in June 1993. The act and regulation require depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening. The regulation also includes rules about advertising of deposit accounts. Depository institutions are generally subject to civil liability for violations of the act and regulation. Credit unions are not subject to Regulation DD, but are governed by a substantially similar regulation issued by the National Credit Union Administration.

II. Proposals Regarding APY Calculation

In 1993, deposit brokers covered by Regulation DD's advertising rules petitioned the Board to reconsider how the annual percentage yield (APY) is calculated. They expressed concern that for a certificate of deposit that has a maturity greater than one year and that does not compound interest, the APY is less than the contract interest rate under the formula prescribed by Regulation DD. The Board subsequently published several proposals addressing this matter (58 FR 64190, December 6, 1993; 59 FR 24376, May 11, 1994; 59 FR 35271, July 11, 1994; 60 FR 5142, January 26, 1995).

In January 1995, to address immediately one anomaly created by the regulation's formula for APY calculations, the Board adopted an interim rule applicable to time accounts with maturities greater than one year that do not compound but require interest distributions at least annually (60 FR 5128, January 26, 1995).

III. Summary of Final Rule

The interim rule permitted institutions to disclose an APY equal to the contract interest rate for noncompounding CDs with a maturity greater than one year if they require interest distributions at least annually. The Board received more than 250 comments—about 75 comments on the interim rule and the remainder on a proposal published concurrently with the interim rule that would have amended the APY formula. The majority of commenters supported the interim rule and urged the Board to make the interim rule permanent. Many commenters believed that the interim rule adequately addressed the concerns of deposit brokers and depository institutions that require interest distributions at least annually. Commenters noted that the interim rule provided a simple solution that would be understandable to consumers. Some banks that opposed any change to the APY calculations favored the interim rule among the alternatives offered.

Based on the comments received and further analysis, the Board has amended Regulation DD by making the interim rule final. The final rule permits institutions to disclose an APY equal to the contract interest rate for noncompounding CDs with a maturity greater than one year if they require interest distributions at least annually. Institutions may not disclose an APY equal to the contract interest rate for noncompounding multi-year CDs that either prohibit withdrawal of interest or that permit but do not require interest distributions; for these time accounts, institutions will continue to use the current formula for APY calculations. The Board believes that this narrow rule provides a targeted response to questions about the APY disclosures for certain time accounts that otherwise would have to disclose an APY that is lower than the contract interest rate. The amendment retains the interim rule's requirement of a brief narrative disclosure about the effect of interest payments on the APY and earnings from the account to minimize any possible consumer confusion.

IV. Regulatory Revisions: Section-by-Section Analysis

Section 230.4 Account Disclosures

4(b) Content of Account Disclosures

4(b)(6) Features of Time Accounts

4(b)(6)(iii) Withdrawal of Interest Prior to Maturity

Consistent with the interim rule, paragraph 4(b)(6) adds a brief narrative for institutions stating an APY equal to the contract interest rate for noncompounding CDs that have a maturity greater than one year and that require interest payouts at least annually. The Board believes a statement alerting consumers to the fact that interest cannot remain in the account will assist them in comparison shopping between CDs with annual compounding and CDs that do not compound but require interest payouts during the account term. The Board believes the disclosure does not add an undue burden on institutions.

Section 230.8 Advertising

8(c) When Additional Disclosures are Required

8(c)(6) Features of Time Accounts

Consistent with the interim rule, paragraph 8(c)(6) adds a brief disclosure for any advertisement that states an APY equal to the contract interest rate for a noncompounding multi-year CD that requires the automatic payment of interest at least annually. To assist

consumers in comparison shopping, institutions must state that interest payouts are mandatory and that interest cannot remain in the account, parallel to the disclosure required by § 230.4(b)(6)(iii).

Appendix A to Part 230—Annual Percentage Yield Calculation

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

E. Time Accounts With a Stated Maturity Greater Than One Year That Pay Interest at Least Annually

The final rule adds paragraph E to Appendix A to clarify how APYs may be determined for noncompounding time accounts that have a maturity greater than one year and that pay interest at least annually. Two examples are added, including an example calculating the APY for a stepped-rate account covered by the amendments.

The statute provides that the APY shall be calculated under a method prescribed by the Board in regulations. It authorizes the Board to provide for adjustments and exceptions for any class of accounts that, in the Board's judgment, are necessary or proper to carry out the purposes of the act, prevent circumvention of the act's requirements, or facilitate compliance. Based on the comments received and further analysis, the Board finds that a final rule permitting institutions to disclose an APY equal to the contract interest rate, for noncompounding CDs with a maturity greater than one year that require interest distributions at least annually, is necessary to carry out the purposes of the act—enabling consumers to make informed decisions about deposit accounts. The exception is narrowly drawn, and reflects the value of receiving payments at least annually on accounts that do not permit account holders to keep interest on deposit until maturity.

Appendix B to Part 230—Model Clauses and Sample Forms

B–1 Model Clauses for Account Disclosures

(h) Disclosures Relating to Time Accounts

(h)(v) Required Interest Distribution

Under the final rule, the Board has included a model clause to describe the effect of interest payments on earnings.

V. Regulatory Flexibility Analysis

Final Rule on Annual Percentage Yields for Certain Time Accounts

Need and objectives of the rule. The annual percentage yield in Regulation DD is an effective rate of interest, which shows the effect of compounding on the rate of return. Annual percentage yields greater than the rate of simple interest reflect the additional earnings resulting from the conversion of interest to principal during a year.

When interest is not compounded and the term to maturity is greater than a year, the annual percentage yield in the original Regulation DD is less than the rate of simple interest. This result reflects an assumption that interest accumulates idly in the account rather than generating additional returns. Following implementation of the regulation, a national trade association representing deposit brokers questioned the appropriateness of this calculation for multiple-year time deposits that distribute the interest—such as brokered deposits. The association argued that because the distributed interest is available to reinvest, the annual percentage yield understated the potential return on such time deposits. The Truth in Savings requirement that advertisements for brokered deposits contain annual percentage yields made it difficult for the association's members to market brokered deposits, which distribute interest.

In response to a petition of the trade association, Board staff and the Board explored alternatives to the annual percentage yield formula specified in the original regulation in four requests for public comment (December 1993, May 1994, July 1994, and January 1995). The most recent request for public comment included an interim rule permitting institutions to disclose an annual percentage yield equal to the rate of simple interest for multiple-year time accounts that require distributions of interest at least annually. The interim rule is a limited exception to the general formula for the annual percentage yield. It eliminated the marketing problem of members of the petitioning association without fundamentally changing the original regulation. The final rule adopts this interim rule.

Issues raised by public comment to proposed rule. Board staff and the Board considered several alternative approaches to resolve the issue raised by the trade association. These alternative approaches included (1) proposals to change the assumptions underlying the calculation of the annual percentage yield, (2) proposals to change industry practices regarding the compounding and distribution of interest, and (3) proposals to create exceptions from the general rule. Commenters suggested that proposals following the first two approaches would be especially costly to implement and may not improve some consumers' ability to make choices among investment alternatives. They suggested that proposals following the second approach also had the potential to impose opportunity costs by reducing consumer choices. Some commenters questioned the need to make any changes in the original rule, noting that an institution could avoid the problem by simply offering to compound interest at least annually. Many public comments supported retaining the original rule or, if necessary, creating a limited exception.

Number of small entities to which the rule will apply. There were 6,334 small commercial banks at the end of September 1996, where small is defined as having assets of less than $100 million.[1] Almost all small banks offered time deposits with terms to maturity greater than a year, and 15% of small banks did not compound interest on time deposits with terms to maturity greater than a year.[2] In contrast, only about 10% percent of medium-sized and large banks did not compound interest on time deposits with terms to maturity greater than a year.

Thrift institutions (savings banks, savings and loan associations, and credit unions) also offer time deposits, and securities brokers offer brokered deposits. Many of these institutions are small, but data on the terms to maturity on their offerings of time deposits or brokered deposits are not available.

Description of projected compliance requirements. Since the interim rule is already effective, the start-up costs of the final rule are probably negligible. Most institutions that require at least annual withdrawal of interest paid on multiple-year time deposits probably have already implemented the interim rule because the annual percentage yield for such time deposits is higher under the interim rule than under the original Regulation DD. If any institutions waited because of uncertainty about whether the interim rule would be adopted as a final rule and now choose to implement the rule,

[1] Federal Deposit Insurance Corporation [Online], Statistics on Banking, All FDIC-Insured Depository Institutions, Number of Institutions by Asset Size, (September 30, 1996), Available through: http://www.fdic.gov/databank/ [April 29, 1996].

[2] Monthly Survey of Selected Deposits (FR2042), September 1994. More recent data on compounding practices for time deposits by term to maturity are not available.

they would need new disclosures for affected accounts. Software modifications and some employee training would be required to produce the new disclosures.

The ongoing costs of the disclosures under the new rule are likely to be similar to those under the original Regulation DD. Thus, adopting the interim rule as a final rule would not significantly change ongoing compliance costs.

Description of the steps taken to minimize the impact on small entities. No special steps were taken to minimize the impact of the rule on small entities. The cost of implementing a change in the method of calculating annual percentage yields was a major consideration leading to the choice of the interim rule over the other alternative rules, however. During its deliberations, the Board was aware of evidence of the existence of scale economies in start-up compliance costs, which implies that per-unit compliance costs would be higher at small institutions than at large institutions.[3] Although the start-up costs of the interim rule are probably subject to scale economies, the interim rule may have a less disparate effect on small institutions than the other alternatives because it has a relatively small effect on institutions' operations.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board, by the Office of Management and Budget, after consideration of comments received during the public comment period. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0271.

The collection of information that is revised by this rulemaking is found in 12 CFR 230 and in Appendices A and B. This information is mandatory (12 U.S.C. 4308) to evidence compliance with the requirements of the Truth in Savings Act and the Board's Regulation DD. This information is used to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, APY, interest rate, and other account terms whenever a consumer requests the information and before an account is opened. The regulation also requires that fees and other information be provided on any periodic statement the institution sends to the consumer. The recordkeepers are for-profit financial institutions, including small businesses. Records must be retained for twenty-four months.

No comments specifically addressing the burden estimate were received.

The current estimated total annual burden for this information collection is 1,478,395 hours, as shown in the table below. These amounts reflect the burden estimate of the Federal Reserve System for the 996 state member banks under its supervision. This regulation applies to all types of depository institutions (except credit unions), not just to state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

The final rule revises the APY that may be disclosed for noncompounding CDs with maturities greater than one year that require interest payouts at least annually. It also adds a brief narrative for account disclosures and advertisements for accounts that disclose the contract interest rate as the APY. The Board believes that there is no net change in the Board's current estimate of paperwork burden associated with Regulation DD. There is estimated to be no associated capital or start up cost and no annual cost burden over the annual hour burden.

	Number of respondents	Estimated annual frequency	Estimated response time	Estimated annual burden hours
Complete account disclosures (Upon request and new accounts)	996	300	5 minutes	24,900
Subsequent notices:				
Change in terms	996	1,130	1 minute	18,757
Prematurity notices	996	1,095	1 minute	18,177
Periodic statements	996	84,615	1 minute	1,404,609
Advertising	996	12	1 hour	11,952
Total				1,478,395

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503.

[3] For a summary of the evidence, see Gregory Elliehausen, *The Cost of Bank Regulation*, Staff Studies (Board of Governors of the Federal Reserve System, forthcoming).

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in savings.

Accordingly, the interim rule amending 12 CFR part 230 which was published at 60 FR 5128 on January 26, 1995, is adopted as a final rule with the following changes:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301, *et seq.*

2. Section 230.4 is amended by revising the sentence at the end of paragraph (b)(6)(iii) to read as follows:

§ 230.4 Account disclosures.

* * * * *

(b) * * *

(6) * * *

(iii) * * * For accounts with a stated maturity greater than one year that do not compound interest on an annual or more frequent basis, that require interest payouts at least annually, and that disclose an APY determined in

accordance with section E of Appendix A of this part, a statement that interest cannot remain on deposit and that payout of interest is mandatory.

* * * * *

3. Section 230.8 is amended by revising paragraph (c)(6)(iii) to read as follows:

§ 230.8 Advertising.

* * * * *

(c) * * *

(6) * * *

(iii) *Required interest payouts.* For noncompounding time accounts with a stated maturity greater than one year that do not compound interest on an annual or more frequent basis, that require interest payouts at least annually, and that disclose an APY determined in accordance with section E of Appendix A of this part, a statement that interest cannot remain on deposit and that payout of interest is mandatory.

* * * * *

4. In Part 230, Appendix A is amended by revising section E of Part I to read as follows:

Appendix A To Part 230—Annual Percentage Yield Calculation

* * * * *

E. Time Accounts with a Stated Maturity Greater than One Year that Pay Interest At Least Annually

1. For time accounts with a stated maturity greater than one year that do not compound interest on an annual or more frequent basis, and that require the consumer to withdraw interest at least annually, the annual percentage yield may be disclosed as equal to the interest rate.

Example

(1) If an institution offers a $1,000 two-year certificate of deposit that does not compound and that pays out interest semi-annually by check or transfer at a 6.00% interest rate, the annual percentage yield may be disclosed as 6.00%.

(2) For time accounts covered by this paragraph that are also stepped-rate accounts, the annual percentage yield may be disclosed as equal to the composite interest rate.

Example

(1) If an institution offers a $1,000 three-year certificate of deposit that does not compound and that pays out interest annually by check or transfer at a 5.00% interest rate for the first year, 6.00% interest rate for the second year, and 7.00% interest rate for the third year, the institution may compute the composite interest rate and APY as follows:

(a) Multiply each interest rate by the number of days it will be in effect;

(b) Add these figures together; and

(c) Divide by the total number of days in the term.

(2) Applied to the example, the products of the interest rates and days the rates are in effect are (5.00%×365 days) 1825, (6.00%×365 days) 2190, and (7.00%×365 days) 2555, respectively. The sum of these products, 6570, is divided by 1095, the total number of days in the term. The composite interest rate and APY are both 6.00%.

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 24, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–20268 Filed 7–29–98; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE146, Special Condition 23–98–02–SC]

Special Conditions; Raytheon Aircraft Company, Beech Model 3000 Airplane: Protection of Systems From High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67201–0085 for a Type Certificate on the Beech Model 3000 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 14, 1998.

Comments must be received on or before August 31, 1998 for domestic, November 27, 1998 for foreign.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE146, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE146. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to CE146." The postcard will be date stamped and returned to the commenter.

Background

Beech Aircraft Corporation made application for a new type certification (TC) for the Beech Model 3000 airplane on August 31, 1992, for the purpose of entering the competition with several other manufacturers for the contract to build the Joint Primary Aircraft Training System (JPATS) trainer aircraft. This application was allowed to expire after three years when it was determined that

Beech Aircraft Corporation did not need a TC in their name to be in the competition. The Swiss TC for the original Pilatus PC–9 airframe was adequate for that purpose.

Beech made a new application for a TC on January 15, 1996, when they were awarded the contract. This is the application that is still in force. On April 15, 1996, Beech Aircraft Corporation became Raytheon Aircraft Company.

The proposed configuration incorporates a novel or unusual design feature, such as digital avionics consisting of an electronic flight instrument system (EFIS), that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, 21.17, Raytheon Aircraft Company must show that the Beech Model 3000 meets the applicable provisions of the following:

The type certification basis for the Beech Model 3000 airplane is given by the following:

Federal Aviation Regulations part 23 effective February 1, 1965, as amended by Amendments 23–1 through 23–47; Federal Aviation Regulations §§ 23.201, 23.203 and 23.207 as amended by Amendment 23–50; Federal Aviation Regulations part 34 effective September 10, 1990, as amended by the amendment in effect on the date of certification; Federal Aviation Regulations part 36 effective December 1, 1969, as amended by amendment 36–1 through the amendment in effect on the day of certification; The Noise Control Act of 1972; and Special Conditions for such items as Protection from High Intensity Radiated Fields (HIRF), Digital Electronic Engine Control (DEEC) and the Section Defuel System.

If the Administrator finds that the applicable airworthiness regulations, 14 CFR part 23, do not contain adequate or appropriate safety standards for the Beech Model 3000 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Beech Model 3000 will incorporate the following novel or unusual design features: Installation of electronic equipment and displays for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF.

Discussion

The FAA may issue and amend special conditions, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards, designated according to § 21.101(b), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions are normally issued according to § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis in accordance with § 21.101(b)(2).

Raytheon Aircraft Company plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previously required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined as follows:

Frequency	Field strength (volts per meter)	
	peak	average
10 kHz—100 kHz	50	50
100 kHz—500 kHz	50	50
500 kHz—2 MHz	50	50
2 MHz—30 MHz	100	100
30 MHz—70 MHz	50	50
70 MHz—100 MHz	50	50
100 MHz—200 MHz	100	100
200 MHz—400 MHz	100	100
400 MHz—700 MHz	700	50
700 MHz—1 GHz	700	100
1 GHz—2 GHz	2000	200
2 GHz—4 GHz	3000	200
4 GHz—6 GHz	3000	200
6 GHz—8 GHz	1000	200
8 GHz—12 GHz	3000	300
12 GHz—18 GHz	2000	200
18 GHz—40 GHz	600	200

Frequency	Field strength (volts per meter)	
	peak	average
The field strengths are expressed in terms of peak root-mean-square (rms) values.		

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the Beech Model 3000. Should Raytheon Aircraft Company apply at a later date for a supplemental type certificate or amended type certificate to modify any other model that may be included on this Type Certificate incorporating, the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

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

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbol

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.17; and 14 CFR part 11, §§ 11.28 and 11.49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Raytheon Aircraft Company, Beech Model 3000 airplane.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on July 14, 1998.

Marvin Nuss,

Assistant Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–20345 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–212–AD; Amendment 39–10676; AD 98–16–01]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires repetitive inspections to measure for free play (wear on nut assembly) of the horizontal stabilizer actuator assembly, and corrective actions, if necessary. This amendment is prompted by reports of wear of the horizontal stabilizer actuator assembly due to a jackscrew surface finish that was manufactured incorrectly. The actions specified in this AD are intended to prevent excessive free play and wear of the horizontal stabilizer actuator assembly, which could result in a free-floating horizontal stabilizer, and consequent loss of aircraft pitch control.

DATES: Effective August 14, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 14, 1998.

Comments for inclusion in the Rules Docket must be received on or before September 28, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products

Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Y. J. Hsu, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5323; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received numerous reports of the actuator nut assembly of the horizontal stabilizer prematurely wearing out on McDonnell Douglas Model MD–11 series airplanes. In one of these incidents, the nut assembly had completely worn through. The cause of such wear and resultant excessive free play has been attributed to a jackscrew surface finish that was out of design specification tolerance, as a result of a manufacturing process error. If not corrected, this condition, in conjunction with a failure of the opposite side jackscrew assembly, could result in a free-floating horizontal stabilizer, and consequent loss of aircraft pitch control.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD11–27–067, dated July 31, 1997; McDonnell Douglas Service Bulletin MD11–27–067, Revision 01, dated February 24, 1998; McDonnell Douglas Alert Service Bulletin MD11–27A067, Revision 02, dated May 18, 1998; and McDonnell Douglas Alert Service Bulletin MD11–27A067, Revision 03, dated June 9, 1998. These service bulletins describe procedures for repetitive inspections to measure for free play (wear on nut assembly) of the horizontal stabilizer actuator assembly, and corrective actions, if necessary. These corrective actions include replacing the actuator assembly with a new actuator assembly, repairing the jackscrew assembly, and replacing the nut assembly with a new nut assembly. Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent excessive free play and wear of the horizontal stabilizer actuator assembly, which could result in a free-floating horizontal stabilizer, and consequent loss of aircraft pitch control. The actions are required to be accomplished in accordance with the service bulletins described previously, except as discussed below. This AD also requires that operators submit a report of the results of the initial inspection required by this AD to the FAA.

Differences Between Proposed Rule and Service Bulletins

Operators should note that although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair/modification conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–212–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–16–01 McDonnell Douglas: Amendment 39–10676. Docket 98–NM–212–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas MD–11 Alert Service Bulletin MD11–27A067, Revision 03, dated June 9, 1998; 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 (i) 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 excessive play and wear on the horizontal stabilizer actuator assembly, which could result in a free-floating horizontal stabilizer, and consequent loss of aircraft pitch control, accomplish the following:

Note 2: Where there are differences between the service bulletins and the AD, the AD prevails.

(a) Within 30 days after the effective date of this AD: Perform an inspection to measure for free play (wear on nut assembly) of the horizontal stabilizer actuator assembly, left and right sides, in accordance with any of the following McDonnell Douglas service bulletins:

- McDonnell Douglas Service Bulletin MD11–27–067, dated July 31, 1997;
- McDonnell Douglas Service Bulletin MD11–27–067, Revision 01, dated February 24, 1998;
- McDonnell Douglas Alert Service Bulletin MD11–27A067, Revision 02, dated May 18, 1998; or
- McDonnell Douglas Alert Service Bulletin MD11–27A067, Revision 03, dated June 9, 1998.

(b) For airplanes that have accumulated 2,000 or more total landings at the time of accomplishment of the inspection required by paragraph (a) of this AD: If any wear is detected during the inspection required by paragraph (a) of this AD, and it is less than or within the limits identified in Table 1, Condition 1, of the Work Instructions of any service bulletin listed in paragraph (a) of this AD, no further action is required by this AD.

(c) For airplanes that have accumulated less than 2,000 total landings at the time of accomplishment of the inspection required by paragraph (a) of this AD: If any wear is detected during any inspection required by paragraph (a) of this AD, and it is less than or within the limits identified in Table 1, Condition 1, of the Work Instructions of any service bulletin listed in paragraph (a) of this AD, repeat the inspection required by paragraph (a) of this AD prior to the accumulation of 2,400 total landings.

(d) Condition 2. If any wear is detected during any inspection required by paragraph (a) or (c) of this AD, and it is within the limits identified in Table 1, Condition 2, of the Work Instructions of any service bulletin listed in paragraph (a) of this AD, within 500 landings following accomplishment of the inspection required by paragraph (a) of this AD, accomplish paragraph (d)(1), (d)(2), (d)(3), (d)(4), or (d)(5) of this AD.

(1) *Option 1.* Replace the actuator assembly with a new actuator assembly, in accordance with any service bulletin listed in paragraph (a) of this AD.

(2) *Option 2.* Repair the jackscrew assembly of the horizontal stabilizer and install it utilizing the existing nut assembly in accordance with either:

(i) A method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or

(ii) Option 2, Procedure 2, of the Work Instructions of any service bulletin listed in paragraph (a) of this AD.

(3) *Option 3.* Repair the jackscrew assembly of the horizontal stabilizer and install it utilizing a new nut assembly in accordance with either:

(i) A method approved by the Manager, Los Angeles ACO; or

(ii) Option 3, Procedure 2, of the Work Instructions of any service bulletin listed in paragraph (a) of this AD.

(4) *Option 4.* Replace the nut assembly with a new nut assembly, in accordance with any service bulletin listed in paragraph (a) of this AD. Within 1,500 landings following accomplishment of the replacement, repeat the inspection required by paragraph (a) of this AD.

(5) *Option 5.* Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 500 landings.

(e) Condition 3. If any wear is detected during the inspection required by paragraph (a) or (c) of this AD, and it is within the limits identified in Table 1, Condition 3, of the Work Instructions of any service bulletin listed in paragraph (a) of this AD, within 250 landings following accomplishment of the inspection required by paragraph (a) of this AD, accomplish either paragraph (e)(1), (e)(2), (e)(3), (e)(4), or (e)(5) of this AD.

(1) *Option 1.* Replace the actuator assembly with a new actuator assembly, in accordance with any service bulletin listed in paragraph (a) of this AD.

(2) *Option 2.* Repair the jackscrew assembly of the horizontal stabilizer and install it utilizing the existing nut assembly in accordance with either:

(i) A method approved by the Manager, Los Angeles ACO; or

(ii) Option 2, Procedure 2, of the Work Instructions of any service bulletin listed in paragraph (a) of this AD.

(3) *Option 3.* Repair the jackscrew assembly of the horizontal stabilizer and install it utilizing a new nut assembly in accordance with either:

(i) A method approved by the Manager, Los Angeles ACO; or

(ii) Option 3, Procedure 2, of the Work Instructions of any service bulletin listed in paragraph (a) of this AD.

(4) *Option 4.* Replace the nut assembly with a new nut assembly, in accordance with any service bulletin listed in paragraph (a) of this AD. Within 1,500 landings following accomplishment of the replacement, repeat the inspection required by paragraph (a) of this AD.

(5) *Option 5.* Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 250 landings.

(f) *Condition 4.* If any wear is detected during the inspection required by paragraph (a) or (c) of this AD, and it is within the limits identified in Table 1, Condition 4, of the Work Instructions of any service bulletin listed in paragraph (a) of this AD, within 100 landings following accomplishment of the inspection required by paragraph (a) of this AD, accomplish paragraph (f)(1), (f)(2), or (f)(3) of this AD.

(1) *Option 1.* Replace the actuator assembly with a new actuator assembly, in accordance with any service bulletin listed in paragraph (a) of this AD.

(2) *Option 3.* Repair the jackscrew assembly of the horizontal stabilizer and install it utilizing a new nut assembly in accordance with either:

(i) A method approved by the Manger, Los Angeles ACO; or

(ii) Option 3, Procedure 2, of the Work Instructions of any service bulletin listed in paragraph (a) of this AD.

(3) *Option 4.* Replace the nut assembly with a new nut assembly, in accordance with any service bulletin listed in paragraph (a) of this AD.

(i) For airplanes that have accumulated 1,500 or more landings at the time of the last inspection: Within 1,500 landings following accomplishment of the replacement, repeat the inspection required by paragraph (a) of this AD.

(ii) For airplanes that have accumulated less than 1,500 landings at the time of the last inspection: Following accomplishment of the replacement, repeat the inspection required by paragraph (a) of this AD within the number of landings accumulated at the time of the last inspection.

(g) If any wear is detected during the inspection required by paragraph (a) or (c) of this AD, and it exceeds the limits identified in Table 1, Condition 4, of the Work Instructions of any service bulletin listed in paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(h) Within 10 days after accomplishment of the initial inspection required by paragraph (a) of this AD, submit a report of the inspection results (positive or negative) to the Manager, Los Angeles Aircraft Certification

Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(i) 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 ACO. 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 ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(j) 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.

(k) Except as provided by paragraphs (d)(2)(i), (e)(2)(i), and (g) of this AD, the actions shall be done in accordance with the following service bulletins:

- McDonnell Douglas Service Bulletin MD11–27–067, dated July 31, 1997;
- McDonnell Douglas Service Bulletin MD11–27–067, Revision 01, dated February 24, 1998;
- McDonnell Douglas Alert Service Bulletin MD11–27A067, Revision 02, dated May 18, 1998; or
- McDonnell Douglas Alert Service Bulletin MD11–27A067, Revision 03, dated June 9, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–151 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on August 14, 1998.

Issued in Renton, Washington, on July 21, 1998.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–19924 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–17]

Amendment to Class D and Class E Airspace; Fort Leonard Wood, MO; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class D and Class E airspace at Fort Leonard Wood, MO, and corrects the name of the airport from Fort Leonard Wood, Forney Army Airfield to Waynesville Regional Airport at Forney Field. An editorial revision to the Class E surface airspace area is included in the document.

DATES: The direct final rule published at 63 FR 27474 is effective on 0901 UTC, October 8, 1998.

This correction is effective on October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: On May 19, 1998, the FAA published in the **Federal Register** a direct final rule; request for comments which modified the Class D and Class E airspace at Fort Leonard Wood, MO (FR Document 98–13272, 63 FR 27474, Airspace Docket No. 98–ACE–17). After the document was published in the **Federal Register**, the name of the airport was changed from Fort Leonard Wood, Forney Army Airfield, MO, to Waynesville Regional Airport at Forney Field, MO. In addition, to more clearly define the Class E surface airspace area, an editorial revision is included. The FAA has determined that these corrections will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the name of the airport and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 8, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 98–13272 published in the **Federal Register** on May 19, 1998, 63 FR 27474, make the following correction to the Fort Leonard Wood, MO, Class D and Class E airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

ACE MO D Fort Leonard Wood, MO [Corrected]

On page 27476, in the first column, under "ACE MO D Fort Leonard Wood, MO [Revised]", line 3, remove "Fort Leonard Wood, Forney Army Airfield," and add in its place "Waynesville Regional Airport at Forney Field."

On page 27476, in the first column, line 3 and 4 of the airspace designation, remove "Forney Army Airfield" and add in its place "Waynesville Regional Airport at Forney Field."

ACE MO E4 Fort Leonard Wood, MO [Corrected]

On page 27476, in the first column, under "ACE MO E4 Fort Leonard Wood, MO [Revised]", line 3, remove Fort Leonard Wood, Forney Army Airfield," and add in its place "Waynesville Regional Airport at Forney Field."

On page 27476, in the first column, line 4 of the airspace designation, remove "Forney Army Airfield" and add in its place "Waynesville Regional Airport at Forney Field."

On page 27476, in the first column, line 8 and 9 of the airspace designation, remove the words "extending from the 4-mile radius of the airport".

ACE MO E5 Fort Leonard Wood, MO [Corrected]

On page 27476, in the first column, under "ACE MO E5 Fort Leonard Wood, MO [Revised]", line 3, remove "Fort Leonard Wood, Forney Army Airfield," and add in its place "Waynesville Regional Airport at Forney Field."

On page 27476, in the first column, line 3 of the airspace designation, remove "Forney Army Airfield" and add in its place "Waynesville Regional Airport at Forney Field."

Issued in Kansas City, MO, on July 15, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–20347 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AWP–11]

Establishment of Class E Airspace; Safford, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Safford, AZ. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the Global Positioning System (GPS) Runway (kWY) 12 and GPS RWY 30 Standard Instrument Approach Procedure (SIAP) at Safford Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations Safford Municipal Airport, Safford, AZ.

EFFECTIVE DATE: 0901 UTC October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6531.

SUPPLEMENTARY INFORMATION:

History

On June 2, 1998, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area at Safford, AZ (63 FR 29960). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 12 and GPS RWY 30 SIAP at Safford Municipal Airport. This action will provide adequate controlled airspace for IFR operations at Safford Municipal Airport, Safford, AZ.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E 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 will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes a Class E airspace area at Safford, AZ. The development of a GPS SIAP has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 12 and GPS RWY 30 SIAP at Safford Municipal Airport, Safford, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; 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; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, 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.

* * * * *

AWP AZ E5 Safford, AZ [New]

Safford Municipal Airport, AZ
(lat. 32°51′17″N, long. 109°38′07″W)
Williams Gateway Airport, AZ
(lat. 33°18′28″N, long. 111°39′20″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Safford Municipal Airport. That airspace extending upward from 1200 feet above the surface bounded on the south by a line beginning at lat. 32°25′00″N, long. 109°11′30″W; to lat. 32°25′00″N, long. 109°26′00″W; to lat. 32°23′00″N, long. 109°26′00″W; extending along the northern boundary of V–94 to the 100-mile radius of the Williams Gateway Airport; and on the west by the 100-mile radius of the Williams Gateway Airport to lat. 33°00′00″N; and on the north by lat. 33°00′00″N; and on the east to lat. 33°00′00″N, long. 109°37′00″W; to lat. 32°40′00″N, long. 109°17′00″W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on July 20, 1998.

John G. Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–20349 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–8]

Amendment to Class E Airspace; Tallahassee, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This amendment is necessary to reflect a change in the name of the Tallahassee VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) of the Seminole VORTAC.

EFFECTIVE DATE: 0901 UTC, October 8, 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

The name of the navigation aid serving the Tallahassee Regional Airport, FL, has been changed from the Tallahassee VORTAC to the Seminole

VORTAC to eliminate confusion in describing the navigation aid and the airport. This action will have no impact on the users of the airspace. This rule will become effective on the date specified in the **DATES** section. Since this action is technical in nature and does not change the airspace design and, therefore, has no impact on the users of the airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Designations for Class E Airspace Areas Designated as an Extension 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.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class E airspace description at Tallahassee, FL, to reflect the name change of the Tallahassee VORTAC to Seminole VORTAC.

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 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 6003 Class E Airspace Areas Designated as an Extension.

* * * * *

ASO FL E3 Tallahassee, FL [Revised]

Tallahassee Regional Airport, FL
(Lat. 30°23′47″N, long. 84°21′01″W)
Seminole VORTAC
(Lat. 30°33′22″N, long. 84°22′26″W)

That airspace extending upward from the surface within 1.3 miles each side of the Seminole VORTAC 175 radial extending from a 5-mile radius of the Tallahassee Regional Airport to 2 miles south of the VORTAC.

* * * * *

Issued in College Park, Georgia, on July 15, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–20356 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–40]

RIN 2120–AA66

Realignment of VOR Federal Airway 369; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action realigns Federal Airway 369 (V–369) located in the Dallas/Fort Worth, TX, area. Due to the decommissioning of the Dallas/Fort Worth Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC), V–369 will be realigned to the newly commissioned Maverick Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME), which is located .66 miles west of the former Dallas/Fort Worth VORTAC. The FAA is taking this action to improve the management of air traffic operations in the vicinity of the Dallas/Fort Worth area.

DATES: Effective 0901 UTC, October 8, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before August 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 98–ASW–40, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule.

Due to the decommissioning of the Dallas/Fort Worth VORTAC and the commissioning of the Maverick VOR/DME there is a need to realign V–369 to the Maverick VOR/DME. Realigning V–369 does not alter the airway track significantly and will benefit users of the airway. Since previous rulemaking actions similar to this one have not been controversial, the FAA does not anticipate any adverse comments on this regulatory effort. Therefore, unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and

a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 specified closing date for comments will be considered, and this rule may be amended or withdrawn in light of comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ASW–40." The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to 14 CFR part 71 realigns V–369 located in the Dallas/Fort Worth area. Due to the decommissioning of the Dallas/Fort Worth VORTAC, V–369 is being realigned to the newly commissioned Maverick VOR/DME, which is located .66 nautical miles west of the former Dallas/Fort Worth VORTAC. Realigning V–369 will ensure that air traffic operations are not interrupted by virtue of the decommissioning of the Dallas/Fort Worth VORTAC and the commissioning of the Maverick VOR/DME. The effective date of this direct final rule will coincide with the effective date of the commissioning of the Maverick VOR/DME. The FAA is taking this action to improve the management of air traffic operations in the vicinity of Dallas/Fort Worth area.

Domestic VOR Federal Airways are published in paragraph 6010(a) 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 airways listed in this document will be published subsequently in the Order.

Agency Findings

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 not controversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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 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 the 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 6010(a)—Domestic VOR Federal Airways

* * * * *

V–369 [Revised]

From Navasota, TX; Groesbeck, TX; to Maverick, TX.

* * * * *

Issued in Washington, DC, on July 23, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–20346 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ANM–15]

RIN 2120–AA66

Modification of VOR Federal Airway V–465

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Very High Frequency Omnidirectional Range (VOR) Federal Airway V–465 (V–465) by lowering the floor of a portion of the airway from 12,400 mean sea level (MSL) to 1,200 feet above the surface. This action also establishes a new segment of V–465 between Billings, Montana (MT), and Miles City, MT. The FAA is taking this action to support an instrument approach procedure into the Jackson Hole Airport, Wyoming (WY), and enhance the management of air traffic operations in the Jackson Hole, WY, area.

EFFECTIVE DATE: 0901 UTC October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Joseph White, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On December 15, 1997, the FAA proposed to amend 14 CFR part 71 (part 71) to modify a portion of V–465 (62 FR 65631). Interested parties were invited

to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Except for editorial changes this amendment is the same as that proposed in the notice.

The Rule

This action amends part 71 by lowering the floor of a portion of V–465 from 12,400 MSL to 1,200 feet above the surface. This action supports the instrument approach procedure requirements into the Jackson Hole Airport, Jackson, WY.

This action also establishes a new segment of V–465 between Billings, MT, and Miles City, MT. When V–465 was established, the FAA intended that the airway include a segment between Billings, MT, and Miles City, MT; however, the airway segment was omitted due to a typographical error. This action properly defines that portion of V–465 between Billings, MT, and Miles City, MT, that was omitted in previous publications. This new segment does not result in any additional controlled airspace because the segment is co-located with a segment of V–2.

The FAA is taking this action to enhance the management of air traffic operations in the Jackson Hole, WY, area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Domestic VOR Federal airways are published in paragraph 6010(a) 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 airways listed in this document will be published subsequently in the Order.

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 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 [Revised]

2. The incorporation by reference in 14 CFR 71.1 of the 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 6010(a)—Domestic VOR Federal Airways

* * * * *

V–465 [Revised]

From Bullion, NV, Wells, NV; 12 miles; 30 miles, 115 MSL, 20 miles, 90 MSL, 36 miles, 115 MSL, 24 miles, 95 MSL, Malad City, ID; Jackson, WY; Dunoir, WY; 14 miles, 45 miles, 137 MSL, Billings, MT; Miles City, MT; Williston, ND.

* * * * *

Issued in Washington, DC, on July 24, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–20341 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 341

[Docket No. 76N–052N]

RIN 0910–AA01

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Monograph for OTC Nasal Decongestant Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the final monograph for over-the-counter (OTC) nasal decongestant drug products (drug products used to relieve nasal congestion caused by acute or chronic rhinitis) to add the ingredient levmetamfetamine (formerly l-desoxyephedrine) and to classify this ingredient as generally recognized as safe and effective for OTC use. The agency is also removing l-desoxyephedrine from the list of nonmonograph active ingredients. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Cazemiro R. Martin, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 23, 1994 (59 FR 43386), the agency published a final rule in the form of a final monograph establishing conditions under which OTC nasal decongestant drug products are generally recognized as safe and effective. The final monograph did not include l-desoxyephedrine as a nasal decongestant active ingredient because it was not currently standardized and characterized for quality and purity in an official compendium, i.e., the United States Pharmacopeia (USP)/National Formulary (59 FR 43386 at 43408). Instead, the final rule listed l-desoxyephedrine in § 310.545(a)(6)(ii)(B) (21 CFR 310.545(a)(6)(ii)(B)) as not generally recognized as safe and effective. The agency stated in the final rule that OTC drug products containing l-desoxyephedrine as a topical nasal decongestant active ingredient were new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)). The effective date of the final rule was August 23, 1995.

In the **Federal Register** of March 8, 1996 (61 FR 9570), the agency stayed the entry for "l-desoxyephedrine (topical)" in § 310.545(a)(6)(ii)(B) until further notice. The agency explained that a citizen petition submitted in response to the OTC nasal decongestant final rule requested that the agency defer the effective date of § 310.545(a)(6)(ii)(B) as it applies to l-desoxyephedrine (topical) until December 31, 1996. The petitioner stated that it had forwarded a draft compendial monograph for l-desoxyephedrine to the USP in late July 1995. The agency added that when l-desoxyephedrine becomes official in the

USP, the final monograph for OTC nasal decongestant drug products would be amended to include the active ingredient and § 310.545(a)(6)(ii)(B) would be revised accordingly. The agency provided certain labeling requirements that would be in effect for topical nasal decongestant drug products containing l-desoxyephedrine during the stay (61 FR 9570).

II. Recent Developments

In the *Pharmacopeial Forum* of January/February 1997 (Ref. 1), USP proposed a monograph for l-desoxyephedrine. Based on the United States Adopted Names (USAN) Council's recommendation, the proposal included levmetamfetamine as the new name for l-desoxyephedrine. The USAN Council and USP used the International Nomenclature Name (INN), levmetamfetamine, in place of l-desoxyephedrine. Levmetamfetamine is the title of the monograph adopted in the 6th Supplement of USP 23 (Ref. 2).

In response to the USP proposed monograph for levmetamfetamine (Ref. 1), the agency at that time expressed its strong objection and the objection of the U.S. Department of Justice, Drug Enforcement Administration (DEA) concerning the USAN Council's recommendation to adopt "levmetamfetamine" as the nonproprietary name for l-desoxyephedrine (Ref. 3). The agency indicated to the Council that both FDA and DEA shared concerns about an increased use of methamphetamine in the United States and with the large-scale diversion of some OTC drug products for illicit use in the manufacture of the controlled substances methamphetamine and methcathinone. Both agencies had concerns that the new name, levmetamfetamine, might draw the attention of potential drug abusers to these OTC nasal decongestant drug products if they contain "metamfetamine" in their name. The agency pointed out that although l-desoxyephedrine is a nonnarcotic substance (21 CFR 1308.22), an OTC drug product label containing a sound-alike name, such as "levmetamfetamine" may encourage intentional misuse. For these concerns, the agency asked the USAN Council to reconsider the proposed name change.

At its January 27, 1997, meeting, the USAN Council considered the agency's request regarding the name change of l-desoxyephedrine to "levmetamfetamine" and voted to retain the name for the following reasons (Ref. 4): (1) Levmetamfetamine is nonaddictive, (2) the new name is consistent with INN policy, and (3) any other name for l-desoxyephedrine may also be confusing. At this time, the agency accepts the USAN Council's decision and is using levmetamfetamine as the new name for l-desoxyephedrine in the OTC nasal decongestant final monograph.

III. The Agency's Final Conclusions

Based on the new USP monograph for levmetamfetamine, the agency is amending the final monograph for OTC nasal decongestant drug products to include levmetamfetamine in § 341.20(b)(1) (21 CFR 341.20(b)(1)) as a safe and effective OTC nasal decongestant active ingredient. The agency is also adding labeling for products containing this ingredient to the OTC nasal decongestant final monograph as follows:

1. In § 341.80(c)(2)(ii) (21 CFR 341.80(c)(2)(ii)): *For products containing levmetamfetamine identified in § 341.20(b)(1) when used in an inhalant dosage form and when labeled for adults.* "Do not use this product for more than 7 days. Use only as directed. Frequent or prolonged use may cause nasal congestion to recur or worsen. If symptoms persist, ask a doctor."

2. In § 341.80(c)(2)(vii): *For products containing levmetamfetamine identified in § 341.20(b)(1) when used in an inhalant dosage form and when labeled for children under 12 years of age.* "Do not use this product for more than 7 days. Use only as directed. Frequent or prolonged use may cause nasal congestion to recur or worsen. If symptoms persist, ask a doctor."

3. In § 341.80(d)(2)(i): *For products containing levmetamfetamine identified in § 341.20(b)(1) when used in an inhalant dosage form.* "The product delivers in each 800 milliliters of air 0.04 to 0.150 milligrams of levmetamfetamine. Adults: 2 inhalations in each nostril not more often than every 2 hours. Children 6 to under 12 years of age (with adult supervision): 1 inhalation in each nostril not more often than every 2 hours. Children under 6 years of age: ask a doctor."

4. In § 341.80(d)(2)(viii), the agency is expanding the header to read: "Other required statements—For products containing levmetamfetamine or propylhexedrine identified in § 341.20(b)(1) or (b)(9) when used in an inhalant dosage form."

The agency is also amending § 310.545(a)(6)(ii)(B) by removing the entry for "l-desoxyephedrine (topical)."

IV. Labeling Guidance

In the **Federal Register** of February 27, 1997 (62 FR 9024), FDA proposed to establish a standardized format for the labeling of OTC drug products. The labeling in this final rule does not follow the new format because the proposal has not been finalized to date. However, the agency is providing manufacturers guidance on how labeling in this final rule would be converted into the format proposed in § 201.66 (62 FR 9024 at 9050 and 9051). The purpose and use of the products are already listed in and would follow § 341.80(a) and (b) of the final monograph for OTC nasal decongestant drug products. The directions would appear as stated in this final rule and in § 341.80(d)(2)(viii). The warnings in § 341.80(c)(2)(ii) and (c)(2)(vii) would meet the requirements of proposed § 201.66(c)(4) as follows:

TABLE 1.—CONVERSION OF MONOGRAPH WARNINGS TO PROPOSED NEW FORMAT

Nasal Decongestant Final Monograph	February 27, 1997, Proposal
Do not use this product for more than 7 days.	DO NOT USE: for more than 7 days
If symptoms persist, ask a doctor.	STOP USING THIS PRODUCT IF: symptoms persist ASK A DOCTOR. THESE MAY BE SIGNS OF A SERIOUS CONDITION.
Use only as directed.	WHEN USING THIS PRODUCT: use only as directed
Frequent or prolonged use may cause nasal congestion to recur or worsen.	frequent or prolonged use may cause nasal congestion to recur or worsen

Until the final rule for the labeling format proposal is published, manufacturers, distributors, and packagers must comply with the final rule published in this document. The final rule for the new labeling format will provide a date by which the labeling of all OTC nasal decongestant drug products covered by the monograph will need to be converted to the new labeling format.

V. Analysis of Impacts

FDA has examined the impacts of this final 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 impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of a 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 proposed rule that has led to the development of this final rule was published on January 15, 1985 (50 FR 2220), before the Unfunded Mandates Reform Act was enacted. The agency explains in this final rule that the final rule will not 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.

The agency believes that this final rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this final rule is to establish conditions under which OTC nasal decongestant drug products containing levmetamfetamine (formerly l-desoxyephedrine) are generally recognized as safe and effective. This includes establishing the allowable monograph labeling.

The March 8, 1996, notice of partial stay of the OTC nasal decongestant final monograph included labeling that manufacturers of OTC topical nasal decongestant drug products containing levmetamfetamine (l-desoxyephedrine) had to have in effect by September 9, 1996. Therefore, all such currently marketed drug products should have this labeling in effect. The only labeling change that is necessary at this time is to change the established name from l-desoxyephedrine to levmetamfetamine as a result of the 6th Supplement to USP 23 (Ref. 2). A number of manufacturers of these products have already made this change as new labeling needed to be prepared. The agency believes that an effective date of 1 year from the date of this publication will provide manufacturers of the remaining products sufficient time to incorporate the name change during a future manufacturing cycle. The agency estimates that there are less than 100 stock keeping units (SKU) (individual products, packages, and sizes) of products containing this ingredient currently in the OTC marketplace. Other manufacturers who now wish to market a product containing this ingredient may enter the marketplace at any time.

The agency considered but rejected several labeling alternatives: (1) A longer implementation period, and (2) an exemption for small entities. The agency does not consider either of these approaches acceptable because only a single labeling change (in the product's established name) is needed at this time. Further, the agency is aware that manufacturers of products containing this ingredient already started to change product labeling after the name change became official in USP 23.

The analysis shows that this final rule is not economically significant under Executive Order 12866 and that the agency has considered the burden to small entities. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act. Finally, this analysis shows that the Unfunded Mandates Act does not apply to the final rule because it would not 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.

VI. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document 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, the labeling statements are 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)).

VII. 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.

VIII. References

The following references are 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) *Pharmacopeial Forum*, The United States Pharmacopeial Convention, Inc., Rockville, MD, p. 3429, January through February, 1997.

(2) *Sixth Supplement to USP 23 and to NF 18*, United States Pharmacopeial Convention, Inc., Rockville, MD, p. 3631, 1997.

(3) Memorandum from D. Bowen, FDA, to R. Wolters, FDA representative to USAN Council, dated January 22, 1997, Docket No. 76N–052N, Dockets Management Branch.

(4) Memorandum from R. Wolters, FDA representative to USAN Council, to D. Bowen *et al.*, FDA, dated February 6, 1997, Docket No. 76N–052N, Dockets Management Branch.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 341

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, 21 CFR parts 310 and 341 are 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, 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 *Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses* is amended in paragraph (a)(6)(ii)(B) by removing the entry for "l-desoxyephedrine (topical)."

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

4. Section 341.20 is amended by revising paragraph (b)(1) to read as follows:

§ 341.20 Nasal decongestant active ingredients.

* * * * *

(b) * * *

(1) Levmetamfetamine.

* * * * *

5. Section 341.80 is amended by revising paragraphs (c)(2)(ii), (c)(2)(vii), and (d)(2)(i), and the heading of paragraph (d)(2)(viii) to read as follows:

§ 341.80 Labeling of nasal decongestant drug products.

* * * * *

(c) * * *

(2) * * *

(ii) *For products containing levmetamfetamine identified in § 341.20(b)(1) when used in an inhalant dosage form and when labeled for adults.* "Do not use this product for more than 7 days. Use only as directed. Frequent or prolonged use may cause nasal congestion to recur or worsen. If symptoms persist, ask a doctor."

* * * * *

(vii) *For products containing levmetamfetamine identified in § 341.20(b)(1) when used in an inhalant dosage form and when labeled for children under 12 years of age.* "Do not use this product for more than 7 days. Use only as directed. Frequent or prolonged use may cause nasal congestion to recur or worsen. If symptoms persist, ask a doctor."

* * * * *

(d) * * *

(2) * * *

(i) *For products containing levmetamfetamine identified in § 341.20(b)(1) when used in an inhalant dosage form.* The product delivers in each 800 milliliters of air 0.04 to 0.150 milligrams of levmetamfetamine. Adults: 2 inhalations in each nostril not more often than every 2 hours. Children 6 to under 12 years of age (with adult supervision): 1 inhalation in each nostril not more often than every 2 hours. Children under 6 years of age: ask a doctor.

* * * * *

(viii) *Other required statements—For products containing levmetamfetamine or propylhexedrine identified in § 341.20(b)(1) or (b)(9) when used in an inhalant dosage form.* * * *

* * * * *

Dated: July 23, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98-20303 Filed 7-29-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. 98N-0513]

Medical Devices; Neurological Devices; Classification of Cranial Orthosis

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the cranial orthosis into class II (special controls). The special controls that will apply to the cranial orthosis are restriction to prescription use, biocompatibility testing, and certain labeling requirements. The agency is taking this action in response to a petition submitted under the Federal, Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997. The agency is classifying cranial orthosis into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

EFFECTIVE DATE: August 31, 1998.

FOR FURTHER INFORMATION CONTACT: James E. Dillard, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1184.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the FDA regulations (21 CFR part 807).

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1), request FDA to classify the device under the criteria set forth in section 513(a)(1). FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

In accordance with section 513(f)(1) of the act, FDA issued an order on March 12, 1998, classifying the Dynamic Orthotic Cranioplasty (DOC™ Band) in class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On March 31, 1998, Cranial Technologies, Inc., submitted a petition requesting classification of the DOC™ Band under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II.

In accordance with 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition and the medical literature, FDA determined that the DOC™ Band can be

classified in class II with the establishment of special controls. FDA believes these special controls will provide reasonable assurance of safety and effectiveness of the device.

The device is assigned the generic name "cranial orthosis," and it is identified as a device intended for use on infants from 3 to 18 months of age with moderate to severe nonsynostotic positional plagiocephaly, including infants with plagiocephalic-, brachycephalic-, and scaphocephalic-shaped heads. The device is intended for medical purposes to apply pressure to prominent regions of an infant's cranium in order to improve cranial symmetry and/or shape.

FDA identified the following risks to health associated with this type of device: (1) Skin irritation, skin breakdown and subsequent infection due to excessive pressure on the skin; (2) head and neck trauma due to alteration of the functional center of mass of the head and the additional weight of the device especially with an infant who is still developing the ability to control his/her head and neck movements; (3) impairment of brain growth and development from mechanical restriction of cranial growth; (4) asphyxiation due to mechanical failure, poor fit, and/or excessive weight that alters the infant's ability to lift the head; (5) eye trauma due to mechanical failure, poor construction and/or inappropriate fit; and (6) contact dermatitis due to the materials used in the construction of the device.

FDA believes that the special controls described below address these risks and provide reasonable assurance of the safety and effectiveness of the device. Therefore, on May 29, 1998, FDA issued an order to the petitioner classifying the cranial orthosis as described previously into class II subject to the special controls described below. Additionally, FDA is codifying the classification of this device by adding new § 882.5970.

In addition to the general controls of the act, the cranial orthosis is subject to the following special controls in order to provide reasonable assurance of the safety and effectiveness of the device: (1) The sale, distribution, and use of this device are restricted to prescription use in accordance with 21 CFR 801.109; (2) the labeling of the device must include: (a) Contraindications for the use of the device on infants with synostosis or with hydrocephalus; (b) warnings indicating the need to: (i) Evaluate head circumference measurements and neurological status at intervals appropriate to the infant's age and rate of head growth and to describe steps that should be taken in order to reduce the potential for restriction of cranial growth and possible impairment of brain growth and development and (ii) evaluate the skin at frequent intervals, e.g., every 3 to 4 hours, and to describe steps that should be taken if skin irritation or breakdown occurs; (c) precautions indicating the need to: (i) Additionally treat torticollis, if the positional plagiocephaly is associated with torticollis; (ii) evaluate device fit and to describe the steps that should be taken in order to reduce the potential for restriction of cranial growth, the possible impairment of brain growth and development and skin irritation and/or breakdown; and (iii) evaluate the structural integrity of the device and to describe the steps that should be taken to reduce the potential for the device to slip out of place and cause asphyxiation or trauma to the eyes or skin; (d) adverse events, i.e., skin irritation and breakdown that have occurred with the use of the device; (e) clinician's instructions for casting the infant, for fitting the device, and for care; and (f) parent's instructions for care and use of the device; (3) the materials must be tested for biocompatibility with testing appropriate for long term direct skin contact.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so it is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Cranial Technologies, Inc., dated March 31, 1998.

2. Hellbusch, J. L., L. C. Hellbusch, and R. J. Bruneteau, "Active Counter-Positioning Treatment of Deformational Plagiocephaly," *Nebraska Medical Journal*, vol. 80, pp. 344 to 349, 1995.

3. Moss, S. D. et. al., "Diagnosis and Management of the Misshapen Head in the Neonate," *Pediatric Review*, vol. 4, pp. 4 to 8, 1993.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 882 is amended as follows:

List of Subjects in 21 CFR Part 882

Medical devices.

PART 882—NEUROLOGICAL DEVICES

1. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 882.5970 is added to subpart F to read as follows:

§ 882.5970 Cranial orthosis.

(a) *Identification.* A cranial orthosis is a device that is intended for medical

purposes to apply pressure to prominent regions of an infant's cranium in order to improve cranial symmetry and/or shape in infants from 3 to 18 months of age, with moderate to severe nonsynostotic positional plagiocephaly, including infants with plagiocephalic-, brachycephalic-, and scaphocephalic-shaped heads.

(b) *Classification.* Class II (special controls) (prescription use in accordance with § 801.109 of this chapter, biocompatibility testing, and labeling (contraindications, warnings, precautions, adverse events, instructions for physicians and parents)).

Dated: July 21, 1998.

Elizabeth D. Jacobson,

Deputy Director for Science, Center for Devices and Radiological Health.

[FR Doc. 98–20308 Filed 7–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–063]

RIN 2115–AE 46

Special Local Regulations for Marine Events; Prospect Bay, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the "Thunder on the Narrows" hydroplane races to be held on the waters of Prospect Bay near Kent Narrows, Maryland. These regulations are needed to protect boaters, spectators and participants from the dangers associated with the event. This action is intended to enhance the safety of life and property during the event.

DATES: This temporary final rule is effective from 12 p.m. EDT (Eastern Daylight Time) to 6 p.m. EDT on August 1 and August 2, 1998.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore Maryland, 21226–1791, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. The application for this event was not received until June 24, 1998. Following normal rulemaking procedures would have been impractical since there is not sufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date. Immediate action is needed to protect vessel traffic from the potential hazards associated with congested waterways.

Background and Purpose

The Kent Narrows Racing Association has submitted a marine event application to the U.S. Coast Guard for the "Thunder on the Narrows" hydroplane races, to be held on the waters of Prospect Bay on August 1 and 2, 1998. The event will consist of 75 hydroplanes racing in heats counter-clockwise around an oval race course. A large fleet of spectator vessels is anticipated. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

Discussion of Regulations

The Coast Guard will establish temporary special local regulations on specified waters of Prospect Bay. The temporary special local regulations will be in effect from 12 p.m. EDT (Eastern Daylight Time) to 6 p.m. EDT on August 1 and 2, 1998, and will restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the marine event to enhance the safety of participants, spectators, and transiting vessels.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. 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. This conclusion is based on the fact that the regulated areas will only be in effect for a limited amount of time, and extensive advisories have been and will be made to the affected Maritime Community so that they may adjust their schedules accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

These regulations contain no Collection of Information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

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.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h) of COMDTINST M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are excluded under that authority.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended 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 section, § 100.35–T05–063 is added to read as follows:

§ 100.35–T05–063 Prospect Bay, Maryland.

(a) *Definitions.*

(1) *Regulated area.* The waters of Prospect Bay, between Kent Island and Hog Island enclosed by:

Latitude	*Longitude*
38°57′52.0″ North	76°14′48.0″ West, to
38°58′02.0″ North	76°15′05.0″ West, to
38°57′38.0″ North	76°15′29.0″ West, to
38°57′28.0″ North	76°15′23.0″ West, to
38°57′52.0″ North	76°14′48.0″ West

[Datum: NAD 1983]

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Special local regulations.* (1) All persons and/or vessels not authorized as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(3) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective dates.* This section is effective from 12 p.m. EDT (Eastern Daylight Time) to 6 p.m. EDT on August 1 and 2, 1998.

Dated: July 14, 1998.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 98–20418 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–94–028]

RIN 2115–AE47

Drawbridge Operating Regulation; Kelso Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the State Route 27 swing span drawbridge across Kelso Bayou, mile 0.7, at Hackberry, Cameron Parish, Louisiana. The change requires four hours advance notification at night from May 20 through December 22. The change will increase the advance notification from four hours to 24 hours from December 23 through May 19. This action provides relief to the bridge owner and still provides for the reasonable needs of navigation.

DATES: This rule is effective August 31, 1998.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. Commander (ob) maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 4, 1994, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (59 FR 50528). The NPRM proposed a change to the advance notification required prior to opening the bridge.

The Coast Guard received four letters in response to the NPRM. One of the letters was from a business owner whose business was dependent upon access by waterway users to deliver their product to his facility. He stated that the change would force a closure of his business. The applicant and the bridge owner began discussions to attempt to resolve their differences, but were unable to reach any agreement. Since that time, the business owner has sold his business. Subsequently, the business closed completely. The Louisiana Department of Transportation and Development (LDOTD) resubmitted a proposal requesting a new operating schedule.

On April 15, 1998, the Coast Guard published a Supplemental Notice of Proposed Rulemaking entitled Drawbridge Operation Regulation; Kelso Bayou, LA in the **Federal Register** (63 FR 18350). The Coast Guard received one letter commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The Kelso Bayou bridge is a 406-foot long structure. Navigational clearances provided by the bridge are 9.1 feet vertical above mean high water in the closed position and unlimited in the open position. Horizontal clearance is 50 feet. Navigation on the waterway consists mainly of small and large fishing boats and occasional small oil field work boats.

LDOTD requested the new regulation because of a decline in vessel traffic that passes the Kelso Bayou bridge at Hackberry during certain times of the year. The rule allows the bridge owner relief from having a person available at the bridge site during the periods when vessel traffic is less frequent. This rule creates a saving to the taxpayer while still serving the reasonable needs of navigational interests.

The regulation requires that from May 20, through October 31, the draw opens on signal from 7 a.m. until 7 p.m. From 7 p.m. until 7 a.m., the draw opens on signal if at least four hours notice is given. From November 1, through December 22, the draw opens on signal from 7 a.m. to 3 p.m. From 3 p.m. to 7 a.m., the draw opens on signal if at least four hours notice is given. From December 23, through May 19, the draw opens on signal if at least 24 hours notice is given. Alternate routes are available.

Data provided by LDOTD show that from January 1, through December 31, 1997, the number of vessels that passed the bridge totaled 803. Between January 1, and May 20, the bridge opened a total of 13 times for the passage of vessels. Due to the limited number of openings, LDOTD requested an increase in notification from four hours to 24 hours between December 23, and May 19. Between May 20, and October 31, the bridge open 682 times for the passage of vessels. Between November 1, and December 31, the bridge opened 108 times for the passage of vessels. Of the 803 openings, 579 occurred between the

hours of 7 a.m. and 7 p.m. and 224 occurred between the hours of 7 p.m. and 7 a.m. Due to the limited openings at night, LDOTD has requested that the 4-hour notification, used at other times during the year, be extended to include night time hours during shrimp season. These changes provide savings to the taxpayer and still serve the reasonable needs of navigation. Alternate routes are available at all times. They are the Calcasieu Ship Channel, the Intracoastal Canal and the Salt Ditch.

Discussion of Comments

One letter was received in reference to the change. The National Marine Fisheries Service stated that the change to the special operation regulation does not adversely impact marine fishery resources.

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 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.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule has a significant economic impact on a substantial number of small entities. "Small entities" include (1) small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less that 50,000.

The rule also considered the needs of local commercial fishing vessels and the economic impact is expected to be minimal. 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.

Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard analyzed this rule under the principals and criteria contained in Executive Order 12612 and determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under Figure 2–1, CE #32 (e) of the NEPA Implementing Procedures COMDINST M16475.IC, this 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 117

Bridges.

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—DRAWBRIDGE OPERATION REGULATIONS

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, 105 Stat. 5039.

2. Section 117.459 is revised to read as follows:

§ 117.459 Kelso Bayou.

The draw of the S27 bridge mile 0.7 at Hackberry, shall operate as follows:

(a) From May 20, through October 31, the draw shall open on signal from 7 a.m. to 7 p.m. From 7 p.m. to 7 a.m., the draw shall open on signal if at least four hours notice is given.

(b) From November 1 through December 22, the draw shall open on signal from 7 a.m. to 3 p.m. From 3 p.m. to 7 a.m., the draw shall open on signal if at least four hours notice is given.

(c) From December 23 through May 19, the draw shall open on signal if at least 24 hours notice is given.

Dated: July 16, 1998.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 98–20387 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11–98–015]

RIN 2115–AE47

Drawbridge Operation Regulations; Three Mile Slough, Sacramento County, CA, State of California Department of Transportation State Route 160 Highway Bridge

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulations governing the opening of the State of California Department of Transportation (Caltrans) vertical lift bridge over Three Mile Slough near Rio Vista, CA. The deviation specifies that the bridge need not open for vessels from 9:00 a.m. until 5:00 p.m. August 19, 1998. The purpose of the deviation is to allow Caltrans and its contractors to electrically test the main power cables. The work requires that the bridge remain closed for 8 hours to complete the testing.

DATES: Effective period of the deviation is 9:00 a.m.–5:00 p.m. August 19, 1998.

FOR FURTHER INFORMATION CONTACT:

Mr. Jerry Olmes, Bridge Administrator, Eleventh Coast Guard District, Building 50–6 Coast Guard Island, Alameda, CA 94501–5100, telephone (510) 437–3515.

SUPPLEMENTARY INFORMATION: The Coast Guard anticipates that the economic consequences of this deviation will be minimal. With adequate Local Notice to Mariners and Broadcast Notice to Mariners notification, commercial vessel operators should have ample time to plan their transits accordingly. This deviation from the normal operating regulations in 33 CFR 117.5 is authorized in accordance with the provisions of 33 CFR 117.35.

Dated: July 9, 1998.

R.D. Sirois,

Acting Captain, U.S. Coast Guard Commander, Eleventh Coast Guard District Acting.

[FR Doc. 98–20386 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–044]

Drawbridge Operating Regulation; Atchafalaya River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulation.

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 Union Pacific Railroad swing span bridge across the Atchafalaya River, mile 95.7 at Krotz Springs, Louisiana. This deviation allows the Union Pacific Railroad to close the bridge to navigation from 7 a.m. on Monday, August 17, 1998 through 6 p.m. on Sunday, August 23, 1998. This temporary deviation is issued to allow for the replacement of the electric motors, gears and associated machinery of the swing span operating mechanism.

DATES: This deviation is effective from 7 a.m. on Monday, August 17, 1998 through 6 p.m. on Sunday, August 23, 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 Union Pacific Railroad swing span bridge across the Atchafalaya River, mile 95.7 at Krotz Springs, Louisiana has a vertical clearance of 6 feet above mean high water, elevation 38.5 feet Mean Sea Level, in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists primarily of tugs with tows and occasional recreational craft. Presently, the draw opens on signal.

On June 1, 1998, the Coast Guard issued a temporary deviation from the regulation governing the operation of the draw to allow it to remain closed to navigation from 7 a.m. on Monday, July 27, 1998 through 6 p.m. on Monday, August 3, 1998. This temporary deviation was issued to allow for the replacement of the electric motors, gears and associated machinery of the swing span operating mechanism. However, the contractor was unable to mobilize for reasons including contract negotiations and delays in material deliveries. The previous temporary deviation is hereby cancelled. The Union Pacific Railroad requested the Coast Guard issue an additional temporary deviation to allow the work to begin on August 17, 1998 and to continue through August 23, 1998. The deteriorated condition of the bridge warrants the closure so that remedial work can be accomplished. The work consists of replacing the electric motors, gears and other components of the operating machinery. This work is essential for the continued operation of the swing span. Alternate navigation routes are available. Mariners may transit the Atchafalaya River to the site of the bridge from both upstream via the Red River and Mississippi River and from downstream via Atchafalaya Bay.

The District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.5 authorizing the Union Pacific Railroad swing span bridge across the Atchafalaya River, mile 95.7 at Krotz Springs, Louisiana to remain in the closed-to-navigation position from 7 a.m. on August 17, 1998 through 6 p.m. on August 23, 1998.

Dated: July 21, 1998.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 98–20417 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–080]

RIN 2115–AA97

Safety Zone; Gloucester Harbor Fireworks Display, Gloucester Harbor, Gloucester, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Gloucester Harbor Fireworks Display around Stage Fort Park in Gloucester Harbor, Gloucester, MA. The safety zone is in effect from 9 p.m. until 11 p.m. on August 6, 1998. The safety zone temporarily closes all waters within four hundred (400) yards of the shoreline of the shore of Stage Fort Park in Gloucester Harbor, Gloucester, MA. The safety zone is needed to protect vessels from the hazards posed by a fireworks display.

DATES: This rule is effective from 9 p.m. until 11 p.m. on Thursday August 6, 1998.

FOR FURTHER INFORMATION CONTACT: LT Mike Day, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3002.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation, and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display, which is intended for public entertainment.

Background and Purpose

On June 4, 1998 the Gloucester Fireworks Fund filed a marine event permit with the Coast Guard to hold a fireworks program on the waters of Gloucester Harbor, Gloucester, MA. This regulation establishes a safety zone in all waters within four hundred (400) yards of the shoreline of Stage Fort Park, Gloucester Harbor, Gloucester, MA. This safety zone is in effect from 9 p.m. to 11 p.m. on August 6, 1998.

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 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. Deep draft vessel traffic, fishing vessels and tour boats may experience minor delays in departures or arrivals due to the safety zone. Costs to the shipping industry from these regulations, if any will be minor and have no significant adverse financial effect on vessel operators. In addition, due to the limited number and duration of the arrivals, departures and harbor transits, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. *Small entities* may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) 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 rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal 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.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. 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 reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

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 § 165.T01–080 to read as follows:

§ 165.T01–080 Safety Zone: Gloucester Harbor Fireworks Display, Gloucester Harbor, Gloucester, MA.

(a) *Location.* The following area is a safety zone:

All waters of Gloucester Harbor within four hundred (400) yards of the shoreline of Stage Fort Park in Gloucester Harbor, Gloucester, MA.

(b) *Effective date.* This section is effective from 9 p.m. until 11 p.m. on Thursday August 6, 1998.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All persons and vessels shall comply with the instructions of the Captain of the Port or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: July 2, 1998.

J.L. Grenier,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 98–20288 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[OPPTS–00246; FRL–5799–8]

Technical Amendments to OMB Control Numbers

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is amending the table of OMB control numbers. The Office of Management Budget (OMB) issues control numbers under the Paperwork Reduction Act for regulations with information collection requirements. This technical amendment includes any new approvals and removes any termination of approvals published in the **Federal Register** since July 1, 1997, or any expired approvals.

DATES: This rule is effective July 30, 1998.

FOR FURTHER INFORMATION CONTACT: Susan H. Hazen, Director, Environmental Assistance Division (7408), Environmental Protection Agency, Rm. E-541, 401 M St., SW., Washington, DC 20460; telephone: 202–554–1404 TDD: 202–554–0551; and e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION: This document consolidates the OMB control numbers for various regulations issued under the Toxic Substances Control Act (15 U.S.C. 2601) and the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*) published in the **Federal Register** since July 1, 1996. Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and the OMB approval process, information collection requests included in this technical amendment were previously subject to public notice and comment prior to approval and receipt of an OMB control number. Therefore, EPA finds that there is "good cause" under the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) not to issue a proposed rule for this technical amendment.

I. Regulatory Assessment

This final rule does not impose any new requirements. It only implements a technical amendment to the Code of Federal Regulations (CFR). As such, 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 is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

II. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 15, 1998.

Marylouise M. Uhlig,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j—2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1, the table is amended as follows:

a. By revising the subordinate table "Labeling Requirements for Pesticides and Devices."

b. By adding a new subordinate table "Statements of Policies and Interpretations."

c. By revising the subordinate table "Significant New Uses of Chemical Substances."

The table as amended reads as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Labeling Requirements for Pesticides and Devices	
156.10	2070–0060
156.206	2070–0060
156.208	2070–0060
156.210	2070–0060
156.212	2070–0060
* * * * *	
Statements of Policies and Interpretations	
Part 159, subpart D	2070–0039
* * * * *	
Significant New Uses of Chemical Substances	
Part 721, subpart A	2070–0012, 2070–0038
721.72	2070–0012, 2070–0038
721.125	2070–0012, 2070–0038
721.160	2070–0012, 2070–0038
721.170	2070–0012, 2070–0038
721.185	2070–0012, 2070–0038
721.225	2070–0012
721.267	2070–0012
721.275	2070–0012
721.285	2070–0012
721.320	2070–0012
721.323	2070–0012
721.336	2070–0012
721.405	2070–0012
721.430	2070–0012
721.445	2070–0012
721.484	2070–0012
721.505	2070–0012
721.520	2070–0012
721.524	2070–0012
721.530	2070–0012
721.536	2070–0012
721.537	2070–0012
721.538	2070–0012
721.539	2070–0012
721.540	2070–0012
721.550	2070–0012
721.562	2070–0012
721.575	2070–0012
721.600	2070–0012
721.625	2070–0012
721.639	2070–0012
721.640	2070–0012
721.641	2070–0012
721.642	2070–0012
721.643	2070–0012
721.646	2070–0012
721.650	2070–0038
721.655	2070–0012
721.658	2070–0012
721.715	2070–0012
721.720	2070–0012
721.723	2070–0012
721.750	2070–0012
721.757	2070–0012
721.775	2070–0012
721.785	2070–0012
721.805	2070–0012
721.825	2070–0012
721.840	2070–0012
721.875	2070–0012
721.925	2070–0012
721.950	2070–0012
721.977	2070–0012
721.980	2070–0012
721.981	2070–0012
721.982	2070–0012
721.1000	2070–0012
721.1025	2070–0038
721.1050	2070–0012
721.1068	2070–0012
721.1075	2070–0012
721.1105	2070–0012
721.1120	2070–0012
721.1150	2070–0012
721.1155	2070–0012
721.1187	2070–0012
721.1193	2070–0012
721.1210	2070–0012
721.1225	2070–0012
721.1300	2070–0012
721.1325	2070–0012
721.1350	2070–0012
721.1372	2070–0012
721.1375	2070–0012
721.1425	2070–0038
721.1430	2070–0038
721.1435	2070–0038
721.1440	2070–0038
721.1450	2070–0012
721.1500	2070–0012
721.1525	2070–0012
721.1550	2070–0012
721.1555	2070–0012
721.1568	2070–0012
721.1612	2070–0012
721.1625	2070–0012
721.1630	2070–0012
721.1637	2070–0012
721.1640	2070–0012
721.1643	2070–0012
721.1645	2070–0012
721.1650	2070–0012
721.1660	2070–0038
721.1675	2070–0012
721.1700	2070–0012
721.1705	2070–0012
721.1725	2070–0012
721.1728	2070–0012
721.1732	2070–0012
721.1735	2070–0012
721.1737	2070–0012
721.1738	2070–0012
721.1740	2070–0012
721.1745	2070–0012
721.1750	2070–0012
721.1755	2070–0012
721.1760	2070–0012
721.1765	2070–0012
721.1775	2070–0012
721.1790	2070–0038
721.1800	2070–0012
721.1805	2070–0012
721.1820	2070–0012
721.1825	2070–0012
721.1850	2070–0012
721.1875	2070–0012
721.1900	2070–0012
721.1907	2070–0012
721.1920	2070–0012
721.1925	2070–0012
721.1930	2070–0012
721.1950	2070–0012
721.2025	2070–0012
721.2075	2070–0012
721.2084	2070–0038
721.2085	2070–0012

40 CFR citation	OMB control No.
721.2086	2070–0012
721.2088	2070–0012
721.2089	2070–0012
721.2091	2070–0012
721.2092	2070–0038
721.2094	2070–0012
721.2095	2070–0012
721.2097	2070–0012
721.2120	2070–0012
721.2122	2070–0012
721.2140	2070–0012
721.2145	2070–0012
721.2175	2070–0012
721.2222	2070–0012
721.2225	2070–0012
721.2250	2070–0012
721.2260	2070–0012
721.2270	2070–0012
721.2275	2070–0012
721.2280	2070–0012
721.2287	2070–0038
721.2340	2070–0012
721.2345	2070–0012
721.2350	2070–0012
721.2355	2070–0038
721.2380	2070–0012
721.2410	2070–0012
721.2420	2070–0012
721.2475	2070–0012
721.2520	2070–0012
721.2527	2070–0012
721.2535	2070–0012
721.2540	2070–0012
721.2560	2070–0012
721.2565	2070–0012
721.2575	2070–0012
721.2600	2070–0038
721.2625	2070–0012
721.2675	2070–0012
721.2725	2070–0038
721.2800	2070–0038
721.2805	2070–0012
721.2825	2070–0012
721.2900	2070–0012
721.2920	2070–0012
721.2925	2070–0012
721.2950	2070–0012
721.3000	2070–0012
721.3034	2070–0012
721.3063	2070–0012
721.3080	2070–0012
721.3085	2070–0012
721.3100	2070–0012
721.3140	2070–0012
721.3152	2070–0012
721.3155	2070–0012
721.3160	2070–0038
721.3180	2070–0012
721.3220	2070–0038
721.3248	2070–0012
721.3254	2070–0012
721.3260	2070–0012
721.3320	2070–0012
721.3340	2070–0012
721.3350	2070–0038
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–61; FCC 98–157]

Vehicle Monitoring Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the *Second Report and Order*, the Commission adopts the general competitive bidding rules and procedures for the auction of multilateration Location and Monitoring

Service (LMS) licenses, provides small business definitions and adopts bidding credits for eligible small businesses. The effect will be to promote and facilitate the participation of small businesses in the Commission's auctions and in the provision of spectrum-based services. The *Second Report and Order* also adds rules to allow LMS licensees to partition their geographic licenses and disaggregate portions of their spectrum.

DATES: Effective September 28, 1998, except for § 90.365(d) which will become effective January 19, 1999. Public and agency comments concerning the information collections contained in the *Second Report and Order* are due September 28, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. For comments or inquiries regarding information collections, direct all correspondence to Les Smith, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via the Internet at lessmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Ken Burnley or Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Second Report and Order* in PR Docket No. 93–61, FCC 98–157, which was adopted on July 9, 1998 and released on July 14, 1998. A copy of the complete item is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800. The complete *Second Report and Order* is available on the Commission's Internet home page (http://www.fcc.gov).

SUMMARY OF ACTION:

I. Introduction

1. The Federal Communications Commission (Commission) has adopted a *Second Report and Order* stating rules and procedures governing competitive bidding for multilateration Location and Monitoring Service (LMS) frequencies.

A. Competitive Bidding Design and Procedures

2. In Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, PR Docket No. 93–61, 62 FR 52078, October 6, 1997 ("*LMS Further Notice*"), the Commission proposed to use the general competitive bidding rules found in subpart Q of part 1 of the Commission's rules as the auction rules for LMS.

3. The Commission adopts the proposal to follow the competitive bidding procedures contained in Subpart Q of Part 1 of the Commission's Rules, including those adopted in Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, WT Docket No. 97–82, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94–32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 63 FR 2315, January 15, 1998 ("*Part 1 Third Report and Order*"). Consistent with this, matters such as the appropriate competitive bidding design for the auction of LMS licenses, as well as minimum opening bids and reserve prices, will be determined by the Wireless Telecommunications Bureau ("Bureau") pursuant to its delegated authority.

B. Treatment of Designated Entities

4. In the *LMS Further Notice*, the Commission acknowledged that it has consistently established "small business" definitions on a service-by-service basis, and proposed to establish definitions for the multilateration LMS. For purposes of LMS, the Commission defines a "small business" as an entity with average annual gross revenues for the preceding three years not to exceed $15 million, and a "very small business" is an entity with average annual gross revenues for the preceding three years not to exceed $3 million. The bidding credits for these small business definitions will be consistent with levels adopted in the Part 1 proceeding. Accordingly, small businesses will receive a 25 percent bidding credit, and very small businesses will receive a 35 percent bidding credit. Bidding credits for small businesses are not cumulative.

5. The Commission adopts, with a slight modification, our tentative conclusion to attribute the gross revenues of the applicant, its controlling principals and their affiliates. Specifically, the rule refers to "controlling interests" rather than "controlling principals," and provides a definition of "controlling interest" to clarify the application of the attribution rule in determining whether an entity qualifies to bid as a small business. In calculating gross revenues for purposes of small business eligibility, applicants will be required to count the gross revenues of the controlling interests of the applicant and their affiliates. A "controlling interest" includes individuals or entities with *de jure* and *de facto* control of the applicant. *De jure* control is 50.1% of the voting stock of a corporation or, in the case of a partnership, the general partners. *De facto* control is determined on a case-by-case basis. The "controlling interest" definition also provides specific guidance on calculation of various types of ownership interests.

6. When an applicant cannot identify controlling interests under the definition, the revenues of all interest holders in the applicant and their affiliates will be counted. For example, if a company is owned by four entities, each of which has twenty-five percent voting equity and no shareholders' agreement or voting trust gives any one of them control of the company, the revenues of all four entities must be counted. This approach is consistent with our treatment of a general partnership—all general partners are considered to have a controlling interest. This rule looks to substance over form in assessing eligibility for small business status and will provide flexibility that will enable legitimate small businesses to attract passive financing in a highly competitive and evolving telecommunications marketplace. The Commission emphasizes that bidders will be subject to the ownership disclosure requirements set forth in 47 CFR 1.2112.

7. The Commission extends the amount of time for all LMS auction winners to satisfy their construction requirements. Multilateration LMS Economic Area (EA) licensees will be required to construct and place in operation a sufficient number of base stations that utilize multilateration technology to provide multilateration service to one-third of the EA's population within five years of initial license grant, and two thirds of the population within ten years. In demonstrating compliance with the construction and coverage requirements, licensees may individually determine an appropriate field strength for reliable service, taking into account the technologies employed in their system design and other relevant technical factors. At the five- and ten-year benchmarks, licensees will be required to file with the Commission a map and other supporting documentation showing compliance with the coverage requirements.

C. Partitioning and Disaggregation and Unjust Enrichment Provisions

8. The Commission has previously adopted or proposed to adopt partitioning and disaggregation rules for many of the Commercial Mobile Radio Services (CMRS), and now adopts rules to allow multilateration LMS licensees to partition their geographic license areas and disaggregate portions of their spectrum in the same general manner as in other CMRS services. Multilateration LMS licensees may partition or disaggregate to any party eligible to be a multilateration LMS licensee. Further, licensees may partition along any service area defined by the parties. These decisions will permit marketplace forces to determine the most suitable service areas, and will further the goal of regulatory parity among CMRS services. Partitioning and disaggregation will allow auction winners to customize their LMS systems in a manner that will best address their business plans and will help remove entry barriers for small businesses.

9. To ensure that partitioning and disaggregation do not result in circumvention of our LMS construction requirements, the Commission adopts the dual construction requirements for partitioning and the construction certification procedure for disaggregation used in the broadband Personal Communications Service (PCS). Under the first option for partitioning, the partitionee must certify that it will meet the same coverage requirements as the original licensee for its partitioned market. If the partitionee fails to meet its coverage requirement, the license for the partitioned area will automatically cancel without further Commission action. Under the second option, the original licensee must certify that it has already met or will meet its coverage requirement. Further, parties seeking Commission approval of an LMS disaggregation agreement must include a certification as to which party will be responsible for meeting the construction requirements.

10. In cases of partitioning, the Commission requires sufficient information to maintain our licensing records. Therefore, consistent with our treatment of the Wireless Communication Service (WCS) and the 800 MHz and 900 MHz Specialized Mobile Radio (SMR) services, partitioning applicants will be required to submit, as separate attachments to the partial assignment application, a description of the partitioned service area and a calculation of the population of the partitioned service area and licensed market. The partitioned service area must be defined by coordinate points at every three degrees along the partitioned service area agreed to by both parties, unless county lines are followed. These geographical coordinates must be specified in degrees, minutes and seconds to the nearest second of latitude and longitude, and must be based upon the 1927 North American Datum (NAD27). Applicants also may supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required based on NAD27. This coordinate data should be supplied as an attachment to the partial assignment application, and maps need not be supplied. In cases where county lines are being utilized, applicants need only list the counties that make up the newly partitioned area.

11. Consistent with our rules for broadband PCS, WCS and the 800 MHz and 900 MHz SMR services, disaggregating parties may negotiate channelization plans among themselves as a part of their disaggregation agreements. In addition, LMS licensees shall be permitted to disaggregate spectrum without limitation on the overall size of the disaggregation as long as such disaggregation is otherwise consistent with our rules.

12. Also consistent with the rules for broadband PCS, WCS and the 800 MHz and 900 MHz SMR services, LMS licensees may use combined partitioning and disaggregation. This will allow LMS licensees the flexibility to design the types of agreements they desire, encourage new market entrants and ensure quality service to the public. In the event that there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules shall prevail.

13. The Commission adopts its proposal to prevent possible unjust enrichment through partitioning or disaggregation. Accordingly, the Part 1 unjust enrichment provisions will apply for LMS. These rules are similar to unjust enrichment rules adopted for the 800 MHz SMR auction for determining the actual proportion of bidding credit to be refunded and reduce the amount of unjust enrichment payments due on transfer based upon the amount of time the initial license has been held. In addition, when a combination of partitioning and disaggregation is proposed, these *pro rata* calculations will be based on both the population of the partitioned area and the amount of spectrum disaggregated.

II. Regulatory Flexibility Act

14. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Memorandum Opinion and Order and Further Notice of Proposed Rule Making. See* Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, PR Docket No. 93–61, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making,* 62 FR 52078, October 6 , 1997 (*"Further Notice"*). The Commission sought written public comment on the proposals in the *Further Notice,* including comment on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

A. Need for, and Objectives of, the Second Report and Order in PR Docket 93–61

15. The adopted provisions are based on the competitive bidding authority of Section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 309(j), which authorized the Commission to use auctions to select from among mutually exclusive initial applications in certain services, including multilateration LMS.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

16. There were no comments filed directly in response to the IRFA; however, the Commission received 2 comments in response to the *Further Notice.*

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

17. The applicable definition under SBA rules of a small entity is the definition under the rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. *1992 Census, Series UC92–S–1,* at Table 5, SIC code 4812. Therefore, using such data, even if all twelve of these firms were LMS companies, nearly all such carriers were small businesses under the SBA's definition.

18. In the *Second Report and Order,* the Commission has adopted more refined definitions for small business categories. The definition of a "small business" is an entity with average annual gross revenues for the preceding three years not to exceed $15 million. The definition of a "very small

business" is an entity with average annual gross revenues for the preceding three years not to exceed $3 million. The Commission is seeking SBA approval for these new LMS size standards. *See also Second Report and Order,* n. 47.

19. As noted in the *Second Report and Order,* there are 528 licenses to be awarded in the upcoming auction. New entrants could obtain multilateration LMS licenses through the competitive bidding procedure, and take the opportunity to partition and/or disaggregate a license or obtain an additional license through partitioning or disaggregation. Additionally, entities that are neither incumbent licensees nor geographic area licensees could enter the market by obtaining a multilateration LMS license through partitioning or disaggregation.

20. The Commission cannot estimate how many licensees or potential licensees could take the opportunity to partition and/or disaggregate a license or obtain a license through partitioning and/or disaggregation, because it has not yet determined the size or number of multilateration LMS licenses that will be granted in the future. Therefore, the number of small entities that will be affected is unknown. Given the fact that no reliable estimate of the total number of future multilateration LMS licensees can be made, the Commission assumes for purposes of this FRFA that all of the licenses will be awarded to small businesses.

D. Summary of the Projected Reporting, Recordkeeping, and Other Compliance Requirements.

21. The rules and provisions adopted in the *Second Report and Order* include the possibility of new reporting and recordkeeping requirements for a number of small business entities:

22. *Competitive Bidding Applications.* LMS license applicants will be subject to reporting and recordkeeping requirements to comply with the competitive bidding rules. Specifically, applicants will apply for LMS licenses by filing a short-form application (FCC Form 175), and will file a long-form application (FCC Form 601) at the conclusion of the auction. Additionally, entities seeking treatment as small businesses will need to submit information pertaining to the gross revenues of the small business applicant and its affiliates and certain investors in the applicant.

23. *Construction Requirements.* The proposals in the *Second Report and Order* include reporting and recordkeeping requirements for new LMS licensees to establish compliance with the coverage requirements. *See Second Report and Order,* ¶ 30.

24. *Geographic Partitioning and Spectrum Disaggregation.* The proposals in the *Second Report and Order* include reporting and recordkeeping requirements for small businesses seeking licenses through the proposed partitioning and disaggregation rules. The information requirements would be used to determine whether the licensee is a qualifying entity to obtain partitioned or disaggregated spectrum. This information will be a one-time filing by any applicant requesting such a license.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. The *Second Report and Order* adopts certain provisions for smaller entities designed to ensure that such entities have the opportunity to participate in the competitive bidding process and in the provision of multilateration LMS services. The Commission anticipates that most LMS licensees will fit the definition of small business or very small business.

26. *Small Business Definitions and Bidding Credits.* The Commission adopts two small business categories for the LMS auction: (1) a "small business" category, for businesses with average gross revenues of over $3 million but not to exceed $10 million; and (2) a "very small business" category, for businesses with average gross revenues not to exceed $3 million. These adopted categories will be based on the gross revenues of the business for the three years preceding the filing of the entity's application. The Commission will rely solely on gross revenues, and not the number of employees, for the purpose of determining an entity's eligibility for small incentives.

27. *Attribution of Gross Revenues and Affiliates.* The Commission adopted a "controlling interest" standard as the general attribution rule for all future auctions. The Commission believes that these definitions are consistent with its proposals in the *Part 1 Third Report and Order.* 63 FR at 2315.

28. *Partitioning and Disaggregation.* With respect to partitioning and disaggregation, the Commission concludes that unjust enrichment provisions should apply when a licensee has benefitted from the small business provisions in the auction rules and applies to partition or disaggregate a portion of the geographic license area to another entity that would not qualify for such benefits.

F. Report to Congress

29. The Commission shall send a copy of the *Second Report and Order,* including the FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second Report and Order,* including FRFA, to the Chief Counsel for advocacy of the Small Business Administration.

III. Ordering Clauses

30. Accordingly, it is ordered that part 90 of the Commission's Rules is amended and will become effective September 28, 1998. It is further ordered that 47 CFR 90.365(d) of the Commission's Rules is amended and will become effective January 19, 1999.

31. Authority for issuance of this *Second Report and Order* is contained in Sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

32. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Second Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act Analysis

33. The *Second Report and Order* contains an information collection. The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Supplementary information:

OMB Approval Number: 3060–XXXX.

Title: Construction requirements.

Form No.: N/A

Type of Review: New collection for construction period buildout requirements.

Respondents: Business and other for-profit entities, individuals or households, State, Federal or Tribal Governments, Not-for-profit entities.

Number of Respondents: 528.

Estimated Time for Response: Estimated total time for response would be 52 hours per respondent for analysis of license records, conducting the appropriate engineering surveys and studies, and preparation of maps displaying the service area contour of the licensee.

Frequency of Response: On occasion.

Total Annual Burden: 27,456 hours. 52 hours by 528 respondents.

Needs and Uses: Engineering surveys and prepared maps displaying the service area contour of the licensee. Surveys and maps will be used to evaluate licensee's service area boundary and coverage. Licensee's boundary and coverage will then be compared against the construction buildout requirements for the service.

DATES: Persons wishing to comment on this information collection should submit comments by September 28, 1998.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via the Internet at lessmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lessmith@fcc.gov. For all other questions contact Ken Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Chapter I of Title 47 of the Code of Federal Regulations, part 90, is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

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

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

2. Section 90.155 is amended by revising paragraph (d) to read as follows:

§ 90.155 Time in which station must be placed in operation.

* * * * *

(d) Multilateration LMS EA-licensees, authorized in accordance with § 90.353, must construct and place in operation a sufficient number of base stations that utilize multilateration technology (see paragraph (e) of this section) to provide multilateration location service to one-third of the EA's population within five years of initial license grant, and two-thirds of the population within ten years. In demonstrating compliance with the construction and coverage requirements, the Commission will allow licensees to individually determine an appropriate field strength for reliable service, taking into account the technologies employed in their system design and other relevant technical factors. At the five and ten year benchmarks, licensees will be required to file a map and other supporting documentation showing compliance with the coverage requirements.

* * * * *

3. Section 90.365 is added to subpart M to read as follows:

§ 90.365 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility*—(1) Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 90.153.

(2) Multilateration LMS licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses. Multilateration LMS licensees may partition or disaggregate to any party that is also eligible to be a multilateration LMS licensee. Partitioning is permitted along any service area defined by the parties, and spectrum may be disaggregated in any amount. The Commission will also consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(b) *Technical Requirements*—In the case of partitioning, requests for authorization for partial assignment of a license must include, as attachments, a description of the partitioned service area, and a calculation of the population of the partitioned service area and the licensed geographic service area. The partitioned service area shall be defined by coordinate points at every three degrees along the partitioned service area unless county lines are followed. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1927 North American Datum (NAD27). Applicants may supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required based on NAD27. In the case where county lines are utilized, applicants need only list the specific area(s) (through use of county names) that constitute the partitioned area.

(c) *License term.* The license term for a partitioned license area, and for disaggregated spectrum shall be the remainder of the original licensee's license term.

(d) *Construction requirements*—(1) *Requirements for partitioning.*

(i) Parties seeking authority to partition must meet one of the following construction requirements:

(A) The partitionee may certify that it will satisfy the applicable construction requirements for the partitioned license area; or

(B) The original licensee may certify that it has or will meet the construction requirement for the entire license area.

(ii) Applications requesting authority to partition must include a certification by each party as to which of the above construction options they select.

(iii) Failure by any partitionee to meet its respective construction requirements will result in the automatic cancellation of the partitioned or disaggregated license without further Commission action.

(2) *Requirements for disaggregation.* Parties seeking authority to disaggregate must submit with their partial assignment application a certification signed by both parties stating which of the parties will be responsible for meeting the construction requirement for the licensed market. Parties may agree to share responsibility for meeting the construction requirements. Parties that accept responsibility for meeting the construction requirements and later fail to do so will be subject to license forfeiture without further Commission action.

4. Add a new subpart X to read as follows:

Subpart X—Competitive Bidding Procedures for Location and Monitoring Service

Sec.

Subpart X—Competitive Bidding Procedures for Location and Monitoring Service

§ 90.1101 Location and Monitoring Service subject to competitive bidding.

Mutually exclusive initial applications for multilateration Location and Monitoring Service licenses are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

§ 90.1103 Designated entities.

(a) This section addresses certain issues concerning designated entities in the Location and Monitoring Service (LMS) subject to competitive bidding. Issues that are not addressed in this section are governed by the designated entity provisions in part 1, subpart Q of this chapter.

(b) *Eligibility for small business provisions.*

(1) A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed $15 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed $3 million for the preceding three years.

(3) For purposes of determining whether an entity meets either of the definitions set forth in paragraph (b)(1) or (b)(2) of this section, the gross revenues of the entity, its affiliates, and controlling interests shall be considered on a cumulative basis and aggregated.

(4) Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(5) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (b)(1) of this section (or each of which individually satisfies the definition in paragraph (b)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(c) *Controlling interest.* (1) For purposes of this section, controlling interest includes individuals or entities with *de jure* and *de facto* control of the applicant. *De jure* control is greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, the general partner. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) the entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(iii) the entity plays an integral role in management decisions.

(2) *Calculation of certain interests.*

(i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified below.

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have an attributable interest in such applicant or licensee if such person, or its affiliate pursuant to § 1.2110(b)(4) of this chapter, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have an attributable interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(d) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in paragraph (b)(1) or (b)(5) of this section may use the bidding credit specified in § 1.2110(e)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in paragraph (b)(2) or (b)(5) of this section may use the bidding credit specified in § 1.2110(e)(2)(i) of this chapter.

[FR Doc. 98–20460 Filed 7–29–98; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 146
Thursday, July 30, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF98

Reporting Requirements for Nuclear Power Reactors; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing a public meeting on August 21, 1998 to discuss a contemplated rulemaking that would modify power reactor reporting requirements.

DATE: Friday, August 21, 1998.

ADDRESS: The public meeting will be held in the auditorium of NRC's headquarters at Two White Flint North, 11545 Rockville Pike, Rockville Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Dennis P. Allison, Office for Analysis and Evaluation of Operational Data, Washington DC 20555–0001, telephone (301) 415–6835, e-mail dpa@nrc.gov or his alternate, Bennett M. Brady, telephone (301) 415–6363, e-mail bmb1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 1998 (63 FR 39522) the NRC published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) to announce a contemplated rulemaking that would modify reporting requirements for nuclear power reactors. Generally, the ANPR requests public comments on whether the NRC should proceed with rulemaking to modify the event reporting requirements in 10 CFR 50.72, "Immediate notification requirements for operating nuclear power reactors," and 50.73, "Licensee event report system," and, if so, the nature of the modifications that should be made. Several concrete proposals regarding rulemaking to modify 10 CFR 50.72 and 50.73 are also provided for comment, including the following:

(1) Objectives for the rulemaking, which are in summary,

(a) To better align the reporting requirements with the NRC's current reporting needs,

(b) To reduce the reporting burden, consistent with the NRC's reporting needs, and

(c) To clarify the reporting requirements where needed;

(2) A number of contemplated amendments, including,

(a) Amendments that would clarify the requirements for reporting of design issues and limit such reporting to design issues that exceed a specified level of significance, and

(b) Amendments that would extend the required reporting time to 8 hours for events that do not involve emergencies but do warrant prompt notification; and

(3) A contemplated schedule that would lead to publication of a final rule by about January 7, 2000.

The ANPR also requests public comments on other reactor reporting requirements, beyond 10 CFR 50.72 and 50.73, that could be simplified and/or made less burdensome and more risk-informed. For example, the time limit for reporting could be adjusted based on the safety significance of the event or issue and the need for NRC's immediate action. The burden associated with reporting events, conditions or issues with little or no safety or risk significance should be minimized.

In addition to the public meeting on the ANPR at NRC Headquarters on August 21, 1998, which is the subject of this meeting notice, the ANPR will also be discussed, along with other subjects, at a public meeting on the role of industry in nuclear regulation in Rosemont, Illinois on September 1, 1998. A notice of the public meeting in Rosemont, Illinois on September 1, 1998 was published in the **Federal Register** on June 26, 1998, (63 FR 34946). Written comments on the ANPR are due September 21, 1998.

At the public meeting on August 21, 1998, with regard to the proposed rulemaking to modify 10 CFR 50.72 and 50.73, the NRC is particularly interested in comments or statements on the following topics:

(1) Whether the objectives of the proposed rulemaking to modify 10 CFR 50.72 and 50.73 are appropriate, and if not, how they should be changed;

(2) Whether the contemplated amendments to 10 CFR 50.72 and 50.73 are appropriate and, if not, how they should be changed;

(3) How the contemplated amendments to 10 CFR 50.72 and 50.73, or suggested changes to the contemplated amendments, would affect the reporting burden; and

(4) Whether the contemplated schedule for amending 10 CFR 50.72 and 50.73 is appropriate and, if not, how it should be changed.

With regard to other reactor reporting requirements (beyond 10 CFR 50.72 and 50.73) the Commission is particularly interested in comments or statements on the following topics:

(1) Additional areas (beyond 10 CFR 50.72 and 50.73) where reporting requirements can be risk-informed and/or simplified;

(2) Amendments that should be made in those areas: and

(3) How the suggested amendments would affect the reporting burden.

Many States (Agreement States and Non-Agreement States) have agreements with power reactors to inform the States of plant issues. State reporting requirements are frequently triggered by NRC reporting requirements. Accordingly, the NRC seeks State input on issues related to amending power reactor reporting requirements.

Participation

The meeting is scheduled for 9 a.m. to 3:15 p.m. and is open to the general public. Interested individuals may address relevant remarks or comments to the NRC staff at the meeting. To facilitate the scheduling of available time for speakers and orderly conduct of the meeting, members of the public who wish to speak at the meeting should request the opportunity to speak, in advance of the meeting. To request the opportunity to speak at the public meeting, contact the cognizant NRC staff member listed in the For Further Information Contact section. Indicate as specifically as possible the topic(s) of your comment. Provide your name and a telephone number at which you can be reached, if necessary, before the meeting. Registration will be available at the meeting for a limited number of additional speakers on a first come basis.

Agenda for August 21, 1998

9:00 a.m.–9:30 a.m.—Introductory Remarks
9:30 a.m.–10:00 a.m.—Discussion of Contemplated Amendments by NRC Staff
10:00 a.m.–12:00 noon—Public Comments and Statements
12:00 noon–1:00 p.m.—Lunch Break
1:00 p.m.–3:00 p.m.—Public Comments and Statements (Continued)
3:00 p.m.–3:15 p.m. Concluding Remarks

Note that public comments and statements may be completed earlier than indicated and, if so, the meeting will be concluded earlier.

Dated at Rockville, MD, this 24th day of July, 1998.

For the Nuclear Regulatory Commission.

Charles E. Rossi,

Director, Safety Programs Division, Office for Analysis and Evaluation of Operational Data.

[FR Doc. 98–30358 Filed 7–29–98; 8:45 am]

BILLING CODE 7590–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–292–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, that currently requires inspection(s) to detect fatigue cracking of the shock strut cylinder of the main landing gear (MLG), and replacement of any cracked shock strut cylinder with a serviceable part. That AD also provides for installation of brake line hydraulic restrictors on the MLG brake systems, which, if accomplished, terminates the repetitive inspections. This action would require that the subject inspection be accomplished repetitively following installation of brake line hydraulic restrictors. This proposal is prompted by an additional report of fatigue cracking and subsequent fracturing of the shock strut cylinder of the MLG. The actions specified by the proposed AD are intended to prevent collapse of the MLG due to fracturing of the shock strut cylinder.

DATES: Comments must be received by September 14, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97-NM–292-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–292–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–292–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 16, 1995, the FAA issued AD 95–22–06, amendment 39–9413 (60 FR 54417, October 24, 1995), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, to require inspection(s) to detect fatigue cracking of the shock strut cylinder of the main landing gear (MLG), and replacement of any cracked shock strut cylinder with a serviceable part. That AD also provides for installation of brake line hydraulic restrictors on the MLG brake systems, which, if accomplished, terminates the repetitive inspection requirement. That action was prompted by a report indicating that fatigue cracking and subsequent fracturing of the shock strut cylinder of the MLG occurred due to high stress loads on the cylinder as a result of braking induced vibration. The requirements of that AD are intended to prevent such fracturing, which could result in collapse of the MLG and consequent reduced controllability of the airplane during landing.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received an additional report of fatigue cracking and subsequent fracturing of the shock strut cylinder of the MLG, which collapsed during landing roll of an affected in-service airplane. Brake line hydraulic restrictors had been previously installed on this airplane.

Explanation of Relevant Service Information

Subsequent to this incident, the manufacturer issued, and the FAA reviewed and approved, McDonnell Douglas Alert Service Bulletin MD80–32A286, Revision 03, dated May 28, 1998. The inspection procedures described in this revision are identical to those described in the original version of the alert service bulletin (which was referenced in AD 95–22–06 as the appropriate source of service information). In addition, Revision 03

recommends that these inspections be accomplished on a repetitive basis following installation of the brake line hydraulic restrictors.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–22–06 to require repetitive dye penetrant and magnetic particle inspections to detect cracking of the shock strut cylinder of the MLG following installation of brake line hydraulic restrictors. The proposed AD also would require replacement of any cracked shock strut cylinder with either a serviceable part or new shock strut cylinder. Accomplishment of the replacement with a new shock strut cylinder constitutes terminating action for the repetitive inspection requirements. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Differences Between the AD and the Relevant Service Information

Operators should note that, although the referenced alert service bulletin describes procedures for installation of brake line hydraulic restrictors, this proposed AD does not require such an installation. The FAA has previously issued AD 96–01–09, amendment 39–9485 (61 FR 2407, January 26, 1996) that concerns the subject area on McDonnell Douglas Model DC–90 series airplanes and Model MD–88 airplanes. That AD requires installation of hydraulic line restrictors in the MLG. This proposed AD would not affect the current requirements of AD 96–01–09.

Cost Impact

There are approximately 1,011 McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 625 airplanes of U.S. registry would be affected by this proposed AD.

The dye penetrant and magnetic particle inspections that are proposed in this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the dye penetrant and magnetic particle inspections proposed by this AD on U.S. operators is estimated to be $150,000, or $240 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9413 (60 FR 54417, October 24, 1995), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 97–NM–292–AD. Supersedes AD 95–22–06, Amendment 39–9413.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes; as listed in McDonnell Douglas Alert Service Bulletin MD80–32A286, dated September 11, 1995; 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 (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the main landing gear (MLG) due to fracturing of the shock strut cylinder, accomplish the following:

Note 2: Where there are differences between the referenced alert service bulletin and the AD, the AD prevails.

(a) Perform dye penetrant and magnetic particle inspections to detect cracking of the shock strut cylinder of the MLG, in accordance with McDonnell Douglas Alert Service Bulletin MD80–32A286, Revision 03, dated May 28, 1998; at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

Note 3: Inspections accomplished prior to the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD80–32A286, Revision 02, dated October 2, 1997, are considered acceptable for compliance with paragraph (a) of this AD.

(1) For airplanes that, as of the effective date of this AD, have accumulated less than 1,200 landings since accomplishment of the brake line hydraulic restrictor installation: Inspect within 1,200 landings after the effective date of this AD. Repeat the inspections thereafter at intervals not to exceed 1,200 landings for a total of 4 inspections.

(2) For airplanes that, as of the effective date of this AD, have accumulated greater than or equal to 1,200 landings and less than 2,400 landings since accomplishment of the brake line hydraulic restrictor installation: Inspect within 1,200 landings after the effective date of this AD. Repeat the inspections thereafter at intervals not to exceed 1,200 landings for a total of 3 inspections.

(3) For airplanes that, as of the effective date of this AD, have accumulated greater than or equal to 2,400 landings since accomplishment of the brake line hydraulic restrictor installation: Inspect within 1,200 landings after the effective date of this AD. Repeat the inspections thereafter at intervals not to exceed 1,200 landings for a total of 2 inspections.

(b) If any cracking is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD80–32A286, Revision 03, dated May 28, 1998.

(1) Replace the shock strut cylinder with a crack-free serviceable part and, thereafter, repeat the inspections required by paragraph (a) of this AD, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Or

(2) Replace the shock strut cylinder with a new shock strut cylinder. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

Note 4: Replacements accomplished prior to the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD80–32A286, Revision 02, dated October 2, 1997, are considered acceptable for compliance with paragraph (b) of this AD.

(c) As of the effective date of this AD, no person shall install on any airplane an MLG shock strut cylinder or MLG assembly unless that part has been inspected and found to be crack free, in accordance with McDonnell Douglas Alert Service MD80–32A286, Revision 02, dated October 2, 1997, or Revision 03, dated May 28, 1998.

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d)(2) Alternative methods of compliance, approved previously in accordance with AD 95–22–06, amendment 39–9413, are approved as alternative methods of compliance with this AD.

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

Issued in Renton, Washington, on July 24, 1998.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–20339 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWA–4]

RIN 2120–AA66

Proposed Establishment of Class C Airspace, and Revocation of Class D Airspace, Austin-Bergstrom International Airport, TX; and Revocation of Robert Mueller Municipal Airport Class C Airspace; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to establish a Class C airspace area and revoke the existing Class D airspace area at the Austin-Bergstrom International Airport, Austin, TX. In addition, this notice proposes to revoke the existing Class C airspace area at the Robert Mueller Municipal Airport, Austin, TX. The FAA is proposing this action in support of the planned closure of the Robert Mueller Municipal Airport, and the transfer of airport operations from the Robert Mueller Municipal Airport to the Austin-Bergstrom International Airport. The Austin-Bergstrom International Airport is a public-use facility that will be serviced by a Level IV control tower and a Radar Approach Control. The establishment of this Class C airspace area would require pilots to maintain two-way radio communications with air traffic control (ATC) while in Class C airspace. Implementation of the Class C airspace area would promote the efficient use of airspace, and reduce the risk of midair collision in the terminal area.

DATES: Comments must be received on or before September 17, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–200, Airspace Docket No. 97-AWA–4, 800 Independence Avenue, SW., Washington, DC 20591. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Ms. Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

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. 97–AWA–4." The postcard will be date/time stamped and returned to the commenter. All communications received on or 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 comments received. All comments submitted will be available for examination in the Rules Docket 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 NPRM's

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661), using a modem and suitable communications software.

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's web page at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office

of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3075. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the Federal Aviation Administration, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that Terminal Radar Service Areas (TRSA's) should be replaced. Four types of airspace configurations were considered as replacement candidates and Model B, the Airport Radar Service Area (ARSA) configuration, was recommended by a consensus of the task group.

The FAA published NAR Recommendation 1–2.2–1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83–9 (48 FR 34286, July 28, 1983), proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by Special Federal Aviation Regulation No. 45 (48 FR 50038; October 28, 1983) to provide operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining ARSA airspace and establishing air traffic rules for operation within such an area.

Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, Columbus, OH, and the Baltimore/Washington International Airports (50 FR 9250; March 6, 1985). The FAA stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

A number of problems with the TRSA program were identified by the NAR Task Group. The task group stated that because of the different levels of service offered in terminal areas, users are not always sure of what restrictions or privileges exist or how to cope with them. According to the NAR Task Group, there is a shared feeling among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. The consensus among the user organizations is that within a given standard airspace designation, a terminal radar facility should provide all pilots the same level of service and in the same manner, to the extent feasible.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which were included in the TRSA replacement program. The task group recommended that these criteria include, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. These criteria have been developed and are published via the FAA directives system (Order 7400.2, Procedures for Handling Airspace Matters).

The FAA has established ARSA's at 123 locations under a phased implementation plan to replace TRSA's with ARSA's. Airspace Reclassification, effective September 16, 1993, reclassified ARSA's as Class C airspace areas. This change in terminology is reflected in the remainder of this NPRM.

This notice proposes a Class C airspace designation at a location which was not identified as a candidate for Class C airspace in the preamble to Amendment No. 71–10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the **Federal Register**.

The Austin-Bergstrom International Airport is a public-use airport with an operating Level IV control tower served by Radar Approach Control.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class C airspace area and revoke the existing Class D airspace area at the Austin-Bergstrom International Airport located in Austin, TX. In addition, this notice proposes to revoke the existing Class C airspace area at the Robert Mueller Municipal Airport located in Austin, TX. The FAA is proposing this action in support of the planned closure of the Robert Mueller Municipal Airport, and the transfer of airport operations from the Robert Mueller Municipal Airport to the Austin-Bergstrom International Airport. The Austin-Bergstrom International Airport is a public-use facility that will be serviced by a Level IV control tower and a Radar Approach Control. With the airport relocating, the annual volume of instrument operations for the Austin-Bergstrom International Airport will equal or exceed current operations at the Robert Mueller Municipal Airport. This volume of instrument operations meets the FAA criteria for establishing Class C airspace. Implementation of the Class C airspace area would promote the efficient use of airspace and reduce the risk of midair collision in the terminal area.

The FAA published a final rule (50 FR 9252, March 6, 1985) that defines Class C airspace and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in Class C airspace areas. The final rule provides, in part, that all aircraft arriving at any airport in Class C airspace must: (1) prior to entering the Class C airspace, establish two-way radio communications with the ATC facility having jurisdiction over the area; and (2) while in Class C airspace, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within Class C airspace, or a satellite airport with an operating control tower, two-way radio communications must be established and maintained with the control tower and thereafter as instructed by ATC while operating in Class C airspace. For aircraft departing a satellite airport without an operating control tower and within Class C airspace, two-way radio communications must be established with the ATC facility having jurisdiction over the area as soon as practicable after takeoff and thereafter maintained while operating within the Class C airspace area (14 CFR 91.130).

Pursuant to Federal Aviation Regulations section 91.130 (14 CFR part 91) all aircraft operating within Class C airspace are required to comply with sections 91.129 and 91.130. Ultralight vehicle operations and parachute jumps in Class C airspace areas may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR Task Group recommendation that each Class C airspace area be of the same airspace

configuration insofar as practicable. The standard Class C airspace area consists of that airspace within 5 nautical miles (NM) of the primary airport, extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 NM's from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviations from this standard have been necessary at some airports because of adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions and operating requirements applicable to Class C airspace may be found in § 71.51 of part 71 and §§ 91.1 and 91.130 of part 91 of Title 14 Code of Federal Regulations (14 CFR). The coordinates for this airspace docket are based on North American Datum 83. Class C and Class D airspace designations are published, respectively, in paragraphs 4000 and 5000 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 C airspace designation listed in this document would be published subsequently in the Order, and the Class D airspace designation listed in this document would be removed subsequently from the Order.

Public Input

Normally, the FAA would hold informal airspace meetings before publication of this NPRM. However, limited time between the issuance of this action and the proposed opening of the Austin-Bergstrom International Airport does not lend time for sufficient notice. The FAA will hold public information sessions where this proposal will be discussed with interested parties. These sessions were announced in the **Federal Register** on June 10, 1998 (63 FR 31678).

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade.

In conducting these analyses, the FAA has determined that this proposed rule is not "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This proposed rule would not have a significant impact on a substantial number of small entities, would not constitute a barrier to international trade, and does not contain any Federal intergovernmental or private sector mandates. These analyses, available in the docket, are summarized below.

The proposed rule would move the Class C airspace area, presently located at the Robert Mueller Municipal Airport, 5 miles to the south to the Austin-Bergstrom International Airport. This action is to take effect when the Robert Mueller Municipal Airport closes (in April 1999) and all operations are transferred to the Austin-Bergstrom International Airport.

Costs of approximately $850 would be incurred by the FAA in order to send a Letter to Airmen to pilots within a 50-mile radius of the Austin-Bergstrom International Airport informing them of the airspace change. The FAA would not incur any costs for ATC staffing, training, or equipment. Changes to sectional charts would occur during the chart cycle and would cause no additional costs beyond the normal update of the charts. Public meetings and safety seminars would not result in costs to the aviation community because they would occur regardless of this proposed rulemaking. Aircraft owners and operators would not incur costs for equipment because they are already operating in Class C airspace at the Robert Mueller Municipal Airport.

The FAA has determined that moving the Class C airspace area from the Robert Mueller Municipal Airport to the Austin-Bergstrom International Airport would maintain the level of safety now existing at the Austin-Bergstrom International Airport. The FAA has determined that the proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informal requirements to the scale of business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

All commercial and general aviation operators who presently use the Robert Mueller Municipal Airport are currently equipped to use the Austin-Bergstrom International Airport. There are only negligible costs associated with this proposed rule in the form of printing and postage of letters to airmen to inform them of the airspace change. Accordingly, the FAA certifies that there is no significant economic impact on a substantial number of small entities as a result of this proposed rulemaking. The FAA solicits comments from affected entities with respect to this finding and determination.

International Trade Impact Assessment

This proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by state, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of state, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon state, local, and tribal governments to expend in the aggregate of $100 million adjusted annually for inflation in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

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—[AMENDED]

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 the 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 4000—Subpart C–Class C Airspace

* * * * *

ASW TX C Austin-Bergstrom International Airport, TX [NEW]

Austin-Bergstrom International Airport, TX
(lat. 30°11'48"N., long. 97°40'44"W.) BSM

That airspace extending upward from the surface to, and including, 4,500 feet MSL within a 5-mile radius of the Austin-Bergstrom International Airport, and that airspace extending upward from 2,100 feet MSL to and including 4,500 feet MSL within a 10-mile radius of the Austin-Bergstrom International Airport.

* * * * *

ASW TX C Austin, Robert Mueller Municipal Airport, TX [Removed]

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Paragraph 5000—Subpart D–Class D Airspace

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ASW TX D Austin-Bergstrom, TX [Removed]

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Issued in Washington, DC, on July 24, 1998.

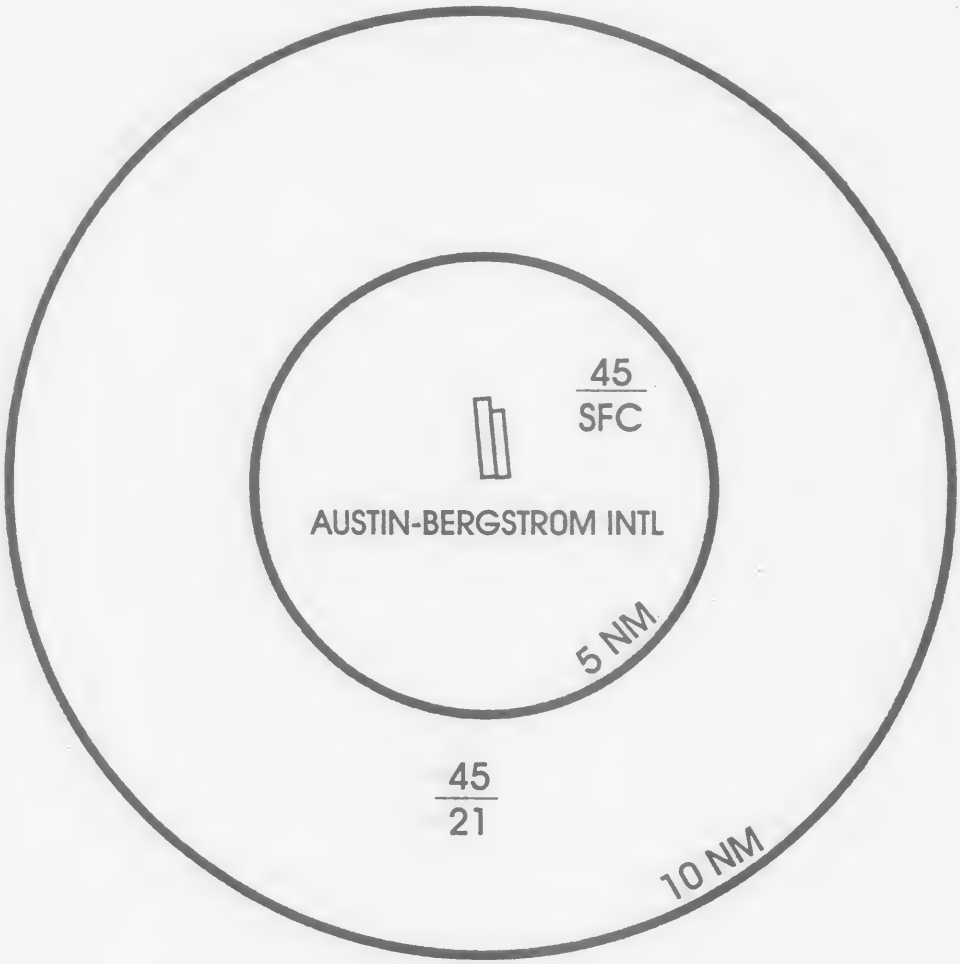
Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

BILLING CODE 4910–13–U

AUSTIN-BERGSTROM INTERNATIONAL AIRPORT, TX CLASS C AIRSPACE AREA

(Not to be used for navigation)



Prepared by the

FEDERAL AVIATION ADMINISTRATION

AIR Traffic Publications
ATA-10

[FR Doc. 98–20342 Filed 7–29–98; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 874 and 882

[Docket No. 98N–0405]

Medical Devices; Retention in Class III and Effective Date of Requirement for Premarket Approval for Three Preamendments Class III Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request a change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to retain in class III, three preamendments class III medical devices, and is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for these devices. FDA believes that the suction antichoke device, the tongs antichoke device, and the implanted neuromuscular stimulator device should remain in class III because insufficient information exists to determine that special controls would provide reasonable assurance of their safety and effectiveness, and/or these devices present a potential unreasonable risk of illness or injury. The agency is summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices. In addition, FDA is announcing the opportunity for interested persons to request the agency to change the classification of any of the devices based on new information.

DATES: Written comments by October 28, 1998; request for a change in classification by August 14, 1998. FDA intends that, if a final rule based on this proposed rule is issued, PMA's will be required to be submitted within 90 days of the effective date of the final rule.

ADDRESSES: Written comments or requests for a change in classification to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295) and the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) established the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or a notice of completion of a PDP until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) of the act is not required to have an approved investigational device exemption (IDE) (see 21 CFR part 812) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device. At that time, an IDE is required only if a PMA has not been submitted or a PDP completed.

Section 515(b)(2)(A) of the act provides a proceeding to issue a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change in reclassification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. Section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, issue a final rule to require premarket approval, or publish a notice terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is finalized, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or notice of completion of a PDP for any such device be filed within 90 days of the date of issuance of the final rule or 30 months after the final classification of the device under section 513 of the

act, whichever is later. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of devices in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for the class III devices that are the subjects of this regulation.

The act does not permit an extension of the 90-day period after issuance of a final rule within which an application or a notice is required to be filed. The House Report on the 1976 amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." (H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976).)

The SMDA added new section 515(i) to the act (21 U.S.C. 360e(i)). This section requires FDA to review the classification of preamendments class III devices for which no final rule has been issued requiring the submission of PMA's and to determine whether or not each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval. SMDA does not, however, prevent FDA from proceeding immediately to rulemaking under section 515(b) of the act on specific devices, in the interest of public health, independent of the procedures of section 515(i). Indeed, proceeding directly to rulemaking under section 515(b) of the act is consistent with Congress' objective in enacting section 515(i), i.e., that preamendments class III devices for which PMA's have not been required either be reclassified to class I or class II or be subject to the requirements of premarket approval. Moreover, in this proposal, interested persons are being offered the opportunity to request reclassification of any of the devices.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA issued a notice of availability of a preamendments class III devices strategy document. The strategy set forth FDA's plans for implementing the provisions of section 515(i) of the act for preamendments class III devices for which FDA had not yet required premarket approval. FDA divided this universe of devices into three groups:

1. Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness but are no longer used or are in very limited use. FDA's strategy is to call for PMA's for all Group 1 devices in an omnibus 515(b) rulemaking action. In the **Federal Register** of September 7, 1995 (60 FR 46718), FDA implemented this strategy by proposing to require the filing of a PMA or a notice of completion of a PDP for 43 class III preamendments devices. Subsequently, in the **Federal Register** of September 27, 1996 (61 FR 50704), FDA called for the filing of a PMA or a notice of completion of a PDP for 41 preamendments class III devices. Due to public comment, the agency is reconsidering its position on the two remaining devices subject to the September 7, 1995, proposal.

2. Group 2 devices are devices that FDA believes have a high potential for being reclassified into class II. In the **Federal Register** of August 14, 1995 (60 FR 41986), and of June 13, 1997 (62 FR 32355), FDA issued an order under section 515(i) of the act requiring manufacturers to submit safety and effectiveness information on these Group 2 devices so that FDA can make a determination as to whether the devices should be reclassified.

3. Group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. FDA intends to issue proposed rules to require the submission of PMA's for the 15 high priority devices in this group in accordance with the schedule set forth in the strategy document. In the **Federal Register** of August 14, 1995 (60 FR 41984), and of June 13, 1997 (62 FR 32352), FDA issued an order under section 515(i) of the act for the 27 remaining Group 3 devices requiring manufacturers to submit safety and effectiveness information so that FDA can make a determination as to whether the devices should be reclassified or retained in class III. This proposed rule would further implement the strategy by retaining the three devices in class III (referred to previously) and requiring manufacturers of such devices to submit PMA's or completed PDP's for the devices.

II. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for class III devices within 90 days after issuance of any final rule based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found to be substantially equivalent to such a device, will be permitted to continue marketing such class III devices during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that, under section 515(d)(1)(B)(i) of the act, the agency may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d) (21 CFR 812.2(d)), the preamble to any final rule based on this proposal will state that, as of the date on which the filing of a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2 (c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any device that is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or notice of completion of a PDP for a class III device is not filed with FDA within 90 days, after the date of issuance of any final rule requiring premarket approval for the device, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications

should be submitted to FDA at least 30 days before the end of the 90-day period after the final rule to avoid interrupting investigations.

III. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP, and (2) the benefits to the public from the use of the devices.

These findings are based on the reports and recommendations of the advisory committees (panels) for the classification of these devices along with any additional information that FDA discovered. Additional information can be found in the proposed and final rules published in the **Federal Register** classifying these devices: On January 22, 1982 (47 FR 3280), and November 6, 1986 (51 FR 40378), for ear, nose, and throat devices (part 874 (21 CFR part 874)); and on November 28, 1978 (43 FR 55640), and September 4, 1979 (44 FR 51726), for neurological devices (part 882 (21 CFR part 882)).

IV. Devices Subject to This Proposal

A. Suction antichoke device (§ 874.5350)

1. Identification

A suction antichoke device is a device intended to be used in an emergency situation to remove, by the application of suction, foreign objects that obstruct a patient's airway to prevent asphyxiation to the patient.

2. Summary of Data

The Ear, Nose, and Throat Devices Classification Panel (the panel) recommended that the suction antichoke device intended to be used in an emergency situation to remove foreign objects that obstruct a patient's airway to prevent asphyxiation to the patient be classified into class III based on an unpublished study that showed unsuccessful performance of the device. FDA agreed and continues to agree with the panel's recommendation. FDA also notes that the agency received no 515(i) submissions of safety and effectiveness information on the device and that although there was one premarket notification for the device in 1979, the device appears to have fallen into disuse. The agency also realizes that the Heimlich Maneuver is now recognized as the best way to assist a choking victim.

3. Risks to Health

Failure of the device to perform as intended could result in asphyxiation of the patient. The effectiveness of the suction feature of this device for the removal of foreign objects from an obstructed airway is questionable. Certain designs of the device have been shown to be ineffective.

B. Tongs antichoke device (§ 874.5370)

1. Identification

A tongs antichoke device is a device intended to be used in an emergency situation to grasp and remove foreign objects that obstruct a patient's airway to prevent asphyxiation to the patient. This generic type of device includes a plastic instrument with serrated ends that is inserted into the airway in a blind manner to grasp and extract foreign objects, and a stainless steel forceps with spoon ends that is inserted under tactile guidance to grasp and extract foreign objects from the airway.

2. Summary of data

The Ear, Nose, and Throat Devices Classification Panel (the panel) recommended that the tongs antichoke device intended to remove foreign objects that obstruct a patient's airway to prevent asphyxiation to the patient be classified into class III based on an unpublished study that showed that the device may grasp an anatomical structure of the body rather than the obstructing foreign object and that the foreign object would not be extracted. FDA agreed and continues to agree with the panel's recommendation. FDA also notes that the agency received no 515(i) submissions of safety and effectiveness information on the device, and that the device appears to have fallen into disuse. The are no premarket notification submissions for the device. The agency also realizes that the Heimlich Maneuver is now recognized as the best way to assist a choking victim.

3. Risks to health

a. *Asphyxiation.* The use of the generic type of device on a patient with a partial obstruction may force the obstruction further down the airway, causing complete obstruction.

b. *Damage to anatomical structures.* Anatomical structures grasped by the tongs can be torn or ruptured. (Risk is associated primarily with plastic tongs with serrated ends.)

c. *Panic.* Injured and bleeding anatomical structures may result in, or contribute to panic of the patient. (Risk is associated primarily with plastic tongs with serrated ends.)

C. Implanted neuromuscular stimulator (§ 882.5860)

1. Identification

An implanted neuromuscular stimulator is a device that provides electrical stimulation to a patient's peroneal or femoral nerve to cause muscles in the leg to contract, thus improving the gait in a patient with a paralyzed leg. The stimulator consists of an implanted receiver with electrodes that are placed around a patient's nerve and an external transmitter for transmitting the stimulation pulses across the patient's skin to the implanted receiver. The external transmitter is activated by a switch in the heel of the patient's shoe.

2. Summary of data

The Neurology Devices Classification Panel recommended that the device intended to be implanted to improve the gait of a paralyzed patient be classified into class III. The Orthopedics Devices Classification Panel recommended that the device be classified into class II. Both classification panels based their recommendations on their personal knowledge of the device, the potential hazards associated with the device, pertinent literature, and their clinical experience with the device. FDA agreed and continues to agree with the recommendation of the Neurology Devices Classification Panel. The agency noted that only limited clinical data on the device was then available. FDA also notes that there were no 515(i) submissions of safety and effectiveness information on the device and that the device appears to have fallen into disuse. There are no premarket notification submissions for the device.

3. Risks to health

a. *Tissue toxicity.* The materials in the implanted components of the device may cause a toxic or an adverse reaction in the surrounding tissue.

b. *Infection.* There is an increased risk of sepsis associated with the implantation of a foreign object in the body.

c. *Injury to the nerve.* The presence of the electrode or the output current may injure the peroneal or femoral nerve.

V. PMA Requirements

A PMA for these devices must include the information required by section 515(c)(1) of the act. Such a PMA should also include a detailed discussion of the risks identified previously, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on: (1)

Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA should include valid scientific evidence obtained from well-controlled clinical studies, with detailed data, in order to provide reasonable assurance of the safety and effectiveness of the device for its intended use. (See 21 CFR 860.7(c)(2).)

Applicants should submit any PMA in accordance with FDA's "Premarket Approval (PMA) Manual." This manual is available upon request from FDA, Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850. This manual is also available on the World Wide Web at "http://www.fda.gov/cdrh".

VI. PDP Requirements

A PDP for any of these devices may be submitted in lieu of a PMA, and must follow the procedures outlined in section 515(f) of the act. A PDP should provide: (1) A description of the device; (2) preclinical trial information (if any); (3) clinical trial information (if any); (4) a description of the manufacturing and processing of the devices; (5) the labeling of the device; and (6) all other relevant information about the device. In addition, the PDP must include progress reports and records of the trials conducted under the protocol on the safety and effectiveness of the device for which the completed PDP is sought. Applicants should submit any PDP in accordance with FDA's "PDP Comprehensive Outline with Attachments." This Outline is available upon request from FDA, Center for Devices and Radiological Health, Office of Device Evaluation (HFZ–400), 9200 Corporate Blvd., Rockville, MD 20850. The outline and other PDP information is also available on the World Wide Web at "http://www.fda.gov/cdrh/pdp".

VII. Request for Comments with Data

Interested persons may, on or before October 28, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (b)(2)(A)(iv) of the act and 21 CFR 860.132 to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to the classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the act.

A request for a change in the classification of these devices is to be in the form of a reclassification petition containing the information required by § 860.123 (21 CFR 860.123), including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by August 14, 1998.

The agency advises that, to ensure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of these devices is submitted, the agency will, by September 28, 1998, after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and 21 CFR 860.130.

IX. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA believes that there is little or no interest in marketing these devices, the agency certifies that the proposed rule, if issued as a final rule, will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

XI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Parts 874 and 882

Medical devices.

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 874 and 882 be amended as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

1. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 874.5350 is amended by revising paragraph (c) to read as follows:

§ 874.5350 Suction antichoke device.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule based on this proposed rule) for any suction antichoke device that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule based on this proposed rule), been found to be substantially equivalent to a suction antichoke device that was in commercial distribution before May 28, 1976. Any other suction antichoke

device shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

3. Section 874.5370 is amended by revising paragraph (c) to read as follows:

§ 874.5370 Tongs antichoke device.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule based on this proposed rule) for any tongs antichoke device that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule based on this proposed rule), been found to be substantially equivalent to a tongs antichoke device that was in commercial distribution before May 28, 1976. Any other tongs antichoke device shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

PART 882—NEUROLOGICAL DEVICES

4. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

5. Section 882.5860 is amended by revising paragraph (c) to read as follows:

§ 882.5860 Implanted neuromuscular stimulator.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule based on this proposed rule) for any implanted neuromuscular stimulator that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule based on this proposed rule), been found to be substantially equivalent to an implanted neuromuscular stimulator that was in commercial distribution before May 28, 1976. Any other implanted neuromuscular stimulator shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: July 17, 1998.

D.B. Burlington.

Director, Center for Devices and Radiological Health.

[FR Doc. 98–20311 Filed 7-29-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 890

[Docket No. 98N–0467]

Medical Devices; Effective Date of Requirement for Premarket Approval for Three Class III Preamendments Physical Medicine Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request a change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for the following three high priority Group 3 preamendments class III devices: Microwave diathermy for uses other than treatment of select medical conditions such as relief of pain, muscle spasms, and joint contractures; ultrasonic diathermy for uses other than treatment of select medical conditions such as relief of pain, muscle spasms, and joint contractures; and ultrasound and muscle stimulator for uses other than treatment of select medical conditions such as relief of pain, muscle spasms, and joint contractures. The uses of these three devices do not include use for the treatment of malignancies. The agency also is summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices. In addition, FDA is announcing the opportunity for interested persons to request that the agency change the classification of any of these devices based on new information.

DATES: Written comments by October 28, 1998; request for a change in classification by August 14, 1998. FDA intends that, if a final rule based on this proposed rule is issued, PMA's will be required to be submitted within 90 days of the effective date of the final rule.

ADDRESSES: Submit written comments or requests for a change in classification to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295) and the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) established the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or a notice of completion of a PDP until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) of the act is not required to have an approved investigational device exemption (IDE) (see part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device. At that time, an IDE is required only if a PMA has not been submitted or a PDP completed.

Section 515(b)(2)(A) of the act provides that a proceeding to issue a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity for the submission of comments on the proposed rule and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change in reclassification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. Section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, issue a final rule to require premarket approval, or publish a notice terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is finalized, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or notice of completion of a PDP for any such device be filed within 90 days of the date of issuance of the final rule or 30 months after the final classification of the device under section 513 of the act, whichever is later. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of devices in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for the class III devices that are the subjects of this regulation.

The act does not permit an extension of the 90-day period after issuance of a final rule within which an application or a notice is required to be filed. The House Report on the 1976 amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." (H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976).)

The SMDA added new section 515(i) to the act. This section requires FDA to review the classification of preamendments class III devices for which no final rule has been issued requiring the submission of PMA's and to determine whether or not each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval. SMDA does not, however, prevent FDA from proceeding immediately to rulemaking under section 515(b) of the act on specific devices, in the interest of public health, independent of the procedures of section 515(i). Indeed, proceeding directly to rulemaking under section 515(b) of the act is consistent with Congress' objective in enacting section 515(i), i.e., that preamendments class III devices for which PMA's have not been required either be reclassified to class I or class II or be subject to the requirements of premarket approval. Moreover, in this proposal, interested persons are being offered the opportunity to request reclassification of any of the devices.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA issued a notice of availability of a preamendments class III devices strategy document. The strategy set forth FDA's plans for implementing the provisions of section 515(i) of the act for preamendments class III devices for which FDA had not yet required premarket approval. FDA divided this universe of devices into 3 groups:

1. Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness but are no longer used or are in very limited use. FDA's strategy is to call for PMA's for all Group 1 devices in an omnibus 515(b) rulemaking action. In the **Federal Register** of September 7, 1995 (60 FR 46718), FDA implemented this strategy by proposing to require the filing of a PMA or a notice of completion of a PDP for 43 class III preamendments devices (the September 1995 proposal). Subsequently, in the **Federal Register** of September 27, 1996 (61 FR 50704), FDA called for the filing of a PMA or a notice of completion of a PDP for 41 of these 43 preamendments class III devices. (Due to public comment, the agency is reconsidering its position on the two remaining devices subject to the September 1995 proposal).

2. Group 2 devices are devices that FDA believes have a high potential for being reclassified into class II. In the **Federal Register** of August 14, 1995 (60 FR 41986), and of June 13, 1997 (62 FR 32355), FDA issued an order under section 515(i) of the act requiring manufacturers to submit safety and effectiveness information on these Group 2 devices so that FDA can make a determination as to whether the devices should be reclassified.

3. Group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. FDA intends to issue proposed rules to

require the submission of PMA's for the 15 high priority devices in this group in accordance with the schedule set forth in the strategy document. In the **Federal Register** of August 14, 1995 (60 FR 41984), and of June 13, 1997 (62 FR 32352), FDA issued an order under section 515(i) of the act for the 27 remaining Group 3 devices requiring manufacturers to submit safety and effectiveness information so that FDA can make a determination as to whether the devices should be reclassified or retained in class III. This proposed rule further implements the strategy for three high priority Group 3 class III devices.

II. Dates New Requirements Apply

In accordance with 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for class III devices within 90 days after issuance of any final rule based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found to be substantially equivalent to such a device, will be permitted to continue marketing such class III devices during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that, under section 515(d)(1)(B)(i) of the act, the agency may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d), the preamble to any final rule based on this proposal will state that, as of the date on which the filing of a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any device that is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or notice of completion of a PDP for a class III device is not filed with FDA within 90 days after the date of issuance of any final rule requiring premarket approval for the device, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period after the final rule to avoid interrupting investigations.

III. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP; and (2) the benefits to the public from the use of the devices.

These findings are based on the original reports and recommendations of the Physical Medicine Device Classification Panel (the panel), an advisory committee for the classification of these devices, along with any additional information that FDA has discovered. Additional information can be found in the proposed and final rules classifying these devices into class III, published in the **Federal Register** of August 28, 1979 (44 FR 50458), and the **Federal Register** of November 23, 1983 (48 FR 53032), respectively.

IV. Devices Subject to This Proposal

A. Microwave Diathermy (21 CFR 890.5275(b))

1. Identification

A microwave diathermy device for uses other than treatment of select medical conditions such as relief of pain, muscle spasms, and joint contractures, is a device that applies to the body electromagnetic energy in the microwave frequency bands of 915 megahertz to 2,450 megahertz and that is intended for the treatment of medical conditions by means other than the generation of deep heat within body tissues. Use of this device does not include use for the treatment of malignancies.

2. Summary of Data

The panel recommended that the device intended for applying therapeutic deep heat be classified into class II based on the potential hazards associated with use of the device, on the panel members' knowledge of and clinical experience with the device, and pertinent literature. FDA agreed with this recommendation for the above intended use. FDA also was aware that the device was being used for additional purposes for which it had not been shown to be safe and effective. Accordingly, FDA believed the device should also be classified with respect to all other intended uses. For all other intended uses other than applying deep therapeutic heat for treatment of select medical conditions, the agency still believes that this device presents a potential unreasonable risk of injury without a proven benefit to the patient because substantial clinical information does not exist to support any other claims.

The agency notes that neither the classification panel nor the agency was aware of any preamendments use of the device for treatment of malignancies. Therefore, when classifying this device, the agency specifically excluded treatment of malignancies from the device identification. Accordingly, a PMA or completed PDP is required before this device may be marketed for the treatment of malignancies, irrespective of the date the new requirements apply for all other uses.

3. Risks to Health

- Adverse tissue response that can result in possible cataract formation in the eye and central nervous system injury.
- Electrical shock from excessive leakage current from improper grounding or a device malfunction.
- Burns from contact of uncovered parts of the body at the device output terminal or with inadequately insulated cables and electrodes.

B. Ultrasonic Diathermy (21 CFR 890.5300(b))

1. Identification

An ultrasound diathermy device for uses other than treatment of select medical conditions such as relief of pain, muscle spasms, and joint contractures, is a device that applies to the body ultrasonic energy at a frequency beyond 20 kilohertz and that is intended for the treatment of medical conditions by means other than the generation of deep heat within body tissues. Use of this device does not include use for the treatment of malignancies.

2. Summary of Data

The panel recommended that the device intended for applying therapeutic deep heat be classified into class II based on the potential hazards associated with use of the device, on the panel members' knowledge of and

clinical experience with the device, and pertinent literature. FDA agreed with this recommendation for the above intended use. FDA also was aware that the device was being used for additional purposes for which it had not been shown to be safe and effective. Accordingly, FDA believed the device should also be classified with respect to all other intended uses. For all other intended uses other than applying deep therapeutic heat for treatment of select medical conditions, the agency still believes that this device presents a potential unreasonable risk of injury without a proven benefit to the patient because substantial clinical information does not exist to support any other claims.

The agency notes that neither the classification panel nor the agency was aware of any preamendments use of the device for treatment of malignancies. Therefore, when classifying this device, the agency specifically excluded treatment of malignancies from the device identification. Accordingly, a PMA or completed PDP is required before this device may be marketed for the treatment of malignancies, irrespective of the date the new requirements apply for all other uses.

3. Risks to Health

- Electrical shock due to faulty design or malfunction.
- Burns from high density current.
- Inappropriate therapy from inaccurate measurement of applied energy.
- Cavitation (cellular destruction) from inadequately uniform field distribution or a lack of sufficient external pressure on the device applied to the skin.

C. Ultrasound and Muscle Stimulator (21 CFR 890.5860(b))

1. Identification

An ultrasound and muscle stimulator for uses other than treatment of select medical conditions such as relief of pain, muscle spasms, and joint contractures, is a device that applies to the body ultrasonic energy at a frequency beyond 20 kilohertz bands and applies to the body electrical currents and that is intended for the treatment of medical conditions by means other than the generation of deep heat within body tissues and the stimulation or relaxation of muscles. Use of this device does not include use for the treatment of malignancies.

2. Summary of Data

The panel recommended that the device intended to repeatedly contract muscles by passing an electric current through electrodes contacting the body be classified into class II based on the panel members' knowledge of and clinical experience with the device, and pertinent literature. FDA agreed with this recommendation for the above intended use. FDA also was aware that the device was being used for additional purposes for which it had not been shown to be safe and effective. Accordingly, FDA believed the device should also be classified with respect to all other intended uses. For all other intended uses other than applying deep therapeutic heat for treatment of select medical conditions, the agency still believes that device presents a potential unreasonable risk of injury without a proven benefit to the patient because substantial clinical information does not exist to support any other claims.

The agency notes that neither the classification panel nor the agency was aware of any preamendments use of the device for treatment of malignancies. Therefore, when classifying this device, the agency specifically excluded treatment of malignancies from the device identification. Accordingly, a PMA or completed PDP is required before this device may be marketed for the treatment of malignancies, irrespective of the date the new requirements apply for all other uses.

3. Risks to Health

- Electrical shock due to faulty design or malfunction.
- Cardiac arrest from excessive electrical current passing through the heart.
- Inappropriate therapy from inaccurate measurement function.

V. PMA Requirements

A PMA for any of these devices must include the information required by section 515(c)(1) of the act. Such a PMA should also include a detailed discussion of the risks identified above, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on the following: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA should include valid scientific evidence obtained from well-controlled clinical studies, with detailed data, in order to provide reasonable assurance of the safety and effectiveness of the device for its intended use. (See 21 CFR 860.7(c)(2).)

Applicants should submit any PMA in accordance with FDA's "Premarket Approval (PMA) Manual." This manual is available upon request from the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. This manual is also available on the world wide web at "http://www.fda.gov/cdrh".

VI. PDP Requirements

A PDP for any of these devices may be submitted in lieu of a PMA, and must follow the procedures outlined in section 515(f) of the act. A PDP should provide the following: (1) A description of the device; (2) preclinical trial information (if any); (3) clinical trial information (if any); (4) a description of the manufacturing and processing of the devices; (5) the labeling of the device; and (6) all other relevant information about the device. In addition, the PDP must include progress reports and records of the trials conducted under the protocol on the safety and effectiveness of the device for which the completed PDP is sought. Applicants should submit any PDP in accordance with FDA's "PDP Comprehensive Outline with Attachments." This outline is available upon request from the Center for Devices and Radiological Health, Office of Device Evaluation (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850. The outline and other PDP information is also available on the world wide web at "http://www.fda.gov/cdrh/pdp".

VII. Request for Comments with Data

Interested persons may, on or before October 28, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (b)(2)(A)(iv) of the act and 21 CFR 860.132 to provide

an opportunity for interested persons to request a change in the classification of the device based on new information relevant to the classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the act.

A request for a change in the classification of these devices is to be in the form of a reclassification petition containing the information required by § 860.123 (21 CFR 860.123), including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by August 14, 1998.

The agency advises that, to ensure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of these devices is submitted, the agency will, by September 28, 1998, after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and 21 CFR 860.130 of the regulations.

IX. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA believes that there is little or no interest in marketing these devices, the Commissioner certifies that the proposed rule, if issued as a final rule, will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

XI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 890

Medical devices.

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 part 890 be amended as follows:

PART 890—PHYSICAL MEDICINE DEVICES

1. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 890.5275 is amended by revising paragraph (c) to read as follows:

§ 890.5275 Microwave diathermy.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP for a device described in paragraph (b) of this section is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any microwave diathermy described in paragraph (b) of this section that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a microwave diathermy described in paragraph (b) of this section that was in commercial distribution before May 28, 1976. Any other microwave diathermy described in paragraph (b) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

3. Section 890.5300 is amended by revising paragraph (c) to read as follows:

§ 890.5300 Ultrasonic diathermy.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP for a device described in paragraph (b) of this section is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any ultrasonic diathermy described in paragraph (b) of this section that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to an ultrasound diathermy described in paragraph (b) of this section that was in commercial distribution before May 28, 1976. Any other ultrasound diathermy described in paragraph (b) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

4. Section 890.5860 is amended by revising paragraph (c) to read as follows:

§ 890.5860 Ultrasound and muscle stimulator.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP for a device described in paragraph (b) of this section is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any ultrasound and muscle stimulator described in paragraph (b) of this section that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to an ultrasound and muscle stimulator described in paragraph (b) of this section that was in commercial distribution before May 28, 1976. Any other ultrasound and muscle stimulator described in paragraph (b) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: July 21, 1998.

Elizabeth D. Jacobson,

Deputy Director for Science, Center for Devices and Radiological Health.

[FR Doc. 98–20306 Filed 7–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 901

[Docket No. FR–4313–N–02]

RIN 2577–AB81

Notice of Extension of Public Comment Period on Public Housing Assessment System Proposed Rule

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Proposed rule; Notice of extension of public comment period.

SUMMARY: On June 30, 1998, HUD published a proposed rule that establishes a new system for the assessment of public housing—the new Public Housing Assessment System (PHAS). The public comment period on the proposed rule was scheduled to end July 30, 1998. This notice extends the public comment period on the PHAS proposed rule to August 13, 1998.

DATES: *Comment Due Date:* August 13, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center, Attention: William Thorson, Department of Housing and Urban Development, 4900 L'Enfant Plaza East, SW, Room 8204, Washington, DC 20410; telephone (202) 755–0102 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On June 30, 1998 (63 FR 35672), HUD published a proposed rule that establishes a new system for the assessment of public housing—the new Public Housing Assessment System (PHAS). The rule provides for the assessment of the physical condition, financial health, management, and resident services of public housing.

The public comment period on the PHAS proposed rule was scheduled to end July 30, 1998. A number of public housing agencies have requested additional time to submit their comments. Accordingly, the Department has decided to extend the public comment period on the PHAS proposed rule to August 13, 1998.

Dated: July 28, 1998.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 98–20514 Filed 7–28–98; 2:45 pm]

BILLING CODE 4210–33–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

[4310–55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Northwest Arctic Federal Subsistence Regional Advisory Council Meeting; Subsistence Management Regulations for Public Lands in Alaska

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice informs the public of the Regional Council meeting identified above. The public is invited to attend and observe meeting proceedings. In addition, the public is invited to provide oral testimony before the Northwest Arctic Advisory Council on a Special Action request to change Subsistence Management Regulations for Public Lands in Alaska for the 1998–99 regulatory year as set forth in a final rule on June 29, 1998 (63 FR 35332–35381). The Regional Council will receive testimony and will consider a request opening sheep hunting in Unit 23 in northwest Alaska and closing Federal lands in the same area to non-qualified subsistence users.

DATES: The Federal Subsistence Board announces the forthcoming public meeting of the Federal Subsistence Regional Advisory Council. The Northwest Arctic Regional Council will meet in Kotzebue, AK on July 29, 1998, at 1 p.m. in the Alaska Technical Center.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, (907) 786–3888. For questions related to subsistence management issues on National Forest Service lands, inquiries may also be directed to Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 271–2540.

SUPPLEMENTARY INFORMATION: The Regional Councils have been established in accordance with Section 805 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and Subsistence Management Regulations for Public Lands in Alaska, 36 CFR part 242 and 50 CFR part 100, subparts A, B, and C (57 FR 22940–22964). The Regional Councils advise the Federal Government on all matters related to the subsistence taking of fish and wildlife on public lands in Alaska and operate in accordance with provisions of the Federal Advisory Committee Act.

The Northwest Arctic Regional Council meeting will be open to the public. The public is invited to attend this meeting, observe the proceedings, and provide comments to the Regional Council.

This document provides less than the required 15 days notice. However, under the proposal just received, the opening date for the hunt and the proposed closure of public lands to non-Federally qualified users would take effect August 1. Thus, in order to provide the Regional Council and the public an opportunity to comment on this proposal before Board action and for the Board to act in a timely manner on this proposal, the Board finds good cause under 41 CFR 101–6.1015(b)(2) to conduct the meeting with less than 15 days notice. Additional notice of the meeting will be placed in local papers and broadcast on local radio and television stations.

Dated: July 24, 1998.

Ken Thompson,

Acting Regional Forester, USDA-Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 98–20362 Filed 7–29–98; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–6132–4]

Public Meeting to Discuss Issues Associated with Regulation of Cooling Water Intake Structures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency will hold a public meeting to discuss specific issues associated with the development of regulations under section 316(b) of the Clean Water Act applicable to cooling water intake structures. The purpose of this meeting is to facilitate an exchange of information that will assist EPA in developing regulatory options relating to: determining what is best technology available (BTA); the role of cost determinations in implementing section 316(b) and, the role of mitigation in minimizing adverse environmental impacts from cooling water intake structures. This is a follow-on public meeting to the one the Agency held on June 29, 1998 (63 FR 27958, May 21, 1998) to discuss issues associated with defining and measuring adverse environmental impacts from cooling water intake structures. The meeting is open to the public.

DATES: The public meeting will be held on Thursday, September 10, 1998 and Friday, September 11, 1998. On Thursday, the meeting will begin promptly at 10:00 a.m. and end at approximately 4:30 p.m. On Friday, the meeting will begin promptly at 9:00 a.m. and conclude at approximately 12:00 noon.

ADDRESSES: The meeting will be held at the Holiday Inn Hotel & Suites, 625 First Street, Alexandria, Virginia 22314. For reservation information see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Deborah Nagle, senior project manager, Office of Wastewater Management (4203), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460; phone number is (202) 260–2656 and E-mail address is nagle.deborah@epa.gov. For any updates on the issues that EPA will discuss at the meeting, refer to EPA's 316(b) web site at http://www.epa.gov/owm/316b.htm. To register for the meeting, please contact Betty Peterson of SAIC via FAX at (703) 903–1374 or via mail at 1710 Goodridge Drive (1–11–7), McLean, VA 22102. Please register by September 3, 1998.

SUPPLEMENTARY INFORMATION: In 1995, EPA entered into a Consent Decree that requires the Agency, no later than July 2, 1999, to propose regulations under section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b), and to take final action with respect to the regulations no later than August 13, 2001. The Agency is currently developing these regulations for proposal. Section 316(b) provides that any standard established pursuant to section 301 or 306 of the Clean Water Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. A primary purpose of section 316(b) is to minimize the impingement and entrainment of fish and other aquatic organisms as they are drawn into a facility's cooling water intake.

The public meeting will focus on the following topics:

(1) BTA. The BTA determination is a critical element in implementing section 316(b). The Agency seeks input from stakeholders on appropriate technologies for satisfying the requirement of section 316(b) that the location, design, construction, and capacity of cooling water intake structures reflect the best technology currently available for minimizing adverse environmental impact from cooling water intake structures.

(2) Role of Costs in Implementing section 316(b). EPA seeks input on how cost should or should not be considered in implementing section 316(b).

(3) Mitigation. EPA is considering whether the section 316(b) regulations should include a national standard on the use of mitigation in minimizing adverse environmental impacts. EPA seeks input on whether and how to apply such a standard.

The public meeting will be divided into three discussion periods. Each discussion period will address one of the three topics outlined above. EPA will initiate the discussion in each period by defining the issue. EPA expects that stakeholders will then continue the discussion by providing their views. EPA does not intend for the public meeting to be a forum for formal testimony. However, EPA will accept written comments on the three issues at the meeting or until October 5, 1998.

The meeting will be held at the Holiday Inn Hotel & Suites, 625 First Street, Alexandria, Virginia 22314. A block of sleeping rooms has been reserved at the hotel for the nights of Wednesday, September 9 and Thursday, September 10. Contact the hotel to make reservations at (703) 548–6300. The rooms are listed under "U.S. EPA Section 316(b) Meeting."

The hotel can be reached via hotel shuttle bus from Washington's National Airport (baggage claim area of Gate 5 in the new terminal). The shuttle runs on the half hour. The blue and yellow lines of Washington's subway system (Metro) stop at National Airport. The closest subway stop to the hotel is the "King Street" metro station. It is approximately 9 blocks from the hotel and is also on the blue and yellow lines of the subway system.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 98–20284 Filed 7–29–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–6130–6]

Virginia; Approval of Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative determination on Virginia's application for approval of underground storage tank program, public hearing and public comment period.

SUMMARY: The Commonwealth of Virginia (State) has applied for approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the State's application and has made the tentative decision that the State's underground storage tank program satisfies all of the requirements necessary to qualify for approval. The State's application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application unless insufficient public interest is expressed.

DATES: Unless insufficient public interest is expressed in holding a hearing, a public hearing will be held on September 11, 1998. However, EPA reserves the right to cancel the public hearing if sufficient public interest in a hearing is not communicated to EPA in writing by September 4, 1998. EPA will determine by September 9, 1998, whether there is sufficient interest to hold the public hearing. The State will participate in any public hearing held by EPA on this subject. All written comments on the State's application for

program approval must be received by 4:30 p.m. on September 4, 1998.

ADDRESSEES: Copies of the State's application for program approval are available between 8:30 a.m. to 4:00 p.m. at the following locations for inspection and copying:

Location: Department of Environmental Quality, Commonwealth of Virginia, Office of Spill Response and Remediation, 629 East Main Street, Richmond, Virginia 23240–0009.

Contact: Mary Ellen Kendall, Environmental Technical Services Administrator.

Telephone: 804–698–4499.

Location: United States Environmental Protection Agency, Docket Clerk, Office of Underground Storage Tanks, 1235 Jefferson Davis Highway, 1st Floor, Arlington, VA 22202.

Telephone: (703) 603–9231.

Location: United States Environmental Protection Agency, Region III Library, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

Telephone: (215) 814–5254.

Written comments should be sent to Rosemarie Nino, Program Manager, State Programs Branch, Waste & Chemicals Management Division (3WC21), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, (215) 814–3377.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State's application for program approval on September 11, 1998, at 7:00 p.m. at the Department of Environmental Quality, Office of Spill Response and Remediation, Underground Storage Tank Program, 4949–A Cox Road, Glen Allen, Virginia 23060.

Anyone who wishes to learn whether or not the public hearing on the State's application has been cancelled should telephone after September 9, 1998, the EPA Program Manager listed above or Mary Ellen Kendall, Environmental Technical Services Administrator, Department of Environmental Quality, Office of Spill Response and Remediation, Underground Storage Tank Program, (804) 698–4499.

FOR FURTHER INFORMATION CONTACT: Rosemarie Nino, State Programs Branch (3WC21), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, (215) 814–3377. Also, a copy of the fact sheet is available on the EPA Web Site at (www.epa.gov/reg3 wcmd/ public__notices.htm).

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve the Commonwealth underground storage tank programs to operate in lieu of the Federal underground storage tank (UST) program. EPA may approve a State program if the Agency finds pursuant to section 9004(b), 42 U.S.C. 6991c(b), that the State's program is "no less stringent" than the Federal program in all seven elements set forth at section 9004(a)(1) through (7), 42 U.S.C. 6991c(a)(1) through (7), and meets the notification requirements of section 9004(a)(8), 42 U.S.C. 6991c(a)(8) and also provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)).

B. Virginia

The Virginia Department of Environmental Quality (VADEQ) is the implementing agency for UST activities in the State. The Underground Storage Tank Program, Office of Spill Response and Remediation of VADEQ is dedicating a substantial effort to prevent, control and remediate UST-related groundwater contamination. The Underground Storage Tank Program, Office of Spill Response and Remediation of VADEQ maintains a strong field presence and works closely with the regulated community to ensure compliance with regulatory requirements.

Virginia's requirements which exceed the stringency or scope of the Federal regulations include the following subject matter:

(1) Virginia's regulations do not allow for the installation of an UST system without corrosion protection under any circumstances, whereas EPA allows the installation of an UST system without corrosion protection if a corrosion expert determines that the site is not corrosive enough to cause the system to have a release due to corrosion during its operating life;

(2) Virginia's regulations require that owners and operators obtain a permit, undergo a State inspection, and/or obtain a certificate of use in accordance with the Virginia Uniform Statewide Building Code for the following circumstances: tank installation, tank repairs and release detection, and temporary closure, permanent tank closure, and changes-in-service. EPA's technical standards do not require permits or inspections of this nature, nor do they require conformance with State building codes;

(3) The Federal requirements at 40 CFR 280.20(e) allow six options for an owner/operator to demonstrate compliance with the installation requirements of section 280.20(d). The State's regulations do not allow two of these options: certification by the installer or inspection and approval of the installation by the implementing agency;

(4) Virginia's regulations require that UST systems with impressed current corrosion protection systems must be installed so that they cannot be inadvertently shut off. EPA technical standards only require that the cathodic protection systems continuously provide corrosion protection;

(5) Virginia's regulations set forth the requirement that owners/operators file an application for and obtain a Corrective Action Permit (CAP) when corrective action is needed. The EPA's technical standards do not include such a requirement;

(6) Virginia's requirements for assessing the site at closure or change-in-service mirror the federal requirements with additional requirements for the testing of samples and submittal of test results, a description of the area sampled, and a site map;

(7) Virginia's state fund has been created to assist owners and operators in demonstrating financial responsibility; and

(8) Virginia's definition of "regulated substance" is more inclusive and therefore, broader in scope than the Federal definition.

The Virginia Department of Environmental Quality submitted to EPA a final application for approval on July 15, 1998. Prior to its submission, the State provided an opportunity for public notice and comment in the development of its underground storage tank program, as required by 40 CFR 281.50(b). EPA has reviewed the State's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final approval. However, EPA intends to review all timely public comments prior to making a final decision on whether to grant approval to the State to operate its program in lieu of the Federal program. Virginia's Petroleum Underground Storage Tank Financial Responsibility Requirements will become effective on or before August 30, 1998. EPA will not make a final decision on Virginia's Underground Storage Tank Program until after that date.

In accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR 281.50(e), the Agency will hold a public hearing on its tentative decision on September 11, 1998, at 7:00 p.m. at the

Department of Environmental Quality, Office of Spill Response and Remediation, Underground Storage Tank Program, 4949-A Cox Road, Glen Allen, Virginia 23060, unless insufficient public interest is expressed. The public may also submit written comments on EPA's tentative determination until September 4, 1998. Copies of the State's application are available for inspection and copying at the locations indicated in the **ADDRESSEES** section of this document.

EPA will consider all public comments on its tentative determination received at the public hearing, if a hearing is held, and during the public comment period. Issues raised by those comments may be the basis for a decision to deny approval to the State. EPA will give notice of its final decision in the **Federal Register**; the document will include a summary of the reasons for the final determination and a response to all significant comments.

C. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this action from the requirements of section 6 of Executive Order 12866.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, 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. The section 202 and 205 requirements do not apply to today's action because it is not a "Federal mandate" and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because the requirements of the Virginia program are already imposed by the State and subject to State law. Second, the Act also generally excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program. Virginia participation in an approved UST program is voluntary.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Virginia program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, they are already subject to the regulatory requirements under existing state law which are being approved by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

E. Certification Under the Regulatory Flexibility Act

EPA has determined that this approval will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the regulatory requirements under existing State law which are being approved by EPA. EPA's approval does not impose any additional burdens on these small entities. This is because EPA's approval would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act: Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This rule approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by an information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

G. Compliance With Executive Order 13045

Executive Order 13045 applies to any rule that the Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and that EPA determines that 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.

The Agency has determined that the proposed rule is not a covered regulatory action as defined in the Executive Order because it is not economically significant and does not address environmental health and safety risks. As such, the proposed rule is not subject to the requirements of Executive Order 13045.

Authority: This notice is issued under the authority of Section 9004 of the Resource Conservation and Recovery Act as amended 42 U.S.C. 6991c.

Dated: July 17, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region 3.

[FR Doc. 98–20412 Filed 7–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6131–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Frontera Creek Site from the National Priorities List; Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA), Region II, announces its intent to delete the Frontera Creek Superfund Site (Site) from the National

Priorities List (NPL) and requests public comment on this action. The NPL, 40 CFR Part 300, Appendix B was promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. EPA and the Puerto Rico Environmental Quality Board (PREQB) have determined that all appropriate response/remedial actions have been completed and no further remedial action is appropriate under CERCLA. In addition, EPA and PREQB have determined that remedial activities conducted to date at the Site have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the Site from the NPL may be submitted on or before August 31, 1998.

ADDRESSES: Comments should be submitted to: Luis E. Santos, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce de León Ave., Stop 22, San Juan, Puerto Rico 00907–4127.

Comprehensive information on the Site is contained in the EPA public docket and is available for viewing, by appointment only, at: U.S. Environmental Protection Agency, Region II, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce de León Ave., Stop 22, San Juan, Puerto Rico 00907–4127, Phone: (787) 728–6951, extension 223, Hours: 8:30 A.M. to 4:30 P.M.—Monday through Friday (excluding holidays); Contact: Luis E. Santos.

Information on the Site is also available for viewing at the Site Administrative Record Repositories located at: P.R. Environmental Quality Board, National Plaza Bank, 431 Ponce de León Ave., Hato Rey, Puerto Rico 00917, Contact: Mr. Genarro Torres, Phone: (787) 766–2823, Hours: 8:30 A.M. to 4:30 P.M.—Monday through Friday (excluding holidays); and the Humacao Town Hall, Humacao, Puerto Rico, Contact: Mayor's Office Secretary, Phone: (787) 852–3066.

FOR FURTHER INFORMATION CONTACT: Luis E. Santos, (787) 728–6951 Ext. 223.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Environmental Protection Agency (EPA) Region II announces its intent to delete the Frontera Creek Site, Humacao, Puerto Rico from the National Priorities List (NPL), 40 CFR Part 300, and requests public comment on this deletion. The NPL is Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to Section 105 of CERCLA, as amended. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (the Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at the site warrant such action.

The EPA will accept comments on the proposal to delete this Site from the NPL for 30 days after publication of this document in the **Federal Register** until August 31, 1998.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action. Section IV discusses how the Site meets the NPL deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e)(1)(i)–(iii), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with PREQB, will consider whether any of the following criteria have been met:

(i) Responsible or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that the EPA shall not delete a site from the NPL until the Commonwealth of Puerto Rico has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for information purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete the site. The Agency believes that deletion procedures should include public notice and comment at the local level. Comments from the local community may be pertinent to deletion decisions. The following procedures were used for the intended deletion of the Site:

1. EPA determined the appropriate remedies at this site in a Record of Decision dated September 30, 1991.

2. Responsible parties conducted the site clean-up as documented in a Remedial Action Completion Report dated May 1995.

3. EPA determined in a September 1997 Superfund Site Close Out Report that all construction activities at this site have been completed.

4. PREQB has concurred with the deletion decision in letter dated March 27, 1998.

5. A Notice has been published in a local newspaper and distributed to appropriate federal, Commonwealth and local officials, and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete.

6. All relevant documents have been made available for public review in the local Site information repositories.

The comments received during the comment period will be evaluated before any final decision is made. EPA Region II will prepare a Responsiveness Summary, if necessary, which will address the comments received during the public comment period.

If after consideration of these comments, the EPA decides to proceed with the deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary, if any, will be made available to local residents by EPA Region II.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the Frontera Creek Site, Humacao, Puerto Rico, from the NPL:

The Frontera Creek Site is located on the eastern coast of Puerto Rico approximately 1.5 miles east of the City of Humacao. As defined in the Remedial Investigation/Feasibility Study (RI/FS) Administrative Order on Consent, the Frontera Creek Site includes Frontera

Creek downstream of Route 925, the Frontera Lagoons, Madri Canal south of Route 3, the Ciudad Cristiana housing development (Cristiana), the 13 industries adjacent or in close proximity to the creek, and the suspected dredge spoil piles allegedly located on the bank of Frontera Creek adjacent to Ciudad Cristiana.

Industrial wastewaters from industries within the Site were discharged into the creek from 1971 to 1981. Public concern about the site arose in 1977 following the death of thirty cows that grazed in the area. Since that time, the area has been investigated by the EPA, PREQB and several industries located in the vicinity. This investigation confirmed the presence of contaminants including mercury in sediments and surface water samples. As a result of the potential threat to public health, in August 1983, the Frontera Creek Site was included on the EPA's National Priorities List.

In February 1985, the Puerto Rico Department of Health (PRDOH) found elevated levels of mercury in blood and urine samples from a number of residents in the Ciudad Cristiana development. In addition, the PREQB found mercury in soil samples. As a result, the Governor of Puerto Rico ordered the evacuation of the residents of the development. In March 1985, the PRDOH requested that the EPA evaluate the Ciudad Cristiana development for mercury contamination. The residents had alleged that during the construction of their homes, the area was contaminated. In response to this request, and in coordination with the Agency for Toxic Substances and Disease Registry (ATSDR), the EPA conducted a Focused Remedial Investigation to assess mercury contamination in the Ciudad Cristiana development. Soil samples from the Ciudad Cristiana development were analyzed for mercury contamination. ATSDR concluded that the mercury levels found did not present an immediate health threat to the residents of Ciudad Cristiana.

On October 3, 1986, an Administrative Order on Consent (Consent Order) was issued by the EPA pursuant to Section 106(a) of CERCLA. The Consent Order required Miles Diagnostics Corporation; Miles, Inc.; Cooper Development Company; and Revlon, Inc. ("Settling Defendants") to undertake a Remedial Investigation/ Feasibility Study (RI/FS) covering the entire Frontera Creek Superfund Site.

A Remedial Investigation (RI) was performed from January 1988 through August 1989. The RI data indicated that elevated concentrations of mercury occurred primarily in surface soils at the Technicon property and in sediments in the Technicon ditch. The sampling done at the Ciudad Cristiana development and in the Frontera Creek itself did not find mercury levels of concern.

A Record of Decision (ROD), which selected the remedy for the Site, was signed in September 1991. The selected remedy called for the excavation and proper disposal of all Site soils and sediments with mercury concentration in excess of 35 parts per million (ppm). On July 8, 1992, Miles Diagnostics Corporation; Miles Inc.; Cooper Development Company; and Revlon, Inc. ("Settling Defendants") signed a Consent Decree with the EPA for implementation of the selected remedy.

Remedial Action was implemented according to the approved Final Remedial Design Report document, dated December 27, 1994. Excavation activities, initiated on March 7, 1995 were substantially completed as of March 30, 1995. Off-site transportation for disposal of rolloffs containing excavated waste, was initiated on April 18, 1995 and completed on April 22, 1995.

The remediated Site areas, as required by the ROD, were two areas within the Technicon ditch (known as Areas 1 and 2) and one area near the former raw materials storage area at the Technicon facility (known as Area 3). The volumes and media removed in each were Area 1—83 cubic yards of Technicon Ditch sediments, Area 2—49 cubic yards of Technicon Ditch sediments and Area 3—159 cubic yards of soils and 32 yards of concrete. The Area 2 excavation was expanded to remove an additional 33.5 cubic yards of sediments based on the results of the post-excavation sampling and analysis.

All the completion requirements for this Site have been met as described in the "Superfund Site Close Out Report" dated September 1997. Activities at the Site have resulted in the removal of mercury contaminated soils and sediments from the Site and have provided for the off-site disposal of contaminated soils and sediments. EPA has determined that responsible parties have completed all appropriate response action necessary under CERCLA at this site and that no further construction activities by responsible parties are necessary. In addition, for the activities undertaken at this Site under CERCLA, EPA identified an air release of methylene chloride. EPA determined the source of the air release to be the Squibb facility located within the Site. Squibb voluntarily reduced emissions of methylene chloride to acceptable levels. Consequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available in the docket.

The EPA and PREQB have determined that the remedy implemented at the Site is protective of human health and the environment and that no further cleanup by responsible parties is appropriate. Hazardous substances were cleaned up to levels that would allow for unlimited use and unrestricted access, therefore the five-year review requirement of Section 121(c) of CERCLA, as amended, is not applicable. On September 30, 1997, the EPA signed the Superfund Site Close Out Report for the Site, prepared in accordance with OSWER Directive 9320.2–09, "Close Out Procedures for National Priorities List Sites".

Dated: June 18, 1998.

William J. Muszynski,

Acting Regional Administrator, Region II.

[FR Doc. 98–20153 Filed 7–29–98; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6131–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the U.S. Navy, Naval Security Group Activity Superfund Site from the National Priorities List. Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II Office announces its intent to delete the United States Navy, Naval Security Group Activity Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL, 40 CFR Part 300, Appendix B was promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. EPA and the Puerto Rico Environmental Quality Board (PREQB) have determined that all appropriate actions have been completed and no further response action is appropriate under CERCLA. In addition, EPA and PREQB have determined that response actions conducted to date at the Site

have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of this Site from the NPL may be submitted on or before August 31, 1998.

ADDRESSES: Comments may be mailed to: Paul G. Ingrisano, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway—18th Floor, New York, NY 10007–1866.

The deletion docket and other comprehensive information on this Site is available through the EPA Region II public docket, which is located at EPA's Region II Office in New York City, and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. Requests for appointments should be directed to: Paul G. Ingrisano, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 18th Floor, New York, NY 10007–1866, (212) 637–4337.

Information on this Site is also available for viewing at the Site Administrative Record Information Repositories at the following locations:

Jaime Fonadella Garriga Public Library, Toa Baja, PR 00951, (787) 794–2145, Monday through Friday, 8:00 a.m. to 8:00 p.m.; and, Saturday, 8:00 a.m. to 3 p.m.; excluding holidays.

Naval Security Group Activity Base Library, Building 193, Sabana Seca, PR FP0 AA 34053–1000, (787) 261–8312, Monday and Tuesday, 10:30 a.m. to 7:00 p.m.; Thursday and Friday, 10:30 a.m. to 6:00 p.m.; and, Saturday, 8:00 a.m. to 1:00 p.m.; excluding holidays.

FOR FURTHER INFORMATION CONTACT: Paul G. Ingrisano, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 18th Floor, New York, NY 10007–1866, (212) 637–4337.

SUPPLEMENTARY INFORMATION:

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I. Introduction

EPA Region II announces its intent to delete the United States Navy, Naval Security Group Activity Superfund Site, which is located in Sabana Seca, in the Municipality of Toa Baja, Puerto Rico from the NPL, which is found in Appendix B to the NCP, 40 CFR Part 300, and requests comments on this deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. As described in § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this Site from the NPL until August 31, 1998.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e)(1)(i)–(iii) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA in consultation with PREQB, shall consider whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release of hazardous substances poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA Region II, PREQB and the United States Navy issued Records of Decision (RODs), which documented the remedial action activities; (2) all appropriate responses under CERCLA have been implemented as documented in the Final Remedial Action Report for Site 6, dated August 4, 1997, together with the Final No Action RODs for Sites 1&3 and Sites 2&4, dated September 30, 1997, in lieu of a Final Close Out Report; (3) PREQB has concurred with the proposed deletion decision by a letter dated March 27, 1998; (4) a notice has been published in the local newspapers and has been distributed to appropriate federal, commonwealth, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and, (5) all relevant documents have been made available for public review in the local Site information repositories.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management of Superfund sites.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

A. Site Background

NSGA Sabana Seca was originally a pineapple and grapefruit plantation known as the Stephenson Place. The plantation was procured by the U.S. Navy during World War II. After the war, the property was turned over to the U.S. Army. In 1951, the Navy again assumed control and in 1952, established the U.S. Naval Radio Station, Sabana Seca. In 1971, NSGA Sabana Seca was established as an independent shore activity of the Navy and has been operated as a communications center continuously since that time. NSGA Sabana Seca is located approximately 14 miles west of the city of San Juan on the island of Puerto Rico, and consists of a North and South Tract together covering over 2,200 acres of land. The South Tract is bounded to the north by Sabana Seca and the North Tract, to the east by Route 866, to the south by Route 22, and to the west by the Bayamón and Toa Baja Municipal Landfills and the U.S. Department of Health and Human Services Research Facility.

B. History

At the NSGA Sabana Seca Site, following placement of the facility on the NPL, seven sites were identified and assessed as posing a potential threat to human health or the environment, due to contamination from past hazardous material operations. All sites are located in the South Tract.

1. Site 6

The Former Pest Control Shop was operational from the mid-1950s through 1979. Pesticides were accidently spilled in and around the building during this time. Pesticides were mixed and application equipment cleaned in a sink outside the building which discharged directly to the ground. In 1987, the materials stored in the pesticide shop were removed and taken to the Base's hazardous storage facility. The building was demolished and the demolition debris was taken to the nearby Bayamón/Toa Baja Municipal Landfill.

As a result of pesticide contamination found in the soil, in the vicinity of the Former Pest Control Shop, NSGA Sabana Seca was added to the NPL on October 4, 1989. In 1991, the Navy, with oversight provided by EPA and PREQB, began a Remedial Investigation (RI) to characterize the nature and extent of contamination and to assess potential risks to human health and the environment.

Based on the results of the RI and risk assessment, a Record of Decision (ROD) for Site 6 was signed on September 20, 1996. The ROD documented the decision that no further remedial action was necessary at the Former Pest Control Shop because the conditions at the site pose no unacceptable risks to human health or the environment. However, since the site is adjacent to a playground/picnic area and the enlisted housing area, as an added measure of precaution, the Navy elected to place an asphalt cap over the areas where pesticides were previously detected in the surface soils. The construction of the asphalt cap was completed in April 1997, and the cap is being maintained by the Navy. The life expectancy of an asphalt cap is approximately 20 to 25 years with routine maintenance. A top sealant will be applied periodically to the asphalt surface to prevent deterioration.

2. Sites 1&3 and Sites 2&4

Site 1, the South Stone Road Disposal Area; Site 3, the North Stone Road Disposal Area; and, Site 4, the Pistol Range Disposal Area were used as the Base's landfills in operation from 1951 to 1960, 1960 to 1965, and 1965 through possibly 1970, respectively. Solid waste was disposed in these landfills. Site 2, the Bunker 607 Disposal Area, was intermittently used for materials storage from the 1960s to 1979. In 1979, the bunker was cleaned -out and old paint intended to be used for the on-Base housing was reportedly disposed in the vicinity of Bunker 607.

In 1991, the Navy, with oversight provided by EPA and PREQB, began Site Investigations (SI) to assess the presence or absence of contamination associated with past Navy activities at these sites and determine if an RI was necessary.

Based on the results of the SIs and risk assessments, RIs were determined to be unnecessary and No Action RODs for the sites were signed on September 30, 1997. The RODs documented the decision that no further remedial action was necessary at Sites 1&3 and Sites 2&4 because the conditions at the sites pose no unacceptable risks to human health or the environment.

3. Site 5

The Wenger Road Disposal Area, was reportedly used as a disposal site for mainly inert materials from 1980 through 1983. In 1982, the Navy recommended that these materials be removed from this site. These materials were removed and placed in a nearby municipal landfill. Because Site 5 has been cleaned up, it does not pose a threat to human health or the environment. Therefore, since this site had been previously remediated prior to the listing of NSGA Sabana Seca on the NPL, EPA's July 19, 1994 letter to the Navy stated that no further investigation of Site 5 was required.

4. Site 7

Leachate from the nearby Bayamón/Toa Baja municipal landfill has been observed entering this wet marshy area, which has been designated as the Leachate Ponding Area. The municipal landfill, which is located directly adjacent to the Base property, has been in operation since the early 1970s. Though the waste stream did not originate from Navy property, the Navy conducted a Leachate Diversion/Feasibility Study (FS) to try to address the problem. The FS provided alternatives for interim treatment of the leachate entering Navy property. A Treatability Study of the engineered wetland technology was conducted as a result of the FS. Due to unforeseen changes in landfill operations and the hydrology upgradient of the Base, and susceptibility of the engineered wetland technology to drought conditions, the study was canceled.

In 1996, the Navy released the final FS report, which provided an in-depth summary and discussion of the alternatives, all of which were determined to be impracticable as the report also determined that the leachate flowing onto Navy property at Site 7, a collection area for leachate from an off-Base source, is from the Bayamón Municipal Landfill, the operation of which could not be controlled by the Navy. Therefore, on February 27, 1997, the EPA notified the Navy that No Further Action was necessary and that a ROD would also not be required for the Leachate Ponding Area. Site 7 will be addressed by the Municipality of Toa Baja, the party responsible for Site 7 contamination. Site 7, the Leachate Ponding Area, is not part of the NPL Site.

C. Characterization of Human Health Risk

The RI and SIs included investigations of the surface water, sediment, soil, and groundwater in the vicinity of the sites. The investigations included a wide range of analyses to detect volatile and semi-volatile organic compounds, pesticides, herbicides, polychlorinated biphenyls, inorganics (metals) and cyanide. Concentrations found in the soil, surface water, sediment and groundwater were below commonwealth and federal regulatory levels and risks for both current and future use were within acceptable levels as defined by the NCP. EPA and PREQB believe that conditions at the Site pose no unacceptable risks to human health or the environment.

D. Ecological Risk

The results of the ecological risk assessment indicate that the Former Pest Control Shop does not pose a threat to ecological receptors or habitats.

E. Site Meets Deletion Criteria

All the construction completion requirements for this Site have been met as described in the No Action RODs, (in lieu of a Final Close Out Report), signed on September 30, 1997, which were prepared in accordance with OSWER Directive 9320.2–09, Close Out Procedures for National Priorities List Sites. EPA and PREQB have determined that the Navy has implemented all appropriate actions necessary under CERCLA, at this Site. The remedial and site investigations and remedial action for this Site have been successfully implemented, are protective of human health, welfare and the environment and no further response actions are necessary. Consequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the docket. Because no hazardous substances remain at the Site above health-based levels, the five-year review requirement of Section 121 (c) of CERCLA as amended, does not apply at this Site.

Dated: June 18, 1998.
William J. Muszynski,
Acting Regional Administrator, Region II.
[FR Doc. 98–20152 Filed 7–29–98; 8:45 am]
BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Maritime Administration

RIN 2133–AB32

[Docket No. MARAD–98–3468]

46 CFR Part 298

Proposed Amendments to the Title XI; Closing Documentation and Application

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Proposed rule; request for comments.

SUMMARY: The Maritime Administration (MARAD) is considering changes to the existing application form used by the agency in evaluating whether to issue, under Title XI of the Merchant Marine Act, 1936, as amended, a commitment to guarantee obligations for the construction of vessels in shipyards located in the United States or for the modernization of such yards, and the documentation forms used by the agency in closing such commitments. The purpose of this proposed rule is to solicit public review and comment of the proposed changes to the application form and the closing documentation.

DATES: Comments should be submitted on or before August 31, 1998, to the address listed below.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., Monday through Friday except Federal Holidays. An electronic version of the new application forms and the closing documents is available from the persons listed below on computer disk or on the World Wide Web at http://marad.dot.gov.

FOR FURTHER INFORMATION CONTACT: Richard Lorr, Office of Chief Counsel, Maritime Administration, MAR–223, Room 7228, 400 Seventh Street, SW, Washington, DC 20590, telephone 202–366–5168 or fax 202–366–7485 with respect to the closing documentation, and Jean E. McKeever, Office of Ship Financing, Maritime Administration, MAR–530, Room 8122, 400 Seventh Street, SW, Washington, DC 20590, telephone 202–366–5744 or fax 202–366–7901 with respect to the application forms.

SUPPLEMENTARY INFORMATION: On February 17, 1998, MARAD issued an Advance Notice of Proposed Rulemaking (ANPRM) and request for comments on whether MARAD should amend its existing regulations or alter its existing administrative practices governing the Title XI application process, standards for evaluation and approval of applications, and the process of documentation for closing of commitments to guarantee obligations. The ANPRM was issued in response to Executive Order 12862 issued by President Clinton which called for agencies to strive for a "customer-driven government" that matches or exceeds the best service available in the private sector.

MARAD requested that its customers, shipyard and shipowner executives, their lawyers, accountants, investment bankers and other professionals, who have used or are familiar with the Title XI program, provide MARAD with their views about how the Title XI program could be improved. MARAD requested specific comments on several topics including the following:

1. Whether changes to the current application form (Form MA–163) are needed and, if so, what specific changes would make the application process more efficient without eliminating critical information needed by MARAD;
2. Whether there should be separate application forms for export vessels, U.S.-flag vessels, and shipyard modernizations, and what specific information should be requested by each;
3. Whether MARAD should waive the requirement in the application form for the submission of plans and specifications if a vessel design has previously been approved by MARAD;
4. Whether MARAD should permit electronic filing of all or a part of a Title XI application;
5. Whether MARAD should create special closing documentation to govern shipyard modernization guarantees; and
6. Whether the current closing documentation on a commitment to guarantee imposes requirements that are unnecessary and redundant, and what changes should be made to the standard documentation.

The response of commenters to these questions and the actions that MARAD is proposing are described below. Upon receipt of further public comment to the proposed application forms and closing documentation, MARAD will make final changes to the application forms and the documentation. MARAD is preparing a separate Notice of Proposed Rulemaking covering any conforming changes with respect to the content of the application forms and the documentation and the other regulatory issues that were raised in the ANPRM, but are not addressed herein.

The Application Form

Four commenters addressed the application form and requested that the agency simplify and streamline the existing form. Five commenters recommended that there be a separate application form for shipyard modernizations and four commenters recommended an additional, separate application form for export vessel projects.

MARAD has responded favorably to most of these recommendations. MARAD has simplified and reorganized the application, and deleted questions that were unnecessary or redundant, and clarified questions that were ambiguous. MARAD is also placing the new application forms on our home page and is printing the forms on letter-size paper instead of legal-size paper.

MARAD created a separate application form for shipyard modernizations, but did not draft a separate application form for export vessels because the differences between the domestic and the export applications were not substantial enough to justify the extra form. However, the proposed vessel application form has a separate section dealing with export transactions.

MARAD believes that the net result is clearer application forms which are easier to follow and complete and which will impose a reduced preparation time on applicants and should allow for a more expedited processing of applications. MARAD welcomes any further suggestions commenters have to the two proposed forms.

Plans and Specifications

The four commenters on the issue of approved vessel designs believe that MARAD should not require the submission of plans and specifications for vessel designs previously approved by MARAD. MARAD agrees and the application form has been amended accordingly.

Electronic Filing

Seven commenters responded to this issue. A number of them thought that electronic filing would raise

confidentiality concerns, while still others thought that paper filing is not unduly burdensome. A few commenters said that electronic filing of non-confidential information should be allowed as a means of expediting the process. Neither MARAD nor the Department of Transportation has the current capacity to utilize electronic filing efficiently or to ensure the confidentiality of information submitted. The Department is currently working on resolving these issues as part of its centralized docket system. When such a system is in place, MARAD will consider offering electronic filing to applicants as an option.

Shipyard Documentation

Five commenters stated that they believed MARAD should create special documents to govern closings on commitments to guarantee shipyard modernizations. Most commenters recognized that the differences between the land transactions involved in shipyard modernization projects and the maritime transactions involved in vessel guarantees merited different closing documentation. In addition, commenters requested that MARAD simplify the documentation. In response, MARAD has prepared a separate set of closing documents for shipyard modernizations. A decision was made not to include a land mortgage since these mortgages vary considerably under local law.

U.S.-Flag and Export Closing Documents

Eight commenters informed us that the existing documents are redundant, inconsistent with current financing practices, unnecessarily voluminous and cumbersome, and difficult to understand. They said that the current documents deter use of the program instead of facilitating its use. They asked MARAD to streamline its documents to reduce unnecessary work and legal fees and other expenses and to make the documentation clearer.

The proposed closing documentation has been rewritten to address many of these concerns. The proposed documentation for the financing of vessels and shipyard modernizations has been simplified and rewritten in plainer English. The length of the vessel documents has been reduced by about 45% (for an uncomplicated transaction) to about 135 pages from about 250 pages. Naturally, the size of the documentation will vary depending on the need for intercreditor agreements, subordination agreements, corporate guarantees, and other complexities that arise out of the individual considerations of any specific transaction. Most importantly, MARAD believes that the proposed revisions to the documents have been made without sacrificing any of the essential rights of the government, shipowners, shipyards or other parties.

In response to requests for documents to cover private placements of obligations without the use of an Indenture Trustee, the agency has developed an even more compact set of documents to cover guarantees of direct debt instead of the necessarily more complicated public bond offerings. These documents eliminate the need for a bond purchase agreement, a trust indenture, bonds, and an authorization agreement. They may be especially useful in attracting smaller applications, but they can be used in larger transactions as well. Depending on the size of the credit agreement and promissory note negotiated by the bank or other direct lender, the documentation needed in these nontrustee transactions could be reduced by about another 40 pages to about 95 pages in their entirety.

By offering the maritime industry and its underwriters and attorneys the opportunity to use these clearer, more streamlined and contemporary financial documents, MARAD will make the Title XI program more attractive to shipowners and shipyards without compromising the interests of the government. By reducing the burden and cost, MARAD will carry out its statutory mission more effectively. MARAD welcomes review of and comments on these documents.

By Order of the Maritime Administrator.

Dated: July 24, 1998.

Joel C. Richard,

Secretary.

[FR Doc. 98–20290 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 392

[FHWA Docket No. FHWA–98–4202]

RIN 2125–AD75

Railroad Grade Crossing Safety

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The Hazardous Materials Transportation Authorization Act of 1994 requires the amendment of the Federal Motor Carrier Safety Regulations (FMCSRs) to prohibit operators of commercial motor vehicles (CMVs) from driving onto a railroad grade crossing unless there is sufficient space to drive completely through the crossing without stopping. The FHWA, therefore, proposes to make this amendment which is intended to reduce the incidence of collisions between trains and CMVs. Comments and information are requested about railroad grade crossings that lack sufficient clearance for some CMVs to be driven completely through the crossing before being required to stop by a stop sign, highway traffic signal, or similar traffic control device. The FHWA intends to have a public meeting in Washington, D.C. during the comment period to discuss this subject matter.

DATES: Data and information concerning railroad-highway crossings from State agencies must be received no later than September 28, 1998. Comments from motor carriers and other interested parties must be received no later than November 27, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to Docket Clerk, U.S. DOT Dockets, Room PL–401, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Lehrman, Office of Motor Carrier Research and Standards, (202) 366–0994, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 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 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.

Background

The purpose of driving rules concerning railroad grade crossings is to prevent the disastrous consequences which result when trains collide with commercial motor vehicles. These consequences are particularly horrendous when the commercial motor vehicle is transporting passengers or hazardous materials. On August 26, 1994, the President signed the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103–311, 108 Stat. 1673)(the Act). Section 112 of the Act requires the Secretary of Transportation to amend the FMCSRs to prohibit the driver of any CMV from driving the motor vehicle onto a highway-railroad grade crossing without having sufficient space to drive completely through the crossing without stopping." In response to the Act, the FHWA proposes to amend § 392.12 of the FMCSRs to implement this statutory prohibition.

Some railroad grade crossings, however, lack sufficient clearance for some CMVs to drive completely through before stopping for a stop sign or other traffic control device. For example, a railroad grade crossing with 12.2 meters (40 feet) between the tracks and a stop sign could not accommodate a tractor-trailer combination which is 18.3 meters (60 feet) long. The FHWA requests that State agencies submit data on the number and locations of such railroad grade crossings within their respective States. In doing so, State agencies should identify the railroad grade crossings where CMVs with the longest legal length under applicable State law could not comply with the proposed rule. The FHWA especially wants to determine whether any such crossings are present on the National Network (NN) where the operation of CMV combinations with two 8.5-meter (28-foot) trailers, or even longer combinations, is permitted. Information about reasonable access routes used by these vehicles in traveling to or from the NN would also be useful. States that allow longer combination vehicles affected by the freeze imposed by the Intermodal Surface Transportation Efficiency Act of 1991 should make particular efforts to determine the effect of this proposed rule on those vehicles, which are prohibited from using routes not in actual, lawful use under State law or regulation on or before June 1, 1991.

The rule, if promulgated, could impact the allowable routing of CMVs. Motor carriers and drivers would have to consider all railroad grade crossings which would be encountered during a trip. If the CMV driver could not use a railroad grade crossing without violating § 392.12, an alternative routing which avoids that crossing would have to be selected. The scenario would be similar where there is little clearance between a railroad grade crossing and a highway traffic signal. Upon approaching such a crossing, a CMV driver could stop short of the tracks and wait until the signal permitted the movement of traffic before attempting to drive through the crossing. Signal timing might have to be adjusted to allow enough time for the CMV to move completely through the crossing, given the time necessary to accelerate from a complete stop and/or the delay caused by the queue of other motor vehicles. The proposed rule would also prohibit the driving of a CMV onto a railroad grade crossing when stopped motor vehicle(s) prevent the driving of the CMV completely through the crossing without stopping. Similarly, changes in the location of traffic signs could alleviate the problems of insufficient clearance.

The FHWA believes that at least some motor carriers are aware of the approximate frequency with which their drivers encounter a railroad grade crossing with a nearby stop sign or other traffic control device that prevents driving completely through the crossing without stopping, or that they could obtain this information without substantial effort. The FHWA requests these motor carriers to assess the impact of the proposed rule upon their operations and advise the agency of this assessment. In addition, the FHWA will consider any recommendation to implement the statutory prohibition that would minimize the difficulties and burdens upon the operations of motor carriers while reducing the likelihood of collisions between trains and CMVs. Physical infrastructure improvements may provide an alternative in some situations. During the public input process to the Secretary's Task Force on Grade Crossing Safety and in deliberations of the Task Force's Technical Work Group, a number of infrastructure improvements were presented. The proposed improvements included physical relocation of the roadway or railroad, construction of escapé or merge lanes, replacement of signs with traffic signals, adjusting signal timing, and interconnecting signals. State and local agencies are requested to comment on the benefits, feasibility and impact of the infrastructure alternatives.

As explained more fully below, the Department of Transportation has worked with States to help improve safety at railroad-highway crossings. One recommendation of the Secretary's Grade Crossing Safety Task Force was that "State and local highway authorities should initiate engineering studies to determine if safety improvements are warranted at grade crossings near highway-highway intersections where there is no interconnection and where there is limited storage distance. Emphasis should be given to locations with STOP sign control at the highway-highway intersection, where storage space is less than required to accommodate the longest legal vehicle permitted to use the highway, and where accident potential is greater due to high volumes of highway and/or rail traffic." In response to this recommendation, States have begun to develop databases that, among other things, indicate where crossings with storage distance problems may exist.

The FHWA requests that State agencies submit data and information concerning railroad-highway crossings within their jurisdiction by September 28, 1998. The FHWA also intends, as part of this rulemaking, to contact its State partners to obtain the latest information available. The FHWA will place the information obtained from the States in the docket. Motor carriers and others interested in this rulemaking are asked to check the information placed in the docket and, by November 27, 1998, to advise the FHWA of the impact they believe the proposal contained in this NPRM will have on motor carrier operations and highway and rail safety generally.

The FHWA believes that as a result of the work done by States in this area over the past several years, much information is available regarding the number and location of railroad-highway crossings that present storage problems, especially for longer commercial motor vehicles. However, if such information is not available or is submitted late to the docket, or if the information reveals an unexpectedly large number of railroad-highway crossings presenting storage problems, the FHWA may extend the period for comment to this docket to enable interested parties to comment to the docket and to provide the FHWA with the information and time necessary to effectively and reasonably implement section 112.

FHWA and the Federal Railroad Administration request comments on

the advisability of making provision for retaining such information within the U.S. DOT/AAR National Highway-Rail Crossing Inventory thus allowing State DOTs the option of keeping such data current and accessible.

In order to fully understand the context in which this NPRM arose, it is necessary to review Department of Transportation efforts to address the issue of railroad grade crossing safety.

DOT Initiatives on Grade Crossing Safety

Shortly after the collision of a commuter train with a school bus in Fox River Grove, Illinois which resulted in seven deaths on October 25, 1995, the Secretary of Transportation established the U.S. DOT Grade Crossing Safety Task Force to look into grade crossing safety. The Task Force was composed of representatives from four modal administrations within the Department: the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), and staff from the Office of Intermodalism. The Task Force was responsible for building upon the Department's 1994 Rail-Highway Crossing Safety Action Plan. The Task Force proceeded to rigorously review the decision making process for designing, constructing, maintaining, and operating railroad-highway grade crossings.

The Task Force solicited information from knowledgeable people in both public and private sectors who had expertise in areas relevant to the inquiry. The National Transportation Safety Board (NTSB), which investigated the Fox River Grove collision, also provided a resource person to assist the Task Force.

On March 1, 1996, the Task Force delivered a report to the Secretary entitled "Accidents That Shouldn't Happen." The report focused on 24 long-term and short-term recommendations broken down into the following problem areas:

a. Interconnected Signals and Storage
b. High Profile Crossings
c. Light-Rail Crossing Issues
d. Special Vehicle Operations and Information
e. Available Storage Space for Motor Vehicles Between Highway-Rail Crossings and Adjacent Highway-Highway Intersections (Storage Space)

The report concluded that "improved highway-rail grade crossing safety depends upon better cooperation, communication, and education among responsible parties if accidents and fatalities are to be reduced significantly." The Task Force proposed to reconvene one year later to evaluate progress in implementation of the recommendations. The report also made a long-term recommendation that the FHWA and the FRA convene a technical working group (TWG), to evaluate current standards and a variety of technical issues. A TWG was immediately formed consisting of government agencies, industry groups, highway and rail associations, safety advocacy groups, and law enforcement associations. The TWG proceeded to evaluate current standards and guidelines regarding a variety of grade crossing technical issues.

The TWG met three times during 1996–1997. It presented 35 recommendations to the Task Force, including the following suggestions for the FHWA on standards/guidelines for vehicle storage and other grade crossing safety issues: the identification of focal points to coordinate railroad safety issues in each State; the initiation of regional State/railroad conferences; and the creation of an advance warning sign for motorists approaching high-profile crossings.

Recommendations regarding the issue of interconnected signals and storage were implemented in guidance issued by FHWA Executive Director, Anthony R. Kane, to all field offices. Mr. Kane urged that FHWA field staff visit their State and local counterparts to ensure that the recommendations were implemented.

As a result, all States with operating railroads informally designated a central focal point for railroad crossing safety issues and provided the name of the contact to the FHWA and/or the FRA.

The Implementation Report of the U.S. DOT Grade Crossing Safety Task Force was submitted to Secretary Slater on June 1, 1997. It documents the close coordination achieved through the cooperative efforts of four operating administrations on the Grade Crossing Safety Task Force (FHWA, FRA, FTA, and NHTSA).

The Department has printed this report as a formal U.S. DOT publication. The FHWA, FRA, and Office of Intermodalism have distributed copies to U.S. DOT headquarters and field offices, State DOTs, State emergency service providers, rail safety organizations (e.g., Operation Lifesaver), and industry associations (e.g., Association of American Railroads).

The Department has distributed this report to all the groups and individuals that participated in the Technical Working Group. The Department urges those agencies, organizations, and other professional societies to take steps to formally endorse this report and implement its recommendations.

The nexus between the actions cited above and the current rulemaking lies in the common goal of reducing the incidence of collisions between trains and commercial motor vehicles. The Department is committed to using the best available resources to targeting safety hazards at railroad crossings throughout the United States. For that reason, this rule proposes that operators of commercial motor vehicles be prohibited from driving onto a railroad grade crossing unless there is sufficient space to drive completely through the crossing without stopping.

Rulemaking Analyses 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 issue 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 analyzed this proposed rule for the purposes of Executive Order 12866 and the Department of Transportation regulatory policies and procedures, and believes that it is a significant regulatory action because of the anticipated substantial public and congressional interest in this action.

The FHWA anticipates that the rule could have an economic impact because it could trigger infrastructure changes to right-of-way or traffic devices or require some motor carriers to develop alternative routing, or operate shorter CMVs to avoid railroad grade crossings where the placement of a stop sign or highway traffic signal would prevent a driver from being able to drive completely through the crossing without stopping. The last alternative would increase the number of CMVs and drivers needed to make the same deliveries because truckload shipments would be split among two or more CMVs. The FHWA will attempt to better

quantify the extent of the economic impact of this proposed rule on the motor carrier industry through the analysis of data requested from State agencies on the number of such railroad grade crossings. Comments on the anticipated costs of complying with this proposed rule, especially any specific data available to States, local communities, or motor carriers, would be helpful. Such costs may include possible infrastructure changes; additional fuel cost attributable to re-routing, the cost of purchasing or leasing shorter CMVs, and the cost of hiring and employing additional drivers. In addition, the FHWA requests comments from motor carriers about whether the rule would make some of their deliveries impossible or cost prohibitive.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed rule upon small entities. Any motor carrier, regardless of its size, is subject to the same driving rules which protect the safety of the motoring public. Because some motor carriers, including small motor carriers, may have to develop alternative routing as a result of this proposed rule, it may have an economic impact on small business entities. The proposed rule may have less of an economic impact upon small motor carriers, as a group, than large motor carriers because small motor carriers, as a group, tend to operate with a lower proportion of long or articulated CMVs than large motor carriers. Small motor carriers, therefore, would be required less often to develop alternative routing. On the other hand, the FHWA is concerned that some small motor carriers may have limited resources with which to make modifications to their operations to comply with this proposed rule.

However, because of a lack of data the FHWA is presently unable to estimate how many crossings exist where a CMV driver would be unable to drive completely through the railroad grade crossing because the positioning of the stop sign or other traffic control device causes the driver to stop on the tracks. If the FHWA is able to obtain better data, the FHWA will further evaluate the degree to which infrastructure changes might have to be made and/or whether small motor carriers might have to develop alternative routing for their CMVs and the extent of the resulting economic impact.

Executive Order 12612 (Federalism Assessment)

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule is not intended to preempt any State law or State regulation. If this rule is adopted as proposed, motor carriers would continue to be subject to State and local traffic laws. In addition, the rule would impose no additional cost or burden upon any State. The rule would not have a significant effect upon the ability of the States to discharge traditional State governmental functions.

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 purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment. An environmental impact statement is, therefore, not required.

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 392

Highway safety, Motor carriers.

Issued on: July 20, 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, part 392 as set forth below:

PART 392—[AMENDED]

1. The authority citation for part 392 is revised to read as follows:

Authority: 49 U.S.C. 31136 and 31502; sec. 112, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.48.

2. Section 392.12 is added to read as follows:

§ 392.12 Railroad grade crossing; sufficient space.

A driver of a commercial motor vehicle shall not drive onto a railroad grade crossing without having sufficient space to drive completely through the crossing without stopping.

[FR Doc. 98–20209 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–22–P

Notices

Federal Register
Vol. 63, No. 146
Thursday, July 30, 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

Agricultural Marketing Service

[FV–97–328N]

United States Standards for Grades of Canned Sweetpotatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA)is revising the United States Standards for Grades of Canned Sweetpotatoes. Specifically, AMS is lowering the recommended minimum drained weight averages of canned sweetpotatoes packed in retail size cans by two percent.

EFFECTIVE DATE: August 31, 1998.

FOR FURTHER INFORMATION CONTACT: Karen L. Kaufman, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, P.O. Box 96456, Washington, D.C. 20090–6456; telephone (202) 720–5021; fax (202) 690–1087; or e-mail Karen__L__Kaufman@usda.gov.

The current United States Standards for Grades of Canned Sweetpotatoes, along with the changes, are available through the above addresses or by accessing the Internet at the following site: www.ams.usda.gov/standards/vegcan.htm.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices . . ." The Agricultural Marketing Service (AMS) is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. The United States Standards for Grades of Canned Sweetpotatoes do not appear in the Code of Federal Regulations but are maintained by the U.S. Department of Agriculture. Copies of official standards are available upon request.

AMS proposed to change the United States Standards for Grades of Canned Sweetpotatoes using the procedures it published in the August 13, 1997, **Federal Register** and that appear in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36). Specifically, AMS proposed to lower the recommended drained weight for sweetpotatoes packed in retail size cans, including No. 10 size cans, by two percent. The drained weight criteria for the No. 300 can, a size pack which has been increasingly utilized in the industry, will also be added. These changes would allow a more equitable marketing environment for domestic sweetpotato processors.

AMS received petitions from the Sweet Potato Council of the United States, and the North Carolina Sweet Potato Commission and three processors requesting the revision of the United States Standards for Grades of Canned Sweetpotatoes.

Changes in the varietal types of sweetpotatoes and the growing conditions in the growing regions have changed significantly since the current Recommended Minimum Drained Weight Averages (RMDWA's) were first proposed 21 years ago. The petitioners contended that a unilateral reduction in drained weight requirements in the grade standard was indicated due to the varietal characteristics of sweetpotatoes currently available for processing. Data supporting their petition was reviewed by AMS.

AMS published a Notice in the January 15, 1998, **Federal Register** (63 FR 2357). AMS received nine comments, all in favor of the proposed changes to the standard. Three of these comments requested additional changes to be made to the standard that are unrelated to the proposed change. These will be addressed at a later date after receiving more information from the requestors.

Accordingly, based on all the information we have reviewed, AMS is lowering the recommended minimum drained weight for sweetpotatoes packed in retail size cans, including No. 10 size cans, by two percent, and has added the recommended drained weight criteria for the No. 300 can in the grade standards. The No. 300 size can is being added because of the increased usage of this can size. As the canning industry has been replacing production of the No. 303 container size with the No. 300 can, it is appropriate to include the RMDWA for No. 300 cans along with the other drained weight changes in the standard.

This change will become effective 30 days after date of publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: July 23, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–20322 Filed 7–29–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lolo National Forest Big Game Winter Range Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service has identified 21 big game winter ranges on the Lolo National Forest that are in a downward trend due to the invasion of noxious weeds and encroaching conifers. The Forest Service will evaluate these winter ranges and analyze various management activities to reduce the spread and density of noxious weeds and allow native and desirable vegetation to reestablish itself and regain vigor. The purpose and need for this project is for the Forest Service to restore the condition of certain high value winter ranges across the Lolo National Forest over the next five to ten years. The proposed actions being considered to achieve the purpose and need include a combination of: burning, cutting small trees and leaving them on site, biological week management, other physical weed controls, and applying herbicides by ground equipment and helicopter. Due to the steep topography on the majority of these sites, we are considering the aerial application of herbicides using a helicopter. The total

area under consideration encompasses approximately 19,300 acres.

DATES: Comments concerning the scope of the analysis should be received in writing on or before September 14, 1998.

ADDRESSES: Send written comments to Forest Supervisor, Lolo National Forest, Building 24A, Fort Missoula, MT 59804.

FOR FURTHER INFORMATION CONTACT: Andy Kulla, Resource Assistant, Missoula Ranger District, (406) 329–3962.

SUPPLEMENTARY INFORMATION: These management activities would be administered by the Lolo National Forest in Missoula, Mineral, Sanders, and Granite Counties, Montana. This EIS will comply with the Forest Plan (April 1986) which provides the overall guidance to achieve the desired future condition for winter ranges and the Final Environmental Impact Statement for Noxious Weed Management (March, 1991) amendment to the Lolo Forest Plan.

The process used in preparing the Draft EIS will include: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; (3) elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis; (4) identification of reasonable alternatives; (5) identification of potential environmental effects of the alternatives; and (6) determination of potential cooperating agencies and task assignments.

To date we have identified the following issues:

(1) On these weed infested winter ranges, what is the existing compared to the potential condition?

(2) How can we coordinate our activities with neighboring land owners?

(3) How will herbicide applications affect noxious weed communities, non-target native plants, winter range forage, wildlife, fish populations, and human health?

(4) What measures will be needed to prevent the reinvasion of weeds if these sites are treated?

The winter ranges we plan to look at in this analysis are:

Ranger district	Project area	Maximum treatment acres(1)	Township, range
Missoula	O'Brien Creek	1,648	T13N, R20W & T13N, R21W.
	Northside 1	649	T14 N, R20W & T15N, R20W.
	Kitchen Gulch	541	T11N, R16W & T11N, R17W.
	Babcock Complex	3,313	T10N, R16W & T11N, R16W.
	Schwartz/Greenough	2,988	T12N, R17W & T12N, R18W.
	Pattee Blue	1,059	T12N, R19W & T13N, R20W.
Ninemile	Madison Gulch	390	T14N, R22W & T14N, R23W.
	Eddy Creek	125	T15N, R22W.
	French Gulch	347	T14N, R22W & T15N, R22W.
Plains	Prospect	1,480	T21N, R30W.
	Wee Teepee	268	T21N, R27W.
	Cougar Silcox	1,404	T21&22N, R29W.
	Cutoff	930	T18N, R26W.
	Knowles Creek	677	T19N, R24W.
	Henry Creek	222	T20N, R25W.
Seeley Lake	Salmon Lake	641	T15N, R14W.
Superior	Bald Hill	638	T17n, R27W.
	Mayo Gulch	266	T18N, R28W.
	Murphy Creek	450	T17N, R27W.
	Blacktail	1,184	T17N, R26W.
	Little Baldy	66	T17N, R26W.
Totals	21 Project areas	19,286	

[1] These are the maximum treatment acres. Actual treatment acres may be less.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. To be most helpful, comments should be sent to the agency within 45 days from the date of this publication in the **Federal Register**.

The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Objectives, Standards and Guidelines, and Management Area direction. The potential affected area is within the following Management Areas:

Management Area 6: Research Natural Areas.

Management Area 9: Consists of lands that receive concentrated public use. Goals for these lands are to provide a wide variety of dispersed recreation opportunities and provide for the management of other resources in a manner consistent with the recreation objectives.

Management Area 11: Consists of large, roadless blocks of land distinguished primarily by their natural environmental character. Goals for these lands are to provide a wide variety of dispersed recreation activities and to provide for old-growth dependent species.

Management Area 16: Goals for these lands are to provide for healthy stands of timber and provide for dispersed recreation opportunities, wildlife habitat, and livestock use.

Management Area 17: This MA is similar to 16 except that slopes are generally over 60% and are best managed from an economic perspective with a low road density.

Management Area 18: Consists of lands designated as important deer, elk, and bighorn sheep winter range that will be managed to attain a proper balance of cover and forage for big game through regulated timber harvest. Goals for these lands are to optimize forage production and to maintain healthy stands of timber while considering the needs of big game.

Management Area 19: Consists of lands designated as important winter range for deer and elk. The management goal is to optimize this winter range and to provide for dispersed recreation.

Management Area 21: Consists of timber lands designated important for

old-growth species. Goals for these lands are to manage for viable populations of old-growth-dependent wildlife species.

Management Area 22: Consists of timbered lands below 5,000 feet on south-facing slopes with a high visual sensitivity. These lands are important winter ranges for deer, elk, and bighorn sheep. Goals for these lands are to provide for optimum cover:forage ratios for big game while achieving visual quality objectives.

Management Area 23: Consists of timber lands on south-facing slopes that are visible from major roads and other high use areas. These lands are important winter ranges. The management goals allow small changes to the visual character of the lands while providing optimal cover:forage ratios for big game and maintaining healthy stands of timber.

Management Area 24: Consists of lands of high visual sensitivity and which are available for timber management, dispersed recreation use, wildlife habitat, and livestock use.

Management Area 25: Consists of lands of visual sensitivity and which are available for timber management. The management goals allow for timber management while achieving visual quality objectives and providing for dispersed recreation opportunities, wildlife habitat, and livestock use.

A range of alternatives will be considered. One of these will be the "no-action" alternative, which would allow no vegetation manipulation or noxious weed treatment to occur under this analysis. Other alternatives will examine various combinations of weed treatment (including aerial application of herbicides) and vegetative manipulation (including cutting of smaller diameter trees on the site). The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will include site specific mitigation measures and discussions about their effectiveness.

Public participation will be important during the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision; however, two periods of time are identified for the receipt of comments on the analysis. The first of these periods occurs during the next 45 days and the second period is during the review of the Draft EIS.

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

The draft environmental impact statement (DEIS) is expected to be available for public review by December of 1999. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by June of 2000. The Forest Service will respond to the comments received in the FEIS. The Forest Supervisor, who is the responsible official for this EIS, will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage because of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.) (Authority: 40 CFR 1501.7)

I am the responsible official for the environmental impact statement. My address is: Lolo National Forest, Building 24A Fort Missoula, Missoula, MT 59804.

Dated: July 17, 1998.

Barbara K. Beckes,

Acting Forest Supervisor, Lolo National Forest.

[FR Doc. 98–20405 Filed 7–29–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Committee of Scientists will hold a public teleconference call on August 17, 1998. The teleconference call will begin at 11:00 a.m. and end at 2:00 p.m. (eastern daylight time). The purpose of the telephone conference call is for the Committee of Scientists to continue discussion of its report and recommendations to the Secretary of Agriculture and the Chief of the Forest Service. The public is invited to attend these teleconference calls and may be provided an opportunity to comment on the Committee of Scientists' deliberations during the teleconference, only at the request of the Committee.

DATES: The teleconference call will be held on Monday, August 17, 1998, from 11:00 a.m. to 2:00 p.m. (eastern daylight time).

ADDRESSES: The teleconference will be held at the USDA Forest Service headquarters, Auditor's Building, 201 14th Street, SW, Washington, DC in the Graves Conference Room (3rd Floor) and at all Regional Offices of the Forest Service, which are listed in the table under Supplementary Information.

Written comments on improving land and resource management planning may be sent to the Committee of Scientists, P.O. Box 2140, Corvallis, OR 97339. Also, the Committee may be accessed via the Internet at www.cof.orst.edu./org/scicomm/.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the

teleconferences, contact Bob Cunningham, Designated Federal Official to the Committee of Scientists, by telephone (202) 205–1523.

SUPPLEMENTARY INFORMATION: The public may attend the teleconference at the following field locations:

USDA FOREST SERVICE REGIONAL OFFICE LOCATIONS

Region 1, Northern Region	Federal Building, 200 E Broadway	Missoula, MT.
Region 2, Rocky Mountain Region	740 Sims St	Golden, CO.
Region 3, Southwestern Region	Federal Building, 517 Gold Ave., SW	Albuquerque, NM.
Region 4, Intermountain Region	Federal Building, 325 25th St	Ogden, UT.
Region 5, Pacific Southwest Region	630 Sansome St	San Francisco, CA.
Region 6, Pacific Northwest Region	333 SW 1st Ave	Portland, OR.
Region 8, Southern Region	1720 Peachtree Rd. NW	Atlanta, GA.
Region 9, Eastern Region	310 W. Wisconsin Ave., Room 500	Milwaukee, WI.
Region 10, Alaska Region (office will open early)	Federal Office Building, 709 W. 9th St	Juneau, AK.

The Committee of Scientists is chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691; August 15, 1997). Notice of the names of the appointed Committee members was published December 16, 1997 (62 FR 65795).

Dated: July 27, 1998.

Robert C. Joslin,

Deputy Chief, National Forest System.

[FR Doc. 98–20384 Filed 7–29–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Holly Hill Watershed, Orangeburg County, SC

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)© of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environment impact statement is not being prepared for the Holly Hill Watershed, Orangeburg County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, state conservationist, Natural Resources Conservation Service, 1835 Assembly Street, room 950, Columbia, South Carolina 29201, (803) 765–5681.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings Mark W. Berkland, state conservationist, has determined that the preparation and review of an environmental impact are not needed for this project.

The project purposes are to reduce flooding and improve flow conditions on 9.0 miles of previously modified and/or new channels to facilitate the removal of stormwater in the Holly Hill area.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Luke Nance.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Mark W. Berkland,

State Conservationist.

[FR Doc. 98–20408 Filed 7–29–98; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:00 p.m. on August 15, 1998, at the Forest Villa, 3645 Lee Circle, Prescott, Arizona 86301. The purpose of the meeting is to have a final discussion on the Committee's report on the Arizona State Department of Transportation, and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 21, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–20318 Filed 7–29–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–805]

Amended Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final determination of sales at less than fair value.

SUMMARY: On March 12, 1998, the Court of International Trade vacated the amended final rate for respondent Fabrique de Fer de Charleroi S.A. and

affirmed the margin calculated for this company in the final determination of sales at less than fair value in certain cut-to-length carbon steel plate from Belgium. As there is now a final and conclusive court decision in this action, we are amending our final determination of sales at less than fair value and we will instruct the Customs Service to change cash deposit rates, where appropriate.

EFFECTIVE DATE: July 30, 1998.

FOR FURTHER INFORMATION CONTACT: Sanjay Mullick or Kris Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, D.C. 20230; telephone: (202) 482–0588 or 482–3813, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR part 353 (April 1, 1997).

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1993, the Department published the final determination of sales at less than fair value (LTFV) in the investigation of certain cut-to-length carbon steel plate from Belgium.[1] The antidumping duty rate calculated for respondent Fabrique de Fer de Charleroi S.A. (FFC) was 3.65 percent.

On August 19, 1993, the Department published an amended final determination, in which we corrected a ministerial error by recalculating the profit rate used in determining FFC's constructed value (CV).[2] The recalculation included profit on home market sales of 'Z-type' steel, which is within the general class or kind of merchandise, but which was not sold in the United States during the period of investigation and was not used for matching purposes. The amended final determination rate for FFC was 13.31 percent.

On January 16, 1998, the Court of International Trade (CIT) issued a remand concerning this segment of the proceeding, in which the CIT found the Department's calculation of the CV profit rate for FFC in the amended final determination to be erroneous.[3] The CIT agreed with the Department that section 773(e)(1) of the Act requires the calculation of CV profit based on sales of the "general class or kind" of merchandise, which includes Z-type steel.[4] However, the Court held that, in the Department's amended determination, the profits on Z-type sales were "extrapolated out of realistic and rational proportion."[5] Accordingly, the CIT issued the following instructions:

> The ITA may have 45 days from the date hereof to consider and report whether, in the exercise of its sound discretion, factoring plaintiff's (FFC) profit on home-market sales of Z-type product in a manner more reflective of the record leads to a weighted-average margin percentage greater than the 3.65 reported at 58 Fed. Reg. 37,091 for FFC. If the court does not receive an affirmative report to this effect by the end of this period, that original margin will be affirmed.[6]

The Department did not issue an affirmative report to the Court. On March 12, 1998, the Court vacated the amended final rate for FFC (13.31 percent) and affirmed the margin calculated for this company in the final determination (3.65 percent).[7] The period to appeal has expired and no appeal was filed. Therefore, as there is now a final and conclusive court decision in this action, we are amending our final determination of sales at LTFV.

Amendment to Final Determination

Pursuant to section 516A(e) of the Act, we are now amending the final determination of sales at LTFV of certain cut-to-length carbon steel plate from Belgium with respect to exports by FFC. In addition, as a result of the change in FFC's margin, we are recalculating the "All-Others" rate. The revised weighted-average percentage dumping margins are as follows:

Manufacturer/exporter	Percentage
Fabrique de Fer de Charleroi S.A.	3.65
All Others	6.75

The above rate listed for FFC will not affect that company's deposit or assessment rates for any segment of this proceeding. Since publication of the first amended LTFV final determination and order, the Department has completed, pursuant to section 751 of the Act, an administrative review of the antidumping order covering FFC's entries for the period August 1, 1995 through July 31, 1996.[8] That review established FFC's assessment rates for that period, and also established its current weighted-average deposit rate. Any entries made prior to that review period were subject to automatic liquidation pursuant to 19 C.F.R. 353.22 (e). However, the Department will instruct the Customs Service to change the cash deposit requirements for producers/exporters subject to the "All-Others" rate to 6.75 percent.[9]

This notice is published in accordance with section 735(d) of the Act and 19 CFR 353.21.

Dated: July 23, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–20416 Filed 7–29–98; 8:45 am]

BILLING CODE 3510–DS–P

[1] *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 37083 (July 9, 1993).

[2] *Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 44164 (August 19, 1993).

[3] *Fabrique de Fer de Charleroi S.A.* v. *United States*, Slip Op. 98–4 (CIT January 16, 1998) ("Fabrique").

[4] *Fabrique* at 8–9.

[5] *Id.* at 12.

[6] *Id.* at 13.

[7] *Fabrique de Fer de Charleroi S.A.* v. *United States*, Slip Op. 98–26 (CIT March 12, 1998).

[8] *Certain Cut-to-Length Carbon Steel Plate from Belgium: Final Results of Antidumping Duty Administrative Review*, 63 FR 2959 (January 20, 1998).

[9] The current "All-Others" rate is 6.84 percent.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Fresh Atlantic Salmon From Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 30, 1998.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–3813, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of

Commerce (the Department) regulations refer to the regulations last codified at 19 CFR part 353 (April 1, 1997).

Amended Final Determination

On June 1, 1998, in accordance with section 735(a) of the Act, the Department made a final determination that fresh Atlantic salmon from Chile is being, or is likely to be, sold in the United States at less than fair value. *See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411 (June 9, 1998) (final determination). On June 9, 1998, the Coalition for Fair Atlantic Salmon Trade (the petitioners) and the Association of Salmon and Trout Producers of Chile (the respondents) filed timely allegations that the Department had made ministerial errors in its final determination. On June 16, 1998, the petitioners and respondents each filed comments addressing the other party's ministerial error allegations.

We have determined, in accordance with 19 CFR 353.28, that certain ministerial errors were made in the final determination. For a detailed discussion of the Department's analysis of the parties' allegations of ministerial errors, *see* Memorandum to Richard W. Moreland from the Team, Regarding Clerical Error Allegations, dated July 1, 1998; *see also* Memorandum from Gabriel Adler to the File, dated July 24, 1998.

Therefore, in accordance with 19 CFR 353.28(c), we are amending the final determination of the antidumping duty investigation of fresh Atlantic salmon from Chile. The revised final weighted-average dumping margins are as follows:

Exporter/Manufacturer	Original margin	Revised margin
Aguas Claras	8.27	5.44
Camanchaca	0.21	0.16
Eicosal	10.91	10.69
Mares Australes	2.24	2.23
Marine Harvest	1.36	1.36
All Others	5.19	4.57

Scope of Order

The scope of this order covers fresh, farmed Atlantic salmon, whether imported "dressed" or cut. Atlantic salmon is the species Salmo salar, in the genus Salmo of the family salmoninae. *Dressed* Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the investigation. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the "pin bones" in or out.

Excluded from the scope are (1) fresh Atlantic salmon that is "not farmed" (*i.e.*, wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this order is classifiable as item numbers 0302.12.0003 and 0304.10.4093 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Antidumping Duty Order

On July 22, 1998, pursuant to section 735(b)(1)(A)(i) of the Act, the International Trade Commission (ITC) notified the Department of its final determination that the fresh Atlantic salmon industry in the United States is materially injured or threatened by material injury by reason of imports of the subject merchandise from Chile.

In accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all entries of fresh Atlantic salmon from Chile.

For purposes of determining which entries are subject to assessment of duties, the Department must consider whether the ITC's determination is based on material injury or the threat of material injury. Per section 736(b)(2) of the Act, if the ITC's determination is threat-based, and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination, then the Department will assess duties on entries made on or after the date of the publication of the ITC's notice of final determination, and will refund any bonds or deposits of estimated antidumping duties posted since the Department's preliminary antidumping determination.

In this case, the ITC's notification did not indicate whether its determination should be considered a material injury determination or a threat determination. The vote by the three ITC Commissioners was as follows: one vote finding material injury, one vote finding threat of injury (without an accompanying "but for" injury finding), and one vote finding neither material injury nor threat of injury. The Department must therefore interpret whether section 736(b)(2) of the Act is triggered by such votes.

In making this determination, the Department has been guided by applicable judicial precedent. *See MBL (USA) Corp.* v. *United States*, 787 F. Supp. 202 (CIT 1992). According to the CIT's ruling in that case, inherent in non-material injury votes (*i.e.*, "negative" votes and "threat" votes) "is the realization that antidumping duties will not be imposed, just as affirmative views can signify imposition of such duties from the date of a preliminary less-than-fair-value determination rather than from the date of a final decision on material injury." 787 F. Supp. at 208.

Therefore, in accordance with *MBL*, the Department has determined that section 736(b)(2) of the Act is applicable to this case. Therefore, the Department will direct the Customs Service to assess, upon further advice, antidumping duties on all unliquidated entries of fresh Atlantic salmon from Chile entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC published its final determination of threat of material injury in the **Federal Register**, and to terminate the suspension of liquidation for entries of fresh Atlantic salmon from Chile, entered, or withdrawn from warehouse, prior to that date.

On or after the date of publication of this notice in the **Federal Register**, the Customs Service will require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the corrected weighted-average ad valorem dumping margins noted above.

This notice constitutes the antidumping duty order with respect to fresh Atlantic salmon from Chile, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, at Room B–099 of the Main Commerce Building, for an up-to-date list of antidumping duty orders currently in effect.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or

destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply with the regulations and terms of an APO is subject to sanction.

This order is published pursuant to section 736(a) of the Act and 19 CFR 353.21.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–20518 Filed 7–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.072198A]

ICCAT Advisory Committee; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT), in conjunction with the Highly Migratory Species (HMS) Management Division of NMFS, announces the schedule of regional public meetings to be held this fall.

DATES: The meetings are scheduled from August to November 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the meetings.

ADDRESSES: The meetings will be held in South Carolina, Florida, U.S. Virgin Islands, Maryland, Massachusetts, New York. See **SUPPLEMENTARY INFORMATION** for specific addresses of the meetings.

FOR FURTHER INFORMATION CONTACT: Jonathon Krieger (international issues) 301–713-2276 or Rachel Husted (domestic issues) 301–713–2347.

SUPPLEMENTARY INFORMATION: The meetings are scheduled as follows:

Thursday, August 13, 1998, 7 pm to 10 pm - Marine Research Institute Auditorium, 217 Fort Johnson Road, Charleston, South Carolina 29412;

Friday, August 14, 1998, 7 pm to 10 pm - Best Western Bayside Inn, 711 West Beach Drive, Panama City, Florida 32401;

Thursday, September 3, 1998, 7 pm to 10 pm - Buccaneer Hotel, Estate Shoyes, St. Croix, Virgin Islands 00824;

Tuesday, October 6, 1998, 7 pm to 10 pm - Holiday Inn, 2625 North Salisbury Boulevard, Salisbury, Maryland 21801;

Wednesday, October 7, 1998, 7 pm to 10 pm - Cape Ann Marina Resort, 75 Essex Avenue, Gloucester, Massachusetts 01930.

Thursday, October 8, 1998, 7 pm to 10 pm - Crown Plaza La Guardia, 104-04 Ditmars Boulevard, East Elmhurst, New York 11369;

Additionally, the annual fall meeting of the Advisory Committee will be held in Silver Spring, Maryland, November 1–3, 1998. There will be an opportunity for public comment on international issues on Sunday, November 1, from 2–6 p.m.

The meeting location is the Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910. Domestic issues will not be discussed at this meeting.

The following topics may be presented to the public for discussion at the regional meetings:

International Issues

1. Background on ICCAT
2. Information on the Advisory Committee and Commissioners
3. Status of Highly Migratory Species Managed by ICCAT
4. Topics for the 1998 ICCAT Annual Meeting

Domestic Issues

1. HMS Rulemaking Actions
2. HMS Activities Under the Magnuson-Stevens Fishery Conservation and Management Act
3. Regional Concerns/Issues

Representatives from the Advisory Committee to the U.S. section to ICCAT and NMFS will be in attendance at the regional meetings. There will be an opportunity for public comment on each issue. The length of the meetings may be adjusted based on the progress of the discussions.

Special Accommodation

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jonathon Krieger at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: July 24, 1998.

Richard W. Surdi,

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

[FR Doc. 98–20392 Filed 7-29-98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072398C]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Coast Weakfish Fishery; Exempted Fishing Permits (EFPs)

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

ACTION: Applications for Exempted Fishing Permits (EFPs); request for comments.

SUMMARY: NMFS announces the receipt of four applications for EFPs. If granted, these EFPs would authorize a Flynet Characterization Study to be conducted by the North Carolina Division of Marine Fisheries in a closed area south of Cape Hatteras. The four participating flynet vessels, each with its own EFP and observer aboard, would conduct up to 12 trips over a 4-month period for a total of up to 64 trips.

DATES: Written comments on the applications must be received on or before August 14, 1998.

ADDRESSES: Send comments to Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries (Fx2), NMFS, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910. The applications, related documents and copies of the regulations under which EFPs are subject may also be requested from this address.

FOR FURTHER INFORMATION CONTACT: Thomas Meyer, 301–427–2014; FAX: 301–427–2014.

SUPPLEMENTARY INFORMATION: These EFPs are requested under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. 5101 *et seq.*, and regulations at 50 CFR 697.6 concerning the acquisition of information and data activities that are otherwise prohibited by the regulations in this part. Since regulations under the Atlantic Coastal Act must be consistent with the national standards set forth in section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, EFPs requested under the Atlantic Coastal Act need to be addressed in the same manner as EFPs requested under the Magnuson-Stevens Act, and regulations at 50 CFR 600.745 concerning scientific research activity, exempted fishing, and exempted educational activity.

Currently, weakfish regulations at 50 CFR 697.7(a)(5) prohibit any person from fishing with a flynet in the Exclusive Economic Zone (EEZ) off North Carolina in a closed area as defined by this regulation. This area was closed to flynetters in order to reduce the harvest of the recovering weakfish stock. In addition, 50 CFR 697.7(a)(3) prohibited the coastwide fishing for weakfish in the EEZ with a minimum mesh size less than 3 1/4–inch (8.3 cm) square stretch mesh (as measured between the centers of opposite knots when stretched taut) or 3 3/4–inch (9.5 cm) diamond stretch mesh for trawls.

The North Carolina Division of Marine Fisheries (NCDMF) proposes to conduct a flynet characterization study using four flynet vessels with a 3 3/4–inch (9.5 cm) diamond stretch mesh trawl to collect information on the size and species composition of finfish caught in a closed area using large mesh flynets (3 3/4–inch (9.5 cm) diamond stretch mesh) as defined in Atlantic States Marine Fisheries Commission's (ASMFC) Weakfish Plan Amendment 3 (Amendment 3), and at 50 CFR 697.7(a)(3). The NCDMF will assess the effects of increasing the tail bag mesh size restrictions on the North Carolina flynet fishery that operates south of Cape Hatteras. This information will permit North Carolina, ASMFC, and NMFS to properly assess the impacts of potentially reopening the closed area to flynets with larger minimum-mesh sizes after the management goals of Amendment 3 have been met. In addition, this study will also determine if weakfish can avoid larger-mesh flynets in the closed area.

The flynet fishery that historically operated south of Cape Hatteras was a small-mesh fishery that was not constrained either by minimum size limits on weakfish or minimum mesh sizes. Therefore, the impact of the larger mesh trawl tailbag restrictions (3 3/4–inch (9.5 cm) diamond stretch mesh) currently in place at 50 CFR 697.7(a)(3) for the weakfish fishery coastwide has never been tested in the closed area south of Cape Hatteras.

Based on historical data, the finfish species that could be harvested include weakfish, Atlantic croaker, kingfish, spot, butterfish, and bluefish. All finfish caught under these permits will be retained and landed in accordance with the Flynet characterization study. Legal-sized finfish caught may be kept by the fishermen and sold after all necessary data have been secured by representatives of the NCDMF. No undersized finfish of any species may be sold under the EFP. The NCDMF will supervise the disposition of all undersized finfish. All exempted fishing trips must take place with an observer aboard the vessel, one of which has been identified by NCDMF.

Historical information on the North Carolina flynet fishery indicates that interaction with marine mammals and/or endangered species is rare or non-existent. Any information gathered with regard to the above interactions will be made available to NMFS.

Each EFP would be valid from the period December 1, 1998, to April 1, 1999, and would apply to the use of a flynet by the permitted vessel in the closed area south of Cape Hatteras for a maximum of 12 trips during the effective dates of the permit. NCDMF limited the number of requests for participation in this study to one per fish company with the owners determining which vessel will fish. The EFP applications were submitted by the owners of the Luther Smith and Sons Seafood, Moon Tillett Fish Company, Williams Seafood, and Susan Rose Inc. The NCDMF would oversee the study.

Based on a preliminary review, NMFS finds that these applications warrant further consideration. A final decision on issuance of EFPs will depend on the submission of all required information, NMFS' review of public comments received on the applications, conclusions of any environmental analyses conducted pursuant to the National Environmental Policy Act, and on any consultations with appropriate Regional Fishery Management Councils, the ASMFC, states, or Federal agencies.

Authority: 16 U.S.C. 5101 *et seq.*

Dated: July 24, 1998.

Richard W. Surdi,

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

[FR Doc. 98–20391 Filed 7–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.072098E]

Marine Mammals; File No. 875–1401

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 875–1401, issued to Dr. Christopher W. Clark, Bioacoustics Research Program, Laboratory of Ornithology, Cornell University, Ithaca, New York 14850, was amended.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (562/980–4001); and

Protected Resources Program Manager, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The Permit has been amended to reflect an expiration date of July 20, 1998.

Issuance of this amended permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 23, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–20390 Filed 7-29-98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Correct Effective Date.

SUMMARY: The Department of Defense is amending the effective date of an alteration to a system of records notice

published on July 14, 1998, at 63 FR 37860. The **Effective Date:** of the alteration should read August 14, 1998. This amendment brings the notice into compliance with the 30 day statutory public comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr., at (703) 607-2943.

SUPPLEMENTARY INFORMATION: The **Effective Date:** for the system of records notice published on July 14, 1998, at 63 FR 37860. The **Effective Date:** should read August 14, 1998. This amendment brings the notice into compliance with the 30 day statutory public comment period.

Dated: July 20, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–19786 Filed 7–29–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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: Interested persons are invited to submit comments on or before September 28, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

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.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Regular.

Title: Regulations for Federal Perkins Loan Program, Due Diligence, Reporting/Disclosure and Recordkeeping—Subpart C.

Frequency: Annually.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 2,796.530.

Burden Hours: 80,431.

Abstract: Institutions of higher education make student loans, information is necessary in order to monitor loan borrowers and documents are needed that can be used as proof in case of legal implications or proceedings.

Office of Postsecondary Education

Type of Review: Regular.

Title: Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant Programs.

Frequency: Annually.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 17,188.

Burden Hours: 12,719.

Abstract: Camp-based program records are maintained by the institutions that administer the program. Records are necessary to ensure that the institution has followed regulatory procedures in administering these programs and to justify the payments of funds by Department of Education.

[FR Doc. 98–20320 Filed 7–29–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 31, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested

Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Regular.
Title: Study of the Outcomes of Diversity in Higher Education.
Frequency: One-time only.
Affected Public: Businesses or other for-profits, Not-for-profit institutions.
Reporting and Recordkeeping Hour-Burden:
Responses: 12,475.
Burden Hours: 2,782.
Abstract: This study focuses on outcomes of diversity in higher education for students and faculty; it also examines the effect of diversity on institutional policies and programs. This is a three-year, 10-institution case study effort that includes interviews with administrators and faculty and focus group discussions with students, as well as a survey of samples of faculty and students.

[FR Doc. 98–20319 Filed 7–29–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–189]

Application to Export Electric Energy; PanCanadian Energy Services Inc.

AGENCY: Office of Fossil Energy, DOE.

AGENCY: Notice of Application.

SUMMARY: PanCanadian Energy Services Inc. (PCES) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 31, 1998.

ADDRESS: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On July 20, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from PCES, a power marketer and wholly-owned subsidiary of PanCanadian Energy Inc., to transmit electric energy from the United States to Canada. Specifically, PCES proposes to transmit to Canada electric energy purchased from U.S. electric utilities and Federal power marketing agencies.

PCES proposes to arrange for the delivery of electric energy to Canada over transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Bradfield Electric, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by PCES, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the PCES application to export electric energy to Canada should be clearly marked with Docket EA–189. Additional copies are to be filed directly with Lee A. Alexander, Dickstein Shapiro Morin & Oshinsky LLP, Washington, DC 20037 *AND* Patricia A. McCunn Miller, PanCanadian Petroleum Limited, 125 9th Avenue, N.W., Calgary, Alberta T2P 2S5, Canada.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page select "Regulatory" and "Electricity" from the options menus.

Issued in Washington, DC on July 23, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 98–20376 Filed 7–29–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board

AGENCY: Department of Energy.
ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB)

DATES: Monday, August 17, 1998: 8:30 a.m.—5:00 p.m.; Tuesday, August 18, 1998: 8:30 a.m.—5:00 p.m.; Wednesday, August 19, 1998: 7:30 a.m.—6:00 p.m. (An optional tour of the radioactive waste management site on the Nevada Test Site)

ADDRESS: Monday & Tuesday, August 17 & 18, 1998: University of Nevada—Las

Vegas, 4505 South Maryland Parkway, Las Vegas, Nevada 89154.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, Public Participation Manager, U.S. Department of Energy (DOE), Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the EM SSAB is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Purpose of the Meeting: The Nevada Test Site Community Advisory Board is hosting the EM SSAB Low-Level Waste Seminar in Las Vegas, Nevada, to support the Department of Energy's desire to have more intersite discussion between the SSAB site boards and the Department, and to fill a need for stakeholder input into the Low-Level Waste Record of Decision.

Tentative Agenda for the EM SSAB Low-Level Waste Seminar

Monday, August 17, 1998:

—Welcome
—Orientation
—DOE HQ Overview on Low-Level Waste Configuration within the DOE Complex
—Site-Specific Overview of Low-Level Waste Configurations
—Overview of the DOE Decisionmaking Process
—Transportation Considerations
—Small Group Discussions on Concerns Related to Disposition

Tuesday, August 18, 1998:

—Presentations by Participants of the Previous Day's Small Group Discussions
—Site-Specific Reactions and Observations
—Next Steps
—Session Evaluation

Wednesday, August 19, 1998:

—An optional tour of the Nevada Test Site's waste management sites will be conducted. Anyone interested in attending the tour must contact Kevin Rohrer by July 31, 1998, to arrange for site access and badging information.

Copies of the final agenda will be available upon request 10 days prior to the seminar by contacting Kevin Rohrer and will also be available at the seminar.

Public Participation: The meeting is open to the public. Opportunites for public comment will be provided at close of each day. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this seminar, including public comments, will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on July 24, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–20374 Filed 7–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATE: Wednesday, August 26, 1998: 5:30 p.m.—9:00 p.m. (Mountain Daylight Time).

ADDRESS: Los Griegos Center For Family And Community Services, 1321 Candelaria Road NW, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30 p.m.—Call to Order/Roll Call
5:35 p.m.—Public Comments
5:45 p.m.—Approval of Agenda
5:48 p.m.—Approval of 06/17/98 Board Meeting Minutes
5:53 p.m.—Approval of 7/15/98 Work Plan Session Minutes
5:58 p.m.—Chairperson's Report—Hubert W. Joy
6:03 p.m.—DOE Quarterly Meeting
7:03 p.m.—FY '99 Work Plan—Report & Vote—Hubert W. Joy, Chair & Task Leader
7:33 p.m.—Break
7:43 p.m.—Eco-Risk Assessment—Report—Yugal K. Behl, Task Leader
8:13 p.m.—Nominations for Officers—Hubert W. Joy, Chair
8:23 p.m.—Intersite Workshop—San Diego—Report—Yugal K. Behl
8:33 p.m.—Membership Announcments—Hubert W. Joy, Chair
8:43 p.m.—New/Other Business
8:53 p.m.—Public Comments
8:58 p.m.—Announcement of Next Meeting—South Broadway Cultural Center
9:00 p.m.—Adjourn

A final agenda will be available at the meeting Wednesday, August 26.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on July 24, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–20375 Filed 7–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities; Proposed collection; comment request concerning the proposed revision and extension of the coal data collections included in the Coal Program Package.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed revision and extension of the surveys included in the Coal Program Package. The surveys covered by this action are the Form EIA–1, "Weekly Coal Monitoring Report—General Industries and Blast Furnaces" (Standby); Form EIA–3, "Quarterly Coal Consumption Report—Manufacturing Plants;" Form EIA–3A, "Annual Coal Quality Report—Manufacturing Plants;" Form EIA–4, "Weekly Coal Monitoring Report—Coke Plants" (Standby); Form EIA–5, "Quarterly Coal Consumption Report—Coke Plants;" Form EIA–5A, "Annual Coal Quality Report—Coke Plants;" Form EIA–6, "Coal Distribution Report;" Form EIA–6 (Schedule Q), "Quarterly Coal Report" (Standby); Form EIA–7A, "Coal Production Report;" and Form EIA–20, "Weekly Telephone Survey of Coal Burning Utilities" (Standby). The Standby forms are designed to be utilized under certain conditions.

DATES: Written comments must be submitted within 60 days of the publication of this notice. 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 Thomas Murphy, Coal, Nuclear, and Renewables Division, EI–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Mr. Murphy can be reached at TMURPHY@EIA.DOE.GOV (Internet e-mail), 202–426–1151 (voice), or 202–426–1311 (facsimile).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Thomas Murphy at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to prepare data requests in the desired format, minimize reporting burden, develop clearly understandable reporting forms, and assess the impact of collection requirements on respondents. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, Title 44, U.S.C. Chapter 35).

The coal surveys included in the Coal Program Package collect information on coal production, distribution, receipts, consumption, quality, stocks, and prices. This information is used to support public policy analyses of the coal industry and is published in various EIA publications, including the *Coal Industry Annual*, the *Annual Energy Review*, and the *Quarterly Coal Report*. Respondents to the surveys include coal producers, coal distributors, and coal consumers.

II. Current Actions

The EIA will request a 3-year extension of the collection authority for each of the above-referenced surveys. Additionally, the EIA proposes the following changes affecting the Form EIA–6 (Schedule Q), the Form EIA–7A, and Form EIA–20.

Form EIA–6 (Schedule Q) and Form EIA–7A

Over the past three years, the EIA has worked closely with the U.S. Mine Safety and Health Administration (MSHA) to identify opportunities for reducing respondent reporting burden and survey operating costs by sharing some of the information each agency currently collects from coal producers and operators of coal processing facilities. By Memorandum of Understanding, dated March 19, 1996, the EIA and MSHA initiated a cooperative program providing for real-time comparison of coal production information collected quarterly on MSHA Form 7000–2 with similar information collected quarterly on Schedule Q of Form EIA–6 and annually on the Form EIA–7A. Concurrently, MSHA Form 7000–2 information on employment at coal mines was compared with similar information collected on the EIA–7A. This initiative, which was undertaken in consultation with the National Mining Association, (NMA), and other coal data users, was aimed at establishing a basis for agreeing upon a single source of high quality information to satisfy the requirements of MSHA, the EIA, and NMA customers.

After evaluating the results of this program, the EIA has concluded that the MSHA Form 7000–2 information can be used in place of the corresponding information collected on the EIA surveys. Accordingly, the EIA has suspended the quarterly collection of coal production and coal stocks information on the EIA–6, Schedule Q, and now proposes to re-classify the Schedule Q as a Standby survey available for use in the event of a change in the availability of the MSHA data. The quarterly coal production information previously obtained from this survey will be obtained from MSHA. The first, second and third quarter ending coal stocks will be estimated by the EIA, and the fourth quarter ending coal stocks will be based on information reported annually on Form EIA–6.

Additionally, the EIA proposes to revise the Form EIA–7A by eliminating or modifying most of the survey data elements currently collected to calculate coal production, and by deleting entirely the portion of the survey pertaining to employment and productivity at coal mines and coal preparation plants. Instead, EIA–7A respondents will be asked to report on the EIA–7A the same coal production value they report to MSHA, and the EIA will obtain employment and

productivity information directly from MSHA. The EIA will evaluate the accuracy of the data reported to EIA for MSHA production versus the data reported directly to MSHA at the end of the first annual collection cycle. If the EIA deems the data to be comparable, in subsequent years data will come directly from MSHA.

The collection of coal price information on the Form EIA–7A, which is currently accomplished using the same data elements gathered to calculate coal production, will be preserved by reformatting the survey to request information on open market coal sales and revenues, as well as information on captive market coal sales and transfers, and corresponding value. Information on the amount of coal consumed at the reporting facility will also be retained as a separate data element. The collection of data on projected production during the next year will be eliminated.

The EIA also proposes to modify the reporting requirements for the Form EIA–7A. For Calendar Years beginning after 1997, mines producing less than 10,000 short tons annually, and stand-along preparation plants recording fewer than 5,000 person hours annually, will no longer be required to submit the Form EIA–7A. Firms in the coal industry are sent the survey materials and those meeting the thresholds must file.

Form EIA–20

The Form EIA–20 is a Standby survey that was developed to collect weekly information on electric utility coal consumption and coal stocks in the event of a coal supply disruption. The Instructions for this Survey currently include an Appendix specifying a formula for estimating the number of days the reporting facility could continue to operate by burning the coal on hand at the end of the reporting period (i.e., burn days). The EIA proposes to delete this Appendix and to amend the Instructions to request that respondents calculate burn days in accordance with their customary operating practices.

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. Please indicate to which form(s) your comments apply.

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. The estimated public reporting burden for each of the surveys included in the Coal Program Package is shown in the following Table.

Survey(s)	Estimated hours per response	
	Current	Proposed
EIA–1, EIA–4, and EIA–20	1.0	1.0
EIA–3	.4	.4
EIA–5	.9	.9
EIA–3A and EIA–5A	1.0	1.0
EIA–6A	5.0	5.0
EIA–6, Schedule Q	.5	.5
EIA–7A	1.0	.75

Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information. The Forms EIA–1, 4, 6 (Schedule Q), and 20 are Standby surveys. The above estimates reflect the anticipated burden per response in the event these surveys are implemented.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of information technology.

D. EIA estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a potential user

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C. July 24, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–20377 Filed 7–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP89–161–036]

ANR Pipeline Company; Notice of Refund Report

July 23, 1998.

Take notice that on July 17, 1998, ANR Pipeline Company (ANR), tendered for filing, a report of refunds paid to customers.

The refunds relate to ANR's Interim Sales Program for the period November 1, 1992 through October 31, 1993. The Commission issued an order on March 12, 1998 in the referenced proceeding which required ANR to file its Third Reconciliation Report on the Interim Sales Program. Such report, which detailed additional refunds to customers of revenues collected in excess of gas costs, was subsequently accepted by the Commission in a letter order dated June 12, 1998. Accordingly, on June 17, 1998, ANR states that it refunded to eligible customers $7,557,718, consisting of principal amounts totaling $5,251,258 and interest of $2,306,460.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 29, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20326 Filed 7–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–85–000]

Equitrans, L.P.; Notice of Refund Report

July 24, 1998.

Take notice that on July 16, 1998, Equitrans, L.P. (Equitrans) filed a Report summarizing the refunds of GRI over collections which were credited to the July billing invoices of Equitrans' customers.

Equitrans states that on May 29, 1998 it received a refund from GRI of $231,022 for collections in excess of 105% of Equitrans 1997 GRI funding level. Equitrans states that it credited this amount to its eligible firm customers in billing invoices which were mailed out on July 15, 1998. The credits were allocated to Equitrans eligible firm customers pro-rata based on GRI rate collections during the 1997 billing year.

Equitrans states that a copy of its report has been served on its customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 31, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20323 Filed 7–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–12–29–001]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

July 24, 1998.

Take notice that on July 17, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Fifteenth Revised Tariff Sheet No. 50. The proposed effective date of the revised tariff sheet is July 1, 1998.

Transco states that the purpose of the instant filing is to supplement Transco's FT–NT Tracker filing of July 2, 1998 in Docket No. TM98–12–29–000 (July 2 Filing), which filing inadvertently neglected to revise the July 1, 1998 Texas Gas Transmission Corporation (Texas Gas) commodity rates. In order to reflect the correct FT–NT commodity rates, Transco is submitting Substitute Fifteenth Revised Sheet No. 50 to replace the tariff sheet effective July 1, 1998 in the July 2 filing.

Transco states that copies of the instant filing are being mailed to affected customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20324 Filed 7–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–71–010 and RP97–312–005]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 24, 1998.

Take notice that on July 20, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets, which tariff sheets are enumerated in Appendix B attached to the filing.

Transco states that the purpose of the instant compliance filing is to reflect the rate and tariff provisions reflected in the pro forma tariff sheets accompanying the Stipulation and Agreement in Docket Nos. RP97–71 and RP97–312 approved by the Commission on June 12, 1998 (June 12 Order). In addition to the foregoing, included in the filing are tariff sheets proposed to be effective January 1, April 1, and August 1, 1998, which reflect the settlement rates approved by the June 12 Order updated to incorporate approved tracker filings made subsequent to the date the Agreement was filed (i.e. subsequent to January 20, 1998).

Transco states that copies of the filing are being mailed to all parties in Docket Nos. RP97–71 and RP97–312 and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20325 Filed 7–29–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6132–7]

Review of Monitoring Requirements for Chemical Contaminants in Drinking Water

AGENCY: Environmental Protection Agency.

ACTION: Notice of review of monitoring requirements.

SUMMARY: Under the Safe Drinking Water Act (SDWA), as amended in 1996, the Environmental Protection Agency (EPA) is, by August 6, 1998, and after consultation with public health experts, representatives of the general public, and officials of State and local governments, to review the monitoring requirements for not fewer than twelve contaminants, and promulgate any necessary modifications. EPA has, with the assistance of a number of States and in consultation with the public and others, conducted an extensive review of monitoring requirements for 64 contaminants as part of its chemical monitoring revisions (CMR) effort. EPA published an Advance Notice of Proposed Rulemaking (ANPRM) (62 FR 36100, July 3, 1997) that described a number of possible changes to the current monitoring requirements for these chemicals and solicited public input. The Agency received considerable new data in response, and, on initial review, these data do not appear to simply confirm and provide additional support for the revisions discussed in the ANPRM. EPA is completing its analysis of these new data, and at this time has not identified any necessary revisions to the monitoring requirements for twelve of the chemical contaminants. Before publishing this document the Agency consulted with numerous stakeholders representing state public health and environmental departments, drinking water utilities, environmental organizations, and public health service representatives.

FOR FURTHER INFORMATION CONTACT: For information on the activities related to this document, contact: Ed Thomas, U.S. EPA at (202) 260–0910 or E-mail to thomas.edwin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA first regulated chemicals in drinking water in 1975 by establishing maximum contaminant levels and sampling requirements for fifteen contaminants. Thereafter, EPA revised the standards for these chemicals and established new standards for other chemicals in a series of drinking water regulations in 1987, 1991 and 1992. In the course of developing these regulations, EPA established a Standard Monitoring Framework that was intended to provide a uniform structure for monitoring requirements for current and subsequent drinking water regulations; the Framework is currently in effect. Because of concerns expressed that the Framework was too prescriptive in some areas and too complex, EPA and a number of States began to discuss ways to reduce unnecessary monitoring requirements and to use chemical monitoring resources more efficiently. This activity was referred to as Chemical Monitoring Reform. During this effort, EPA also sought input from outside organizations through public forums. EPA gathered one of the largest collections of sampling data then available, representing thousands of public water systems. In addition, several States volunteered compilations of their sampling results for organic chemicals. While recognizing the shortcomings of these data (which include the fact that they may not be representative of the nation), EPA believed that the data indicated that relatively few systems are contaminated and therefore revisions to the Standard Monitoring Framework should be considered.

CMR was based on six concepts: (1) some systems are not sampling at the appropriate time of year or with sufficient frequency to detect significant levels of contamination; (2) the percentage of systems that are contaminated is very low; (3) public resources should be focused more on the systems that are contaminated or at risk of contamination; (4) because of their first hand knowledge, States are best able to determine which systems are at risk of contamination and when sampling is most likely to detect contamination; (5) source water protection measures should be expanded; and (6) current monitoring requirements should be streamlined. Thus under the CMR approach, monitoring requirements would be consolidated, "at risk" systems would be targeted for increased sampling, and sampling would occur when systems were most vulnerable to contamination. The objective was to both strengthen public health protection and reduce unnecessary monitoring.

While EPA was developing the CMR approach, Congress enacted the 1996 amendments to the SDWA. These amendments reflected a number of the issues being addressed in the CMR, and in particular, source water protection. The amendments authorized States with a Source Water Assessment Program approved by EPA to tailor monitoring requirements for public water systems that had completed their source water assessment under the State program. Prior to these amendments, the CMR was envisioned as a free standing initiative for monitoring revision and burden reduction. In response to the statutory changes, EPA proceeded with separate but related activities: Development of Alternative Monitoring Guidelines associated with source water protection (which were published on August 5, 1997) and the CMR.

In July 1997, EPA provided public notice of its plan to propose a revision of the monitoring requirements based on the CMR. In the ANPRM, EPA described in detail the sampling data it had gathered as well as data from a number of States and other sources, and the possible changes to the current requirements. The Agency sought public comment on the CMR approach and, recognizing that the data used to develop the new approach for monitoring were limited in scope, solicited additional sampling data.

In response to the ANPRM, commenters identified 17 potential data sources. EPA has completed an initial review of these data sets and presented a summary of that review at a stakeholders meeting on April 6, 1998 in Washington, D.C. On the basis of its initial review and consultation with stakeholders representing state drinking water departments, health advisory departments, water utilities, environmental organizations, and public health representatives, EPA is not able to say that the new data are simply supplementary data that support and confirm the possible changes to the monitoring requirements set forth in the ANPRM. For that reason, EPA believes it is inappropriate to proceed with the ANPRM until it has completed its analysis of the new data. Stakeholders at the April 6 meeting agreed with this approach.

Thus, EPA has completed an extensive review of the current monitoring requirements for 64 chemical contaminants in drinking water which covers the 12 contaminants referred to in section 1445(a)(1)(D). At this time, EPA has not identified any necessary modifications to those monitoring requirements for twelve contaminants.

J. Charles Fox,

Acting Assistant Administrator, Office of Water.

[FR Doc. 98–20414 Filed 7–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6132–8]

Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold its Executive Committee Meeting.

DATES: The meeting will be held on August 17–18, 1998.

ADDRESSES: The meeting will be held at the Ritz-Carlton, Pentagon City, Arlington, Virginia 22202. On Monday, August 17, the meeting will begin at 8:45 a.m. and will recess at 4:30 p.m., and on Tuesday, August 18, the meeting will begin at 8:45 a.m. and will adjourn at 12:30 p.m. All times noted are Eastern Time.

SUPPLEMENTARY INFORMATION: Agenda items will include, but not limited to: State of ORD, Activities of the Science Advisory Board, and Issues Definition on Particulate Matter. Anyone desiring a draft BOSC agenda may fax their request to Shirley R. Hamilton, (202) 565–2444. The meeting is open to the public. Any member of the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 401 M Street, SW, Washington, DC 20460; or by telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA (MC 8701R), 401 M Street, SW., Washington, DC 20460, (202) 564–6853.

Dated: July 23, 1998.

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 98–20411 Filed 7–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66257; FRL–6020–9]

Vinclozolin; Voluntary Termination of Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of request to terminate uses.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, EPA is issuing a notice of receipt of request by BASF Corporation to amend its registrations for products containing 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione), or vinclozolin, to terminate certain uses.

DATES: Comments must be submitted on or before August 31, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2. 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit VII. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Mark Wilhite, Reregistration Branch I (7508W), Special Review and Reregistration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20046. Office location, telephone number, and e-mail address: Reregistration Branch I, 3rd Floor, 2800 Crystal Drive, Arlington, VA; (703) 308–8586, and e-mail: wilhite.mark@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

Vinclozolin (trade names Curalan, Ornilan, and Ronilan) is a fungicide first registered in 1981 to control various types of rot caused by *Botrytis spp., Sclerotinia spp*, and other types of mold and blight causing organisms on lettuce (all types), onions, raspberries, stonefruit, strawberries, succulent beans, tomatoes, and turf on golf courses, commercial sites, and industrial sites. Vinclozolin is also registered for use on ornamental plants in greenhouses and nurseries. During its review of the vinclozolin toxicology data base for the purpose of making a decision concerning reregistration of vinclozolin under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), EPA decided an additional tenfold margin of safety, as specified in the Food Quality Protection Act of 1996, was required to protect the safety of infants and children. Given prior EPA risk assessments of the acute risk posed by vinclozolin, that use of the additional tenfold margin of safety would render aggregate exposure to vinclozolin under existing use patterns to be unacceptably high. BASF, the sole registrant of vinclozolin used on food commodities, recently requested amendment of its vinclozolin registrations to terminate two uses of vinclozolin in order to mitigate this risk.

There are several ongoing actions concerning vinclozolin. First, as mentioned above, EPA has been working to make a reregistration decision under FIFRA concerning vinclozolin. EPA plans to release a Reregistration Eligibility Decision in the next few months. Second, objections and hearing requests were filed in regard to EPA's establishment of a tolerance for vinclozolin on succulent beans published in the **Federal Register** of July 18, 1997 (62 FR 38464) (FRL–5727–9). EPA anticipates issuing a decision on the hearing requests and objections, as appropriate, shortly. EPA has made no final decision regarding the eligibility of vinclozolin for reregistration or as to the hearing requests or objections.

II. BASF Request to Amend Registrations

On June 30, 1998, BASF submitted a written request to EPA seeking to amend the registrations for vinclozolin. Specifically, BASF requested that EPA amend registration numbers 7969-53, 7969-57, 7969-62, and 7969-85 to terminate the use of vinclozolin on

stone fruits and strawberries. BASF requested that EPA waive the 180–day waiting period for EPA action on its use termination request.

BASF made clear that the proposed use terminations were conditioned on EPA accepting certain existing stock provisions. EPA interprets BASF's request as proposing the following existing stock provisions:

1. All existing stocks released for shipment by BASF prior to August 30, 1998, shall be available for sale to end users until June 30, 1999.

2. Beginning on August 30, 1998, BASF will sticker all cases of vinclozolin-containing products (that are not yet palletted and are in BASF's site of manufacturing/packaging and contain the old labeling) with a notice barring sale and use of the products on the terminated sites after June 30, 1999.

3. Within 30 days of EPA approval of BASF's proposed use terminations and existing stock provisions, BASF will provide to all Ronilan points of purchase (shown by EDI sales to resellers) 50 copies (per location) of a bulletin with the pertinent details of the label amendments and the existing stocks provisions.

4. Use of vinclozolin on terminated use sites will be prohibited after January 30, 2000.

BASF also made several requests regarding the timing of the revocation of Federal Food, Drug, and Cosmetic Act (FFDCA) tolerances associated with the terminated uses, the FFDCA provision addressing commodities in the channels of trade following FIFRA cancellation and FFDCA revocation, and FIFRA recall or recovery provisions.

III. Terminations Pursuant to Voluntary Requests

Under section 6(f)(1) of FIFRA, registrants may request at any time that "a pesticide registration of the registrant be canceled or amended to terminate one or more pesticide uses" (7 U.S.C. 136d(f)(1)). Consistent with section 6(f)(1) of FIFRA, EPA is issuing a notice of receipt of the request and allowing 30 days for public comment.

IV. Procedures for Withdrawal of Request

For BASF to withdraw a request for use termination BASF must submit such withdrawal in writing to Mark Wilhite, at the address listed under "FOR FURTHER INFORMATION CONTACT," postmarked before August 31, 1998. This written withdrawal of the request for use termination will apply only to the applicable section 6(f)(1) request listed in this notice.

V. Proposed Acceptance of Use Termination and Existing Stocks Provision

EPA proposes to accept BASF's request for amendment of its vinclozolin registration (EPA registration numbers 7969-53, 7969-57, 7969-62, and 7969-85) to terminate uses on stone fruits and strawberries. It is EPA's general practice to accept, as a routine matter, registrants requests for cancellation of registrations or specific uses in registrations unless the registrant withdraws the request. Notice of the request for cancellation is published primarily for the purpose of alerting affected parties so that they may either attempt to convince the registrant to maintain the registration or apply to register the product themselves. EPA proposes to approve these terminations expeditiously after the close of the comment period unless BASF withdraws its request or a compelling reason opposing termination is presented in public comments.

EPA also proposes to accept BASF's requested existing stocks provisions. Under FIFRA section 6(a)(1), EPA may permit the continued sale and use of a canceled pesticide if such sale or use "is not inconsistent with the purposes of this Act." BASF has made clear that its request for voluntary termination of these uses is tied to its proposal for existing stocks. Given EPA's risk concerns regarding vinclozolin, the Agency believes that generally any voluntary termination and existing stocks provision that results in less use of vinclozolin is not inconsistent with the provisions of FIFRA. By accepting this voluntary termination and existing stocks provision, EPA is not determining that exposure to vinclozolin under the revised registration and the existing stocks provision does not result in unreasonable adverse effects on the environment as that phrase is defined in FIFRA section 2(bb). Rather, EPA believes it has the flexibility to accept voluntary risk mitigation measures undertaken by registrants without first determining whether further actions are necessary to meet FIFRA standards. Ultimately, EPA must determine whether the vinclozolin registration meets FIFRA's unreasonable adverse effects standard. EPA will be making that determination shortly in the context of its reregistration decision on vinclozolin. Assuming BASF's request is approved, EPA will consider the vinclozolin registration, as amended, including the existing stocks provision, in making its determination on reregistration.

VI. Proposed Existing Stocks Provision

EPA proposes the following existing stocks provision:

1. Effective no later than the date upon which the requested termination is approved ("approval date"), no vinclozolin products may be released for shipment unless their labels reflect the changes described in this notice.

2. Any vinclozolin product that on the approval date: has not been released for shipment; is present in a BASF manufacturing or packaging facility; and contains labeling not reflecting the proposed terminations may be stickered by BASF to reflect the use terminations and to bar the sale and use by June 30, 1999.

3. Retailers, distributors, and end-users may sell, distribute, or use products with the previously approved labeling which have already been released for shipment as of August 30, 1998, until such supplies are exhausted or January 30, 2000, whichever comes first.

4. Within 30 days of the approval date, BASF shall provide to all Ronilan points of purchase, 50 copies of a bulletin with the pertinent details of the label amendments and existing stocks provisions.

EPA requests public comment on these proposed existing stock provisions. EPA particularly asks for comment from parties affected by the restriction on use of the product after January 30, 2000.

BASF requested that EPA revoke the tolerances for vinclozolin on strawberries and stone fruits on January 30, 2000. In response, EPA would note that it is EPA's general practice to revoke tolerances for canceled uses when existing stocks for such uses are exhausted or use is barred. BASF also sought confirmation that stone fruits and strawberries legally treated with vinclozolin prior to any tolerance revocation would be allowed to clear the channels of trade under FFDCA section 408(l)(5). Under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on a commodity after the date the tolerance is revoked will not be unlawful if the pesticide is applied when the tolerance was in effect and in a manner that was lawful under FIFRA and EPA has not issued a determination that consumption of the food will pose an unreasonable dietary risk. Additionally, BASF wanted clarification that it would have no obligation to recover or recall any vinclozolin products as a result of its voluntary termination request. In response, EPA would note that recalls under FIFRA section 19(b) are

mandatory only where a pesticide's registration has been suspended and canceled. Finally, BASF requested EPA provide advance public notice of its voluntary cancellation proposal. This notice provides the public with such notice. EPA will also publish the existing stocks provisions that are established if the requested termination is approved.

VII. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number "OPP– 66257" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP–66257." Electronic comments on this action may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: July 23, 1998.

Jack E. Housenger,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 98–20410 Filed 7–29–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6132–9]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act: Woodward Metal Processing Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve certain claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). Notification is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve 19 parties' liability for certain response costs incurred by EPA at the Woodward Metal Processing Superfund Site in Jersey City, New Jersey.

DATES: Comments must be provided on or before August 31, 1998.

ADDRESSES: Comments should be addressed to the United States Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007, and should refer to: In the Matter of the Woodward Metal Processing Superfund Site: Woodward Metal Processing Administrative Settlement, under section 122 (h) of CERCLA, U.S. EPA Index No. II-CERCLA–98–0110.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007; Attention: Virginia A. Curry, Esq. (212) 637–3134, or curry.virginia@epa.mail.epa.gov

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of CERCLA, notification is hereby given of a proposed administrative settlement concerning the Woodward Metal Processing Superfund Site located in Jersey City, New Jersey. Section 122(h) of CERCLA provides EPA with authority to settle certain claims for costs incurred by the United States when the settlement is in the public interest and has received the approval of the Attorney General. Parties will pay a total of $1,795,051 to reimburse EPA for response costs incurred at the Woodward Metal Processing Superfund Site.

Dated: July 20, 1998.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 98–20415 Filed 7–29–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 14, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Adeline M. Morgan, Montgomery, Minnesota; to acquire voting shares of F and O, Inc., Montgomery, Minnesota, and thereby indirectly acquire voting shares of First National Bank of Montgomery, Montgomery, Minnesota.

Board of Governors of the Federal Reserve System, July 27, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–20381 Filed 7–29–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or

bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Alabama National BanCorporation, Birmingham, Alabama; to merge with Community Financial Corporation, Mableton, Georgia, and thereby indirectly acquire Georgia State Bank, Mableton, Georgia.

Board of Governors of the Federal Reserve System, July 27, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–20380 Filed 7–29–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The FTC has submitted to OMB for review and clearance under the Paperwork Reduction Act information collection requirements stemming from (1) a regulation that the Commission enforces and (2) a study to assess the effectiveness of Commission divestiture orders in merger cases. On May 13, 1998, the FTC solicited comments concerning these information collection requirements. No comments were received. The current Office of Management and Budget (OMB) clearances expire on July 31, 1998. The FTC proposes that OMB extend its approval for the regulation an additional three years from clearance expiration and that approval for the divestiture order study be extended through December 31, 1999.

DATES: Comments must be submitted on or before August 31, 1998.

EFFECTIVE DATE: Send written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10202, Washington, D.C. 20503, ATTN: Edward Clarke, Desk Officer for the Federal Trade Commission, and to Gary M. Greenfield, Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580, (202) 326–2753. All comments should be identified as responding to this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection requirements should be addressed to Gary M. Greenfield at the address listed above.

SUPPLEMENTARY INFORMATION: The FTC has submitted requests for OMB review of the two items described below. Further information concerning the entities subject to, and the burden estimates for, these requirements can be found at 63 FR 26607 (May 13, 1998). The relevant information collection requirements are as follows.

1. The Telemarketing Sales Rule, 16 CFR Part 310 (OMB Control Number 3084–0097).

Description of the information collection and proposed use: The Telemarketing Sales Rule implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108 ("Telemarketing Act" or "the Act"). The Act seeks to prevent deceptive or abusive telemarketing practices. As specified by the Act, the Telemarketing Rule mandates certain disclosures regarding telephone sales and requires telemarketers to retain certain records regarding advertising, sales, and employees. The disclosures provide consumers with information necessary to make informed purchasing decisions. The records are to be made available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule.

Estimate of information collection annual hours burden: 2,301,000 hours.

The estimated recordkeeping burden is 50,000 hours for all industry members affected by the Rule. The estimated burden related to the disclosures that the Rule requires is 2,251,000 hours (rounded to nearest thousand) for all affected industry members, for a total of 2,301,000 burden hours.

Recordkeeping: At the time the Commission issued the Rule, it estimated that during the initial and subsequent years after the Rule took effect, 100 new telemarketing entities per year would find it necessary to revise their practices to conform with the Rule and that it would take each such entity approximately 100 hours to develop a compliant recordkeeping system, for a total of 10,000 burden hours a year. The Commission received no comments of any kind in connection with this estimate when it was issued and this estimate continues to be appropriate. There is no reason to believe that the number of new entrants into the telemarketing field who find it necessary to revise their recordkeeping system as a result of the Rule's recordkeeping requirements has increased. Of the estimated 39,900 industry members who have already assembled and retained the required records in their recordkeeping systems, staff estimates that each member requires only one hour per year to file and store records required by the Rule. This estimate was rounded up to 40,000 hours. Therefore, the total yearly burden hours associated with the Rule's recordkeeping requirements is 50,000.

Disclosure: Staff previously calculated the burden associated with the Rule's disclosure requirements based primarily on the total number of telemarketing calls and the amount of time needed to make the required basic disclosures, as well as the number of calls resulting in sales and the amount of time needed to make the additional disclosures required before a customer pays for goods or services. While this methodology remains appropriate in large part, staff has determined that the resulting burden estimate substantially overstates the impact of the Rule unless the analysis is refined to take into account the number of firms that would make the required disclosures even in the absence of the Rule.

As noted above, the purpose of the Rule's disclosure provisions is to help prevent consumer injury from deceptive or abusive telemaketing practices by ensuring that telemarketers provide consumers with information they need to avoid being misled. In fact, however, the vast majority of telemarketing firms are legitime businesses. Although telemarketing fraud causes significant harm to consumers—Congress has estimated that misrepresentations or material omissions in telemarketing sales presentations result in $3 billion to $40 billion annually in consumer injury—the harm caused by

telemarketing fraud remains a small fraction of the $400 billion in total annual sales through telemarketing.

Staff believes that a substantial majority of telemarketers now make the disclosures required by the Rule in the ordinary course of business because doing so constitutes good business practice. To the extent this is so, the time and financial resources needed to comply with disclosure requirements do not constitute "burden." 16 CFR 1320.3(b)(2). Moreover, many state laws require the same or similar disclosures mandated by the Rule. Thus, the disclosure hours burden attributable solely to the Rule is far less than the total number of hours associated with the disclosure. Staff estimated that the disclosures required by the Rule would occur in at least 75 percent of telemarketing presentations even in the absence of the Rule. Accordingly, staff has determined that the hours burden estimate for the Rule's disclosure requirements is 25 percent of the total amount of hours associated with disclosures of the type required by the Rule. Staff previously estimated this total to be 9,003,000 hours. No comments were received refuting this estimate. The portion attributable to the Rule is accordingly 2,250,750 hours (.25 × 9,003,000). For present purposes, this amount was rounded up to 2,251,000 hours.

Staff's basis for its underlying estimate of 9,003,000 total disclosure hours was derived as follows. In connection with issuing the Rule and obtaining OMB clearance, staff previously estimated that the 39,900 (rounded to 40,000) industry members make approximately 9 billion calls per year, or 225,000 calls per year per company. The Telemarketing Sales Rule provides that if an industry member chooses to solicit inbound calls from consumers by advertising media other than direct mail or by using direct mail solicitations that make certain required disclosures, that member is exempted from complying with other disclosures required by the Rule. Because the burden of complying with written disclosures is less than the burden of complying with the Rule's oral disclosure requirements, staff estimated that at least 9,000 firms will choose to adopt marketing methods that exempt them from the oral disclosure requirements.

In connection with issuing the Rule, staff estimated that it takes 7 seconds for telemarketers to disclose the required outbound call information orally. Staff also estimated that at least 60 percent of calls result in "hang-ups" before the seller or telemarketer can make all the required disclosures. Staff estimated that "hang-up" calls last for only 2 seconds. Accordingly, staff estimated that the total amount of time associated with these initial disclosure requirements is approximately 250 hours per firm (90,000 non-hang up calls (.40 × 225,000) × 7 seconds per call + 135,000 hang-up calls (.60 × 225,000) × 2 seconds per call). Thus, the total time expenditure for the 31,000 firms choosing marketing methods that require these oral disclosures is 7.75 million hours. When the Commission initially published this estimate, it received no comments and staff believes the estimate remains appropriate. Based on the assumption that no more than 25 percent of this time constitutes "burden" imposed solely by the Rules (as opposed to the normal business practices of most affected entities apart from the Rule's requirements), the burden subtotal attributable to the basis disclosure is 1,937,500 hours.

The Rule also requires additional disclosures before the customers pays for goods or services. Specifically, telemarketers must disclose the total cost of the offered goods or services; all material restrictions; and all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies (if a representation about such a policy is a part of the sales offer). If a prize promotion is involved in connection with the sales of goods or services, the telemarketer must also disclosure information about the non-purchase entry method for the prize promotion. Staff estimated that these disclosures take approximately 10 seconds. However, these disclosures are required only where a call results in a sale. Staff estimated that sales occur in the approximately 6 percent of telemarketing calls. Accordingly, the estimated amount of time for the disclosures is 17.5 hours per firm (13,500 calls resulting in a sale—.06 × 225,000—× 10 seconds) or 1.163 million hours for the 31,000 firms choosing marketing methods that require oral disclosure. When the Commission initially published this estimate, it received no comments and staff believes the estimate remains appropriate. Based on the assumption that no more than 25 percent of this time constitutes "burden" imposed solely by the Rule, the burden subtotal attributable to these additional disclosures is 290,750 hours.

As noted, staff estimated that approximately 9,000 telemarketing firms will choose to use the written disclosure option. Firms choosing this option are likely to be those using written advertising materials. Thus, the burden of adding the required disclosures should be minimal. Staff estimated that a typical firm will spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the Rule, for an estimated total burden of 90,000 hours for all 9,000 firms using written disclosure. When the Commission initially published this estimate, it received no comments and staff believes the estimate remains appropriate. Based on the assumption that no more than 25 percent of this time constitutes "burden" imposed solely by the Rule, the burden subtotal attributable to these written disclosures is 22,500 hours.

Estimate of information collection annual labor cost burden: $34,361,250.

The estimated labor cost for recordkeeping is $600,000. Assuming a cumulative burden of 10,000 hours/year to set up compliant recordkeeping systems, and applying to that a skilled labor rate of $20/hours, set up costs would approximate $200,000 annually for all new telemarketing entities. Staff also estimated that existing industry members require 40,000 hours to maintain compliance with the Rule's recordkeeping provisions. Using a clerical cost rate of $10/hour, cumulative recordkeeping maintenance would cost approximately $400,000 annually. The estimated labor cost for disclosure is $33,761,250, based on an estimate of 2,250,750 disclosure burden hours and a wage rate of $15/hour.

Estimate of information collection annual capital and operating cost burden: $10,022,000.

Total capital and start up costs: Staff estimates that the capital and start up costs associated with the Telemarketing Sales Rule's information collection requirements are *de minimis*. The Rule's recordkeeping requirements mandate that companies maintain records but not in any particular form. While the recordkeeping requirements necessitate that the affected entity have some storage device, virtually every entity is likely already to possess the means to store the required records. Most entities keep the type of records required by the Rule in the ordinary course of business. Even assuming that an entity found it necessary to purchase a storage device, which could be as inexpensive as a cardboard box, the annual expenditure is likely to be very small when the cost of the device is annualized over its useful life. The Rule's disclosure requirements require no capital expenditures.

Total operation/maintenance/purchase of services costs: Affected entities need some storage media such as file folders, computer diskettes, or paper in order to comply with the Rule's

recordkeeping requirements. Although staff believes that most affected entities would maintain the required records in the ordinary course of business, staff estimated that the approximately 40,000 industry members affected by the Rules spend an annual amount of $50 each on office supplies as a result of the Rule's recordkeeping requirements, for a total recordkeeping cost burden of $2,000,000.

In connection with the Rule's disclosure requirements, telemarketing firms likely incur additional costs for telephone service, assuming that the firms spend more time on the telephone with customers as a result of the required disclosures. Staff believes that the hour burdens relating to the required oral disclosures amount to 8,913,000 hours (7.75 million initial disclosure hours + 1.163 million hours regarding sales). Assuming all calls to customers are long distance, at a commercial calling rate of 6 cents per minute ($3.60 per hour), affected entities as a whole may incur up to $32,086,800 in telecommunications costs as a result of the Rule's disclosure requirements. However, as noted above, only 25 percent of such disclosures constitute "burden." Accordingly, the adjusted oral disclosure cost burden is $8,021,700, rounded to $8,022,000.

As indicated previously, staff estimated that approximately 9,000 entities will choose to comply with the Rule through written disclosures. However, staff estimated that those companies incur no additional capital or operating expenses as a result of the Rule's requirements because they are likely to provide written information to prospective customers in the ordinary course of business and adding the required disclosures to that written information requires no supplemental expenditures.

Thus, the total estimated operating cost burdens associated with the Rule is $10,022,000 (rounded to nearest thousand).

2. Study of the Effectiveness of Commission Divestiture Orders in Merger Cases (OMB Control Number 3084–0115)

Description of the information collection and proposed use: The Commission is directed to prevent "unfair methods of competition" under Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45, and is authorized to enforce the Clayton Act's proscriptions against anticompetitive mergers. 15 U.S.C. 18, 21. Under these authorities, the Commission examines proposed transactions to determine whether anticompetitive effects are likely. If it has reason to believe that a transaction is unlawful, the Commission either seeks to enjoin the transaction or seeks a remedy that it believes will alleviate the likely anticompetitive effects.

When a proposed merger raises competitive concerns, it is sometimes the case that the problem arises in only a limited number of markets in which the parties compete, while the remainder of the proposed transaction poses no competitive harm. Thus, in 1978, the Commission began requiring respondents in certain merger cases with likely anticompetitive effects, as a condition for the Commission's decision not to oppose a transaction, to divest certain assets of business(es) in order to cure the competitive problem. The Commission requires that the divested assets or business(es) be commercially viable, and that the buyer of the assets or business(es) have the capability of competing effectively in the applicable market(s).

In 1995, the FTC's Bureau of Competition and Bureau of Economics undertook a pilot study to determine whether a more comprehensive study of these Commission divestiture orders would be feasible and productive. The staff concluded that further study is necessary to draw more general conclusions about the effectiveness of the Commission's divestiture process, as the circumstances surrounding the orders vary widely. OMB subsequently granted clearance of such an expanded study. Pursuant to that authority, FTC staff has interviewed numerous parties subject to divestiture orders ("respondents") and buyers of divested assets or businesses ("buyers"). As with the pilot study, the information that staff has obtained continues to offer important insights into the effectiveness of the divestiture process.

Accordingly, the Commission's Bureau of Competition and Bureau of Economics intend to continue to conduct interviews with respondents and buyers in order to complete their review of the 36 sample orders comprising the study. Thereafter, staff will interview third parties and solicit sales data from respondents and buyers. The objectives of the study continue to be to determine: (1) The effectiveness of Commission orders that seek to preserve or reestablish competition where the Commission required divestiture of certain assets; (2) the effect of certain provisions in Commission orders (e.g., length of time permitted for divestiture, "crown jewels" provisions, etc.) on the timeliness of divestitures and on the success of the business or assets divested; (3) the effect of the procedures that respondents use to find a buyer on the timeliness of the divestitures and on the success of the business or assets divested; (4) the effect of the divestiture contract on the success of the divested business or assets; (5) the effect of the type of assets divested on the success of the divested business; (6) the effect of the type of buyer on the success of the divested business; and (7) the extent to which respondents fully complied with the requirements under the order.

Securing information about the success of divested businesses (or businesses that have acquired divested assets) will provide a better understanding of the kind of order provisions most likely to lead to successful divestitures in merger transactions. The survey is designed to expand the Commission's knowledge by eliciting information across a broad spectrum of industries. Such information will be used to enhance the effectiveness of Commission divestiture orders.

Estimate of information collection annual hours burden: 1,000 hours (rounded).

The information to be collected will be obtained by telephone interviews, document requests, and a questionnaire. Staff will conduct telephone interviews with respondents, buyers, and third parties (such as competitors, customers, and suppliers). The divestiture study includes a total of 51 divestitures arising out of 36 orders. Staff has already interviewed 32 buyers and 6 respondents; thus it will contact another 19 buyers and 30 respondents. It will also contact 153 third-parties (on average, three per divestiture) for a total of 202 remaining telephone interviews. All of the remaining interviews, like those already conducted, should take about 1.5 hours to complete, for a total burden estimate of approximately 303 hours.

After interviewing respondents and buyers, staff will ask them to submit certain existing financial documents for a five-year period beginning the year before the divestiture occurred. Staff will not request that any new documents be created. Because only documents already in existence will be requested, the anticipated burden of producing these documents will be minimal, approximately two hours per participant, for a total of 174 hours (51 buyers + 36 respondents = 87, 87 × 2 = 174).

Staff is also asking respondents and buyers to complete a two-question chart that requests sales in dollars and units of each product or asset that was the subject of the Commission's competitive concern in the case over a five-year

period beginning the year before the divestiture. Staff estimates that the burden on each participant to provide this information will be 4 hours, for a total of 348 hours (51 buyers + 36 respondents = 87, 87 × 4 = 348). The total cumulative burden of the document production and chart completion will be 522 hours (174+348). The estimated total burden for the entire study is therefore calculated to be 825 hours (303+522), which has been rounded to 1,000 hours to allow for small additions such as interviews with and follow-up document requests of subsequent buyers.

Estimate of information collection annual labor cost burden: $75,000.

It is difficult to calculate reliably the costs associated with this information collection, as they entail varying compensation levels of executives, management, and/or support staff among many companies and various industries. Individuals among some or all of those labor categories may be involved in the information collection process. Nonetheless, assuming that responses to interviews, the questionnaire, and the document request are handled by executive and mid-management level personnel alone, and applying a blended average hourly compensation rate of $75/hour for their labor, the total cost should not exceed $75,000 (based on the upward rounding of estimated total hourly burden for the study).

Estimate of information collection annual capital and operating cost burden: None.

The data for the study are being collected in two principal ways. Staff is conducting telephone interviews and asking respondents and buyers to respond to a brief questionnaire and produce existing documents. None of these means of collecting information requires any capital expenditure. Interviews solely involve respondents and buyers making available one or more company officials for approximately 1½ hours. The questionnaires and document requests seek only information that the respondents and buyers maintain in the ordinary and usual course of their business. No additional cost burden is imposed.

Debra A. Valentine,

General Counsel.

[FR Doc. 98–20298 Filed 7–29–98; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Fleet Management Division; Cancellation of Standard Forms

AGENCY: Federal Supply Service, General Services Administration.

ACTION: Notice.

SUMMARY: This notice announces the General Services Administration's intent to cancel the following Standard forms:

SF 149, U.S. Government National Credit Card, and SF 149A, U.S. Government Fleet Credit Card.

Both of these forms were replaced with a bank credit card.

DATES: Effective July 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. William Webster, Environmental and Legislation Branch (703) 305–6276. This contact is for information on the new fleet services credit card only.

Dated: July 20, 1998.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 98–20334 Filed 7–29–98; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Meeting

AGENCY: President's Committee on Mental Retardation.

TIME AND DATE: August 28, 1998, 8 a.m.–2 p.m.

PLACE: Renassaince Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC. 20036.

STATUS: Full Committee Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All meeting sites are barrier free.

MATTERS TO BE CONSIDERED: The Committee plans to discuss critical issues concerning Federal Policy, Federal Research and Demonstration, State Policy Collaboration, Minority and Cultural Diversity and Mission and Public Awareness, relating to individuals with mental retardation.

The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs and supports for persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

CONTACT PERSON FOR MORE INFORMATION: Gary H. Blumenthal, 352–G Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC. 20201–0001; (202) 619–0634.

Dated: July 24, 1998.

John L. Pride,

Deputy Executive Director, PCMR.

[FR Doc. 98–20420 Filed 7–29–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0572]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed collection of information concerning a pilot program in which volunteers from the retail food industry will use Hazard Analysis Critical Control Point (HACCP) principles and partner with interested regulatory authorities in the program implementation.

DATES: Submit written comments on the collection of information by September 28, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Collection of Letters of Interest and Food Safety Data by Retail Food Operators in a Voluntary Pilot Program using HACCP Principles

Section 301 (21 U.S.C. 331 *et seq.*) of the Federal Food, Drug, and Cosmetic Act enables FDA to ensure that foods in interstate commerce are safe. In addition, under authority granted in the Public Health Service Act (42 U.S.C. 243 *et seq.*), the agency engages in a range of activities intended to ensure safety of the nation's food supply, from regulating food when it can be a vector of disease to assisting, and cooperating with, the States to ensure effective State and local food safety programs. FDA endeavors to assist the more than 3,000 Federal, tribal, State, and local regulatory agencies that have primary responsibility for monitoring retail food establishments to ensure that consumers are protected.

FDA is proposing to collect information, through a voluntary pilot program, on how HACCP principles might be implemented in the retail food industry. The pilot program is designed to provide insight into the problems, costs, and benefits of developing and implementing HACCP principles for food service, retail food stores, and other retail food establishments, in order to improve and provide direct guidance to both the retail industry and regulatory authorities for the implementation of HACCP principles in the retail food sector. FDA will select candidates with a goal of ensuring that the participants in the program cross the spectrum of retail activities, have a range of scientific capabilities, have facilities of varying sizes, and have a range of HACCP experience. FDA has been approached by State and local governments to provide guidance for applying HACCP principles at retail, therefore the agency intends to collect information through the pilot program to develop and enhance guidance. The agency intends to make a summary of the results of the retail pilot program publicly available.

The agency will request interested retail food establishments along with regulatory authorities interested in participating in the pilot program to send to FDA a letter of interest. FDA requests that the letters of interest from the retail food establishments provide information concerning the nature of their menu, the location and size of their facility, the type of techniques they use to prepare their products, the extent to which, and how, they employ HACCP; identify area government officials with whom they have worked to implement or reinforce the system; identify which government officials they would like involved in the pilot program; and identify trade associations they would like involved with them in the pilot. FDA will consider these factors in reviewing the letters of interest from retail applicants as a basis for identifying a limited number of individual establishments that, in the judgment of the agency, are best suited to participate in the program. The agency will request selected retail pilot participants to maintain their food safety program based upon HACCP principles for the duration of the pilot. FDA will study the information and data the pilot participants use to maintain their food safety program.

FDA estimates the burdens of this collection of the information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Letters of interest from State/local/tribal authorities[2]	50	1	50	1	50
Letters from interested retail firms[2]	50	1	50	1	50
Total					100

[1] There are no operating and maintenance costs or capital costs associated with this collection of information.
[2] One time activity.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Activity	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Plan development	50	1	50	100	5,000
Plan implement documentation	50	7,000	350,000	.05	17,500
Implementation review	50	4	200	4	800
Total					23,300

[1] There are no operating and maintenance costs or capital costs associated with this collection of information.

FDA estimates the burden incurred by interested regulatory agencies and retail industry to provide FDA with a letter of interest to be a one time burden. FDA estimates the burden of collecting and maintaining food safety information based upon HACCP principles during the pilot program will vary considerably across the wide spectrum of retail activities and establishments and the type and number of products involved, and the nature of the equipment or instruments required by the retail establishment for monitoring. The estimated burden by the retail industry for maintaining their food safety system would involve the development, if not already implemented, and maintenance of the food safety plan based upon HACCP principles, the implementation and records generated by that plan, and the verification of the plan's implementation activities and records.

These estimates are based on FDA's experience with other government pilot programs and with comments received through the conference of food protection, public meetings, and retail industry advice. This information was utilized to design the pilot program with the least amount of burden to the retail industry.

Dated: July 22, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–20309 Filed 7–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0194]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by August 31, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Registration of Cosmetic Product Establishment—21 CFR Part 710 (OMB Control Number 0910–0027—Extension)

Under the Federal Food, Drug, and Cosmetic Act (the act), cosmetic products that are adulterated under section 601 of the act (21 U.S.C. 361) or misbranded under section 602 of the act (21 U.S.C. 362) may not be distributed in interstate commerce. To assist FDA in carrying out its responsibility to regulate cosmetics, FDA requests that establishments that manufacture or package cosmetic products register with the agency on Form FDA 2511 entitled "Registration of Cosmetic Product Establishment." Regulations providing procedures for the voluntary registration of cosmetic product establishments are found in 21 CFR part 710.

Since mandatory registration of cosmetic establishments is not authorized by statute, voluntary registration provides FDA with the best information available about the location, business trading names used, and the type of activity (manufacturing or packaging) of cosmetic product establishments that participate in this program. In addition, the registration information is an essential part of planning onsite inspections to determine the scope and extent of noncompliance with applicable provisions of the act. The registration information is used to estimate the size of the cosmetic industry regulated. Registration is permanent, although FDA requests that firms submit an amended registration on Form FDA 2511 if any of the information originally submitted changes.

FDA uses registration information as input for a computer data base of cosmetic product establishments. This data base is used for mailing lists to distribute regulatory information or to invite firms to participate in workshops on topics in which they may be interested. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Part	Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
710	FDA 2511	50	1	50	0.4	20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates are based on past experience and on discussions with registrants during routine communications. FDA receives an average of 50 registration submissions annually. There has been no change over the past 13 years in the number of submissions of Form FDA 2511 or in the time it takes to complete this form.

Dated: July 23, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–20302 Filed 7–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98D–0264, 98D–0265, et al.]

Food and Drug Administration Modernization Act of 1997; Establishment of Public Dockets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is establishing a series of public dockets containing information on the implementation of the Food and Drug Administration Modernization Act of 1997 (Modernization Act). This action is intended to ensure that information submitted to FDA on the implementation of the Modernization Act is available to all interested persons in a timely fashion.

ADDRESSES: The public dockets are located in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The public dockets may be accessed directly under the docket numbers provided in the list below, and they are also posted on the agency's Internet World Wide Web (WWW) site at "http://www.fda.gov/ohrms/dockets".

FOR FURTHER INFORMATION CONTACT:

Nancy E. Derr, Center for Drug Evaluation and Research (HFD–5), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400;

Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–6210;

Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974; or

George A. Mitchell, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5587.

SUPPLEMENTARY INFORMATION: On November 21, 1997, the President signed the Modernization Act into law (Pub. L. 105–115). The Modernization Act provides for the reauthorization of the Prescription Drug User Fee Act of 1992, codifies many FDA initiatives undertaken in recent years under the Administration's Reinventing Government Program, and implements certain other reforms of FDA processes.

FDA has received numerous recommendations on how the agency should implement various Modernization Act provisions for which dockets have not yet been established. To provide timely public access to these recommendations, FDA is establishing a series of public dockets through which interested persons can have access to these recommendations and other information submitted to FDA. Each docket contains information pertaining to a specific section of the Modernization Act and may be accessed directly under the docket numbers provided in the list below. FDA expects to place submissions containing recommendations on how the agency should implement the Modernization Act in one of these public dockets, or in a new docket created for the specific provision addressed in the recommendations. These dockets are in addition to those already established in connection with implementation of other provisions of the Modernization Act, i.e., dockets assigned to the Modernization Act-related notices, guidances, or rules.

The following is a list of dockets that FDA is establishing at this time to provide access to information submitted relating to the implementation of specific provisions of the Modernization Act. The list includes the section number of the Modernization Act, the title of the docket, and the docket number.

Section No.	Docket Title	Docket No.
111	Pediatric Studies of Drugs	98D–0265
112	Fast Track Products	98D–0267
113	NIH Data Bank—Clinical Trials for Serious Diseases	98D–0293
114	Health Care Economic Information	98D–0468
118	Data Requirements for Drugs and Biologics	98D–0264
121	Positron Emission Tomography (PET)	98D–0266
122	Radiopharmaceuticals	98D–0372
127	Pharmacy Compounding	98D–0272
216	Six-Year Use of Data	98D–0466
406	Agency Plan for Statutory Compliance	98N–0339

From time to time, FDA may establish dockets on other Modernization Act provisions but does not intend to separately announce the creation of such dockets. Instead, a list of the Modernization Act dockets will be maintained on the agency's Internet WWW site at "http//www.fda.gov/ohrms/dockets". The dockets created in connection with specific notices, guidances, or rules published in the **Federal Register** are also listed at this site.

The public dockets are available for public review in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 22, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–20307 Filed 7-29-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0593]

Dover Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Dover Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 3,9-bis[2,4-bis(1-methyl-1-phenylethyl)phenoxy]-2,4,8,10-tetraoxa-3,9-diphosphaspiro[5.5]undecane, which may contain not more than 2 percent by weight of triisopropanolamine, as an antioxidant and/or stabilizer for polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4614) has been filed by Dover Chemical Corp., 3676 Davis Rd. NW., Dover, OH 44622. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 3,9-bis[2,4-bis(1-methyl-1-phenylethyl)phenoxy]-2,4,8,10-tetraoxa-3,9-diphosphaspiro[5.5]undecane, which may contain not more than 2 percent by weight of triisopropanolamine, as an antioxidant and/or stabilizer for polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: July 11, 1998.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–20359 Filed 7–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83F–0089]

National Starch and Chemical Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 3B3696) proposing that the food additive regulations be amended to provide for the safe use of the partial sodium salt of a copolymer of dimethyldiallylammonium chloride with acrylamide and acrylic acid as a component of paper and paperboard for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3084.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 22, 1983 (48 FR 17390), FDA announced that a food additive petition (FAP 3B3696) had been filed by National Starch and Chemical Corp., P.O. Box 6500, Bridgewater, NJ 08807–0500. The petition proposed to amend the food additive regulations in § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods (21 CFR 176.170) to provide for the safe use of the partial sodium salt of a copolymer of dimethyldiallylammonium chloride with acrylamide and acrylic acid as a component of paper and paperboard for use in contact with food. National Starch and Chemical Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: July 2, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–20304 Filed 7–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0449]

"Draft Compliance Program Guidance Manual: Inspection of Medical Device Manufacturers;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Draft Compliance Program Guidance Manual: Inspection of Medical Device Manufacturers." This draft guidance provides guidance to the FDA field staff for the enforcement of the requirements of the quality system regulation, and it includes guidance on the amendments to the quality system regulation, which became effective June 1, 1997. This draft guidance is intended to represent the agency's current thinking on inspection of medical device manufacturers, and it is not final nor is it in effect at this time.

DATES: Written comments may be provided at any time, however, comments should be submitted by October 28, 1998.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Draft Compliance Program Guidance Manual: Inspection of Medical Device Manufacturers" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Wes W. Morgenstern, Center for Devices and Radiological Health (HFZ–305), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–4699.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled "Draft Compliance Program Guidance Manual: Inspection of Medical Device

Manufacturers" (CP 7382.830). This draft document provides guidance to the FDA field staff for the enforcement of the quality system regulation (part 820 (21 CFR part 820)). This draft is a revision to the document first made available in May 1995, in accordance with the amendments to part 820, effective June 1, 1997.

This guidance document represents the agency's current thinking on inspection of medical device manufacturers. 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 applicable statute, regulations, or both.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is issued as a Level 1 guidance consistent with GGP's.

II. Electronic Access

In order to receive the "Draft Compliance Program Guidance Manual: Inspection of Medical Device Manufacturers" (CP 7382.830) via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (487) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes the "Draft Compliance Program Guidance Manual: Inspection of Medical Device Manufacturers" (CP 7382.830), device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh". The "Draft Compliance Program Guidance Manual: Inspection of Medical Device Manufacturers" (CP 7382.830) will be available at "http://www.fda.gov/cdrh/ochome.html".

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

II. Comments

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to Dockets Management Branch (address above) written comments regarding this draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by October 28, 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 document and received comments are available for examination in the the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 17, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–20305 Filed 7-29-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0566]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidance on Stability Testing of New Animal Drug Substances and Products (#73), Stability Testing for New Dosage Forms of New Animal Drugs (#74), and Stability Testing: Photostability Testing of New Animal Drug Substances and Products (#75); Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of three draft guidance for industry documents entitled "Stability Testing of New Animal Drug Substances and Products," "Stability Testing for New Drug Dosage Forms of New Animal Drugs,"and "Stability Testing: Photostability Testing of New Animal Drug Substances and Products." These related draft guidance documents have been adapted for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) from guidelines that were adopted by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance is intended to provide guidance on stability testing of new drug substances and products and new dosage forms included as part of registration applications for approval of veterinary medicinal products submitted to the European Union, Japan, and the United States.

DATES: Written comments should be submitted by August 31, 1998.

Note: FDA will accept comments after the deadline, but to assure consideration at the next VICH Committee meeting, we must receive them by August 31, 1998.

ADDRESSES: Submit written requests for single copies of these draft guidance documents to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments to the Dockets Management Branch (HFA–

305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the full title of the draft guidance document and the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section of this document for electronic access to the draft guidance documents.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance documents: William G. Marnane, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0678, e-mail "wmarnane@bangate.fda.gov".

Regarding VICH: Sharon Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail "sthompso@bangate.fda.gov".

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seeking scientifically based harmonized technical requirements for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the ICH for several years to develop harmonized technical requirements for the registration of human pharmaceutical products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the registration of veterinary medicinal products in the European Union, Japan, and the United States, and it includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Épizooties (OIE). The VICH Steering Committee is composed of member representatives from the European Commission, the European Medicines Evaluation Agency, the European Federation of Animal Health, the U.S. Food and Drug Administration, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from MERCOSUR (Argentina, Brazil, Uruguay, and Paraguay), and one representative from Federacion Latino-Americana de la Industria para la Salud Animal. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative participates in the VICH Steering Committee meetings.

At a meeting held on February 26 and 27, 1998, the VICH Steering Committee agreed that the draft guidance documents entitled "Stability Testing of New Animal Drug Substances and Products," "Stability Testing for New Dosage Forms of New Animal Drugs," and "Stability Testing: Photostability Testing of New Animal Drug Substances and Products" should be made available for public comment. These draft guidance documents were prepared by the VICH Quality Working Group and are based on ICH Guidelines that have already been adopted by FDA for human pharmaceuticals.

The draft guidance entitled "Stability Testing of New Animal Drug Substances and Products" addresses the generation of stability information that should be included in submissions for applications for registration or approval of new molecular entities and associated drug products in the European Union, Japan, and the United States. In this guidance's discussion of "stress testing" for both new drug substances and drug products, the comment states that "light testing" should be an integral part of stress testing and will be considered in a separate annexed VICH document. That separate draft document is entitled "Stability Testing: Photostability Testing of New Animal Drug Substances and Products," and sets out a basic testing protocol for photostability. The third draft guidance entitled "Stability Testing for New Dosage Forms of New Animal Drugs" is also an annex to "Stability Testing of New Animal Drug Substances and Products." It addresses the generation of stability information for new dosage forms for submission by the owner of the original application for registration, after the original application for new drug substances and products has been submitted. Comments about these draft guidance documents will be considered by FDA and the VICH Quality Working Group. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidance and to publish as future guidance documents.

These draft guidance documents, developed under the VICH process, have been revised to conform to FDA's Good Guidance Practices (62 FR 8961, February 27, 1997) . For example, the documents have been designated "guidance" rather than "guideline." Since guidance documents are not binding, mandatory words such as "must," "shall," and "will" in the original VICH documents have been substituted with "should."

These draft guidance documents represent current FDA thinking on stability testing of new animal drug substances and products and new dosage forms of new animal drugs. The documents do not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternate approaches may be used if they satisfy the requirements of applicable statutes, regulations, or both.

II. Comments

Interested persons may, on or before August 31, 1998, submit to the Dockets Management Branch (address above) written comments regarding the guidance documents. Two copies of any comments are to be submitted, except that 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 guidance documents 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 guidance documents using the World Wide Web (WWW). For WWW access, connect to CVM at "http://www.fda.gov/cvm".

Dated: July 23, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–20310 Filed 7-29-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0249]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; *Title of Information Collection:* Hospice Cost Report and Supporting Regulations in 42 CFR 413.20, 413.24 , and 418.310; *Form No.:* HCFA-R–0249 (OMB # 0938-new); *Use:* Medicare certified hospice programs must file an annual cost report with HCFA. This report contains information on overhead costs, assets, depreciation, and compensation which will be used for hospice rate evaluations.; *Frequency:* Annually; *Affected Public:* Not-for-profit institutions, and Individuals or Households; *Number of Respondents:* 1,720; *Total Annual Responses:* 1,720; *Total Annual Hours:* 302,720.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated July 23, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–20316 Filed 7–29–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-R–243]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Medicare Agreement Application, Health Care Prepayment Plan; *Form No.:* HCFA–R–243; *Use:* An organization must meet certain requirements to be a Health Care Prepayment Plan that is eligible for a Medicare 1833 agreement. The application is the collection form used to obtain information from an organization that would allow HCFA staff to determine compliance with the regulations. This form includes requests for information about: the management of the applicant organization; arrangements for providing health care to beneficiaries; meeting Medicare requirements for appeals, hearings, advance directives, health benefits; risk sharing with other entities; the fiscal soundness of the applicant; the cost budget, which forms the basis for HCFA payment; prevention of duplicate payment; and the applicant's marketing strategy. *Frequency:* One time; *Affected Public:* Business or other for-profit institutions, Not-for-profit institutions, and State, Local or Tribal Governments.; *Number of Respondents:* 15; *Total Annual Responses:* 15; *Total Annual Hours:* 1,125.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 23, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 98–20406 Filed 7–29–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 28, 1998.

Time: 7:30 AM to 9:00 AM.

Agenda: To review and evaluate grant applications.

Place: 600 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone conference Call).

Contact Person: Aida K. Vasquez, Grant Technical Assistant, Extramural Review Branch, National Institute on Alcohol Abuse and Alcoholism Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892, 301–443–9788.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 30, 1998.

Date: 9:00 AM to 10:30 AM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aida K. Vasquez, Grant Technical Assistant, Extramural Review Branch, National Institute on Alcohol Abuse and Alcoholism, Suite 409, 600 executive Boulevard, Bethesda, MD 20892, 301–443–9788.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20292 Filed 7–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The ıneeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 14–15, 1998.

Open: September 14, 1998, 8:30 AM to 2:00 PM.

Agenda: Grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10. Bethesda, MD 20892.

Closed: September 14, 1998, 2:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: September 15, 1998, 8:30 AM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Open: September 15, 1998, 11:00 AM to adjournment.

Agenda: Grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Walter S. Stolz, PHD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20293 Filed 7–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel. POSIT.

Date: July 28, 1998.

Time: 9:30 AM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–1644.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel. The Drug Abuse and Alconol Problem Assessment for Primary Care Evaluation of a Substance Abuse Screening System.

Date: July 29, 1998.

Time: 10:00 AM to 11:00 AM.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–49, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–1644.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel. Development of a Brief Drug Abuse Screening Instrument.

Date: July 29, 1998.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–49, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–1644.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel. Receptor Profiling and/or Compound Library Screening.

Date: August 4, 1998.

Time: 9:00 AM to 5:00 PM

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–1644.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel KAPPA Ligands From Combinatorial Libraries as Potential Treatment for Cocaine Addiction.

Date: August 5, 1998.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–49, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, 10–42, Rockville, MD 20857 (301) 443–1644.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Nonclinic ADME Studies.

Date: August 11, 1998.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, 10–42, Rockville, MD 20857 (301) 443–1644.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs; 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards, National Institutes of Health, HHS)

Dated: July 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20294 Filed 7–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Pharmacology Program Project Application.

Date: August 7, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Brookline, 1200 Beacon Street, Brookline, MA 02146.

Contact Person: Irene B. Glowinski, PhD, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–13, Bethesda, MD 20815, (301) 594–2772.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20296 Filed 7–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of SEP: National Institute on Aging Special Emphasis Panel, Early Indicators of Later Work Levels, Disease and Death (Teleconference).

Date of Meeting: August 18, 1998.

Time of Meeting: 11:30 a.m. to adjournment.

Place of Meeting: Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland 20815.

Purpose/Agenda: To review proposed program project.

Contact Person: Dr. William Kachadorian, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: July 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20297 Filed 7–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel.
Date: August 3, 1998.
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Zakir Bengali, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel ZRG–5 AARR–4 (03).
Date: August 4, 1998.
Time: 2:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Mohindar Poonian, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel ZRG5 BM–1 03.
Date: August 5, 1998.
Time: 10:30 AM to 11:30 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Timothy Henry, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel ZRG5 –BM–1 04 Telephone Conference Call.
Date: August 5, 1998.
Time: 1:00 PM to 2:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Timothy Henry, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel ZRG7–SSS–X (09).
Date: August 5, 1998.
Time: 2:00 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Lee Rosen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Clinical Sciences Special Emphasis Panel.
Date: August 5, 1998.
Time: 3:00 PM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892 (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel zrg5 bm-2 02m.
Date: August 11, 1998.
Time: 10:00 AM to 11:30 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: William C. Branche, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892 (301) 435–1148.

Name of Committee: Biological and Physiological Sciences Special Emphasis Panel.
Date: August 11, 1998.
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexander D. Politis, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892 (301) 435–1225.

Name of Committee: Clinical Sciences Special Emphasis Panel.
Date: August 12, 1998.
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892 (301) 435–1786.

Name of Committee: Biological and Physiological Sciences Special Emphasis Panel.
Date: August 12, 1998.
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexander D. Politis, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892 (301) 435–1225.

Name of Committee: Biological and Physiological Sciences Special Emphasis Panel.
Date: August 12, 1998.
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Calbert A. Laing, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892 (301) 435–1221.

Name of Committee: Clinical Sciences Special Emphasis Panel ZRG–GMB–01.
Date: August 12, 1998.
Time: 12:00 PM to 1:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Shirley Hilden, PHD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892 (301) 435–1198.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel ZRG BM–2 3 Fellowships Applications.
Date: August 13, 1998.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.
Contact Person: William C. Branche, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

Name of Committee: Biological and Physiological Sciences Special Emphasis Panel ZRG2–MEP–01S.
Date: August 13, 1998.
Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcelina B. Powers, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

Name of Committee: Biological and Physiological Sciences Special Emphasis Panel zrg2 sssc-01.

Date: August 14, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Cheri Wiggs, PHD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7848, Bethesda, MD 20892 (301) 435–1261.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel zrg5 evr 05.

Date: August 19, 1998.

Time: 10:00 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Garrett V. Keefer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892 (301) 435–1152.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel ZRG5 EVR 06.

Date: August 25, 1998.

Time: 10:00 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Garrett V. Keefer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892 (301) 435–1152.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20295 Filed 7–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c)of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–844874

Applicant: Michael Frisina and Lajia Cairen, Buffalo, NY

The applicants request a permit to import biological samples obtained as salvage or from trophy specimens of Altai argali (*Ovis ammon ammon*) and Gobi argali (*Ovis ammon darwini*) in the wild in Mongolia, for the purpose of genetic studies for enhancement of the survival of the species.

PRT–695190

Applicant: Western Foundation of Vertebrate Zoology, Camarillo, CA

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the permittee's collection for scientific research. This notification covers activities conducted by the applicant for a five year period.

PRT–676851

Applicant: U.S.Fish and Wildlife Service, Regional Director, Region 2, Albuquerque, NM

The applicant request renewal of a permit to import salvaged specimens of Sonoran pronghorn (*Antilocapra americana sonoriensis*) and peregrine falcon (*Falco peregrinus*), and salvaged specimens, viable eggs, injured birds from the wild and viable eggs from captive-held birds of whooping crane (*Grus ameriana*) for the purpose of scientific study or enhancement of propagation or survival of the species.

PRT–971

Applicant: Lance Lester, College Station, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–973

Applicant: Jack W. Lester, Jr, Bryan, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Steven E. Chancellor, Evansville, IN, PRT–972.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Sandra R. Green, La Ward, TX, PRT–1009.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kenneth L. Green, La Ward, TX, PRT–1008.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Michael F. Lonuzzi, Evansville, IN, PRT–1007.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Texas A&M University, Marine Mammal Research Program, Galveston, TX, PRT–766146.

Permit Type: Take for Scientific Research.

Name and Number of Animals: Manatee (*Trichecus manatus*), up to 20.

Summary of Activity to be Authorized: The applicant requests amendment of PRT–766146 to provide two new researchers authorization to work under the permit to take captive manatees at facilities in Florida for the purpose of scientific research.

Source of Marine Mammals: Captive manatees at facilities in Florida.

Period of Activity: Up to 5 years from issuance date of permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358–2281).

Dated: July 24, 1998.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–20336 Filed 7–29–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Three-Year Program of Customer Satisfaction Information Collection—to be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A plan for the three-year proposed information collection program described herein will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Copies of the proposed information collection plan may be obtained by contacting the U.S. Geological Survey's (USGS) Clearance Officer at the phone number listed below or e-mail customer@www.usgs.gov. Comments and suggestions on the plan are encouraged and should be made within 60 days directly to the Bureau Clearance Officer, USGS, National Center, 12201 Sunrise Valley Drive, M.S. 807, Reston, Virginia 20192. Telephone 703/648–7313.

Specific Public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden at the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: "Three-Year Program of Voluntary Customer Satisfaction Information Collections in Accordance with Executive Order 12862, 'Setting Customer Service Standards,' Within the U.S. Geological Survey."

OMB approval number: New collection.

Abstract: The USGS provides science for a changing world by delivering reliable and impartial information that describes the Earth, its natural processes, and its natural species. Much of this information is used to minimize the loss of life and property from natural disasters; manage water, biological, energy, and mineral resources; enhance and protect quality of life; and to contribute to wise societal, economic, and physical development. The USGS recognizes that excellent customer service is a key component of good government and that its interface with customers reflects the effectiveness of its organization. USGS is committed to engaging customers in a dialog to identify customer needs and satisfaction levels, and to deliver USGS products, information and services to customers in a timely and accurate manner.

Under the proposed three year information collection program, voluntary customer surveys will be conducted to ascertain customer satisfaction with the products, information and services of the USGS. Measures such as timeliness, accessibility, accuracy, availability, product and service quality, service responsiveness, and courtesy of service will serve as the focus of these surveys. The surveys will involve individuals who interact directly with the USGS to use or to request its products, information and/or services. Over the three-year period, the USGS will focus on encouraging and obtaining satisfaction feedback from customers involved in three areas of effort: partnerships and cooperative agreements, technical assistance, and public inquiries and requests for publications, information, services, maps, and/or other products. This last area will also include a survey of our web-page customers to ensure that our web pages are useful and easy to access and read. For the partnerships and cooperative agreements area, the USGS will ask its partners and cooperators (many of them work for State government agencies) for feedback about our service and whether or not we are meeting their needs. For the technical assistance area, USGS will ask customers who have requested scientific technical assistance if this assistance has been provided in a timely manner, with courtesy, and whether or not the assistance met the customer's expectations. In the public inquiries and requests for information, products, and services area, customers of USGS web pages, Information Centers, and map sales centers will be asked if the service was satisfactory and if the product was delivered in a timely manner.

To minimize burden on respondents, the surveys will be conducted using a variety of mechanisms ranging from questionnaires, comment cards, electronic queries and web-based feedback systems to focus groups. Customer information gathered from the surveys will be used to evaluate and improve satisfaction levels and to better meet customer needs. The average

burden per response for these activities is estimated to range from 5 minutes for a simple card to 1 hour for a focus group. Summarized results of customer satisfaction surveys will be published annually by the USGS in a *Report to Customers,* which will be made available to customers through USGS information centers and through its web pages.

Bureau form number: None.

Frequency: An estimated 10–20 surveys (ranging from comment cards, web-based and electronic surveys, and mail-out questionnaires) and 5–10 focus groups per year to evaluate customer satisfaction with specific products, information and services.

Description of respondents: Representatives of state, local, and tribal government agencies; universities and schools; non-government and nonprofit natural resource organizations; and some private citizens.

Estimated completion time: Varies depending upon the mechanism used: approximately 5 minutes for a comment card to one hour for a focus group session.

Annual responses: Approximately 20 surveys each with 500 responses and 10 focus groups each with 25 responses.

Annual burden hours: 2250 hours. (20 surveys)(500 responses)(0.2 hours)+(10 focus groups)(25 responses)(1 hour)

Bureau clearance officer: John Cordyack, 703/648–7313.

Dated: July 23, 1998.

Michael P. McDermott,

Chief, Office of Outreach.

[FR Doc. 98–20291 Filed 7–29–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–08–1430–00 Michigan]

Notice of Disclaimer of Interest

SUMMARY: The purpose of this notice is to inform claimants, the State of Michigan, and the general public of a decision by the United States Sixth Circuit Court of Appeals affecting the processing of claims to certain islands under the Michigan Public Lands Improvement Act (MPLIA) of October 28, 1998, Pub. L. No. 100–537, 102 Stat. 2711. The court's decision in the case of *Barbara W. Wolff and Janice Wheeler Tinker* v. *United States (Wheeler)*, 967 F. 2nd 222 (1992), held that, under Michigan law, title to islands which had been omitted from the original Federal survey passed to the littoral land owner when the littoral lands were patented. This is because the government did not survey the islands prior to the original conveyance, nor did the United States make any reservations of the islands in the patents for the littoral lands. Upon advice from the Department of the Interior's Office of the Solicitor, in accordance with the above Sixth Circuit Court of Appeals decision, it has been determined that the United States has no claim or interest in the islands listed below.

FOR FURTHER INFORMATION CONTACT: Deputy State Director, Walter Rewinski, at (703) 440–1727, Eastern States, Division of Resources Planning, Use and Protection, 7450 Boston Boulevard, Springfield, VA 22153.

SUPPLEMENTARY INFORMATION:

Background

Federal land policy has long held that lands, including islands, that were omitted from the original Federal survey remain the property of the United States until the United States officially patents the lands out of Federal ownership. In 1988, the MPLIA was enacted to transfer unsurveyed islands in Michigan to the State of Michigan unless a valid claim by a private party to an island exists. Section 3 of the MPLIA allows islands to be sold by the Secretary of the Interior to parties who could demonstrate valid claims. The rights, title, and interest of the United States to any islands not purchased by claimants within 10 years after the date of enactment of the MPLIA would be transferred by the Secretary of the Interior to the State of Michigan under and subject to this Act. Following the passage of the MPLIA, the BLM received claims for a number of unsurveyed islands. In the early 1990's, the BLM transferred ownership of all unsurveyed islands that did not receive claims to the State of Michigan in accordance to the MPLIA. The BLM then began adjudicating the claims filed under the MPLIA. Before adjudication could be completed, however, the Sixth Circuit decided *Wheeler.* The court held that under Michigan law, the unsurveyed islands had passed to the owners of the adjacent littoral land because the Government did not survey the island prior to the conveyance of the adjacent littoral lands, nor had the United States made any reservation of the islands in the patents for the littoral lands. According to *Wheeler,* the United States no longer has jurisdiction to sell islands to qualified claimants or to transfer islands to the State of Michigan. Therefore, the United States disclaims any interest in the islands listed below subject to *Wheeler.* Seventeen islands were surveyed by the United States after the MPLIA was enacted but before the Wheeler decision was made. These islands are subject to *Wheeler* and the United States disclaims interest in these islands also.

UNSURVEYED ISLANDS SUBJECT TO WHEELER

[All are in Michigan Meridian]

County	CCN	TNP	RNG	SEC	Acres	Location
Alpena	001	31N	6E	3	0.80	Island in Thunder Bay River.
	002	31N	6E	3	1.50	Island in Thunder Bay River.
	003	31N	6E	11	0.30	Island in Thunder Bay River.
	004	31N	6E	3	0.20	Island in Thunder Bay River.
	005	32N	6E	36	0.20	Island in Thunder Bay River.
	006	31N	8E	7	1.50	Island in Thunder Bay River.
	007	31N	8E	7	0.20	Island in Thunder Bay River.
	008	31N	8E	7	0.30	Island in Thunder Bay River.
	009	31N	8E	7	0.40	Island in Thunder Bay River.
	009	31N	8E	7	0.40	Island in Thunder Bay River.
	010	31N	8E	18	0.30	Island in Thunder Bay River.
Barry	004	1N	10W	7	1.30	Island In Pine Lake.
	005	1N	10W	15	2.80	Island In Crooked Lake.
Berrien	005	6S	18W	1	0.80	Island in St. Joseph River.
Branch	002	7S	5W	5	1.50	Island in Marble Lake.

UNSURVEYED ISLANDS SUBJECT TO WHEELER—Continued

[All are in Michigan Meridian]

County	CCN	TNP	RNG	SEC	Acres	Location
Calhoun	011	3S	6W	15	1.50	Island in Cedar Lake.
Cass	005	7S	13W	19	0.80	Island in Shavehead Lake.
	012	7S	15W	30	1.50	Island in Pine Lake.
Clare	002	20N	4W	26	0.50	Island in Long Lake.
Genesee	006	9N	5E	21	8.00	Island in Flint River
Iron	022	41N	23W	5	0.10	Island in Stager Lake.
	055	42N	33W	15	0.60	Island in Buck Lake.
Kent	015	8N	11W	7	3.20	Island in Little Pine Island Lake.
Keweena	023	58N	31W	1	0.50	Island In Lake Superior.
Marquette	018	50N	26W	21	0.60	Island In Lake Superior.
	019	50N	26W	21	0.30	Island In Lake Superior.
	020	50N	26W	27	4.00	Garlic Island in Lake Superior.
	021	47N	27W	13	0.80	Island in Lake Miller.
	022	46N	28W	15	0.20	Island in Island Lake
Montcalm	003	10N	5W	17	0.30	Island in Crystal Lake.
Oakland	001	2N	9E	4	0.30	Island in Cass Lake.
Ogemaw	004	23N	1E	2	0.20	Island In Clear Lake.
	005	23N	1E	2	0.90	Island in Clear Lake.
	006	23N	1E	11	1.20	Island in Clear Lake.
	010	23N	4E	8	1.80	Island in George Lake.
Presquew	002	34N	4E	31	0.10	Island in Lake Nettie.
Isle	004	33N	7E	25	0.10	Island in Long Lake.
	005	33N	7E	25	0.20	Island in Long Lake.
Roscommon	001	22N	1W	31	1.00	Island in West Twin Lake.
	003	21N	2W	12	0.20	Island in Clear Lake.
Washtenaw	014	2S	6E	21	1.30	Island in Huron River.
	015	2S	6E	21	0.10	Island in Huron River.

SURVEYED ISLANDS SUBJECT TO WHEELER

[All are in Michigan Meridian]

County	Serial/No.	TWP	RNG	SEC	Subdiv	AC	Location/name
Chippewa	041337	47N	1E	11	Tr. 41	1.05	Black Point.
							Sugar Island.
Chippewa	041338	46N	2E	14	Tr. 38	0.60	Rock Island.
					Tr. 37	1.68	Advance Island.
Chippewa	041339	42N	4E	16	Lot 2	1.24	Sweets Island.
Chippewa	041340	41N	5E	14	Tr. 39	0.28	Huron Bay.
				23	Tr. 38	1.27	Huron Bay.
Chippewa	035667	43N	6E	30	Tr. 39	0.06	Potaganissing Bay.
				31	Tr. 37 & 38	0.47	Potaganissing Bay.
				31	Tr. 40 & 41	0.36	Potaganissing Bay.
Grand Traverse	041343	26N	10W	1	Tr. 37	0.10	Rennie Lake.
Mackinac	041349	41N	1E	3	Tr. 37	1.10	Little Island.
Mackinac	041350	42N	1W	28	Tr. 39	0.19	Lake Huron.
					Tr. 40	0.02	Lake Huron.
Mackinac	035172	42N	1W	28	Tr. 37	0.45	Lake Huron.
Mackinac	036455	42N	1W	29	Tr. 41	0.45	Burnam Island.
Otsego	041360	30N	4W	32	Tr. 37	1.02	Buhl Lake.
Otsego	041361	30N	4W	32	Tr. 38	0.91	Buhl Lake.

Ron Montagna,

Acting Associate State Director, Eastern States.

[FR Doc. 98–20001 Filed 7–29–98; 8:45 am]

BILLING CODE 4310–CJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1220; GP8–0256]

Amendment to Prohibited Acts Within the Boundaries of the Deschutes Wild and Scenic River Area, Located in the Prineville District; Oregon

AGENCY: Bureau of Land Management, Prineville District Office.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) is proposing amendments to existing special rules which apply to public use of land and water surfaces administered by the BLM within the boundaries of the Deschutes National Wild and Scenic River Area. The existing special rules were published in the **Federal Register** on April 15, 1994 (Vol. 59, No. 73) and June 20, 1997 (Vol. 62, No. 119). The

proposed special rules include acts which are prohibited.

COMMENT PERIOD: Interested parties may submit comments within 30 days of the publication of this notice. Please send comments to the Prineville District Manager, Attention Law Enforcement, Bureau of Land Management, P.O. Box 550, Prineville, OR 97754. Any adverse comments will be evaluated by the District Manager, who may vacate or modify these proposed amendments and issue a final determination.

EFFECTIVE DATE: In the absence of any further action by the District Manager, these proposed special rules will become the final determination of the Department of the Interior, on or before July 17, 1998.

FOR FURTHER INFORMATION: Contact Tom Teaford at 541–416–6759.

Special Rules

Pursuant to 43 CFR 8351.2–1, the following acts are prohibited on the land and water surfaces administered by the BLM, Prineville District, within the designated boundaries of the Deschutes National Wild and Scenic River Area. The acts are prohibited to protect natural resources and to provide for public safety and enjoyment. Prior authorization for exemption from a prohibited act must be obtained from a BLM authorized officer, as defined in 43 CFR 8360.0–5(a).

Part 1. Camping is revised as follows:

Camping means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home, or trailer or mooring of a vessel for the apparent purpose of overnight occupancy.

a. Camping longer than four consecutive nights at a boat-in-only campsite or vehicle camping for a total period of more than 14 days during any 28 day period. The 28 day period begins on the first full day the site is occupied. The 14 day limit may be reached either through a number of separate visits or through a period of continuous occupation. Once the 14 day limit is reached in any camping area, the person(s) must move a distance of not less than 50 miles if they intend to continue camping on public lands.

b. Digging or leveling the ground at any campsite.

c. Installation of permanent camping facilities.

d. Camping on river islands or any area posted as closed to camping.

e. Camping outside of designated campsites between Locked Gate and Buck Hollow Recreation Site.

f. Camping outside of designated campsites on the east (road side) of the River between Buck Hollow Recreation Site and Macks Canyon Recreation Site.

g. Vehicle camping anywhere along the River outside of designated campsites.

h. Occupying any area designated as day use only between sunset and sunrise.

i. Possessing or leaving refuse, debris, or litter in an exposed, unsightly, or unsanitary condition.

j. Leaving campground equipment, site alterations, or refuse after departing any campsite or in any unoccupied campsite.

k. Failure to pay fees within 30 minutes of occupying a fee campsite.

l. Exceeding party or group sizes of: 16 in river segments 1,3, and 4. 24 in river segment 2 in any boat-in site and in any designated group campsite. 8 in any designated single drive-in site.

m. After camping at a boat-in-only site, failure to move from that site at least ¼ mile and failure to vacate that site at least 3 nights before returning to that site.

n. Exceeding the maximum allowable number of persons and/or vehicles allowed for a designated campsite.

o. Reserving, holding, or transferring campsites for the benefit of another party.

p. Moving any table, stove, barrier, litter receptacle, or other campground equipment.

Part 3, Sanitation and Refuse, is revised as follows:

An "approved carry out system" is a portable unit designed for the deposition and transportation and disposal of human body waste. Such a system must have a water-tight seal and be designed to be emptied into designated BLM dump facilities or RV waste dump stations. Systems which use plastic bags or similar material are not considered approved carry out systems because plastic cannot be accepted by dump facilities.

A "toilet facility" is a vault-type toilet provided by the Bureau of Land Management.

a. When camping less than 800 feet from a toilet facility, disposing of human body waste except in a toilet facility.

b. When camping more than 800 feet from a toilet facility, failing to use an approved carry out system.

c. When not camping and less than 800 feet from a toilet facility, disposing of human body waste except in fixtures provided for that purpose.

d. When not camping and more than 800 feet from a toilet facility, failing to bury human body wastes at least six inches deep and more than fifty feet from any natural water source.

e. Emptying waste from an approved carry out system into the interior fixture of a toilet.

f. Disposing of refuse in other than refuse receptacles.

g. Depositing refuse in the plumbing fixtures or vaults of a toilet facility.

h. Using government refuse receptacles for dumping household, commercial, or industrial refuse brought in as such from non- US government property except in accordance with conditions established by an authorized official.

i. Draining any refuse from a trailer or vehicle except in facilities provided for that purpose.

j. Washing dishes or using soap in the River or any tributaries or less than 50 feet from any natural water source.

Part 6, Vehicles, supart (k)(6), is added as follows:

Riding or allowing to ride on the external part of a motor vehicle, including but not limited to hoods, bumpers, fenders, tailgates, trunks, window sills, running boards, or above cargo bed side rails.

Part 9, Alcoholic beverages and controlled substances, subpart (i)(2) is revised as follows:

The alcohol content of the operator's blood is. 08 percent or more by weight of alcohol in the blood.

Dated: July 14, 1998.

Donald L. Smith,

Acting District Manager.

[FR Doc. 98–20407 Filed 7–29–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Submission of Study Package to the Office of Management and Budget; Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) Social Science Program is submitting to the Office of Management and Budget (OMB) a request for clearance of a three year program of collections of information that would conduct surveys of the public regarding park visitors and visitor services. The NPS is publishing this notice to inform

the public of this proposed three-year program and to request comments on the program and the proposed approach.

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the NPS, including whether the information will have practical utility; (b) the accuracy of the NPS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Sixty-day Notice of Intention to Request Clearance of Collection of Information—Opportunity for Public Comment was published in the **Federal Register** on September 30, 1997, Vol. 63 No. 189 pgs. 51133–51143. Several comments were received from the public as a result of the **Federal Register** Notice and have been integrated into this final proposal.

DATES: Public Comments will be accepted on or before August 31, 1998.

Send comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for the Interior Department, Washington, DC 20503. Also send a copy of these comments to Mr. Jared D. Ficker, Social Science Specialist, National Park Service, Social Science Program, 1849 C Street NW, MS 3127, Washington, DC 20240.

The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments on or before August 31, 1998.

All comments will become a matter of public record. Copies of the proposal requirement can be obtained from Mr. Jared D. Ficker, Social Science Specialist, National Park Service, Social Science Program, voice 202–208–6330, fax 202–208–4620, e-mail <jared_ficker@nps.gov>. In addition, a complete copy of the proposal is available at the NPS Social Science Program website at *http://www.nps.gov/socialscience/tech/survey.htm.*

SUPPLEMENTARY INFORMATION:

Title: Programmatic Approval for NPS Visitor Surveys.

Bureau Form Number: None.

OMB Number: To be assigned.

Expiration Date of Approval: To be assigned.

Type of Request: Request for new clearance.

Description of Need: NPS needs to sponsor information collection surveys of the public to provide to park managers information for improving the quality and utility to the public of park programs. NPS finds the current process by which it secures OMB approval of proposed collections of information can be improved with respect to securing public comment and can be made more efficient for the federal government through reducing current levels of personnel and funding necessary for preparing and reviewing the proposed collections of information. NPS believes it has developed an alternative approach for processing proposed collections of information that will be both more effective and more efficient. This proposal is designed to test the alternative approach using one subset of NPS information collection surveys for a 3-year test period.

Automated Data Collection: At the present time, there is no automated way to gather this information, since the information gathering process involves asking visitors to evaluate services and facilities that they used during their park visits. The intrusion on individual visitors is minimized by rigorously designing visitor surveys to maximize the ability of the surveys to use small samples of visitors to represent large populations of visitors and by coordinating a program of surveys to maximize the ability of new surveys to build on the findings of prior surveys.

Description of Respondents: A sample of visitors to parks or of people who have relationships to parks.

Estimated Average Number of Respondents: The proposal does not identify the number of respondents because that number will differ from individual survey to individual survey, depending on the purpose and design of each individual survey.

Estimated average number of responses: The proposal does not identify the average number of responses because that number will differ from individual survey to individual survey, depending on the purpose and design of each individual survey. For most surveys, each respondent will be asked to respond only one time, so in those cases the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: The proposal does not identify the average burden hours per response because that number will differ from individual survey to individual survey, depending on the purpose and design of each individual survey.

Frequency of response: Most individual surveys will request only 1 response per respondent.

Estimated annual reporting burden: The proposal identifies the requested total number of burden hours annually for all of the surveys to be conducted under its auspices to be 10,000 burden hours per year. The total annual burden per survey for most surveys conducted under the auspices of this proposal would be within the range of 100 to 300 hours.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–20369 Filed 7–29–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Trail of Tears National Historic Trail Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Establishment.

SUMMARY: The National Park Service (NPS) is giving notice of the establishment of the Trail of Tears National Historic Trail Advisory Council in accordance with the Federal Advisory Committee Act (PL 92–463, 86 Stat. 770, 5 U.S.C. Appx., section 10).

The Council was originally established by PL 100–192, which amended the National Trails System Act to designate the Trail of Tears National Historic Trail. Under the general authority of Section 5(d) of the National Trail System Act, PL 90–543, as amended, October 2, 1968, an advisory council with a 10-year term is required for each established national scenic or national historic trail. The Council's statutorily prescribed 10-year term will expire July 7, 1998. Because the need for the Council is expected to continue until such time as trail plan implementation and administration have broadened and matured to become fully effective and responsive to operational and partnership responsibilities, the National Park Service is administratively re-establishing the Council in the same form as it existed under its expiring statutory authority. In this way, the Council may continue its work without interruption.

Composition: The Council, not to exceed 35 members, shall be appointed by the Secretary of the Interior as follows:

(1) The head of each Federal department or independent agency administering lands through which the trail passes, or a designee;

(2) A member appointed to represent each State through which the trail passes, and such appointments shall be made from recommendations of the Governors of such States;

(3) One or more members appointed to represent private organizations, including corporate and individual landowners and land users, which in the opinion of the Secretary have an established and recognized interest in the trail, and such appointments shall be made from recommendations of the heads of such organizations.

The Secretary of the Interior may also appoint a non-voting representative of each bureau of the Department of the Interior that administers land through which the trail passes, provided that such bureau is not otherwise represented by a voting member of the Council.

Copies of the Council's charter will be filed with the appropriate committees of the Congress and with the Library of Congress in accordance with section 9(c) of the Federal Advisory Committee Act (FACA), 5 U.S.C. appx.

Records of Meetings: In accordance with requirements of the Federal Advisory Committee Act, 5 U.S.C. Appx. 1994, the NPS will keep a record of all Council meetings.

Administrative Support: To the extent authorized by law, the NPS will fund the costs of the Council and provide administrative support and technical assistance for the activities of the Council.

Certification: I hereby certify that the administrative establishment of the Trail of Tears National Historic Trail Advisory Council is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of October 2, 1968, as amended, 16 U.S.C. 1241 *et seq.*

Dated: July 15, 1998.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 98–20371 Filed 7–29–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Record of Decision, Final Environmental Impact Statement for the General Management Plan, Cape Cod National Seashore, Wellfleet, MA

AGENCY: National Park Service, Department of the Interior.

INTRODUCTION: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, (P.L. 91–190 as amended), and specifically to regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service has prepared this Record of Decision following the Final Environmental Impact Statement for the General Management Plan for Cape Cod National Seashore, Barnstable County, Massachusetts. In accordance with the National Environmental Policy Act of 1969, the environmental impact statement was prepared to assess the impacts of implementing the general management plan. The purpose of the General Management Plan is to guide the overall management, development, resource conservation and public use Cape Cod National Seashore. Presented are alternatives for the preservation, public use and management of the National Seashore and the impacts of implementing each alternative.

SUMMARY: The Record of Decision concludes compliance with the National Environmental Policy Act for decision making to approve a General Management Plan for Cape Cod National Seashore. This compliance was initiated upon a Notice of Intent to prepare an Environmental Impact Statement published in the **Federal Register** on April 24, 1992. A second **Federal Register** notice announcing the schedule for public scoping meetings in the six Outer Cape towns and Barnstable, Massachusetts was issued on June 11, 1992. Notice of Availability of the Draft Environmental Impact Statement and announcement of two public forums was made in the **Federal Register** on August 5, 1996. The comment period of about 75 days was scheduled to end October 31, 1996. This period was extended twice to December 31, 1996 by subsequent **Federal Register** notices on October 7, 1996 and November 20, 1996. The October 7, 1996 **Federal Register** notice also announced two additional public meetings. The Notice of Availability for the Final Environmental Impact Statement was published in the **Federal Register** on March 2, 1998.

The Record of Decision is a concise statement of the decisions made, other alternatives considered, the basis for the decision, the environmentally preferable alternative, the mitigating measures, and the public involvement in the decision making process.

The Final Environmental Impact Statement for the General Management Plan describes alternatives for management actions at Cape Cod National Seashore, the environment that would be affected by those actions, and the environmental consequences of implementing alternative actions. Three alternatives were presented, including the proposed general management plan, the selected action described in the Record of Decision.

Alternative 1 is a continuation of current management, often referred to as the "no-action" alternative. Under this alternative the Park Service would continue to manage the National Seashore to protect natural and cultural resources, while allowing for appropriate public use related to those resources. Essentially no new development for public use would be undertaken.

Alternative 2, the selected action, would guide the overall management of Cape Cod National Seashore for the next 10 to 15 years. The emphasis of the plan is on the management of natural and cultural resources; public use and interpretation; coordination with nonfederal landowners within the National Seashore; administrative, maintenance, and operational concerns; and working with local residents, town and county officials and interested agencies and persons to resolve problems of mutual concern. The plan is programmatic in that it gives guidance and criteria for day-to-day decision making and for producing more specific future action and development plans. It would seek to maintain an appropriate balance between resource protection and public use. More opportunities would be provided for the public to experience the resources of the National Seashore. Existing public use facilities and attractions would be improved. No major new development, however, is proposed, and the built environment or impacts from development would be reduced where possible. Under Alternative 2 there would be more emphasis on preserving the "timeless" character of Cape Cod in terms of natural and dynamic landscapes, historic architecture and cultural landscapes, and customary activities. The National Park Service would work in partnership with local communities and officials to more effectively further

educational and interpretive opportunities and resource stewardship on the Outer Cape and to more successfully address mutual problems and concerns, such as water supply, coastal processes, and traffic congestion—concerns that transcend political boundaries.

Alternative 3 builds on the approach of Alternative 2, proposing that National Seashore managers play a more formal role in directing efforts to protect and manage resources on the Cape through more structured partnerships. Included are other reasonable actions that could be implemented but that are significantly different from those presented in either Alternative 1 or 2, and they are often more costly. The Park Service would initiate and enter into more formal agreements with state and local agencies to improve collaboration and consistency in day-to-day resource management. These actions are specific to selected management topics only, not to each subject area.

The National Park Service will now commence to implement action features of the selected alternative from the Final Environmental Impact Statement as described in the Record of Decision and set forth in the General Management Plan.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision are available upon request from: Superintendent, Cape Cod National Seashore, 99 Marconi Site Rd., Wellfleet MA 02667. Telephone: (508) 349–3785.

Dated: July 10, 1998.

Marie Rust,

Regional Director, Northeast Field Area (215) 597–7013.

[FR Doc. 98–20367 Filed 7–29–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Draft Environmental Assessment (EA)

AGENCY: National Park Service, Interior.

ACTION: Notice of release of draft environmental assessment.

SUMMARY: This notice announces the release of a draft environmental assessment (EA) on a proposal for the construction of a new dining facility for the Pocono Environmental Education Center (PEEC).

EA Comment Period: Comments on or before September 28, 1998.

Copies available at: Website: www.nps.gov/dewa

Park Headquarters, River Road, Bushkill, PA 18324

Warren County Library, Belvidere, NJ 07823

Kemp Library, East Stroudsburg University, E Stroudsburg PA 18301

State Library of PA, PO Box 1601, Harrisburg, PA 17105

Easton Area Public Library, 6th and Church Street, Easton, PA 18042

Sussex County Library, 125 Morris Turnpike, Newton, NJ 07860

New Jersey State Library, 185 West State Street CN 520, Trenton, NJ 08625

Superintendent

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenburg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, DC 20510–3002

Honorable Robert G. Torricelli, U.S. Senate, Washington, DC 20510–3001

Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, DC 20510

Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, DC 20510–3802

Honorable Paul McHale, U.S. House of Representatives, 511 Cannon House Office Bldg., Washington, DC 20515–3815

Honorable Joseph McDade, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, DC 20515–3810

Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, DC 20515–3005

Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120

Honorable Christine Whitman, State House, Trenton, NJ 08625

Eastern Monroe Public Library, 1002 North Ninth Street, Stroudsburg, PA 18360.

Pike County Library, 201 Broad Street, Milford, PA 18337.

This draft environmental assessment, prepared by the National Park Service, deals with the environmental consequences of the construction of a new dining hall and associated waste water system. The project is located within the campus of the Pocono Environmental Education Center (PEEC).

SUPPLEMENTARY INFORMATION: PEEC operates under a Memorandum of Understanding (MOU) with the National Park Service. The center has been in operation for over 25 years and services over 20,000 people every year. The existing dining hall is inadequate and in poor structural condition. Dining is an essential function at the center and there are no dining establishments within a reasonable distance.

The EA is available for public comment. Any member of the public may file a written comment. Comments should be addressed to the Superintendent, Delaware Water Gap National Recreation Area, River Road, Bushkill, PA 18324.

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 717–588–2418.

Dated: July 23, 1998.

William G. Laitner,

Superintendent.

[FR Doc. 98–20370 Filed 7–29–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF INTERIOR

National Park Service

Keweenaw National Historical Park Advisory Commission Meeting

SUMMARY: This notice announces an upcoming meeting of the Keweenaw National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

DATES: August 25, 1998; 8:30 a.m. until 4:30 p.m.

ADDRESS: Keweenaw National Historical Park Headquarters, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913–0471.

The Chairman's welcome; minutes of the previous meeting; update on the general management plan; update on park activities; old business; new business; next meeting date; adjournment. This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Superintendent, Keweenaw National Historical Park, Frank C. Fiala, P.O. Box 471, Calumet, Michigan 49913–0471, 906–337–3168.

SUPPLEMENTARY INFORMATION: The Keweenaw National Historical Park was established by Public Law 102–543 on October 27, 1992.

Dated: July 16, 1998.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 98–20368 Filed 7–29–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Update National Park Service Policies for Managing the National Park System

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) is updating its policies for managing the National Park System. The policies are contained in Part One of a document titled Management Policies, which was last published in 1988. The comment period for interested parties to provide information or suggestions that should be considered by the NPS is hereby extended an additional 15 days, to August 30, 1998.

DATES: Information from interested parties will be accepted until August 30, 1998.

ADDRESSES: Send information or suggestions to Bernard Fagan, National Park Service, Office of Policy, 1849 C Street, NW, Room 3230,Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Bernard Fagan at (202) 208–7469.

SUPPLEMENTARY INFORMATION: The NPS is updating the policies governing management of the National Park System. These policies are contained in Part One of a document titled Management Policies (1988). New laws and technologies, new understandings of the environment, and changes in society necessitate re-examination of the 1988 policies, and revision where necessary. Organizations and individuals with an interest in NPS Management Policies are invited to provide information or suggestions that should be considered by NPS during the review process. Original notice of intent to update Management Policies was published in the **Federal Register** on June 30, 1998, wherein it was stated that comments would be accepted through August 15, 1998. This notice extends the comment period an additional 15 days, to August 30. The 1988 edition of Management Policies is posted on the Internet at <*http://www.nps.gov/planning/mngmtplc/npsmptoc.html*>. If you are unable to access the Internet, and would like to receive a copy by mail, please contact Bernard Fagan at the address given above. The NPS expects to have a draft of the updated Management Policies available for public review and comment by December 30, 1998.

Dated: July 23, 1998.

Loran G. Fraser,

Chief, Office of Policy.

[FR Doc. 98–20372 Filed 7–29–98; 8:45 am]

BILLING CODE 4310–70–U

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 Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on July 10, 1998, a proposed Consent Decree in *United States* v. *Akzo Coatings, Inc., et al.*, Civ. Action No. 98–72934 was lodged with the United States District Court for the Eastern District of Michigan. This Consent Decree represents a settlement of claims of the United States against: (1) Akzo Coatings, Inc.; (2) Chrysler Corporation; (3) Detrex Corporation; (4) Federal Screw Works; (5) Ford Motor Company; (6) General Motors Corporation; (7) Great Lakes Division of National Steel Corporation; (8) HNA Holdings, Inc. (formerly known as Hoechst Celanese Corporation); (9) TRW Inc.; and (10) Michelin North America (successor to Uniroyal Goodrich Tire Company) (collectively "Settling Defendants"), for reimbursement of response costs and injunctive relief in connection with the Springfield Township Superfund Site ("Site") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under this settlement with the United States, Settling Defendants, will pay $1,551,510.72, plus interest, in reimbursement of response costs incurred by the United States at the Site. In addition, Settling Defendants will continue to operate the ground water extraction and treatment system that they currently are operating at the Site pursuant to a Unilateral Administrative Order. Settling Defendants will also design and implement the response action selected in the Amended Record of Decision that will address contaminated soils at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Akzo Coatings, Inc., et al.*, D.J. Ref. 90–11–2–222B.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, Southern Division, 211 West Fort Street, Suite 2300, Detroit, MI 48226, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the Consent Decree, please enclose a check payable to the Consent Decree Library in the amount of $25 (25 cents per page reproduction cost) for a copy of the Consent Decree without attachments or $191.50 for a copy of the Consent Decree with attachments.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–20401 Filed 7–29–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the policy of the Department of Justice, notice is hereby given that a proposed consent decree in *United States* v. *CMC Heartland Partners and General Motors Corp.*, Civ. No. 98–C–494–S, was lodged with the United States District Court for the Western District of Wisconsin, on July 14, 1998. That action was brought against defendants pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for payment of past costs incurred by the United States at the Wheeler Pit Superfund site in LaPrairie, Wisconsin. This decree requires defendants to pay $620,661.78, in satisfaction of the United States claims against it for response costs incurred in connection with the site through May 31, 1997.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *CMC*

Heartland Partners, et al., DOJ. Ref. #90–11–2–1210.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Wisconsin, 660 W. Washington Avenue, Suite 200, Madison, WI 53701–1585; at Region 5, Office of the Environmental Protection Agency, 77 West Jackson Blvd, Chicago, IL 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $6.25 (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy please refer to *United States* v. *CMC Heartland Partners, et al.*, DOJ. Ref. #90–11–2–1210.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–20396 Filed 7–29–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Environmental Settlements

In accordance with Department policy, 28 CFR § 50.7, notice is hereby given that on June 16, 1998, the United States, on behalf of the U.S. Environmental Protection Agency ("EPA") entered into proposed settlements in two related cases, *United States* v. *City of McKinney, Texas* (498–cv–202) and *United States* v. *McKinney Smelting, Inc.* (498–cv–204). The settlements involve remediation of, and environmental violations at, the McKinney Smelting, Inc. ("MSI") scrap metal recycling facility. The Consent Decrees were lodged with the Court on July 10, 1998.

The settlement with the City of McKinney (the "City") is pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601, *et seq.* and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.* The United States has alleged that the City contributed to the contamination of the MSI facility as the past owner of roads which border the facility and which contained lead battery casings as fill material in the roadbed. Under the proposed settlement, the City will contribute $33,500 to fund a portion of the cleanup of the MSI facility, which will be performed by a prospective purchaser, Ferex, Inc., in accordance with a March 25, 1998 "Agreement and Covenant Not to Sue" ("PPA") with the United States.

The Consent Decree with MSI is pursuant to Section 7003 of RCRA, 42 U.S.C. 6973, Section 15(1)(C) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2614(1)(C) and Sections 301(a) and 402(p) of the Clean Water Act ("CWA"), 33 U.S.C. 1311(a) and 1342(p). The United States alleges MSI's improper disposal of non-liquid polychlorinated biphenyls ("PCBs"), failure to comply with the Storm Water Pollution Prevention requirements of the CWA, and that the disposal of hazardous and solid waste at the facility may present an imminent and substantial endangerment to health or the environment. The proposed Consent Decree requires MSI to pay $25,000 in settlement of CWA civil penalty claims, based on the company's financial inability to pay the full penalty demanded.

The U.S. Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to the appropriate settlement, either *United States* v. *City of McKinney, Texas*, D.J. ref. 90–5–1–1–4458/2 or *United States* v. *McKinney Smelting, Inc.*, D.J. ref. 90–5–1–1–4458. In addition, interested parties may request a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Consent Decrees may be examined at the Office of the United States Attorney for the Eastern District of Texas, Sherman Division, 660 North Central Expressway, Suite 400, Plano, Texas 75704; the Office of the City Manager, City of McKinney, 222 E. Tennessee, McKinney, Texas 75070; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. A copy of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., Washington, D.C. 20005. In requesting a copy of these Decrees, Please enclose a check to cover the $.25 per page reproduction costs. A check in the amount of $11.50 is required if requesting a copy of the City of McKinney Decree. A check in the amount of $4.75 is required if requesting a copy of the McKinney Smelting, Inc. Decree. Make checks payable to: Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 98–20400 Filed 7–29–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act, the Emergency Planning and Community Right To Know Act and the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Terra International, Inc. and Terra Industries, Inc.*, No. C98–4070MWB (N.D. Iowa), was lodged on June 26, 1998, with the United States District Court for the Northern District of Iowa. With regard to the Defendants, the Consent Decree resolves claims filed by the United States on behalf of the United States Environmental Protection Agency ("EPA") pursuant to the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Emergency Planning and Community Right to Know Act, 42 U.S.C. 11001 *et seq.*, and the Comprehensive Environmental Response, Compensation and Liability Act, *as amended*, 42 U.S.C. 9601, *et seq.*

The United States entered into the Consent Decree in connection with the Terra Industries Port Neal facility located in Port Neal, Iowa. The Consent Decree provides that the Settling Defendants will pay a civil monetary penalty of $500,000 plus reimburse the United States a total of $150,000 for past costs incurred by the United States at the Site. The Settling Defendants also perform Supplemental Environmental Projects valued at more than $100,000.

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 National Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Terra International, Inc. and Terra Industries, Inc.*, DOJ Reg. #90–5–2–1–2062A.

The proposed Consent Decree may be examined at the office of the United States Attorney, 320 6th Street, Room 327, Sioux City, Iowa 51101; the Region 7 office of the Environmental Protection

Agency, 726 Minnesota Avenue, Kansas City, Kansas; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 98–20402 Filed 7–29–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in an Oil Spill Case

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree was lodged in *In re Complaint of United States, as Owner of SS CAPE MOHICAN (O.N. 536672), for exoneration from or limitation of liability,* Civil Action No. C97–1380 EDL (N.D. Cal.), on July 16, 1998 with the United States District Court for the Northern District of California.

On October 28, 1996, fuel oil in a stabilization tank on the SS CAPE MOHICAN flowed from the vessel into a drydock operated by San Francisco Drydock and overflowed from the drydock into San Francisco Bay (the "Oil Spill"). The United States has filed claims against San Francisco Drydock. San Francisco Drydock has filed claims against the United States. The State of California has filed claims against San Francisco Drydock and the United States.

The State of California and the United States have entered into a joint consent decree with San Francisco Drydock that resolves the claims asserted by both governments against San Francisco Drydock. Under the Consent Decree, San Francisco Drydock will pay the state and federal governments $7,756,646 to settle the state and federal claims for response costs, assessment costs, and natural resources damages. Of that total, $3.625 million is for natural resources damages under the trusteeship of the federal and state governments. The state and federal natural resources trustees presently plan to use the $3.625 million to restore and enhance habitats, birds, marine aquatic species, public areas, and public services affected by the spill. The natural resources trustees will describe specific restoration projects in one or more restoration plan proposals. Public comment on the specific projects will be sought before the trustees prepare the final restoration plan or plans.

Other federal components of the settlement include the recovery of Coast Guard and Navy response costs of $1,239,198; Department of the Interior ("DOI") response costs of $138,832; compensation for the oiling of historic ships in the amount of $50,000; and National Oceanic and Atmospheric Administration response costs of $120,630.

The State of California is recovering other amounts, including state response costs of $1,757,984; state damage assessment costs of $175,000; payments to the state environmental enhancement fund and the oil spill prevention and administration fund totaling $175,000, and a civil penalty of $50,000. In addition, the state and the San Francisco District Attorney's Office will jointly administer $400,000 to be devoted to enhancing and protecting natural resources in or around, or affected by or having an effect on, San Francisco Bay.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the joint natural resources damages component of the proposed consent decree, the $3.625 million. No comments are requested on the recovery of response costs or other matters. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and copied to Robert R. Klotz, Environmental Enforcement Section, U.S. Department of Justice, 301 Howard Street, Suite 870, San Francisco, CA 94105. Comments should refer to *In re Complaint of United States, as Owner of SS CAPE MOHICAN (O.N. 536672), for exoneration from or limitation of liability,* Civil No. C97–1380 EDL, and DOJ No. 90–5–1–1–4407.

The proposed CAPE MOHICAN consent decree may be examined at the office of the United States Attorney, Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. To request a copy of the consent decree in *In re Complaint of United States, as Owner of SS CAPE MOHICAN (O.N. 536672), for exoneration from or limitation of liability,* please refer to that case title, Civil No. C97–1380 EDL, and DOJ No. 90–5–1–1–4407, and enclose a check for the amount of $9.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–20395 Filed 7–29–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. General Electric Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Montana, Missoula Division, in *United States* v. *General Electric Company,* Civil Action No. 96–121–M–CCL. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC, in Room 300, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the District of Montana, 301 South Park, Room 542, Helena, MT 59626.

The Complaint in this case, filed in August 1996, alleged that General Electric had entered into agreements that violated Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1 and 2, with hospitals in the United States. The District Court dismissed the government's Section 2 claims, leaving for adjudication whether GE's agreements, by restraining trade, had violated Section 1. The challenged agreements were part of license agreements between GE and the hospitals in which the hospitals agreed, as a condition for obtaining a license for GE's advanced diagnostic materials for the servicing of their GE imaging equipment (such as MRIs, CT scanners, x-ray machines, etc.), that they would not compete with GE in servicing medical equipment for others.

The proposed Final Judgment enjoins GE from restraining, in connection with such licenses, a licensee's right to service medical equipment for third parties. Section IV(B) of the Final Judgment prohibits GE from requiring

that a potential licensee give GE information regarding that person's practice with regard to the provision of third-party service. Section IV(C) enjoins GE from representing that GE has a policy or general practice of refusing to license operating or service materials for medical equipment, or of refusing to provide training thereon, because an end-user offers third-party medical equipment service. Section IV(D) prohibits GE from offering to sell or license operating or service materials on terms that vary depending on whether the end-user has provided, does provide, or will provide third-party medical equipment service. Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, Department of Justice, Suite 300, 325 7th Street, NW., Washington, DC 20530 (telephone: 202/616–5935).

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement, Antitrust Division.

Stipulation and Order

Cause No. CV–96–121–M–CCL

The undersigned parties, by their respective attorneys, stipulate that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties, and venue of this action is proper in the Missoula Division of the District of Montana.

2. The Court may enter and file a Final Judgment in the form attached upon the motion of any party or upon the Court's own motion at any time after compliance with the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice on the defendant and by filing that notice with the Court.

3. The defendant agrees to comply with the proposed Final Judgment pending its approval of the Court, and shall, from the date of signing this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though it were in full force and effect as an order of the Court.

4. If the United States withdraws its consent, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

5. The parties request that the Court acknowledge the terms of this Stipulation by entering the Order in this Stipulation and Order.

Dated: _____

Respectfully submitted,

For Plaintiff United States of America:

Joel I. Klein,

Assistant Attorney General.

A. Douglas Melamed,

Principal Deputy Assistant Attorney General.

John M. Nannes,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement.

Mary Jean Moltenbrey,

Chief, Civil Task Force.

Susan L. Edelheit,

Assistant Chief, Civil Task Force.

Sherry Scheel Matteucci,

United States Attorney, District of Montana, P.O. Box 1478, Billings, MT 59103, (406) 657–6101.

Fred E. Haynes,

John R. Read,

Jon. B. Jacobs,

Joan H. Hogan,

Peter J. Mucchetti,

Attorneys for the United States, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, DC 20530, (202) 514–5038.

Bernard M. Hollander,

Senior Trial Attorney.

For Defendant General Electric Company:

Richard L. Rosen,

David S. Eggert,

Kathleen A. Behan,

Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004,

Dan K. Webb,

W. Gordon Dobie,

Winston & Strawn, 35 West Wacker Drive, Chicago, IL 60601,

Randy J. Cox,

Boone, Karlberg & Haddon, 300 Central Square, 201 West Main, P.O. Box 9199, Missoula, MT 59807.

So Ordered on this ____ day of _____,

1998._____

Hon. Charles C. Lovell,

United States District Judge.

Competitive Impact Statement

This Competitive Impact Statement ("CIS") sets forth the information necessary to enable the Court and the public to evaluate the proposed consent judgment that the parties have filed in this case, a Final Judgment that would terminate the litigation. The CIS, which explains why the proposed Judgment is in the public interest, is filed pursuant to the requirements of the Antitrust Procedures and Penalties Act of 1974 ("APPA"), 15 U.S.C. 16. The APPA subjects proposed consent judgments in government antitrust cases to public scrutiny and comment, after which the Court may enter the judgment if it finds that it is in the public interest.

I.

Nature and Purpose of the Proceedings

The United States filed the Complaint in this civil antitrust suit on August 1, 1996. The Complaint alleged that GE has entered into agreements with hospitals in the United States that illegally restrained trade in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, and that constituted a combination to monopolize in violation of Section 2 of that act, 15 U.S.C. 2. The agreements alleged to be illegal are provisions of license agreements under which the hospitals have been granted the right to use specialized diagnostic software and other tools and manuals developed by GE ("advanced service materials") on the GE medical imaging equipment owned by the hospitals. The advanced service materials enable service personnel to more quickly calibrate and repair the GE medical imaging equipment. Under the agreements challenged in this case, the licensee hospitals agreed not to compete with GE in the servicing of any medical imaging equipment or medical equipment, in exchange for the right to use the valuable advanced service materials.

GE is the world's leading manufacturer of medical imaging equipment (such as magnetic resonance imagers, computed tomography scanners, and x-ray machines) and is the leading servicer of such machines in the United States. Hospitals with in-house service capabilities are actual or potential competitors of GE in the servicing of medical imaging equipment and other medical equipment. The agreements harmed competition by foreclosing actual and potential competition from offering service. To remedy the competitive harm done by the illegal agreements, the Complaint asks the Court to declare the agreements to be unlawful and to enter an injunction barring GE from enforcing or renewing the illegal agreements.

The government and GE have reached a proposed settlement that eliminates the need for a trial in this case. The settlement terms are found in the parties' proposed Final Judgment. The parties have stipulated that the Court may enter this Judgment after compliance with the APPA, unless the government first withdraws its consent. The Court's entry of the Judgment will terminate this civil action against GE,

except that the Court will retain jurisdiction over any future proceedings to construe, modify, or enforce the judgment, or to punish violations of its provisions. Entry of the Judgment would not constitute evidence against, or an admission by, any party with respect to any issue of fact or law involved in the case and is conditioned upon the Court's finding that its entry is in the public interest, as provided by Section 2(e) of the APPA, 15 U.S.C. 16(e).

II.

Description of the Practices Giving Rise to the Alleged Violations of the Antitrust Laws

GE sells a wide variety of medical imaging equipment. Hospitals, clinics, and doctors use such equipment to create images of the body's internal structure. Complaint at ¶ 4. Such equipment is essential to the diagnosis of numerous injuries and illnesses. *Id,* at ¶ 16. Imaging equipment, like other medical equipment, requires regular, high-quality service. Such service ensures that the equipment functions accurately and reliably. *Id.* at¶ 1. Some hospitals employ and retain service engineers "in house" to service the hospital's medical equipment. *Id.* at ¶¶ 3, 22. Other hospitals hire outside parties such as GE to service their imaging equipment. GE services many types of medical equipment, including equipment manufactured by other companies. *Id.* at ¶ 20.

GE has developed advanced service materials that enable service engineers to service certain GE imaging equipment much more quickly than otherwise possible. *Id.* at ¶ 27. GE makes the advanced service materials available to hospitals with in-house service groups. Such hospitals may be actual or potential competitors to GE in servicing other health care providers' medical equipment. *Id.* at ¶¶ 3, 23, 31.

To gain access to GE's advanced service materials, however, hospitals licensing GE's advanced service materials have had to agree not to compete with GE in servicing third-parties' medical imaging equipment or other medical equipment. The specific terms of this agreement changed somewhat over time. The 1988 to 1992 version of the license agreement for the advanced service materials restricted the hospital licensee from servicing any other person's medical imaging equipment; the 1992 to 1996 version was broader, restricting the licensee from servicing any other person's medical equipment (which would include non-imaging medical equipment); and the 1996 to present version—adopted in the face of the government's investigation—is narrower, restricting the licensee from servicing any other person's *GE* diagnostic imaging equipment that is of the same type (i.e., modality) as the model(s) for which the hospital has licensed advanced service materials from GE. More than 500 potentially competing hospitals have agreed to these restrictions. *Id.* at ¶¶ 32, 33, 35.

The non-compete agreements are not ancillary to any legitimate business interest that GE had in licensing advanced service materials particularly since they were not reasonably necessary to prevent the hospitals from using the advanced service materials on third-party equipment, in a manner not authorized by the license agreements. As a result of software security procedures adopted by GE, the advanced service materials will only work on the specific GE machine to which the license agreement relates. Furthermore, the advanced service materials are model specific, *i.e.,* the advanced service materials for one model of GE imaging equipment cannot be used on another model, even if the two models are of the same "modality" (*e.g.,* if both are GE CT scanners), and cannot be used on other manufacturers' equipment. *Id.* at ¶ 30. Given the machine and model-specific nature of the software, the restrictions imposed by the license agreements on third-party service are unrelated to any legitimate interest GE has in preventing the unauthorized use of its software. *Id.* at ¶ 8.

By exacting a commitment from hospitals not to provide any outside service in competition with GE in exchange for the advanced service materials, the complaint alleged that GE has harmed competition for the service of medical equipment. *Id.* at ¶¶ 38–41. Hospitals have been forced to abandon their efforts to provide medical equipment service to other nearby health care facilities, *id.* at ¶¶ 31, 39, and other hospitals have, consequently, paid supra-competitive prices for equipment service and purchased less service than they otherwise would have paid. *Id.* at ¶¶ 40, 43.

GE's license restrictions have also reduced competition in the sale of medical imaging equipment. Health care facilities need prompt and affordable repairs for their imaging equipment. Because of the cost and delays of travel, proximity to a service provider is an important consideration when a hospital is considering the purchase of medical imaging equipment. Hospitals are reluctant to purchase a piece of imaging equipment unless someone near their facility can service it. *Id.* at ¶¶ 17, 19.

Because manufacturers cannot economically place their own service engineers in areas where they do not have a large installed base, they need someone else in those areas who is qualified to service their equipment. *Id.* at ¶ 19. Hospitals with in-house service departments could provide such service for a given manufacturer's equipment. *Id.* at ¶¶ 3, 39. But, because GE exacted agreements from hospitals not to provide third-party service, the complaint alleged that GE has disadvantaged its equipment manufacturing competitors. *Id.* at ¶ 44. As a result, GE has restrained health care facilities in Montana and similar areas from purchasing imaging equipment from manufacturers other than GE, even though the equipment may have better suited the facilities' needs. *Id.* at ¶¶ 42, 45.

In addition to alleging that GE's license agreements violated Section 1 for the reasons set forth above, the complaint alleged that the license agreements for advanced service materials between GE and the hospitals constituted a combination between GE and the hospitals that had the specific intent of excluding competition in violation of Section 2 of the Sherman Act. *Id.* at ¶ 47. Shortly after the complaint was filed, GE moved to dismiss both the Section 1 and Section 2 claims. The Court denied GE's motion as to the government's Section 1 claims; however, the Court dismissed the Section 2 claims because the complaint did not allege that the hospitals shared GE's intent to monopolize the service markets for medical equipment. Thus, only the Section 1 claims remain in the case. The proposed settlement resolves those claims.

III.

Explanation of the Proposed Consent Judgment

The proposed Final Judgment sets forth the conduct that GE is prohibited from engaging in, certain conduct that GE may engage in without violating the Judgment, the compliance program that GE must follow, and the procedures available to the government to determine and secure compliance with the Final Judgment.

A. Prohibited Conduct

Section IV(a) of the Final Judgment prohibits GE from entering into or enforcing any agreement in conjunction with the licensing of advanced service materials or related training whereby (a) the end-user represents that it has not,

does not, or will not perform third-party medical equipment service or (b) the end-user is prevented or restrained from providing third-party service. The Judgment defines third-party service to mean the service of any medical equipment in the United States not owned, leased, or operated by the party performing the service. Section IV(B) prohibits GE from requiring that a potential licensee give GE information regarding that person's current or prospective practice with regard to the provision of third-party service. Section IV(C) enjoins GE from stating publicly or to any end-user of medical equipment that GE has a policy or general practice of refusing to license advanced service materials for medical equipment, or of refusing to provide training thereon, because an end-user offers third-party medical equipment service. Section IV(D) prohibits GE from offering to sell or license advanced service materials to end-user of medical equipment on terms that vary depending on whether the end-user has provided, does provide, or will provide third-party medical equipment service.

B. Limiting Conditions

Section V of the Final Judgment sets forth certain conduct that the Judgment does not prohibit. Section V clarifies that the Judgment does not prohibit GE from refusing to license its advanced service materials to independent service organizations or to any other person who is not an end-user of GE medical equipment. The Final Judgment also does not limit GE's pricing discretion as long as its pricing does not otherwise violate the Judgment. Section V also makes clear that the Final Judgment does not prohibit GE from using site-specific or equipment-specific licensing of its advanced service materials or from limiting the use of the licensed materials to an end-user's full-time employees. The Final Judgment also does not prohibit GE from implementing security procedures intended to prevent the misappropriation or unauthorized use of its advanced service materials.

The limiting conditions are consistent with the relief sought in the Complaint. The Complaint alleged that GE has used its advanced service materials to induce hospitals with in-house service capability to agree not to compete with GE in the servicing of medical equipment. The Complaint did not allege that GE's refusal to license its intellectual property to any or all persons who might seek such licenses violated the antitrust laws, and the Final Judgment is silent as to that conduct.

C. Defendant's Compliance Program

Section VI of the proposed Final Judgment requires GE to distribute copies of the Judgment to certain employees and to provide notice of the change in its licensing policy to the licensees of its advanced service materials. Within seventy-five (75) days of its entry, GE must certify that it has distributed all such materials. Finally, under Section VIII of the proposed Final Judgment, GE will make its records and personnel available to the Justice Department upon reasonable notice in order to determine or secure its compliance with the Judgment.

D. Scope of the Proposed Final Judgment

The proposed Final Judgment expressly provides in Section II that its provisions apply to GE, its officers, directors, agents, employees, successors, and assigns, and to all other persons in active concert or participation with any of them who have received actual notice of the terms of the Judgment. Section IX provides that the proposed Final Judgment will expire on the tenth anniversary of its entry.

E. Effect of the Proposed Final Judgment on Competition

Health care providers in the United States spend more than $3 billion a year for medical equipment service. The Department's lawsuit sought to ensure access for these consumers to a wider choice of medical-equipment service providers across the country by preventing GE from using its advanced service materials to induce hospitals to agree not to compete with GE in the provision of third-party service on medical equipment. The proposed Final Judgment achieves this goal. It should enable some hospitals with in-house service capability to initiate or expand third-party service to other users of medical equipment, thereby increasing actual and potential competition in the markets for medical equipment service.

Entry of the Judgment should also increase the number of local service providers that are available to act as service providers for medical equipment manufacturers who lack a sufficient installed base in an area to support one of their own field service engineers. By making such manufacturer's equipment more competitive from a service perspective, the Judgment should lead to increased competition among manufacturers of medical equipment to the benefit of purchasers of such equipment.

IV.

Remedies Available to Potential Private Plaintiffs

After entry to the proposed Final Judgment, any person who has been harmed by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies that such person had before its entry. A person may not use the Judgment, however, as *prima facie* evidence in any subsequent private litigation, pursuant to Section 5(a) of the Clayton Act, 15 U.S.C. 16(a).

V.

Procedures Available for Modification of the Proposed Judgment

The parties have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA, provided that the United States has not withdrawn its consent. The APPA conditions that entry upon the Court's finding that the proposed Final Judgment is in the public interest. 15 U.S.C. 16(e). Any person who wishes to comment on the proposed Judgment may, for a sixty-day period subsequent to the publishing of this document in the **Federal Register**, submit written comments. All such comments must be addressed to the United States Department of Justice, Antitrust Division, Attention: Ms. Mary Jean Moltenbrey, 325 Seventh Street, N.W., Suite 300, Washington, D.C. 20530. The government will evaluate all comments submitted to determine whether any reason exists for the withdrawal of its consent to the proposed Final Judgment. The government will file any such comments and its response to them with the Court and also publish them in the **Federal Register.**

The proposed Final Judgment provides that the Court will retain jurisdiction over this action in order to permit any of the parties to apply for such orders as may be necessary or appropriate to construe or modify the judgment, to enforce compliance with it, or to punish any violations of its provisions.

VI.

Alternative to the Proposed Judgment

The government's alternative to the proposed final judgment is a trial on the merits. Because the government considers the final judgment to remedy fully the anticompetitive effects of GE's agreements, not to compete, it does not believe that a trial would result in any further relief.

VII.

Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the government be subject to a sixty-day comment period, after which the Court determines whether entry of the proposed Final Judgment "is in the public interest." In making this determination, the Court may consider:

(1) the competitive impact of the judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of the judgment;
(2) the impact of entry of the judgment upon the public generally and upon individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

The Court of Appeals for the D.C. Circuit has held that the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995). In conducting this inquiry, "[t]he Court is no where compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24598 (1973); *See United States* v. *Gillette Co.*, 406 F. Sup. 713, 715 (D. Mass. 1975.) A "public interest" determination can be made properly on the basis of the competitive impact statement and the government's response to the comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

The Court of Appeals for this Circuit has held that a district court judge, in making the public interest determination, should not engage "in an unrestricted evaluation of what relief would best serve the public." Rather [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. *See United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127 (C.D. Cal. 1978). The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." *Id.* At 1143 (quoting *United States* v. *Gillette Co.*, 406 F.Supp. 713, 716 (D. Mass. 1975)). More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

United States v. *Bechtel Corporation*, 648 F.2d 660, 666 (9th Cir. 1981).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitve effect of a particular practice. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub. nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), (quoting *Gillette Co.*, 406 F. Supp. at 716 (citations omitted)); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

VIII.

Determinative Materials and Documents

The APPA requires that the government file with the Court any documents that the government considers to have been determinative in formulating the proposed Final Judgment. 15 U.S.C. 16(b): *see Massachusetts School of Law* v. *United States*, 118 F.3d 776, 784–85 (D.C. Cir. 1997). The government considered no materials or documents determinative in formulating the proposed Final Judgment. It therefore files no such documents.

Date: July 13, 1998.

Antitrust Division, Department of Justice.
Fred E. Haynes
John R. Read
Jon B. Jacobs
Joan H. Hogan
Peter J. Mucchetti,
Civil Task Force, 325 Seventh Street, N.W., Suite 300, Washington, D.C. 20530, (202) 514–0230.

[FR Doc. 98–20394 Filed 7–29–98; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Consortium for Integrated Intelligent Manufacturing, Planning and Execution

Notice is hereby given that, on February 3, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Consortium for Integrated Intelligent Manufacturing, Planning and Execution (CIIMPLEX) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Haley Enterprise, Inc., Sewickley, PA; IndX Software Inc., Laguana Nigual, CA; Scandura, Narbeth, PA; and Vitria Technology, Inc., Palo Alto, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Consortium for Integrated Intelligent Manufacturing, Planning and Execution (CIIMPLEX) intends to file additional written notification disclosing all changes in membership.

On April 24, 1996, Consortium for Integrated Intelligent Manufacturing, Planning and Execution (CIIMPLEX) filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 15, 1996 (61 FR 24514).

The last notification was filed with the Department on May 13, 1997. A notice was published in the **Federal**

Register pursuant to Section 6(b) of the Act on June 13, 1997 (62 FR 32370).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–20397 Filed 7–29–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993; OBI Consortium, Inc.

Notice is hereby given that, on March 3, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), OBI Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3M, St. Paul, MN; AllData Corporation, Elk Grove, CA; Amvet Inc., Lexington, KY; Commerce One, Walnut Creek, CA; Commonwealth of Massachusetts, Boston, MA; Connect Inc., Mountain View, CA; Dell Computer Corporation, Round Rock, TX; Dun & Bradstreet, Parsippany, NJ; EPIC Systems Inc., Phoenix, AZ; Harbinger Corporation, Atlanta, GA; InterWorld Corporation, New York, NY; Mastercard International, Purchase, NY; PartNet, Salt Lake City, UT; Software Spectrum, Garland, TX; Vallen Corporation, Houston, TX; and W.H. Brady, Milwaukee, WI have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OBI Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On September 10, 1997, OBI Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1997 (62 FR 60531).

The last notification was filed with the Department on December 9, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 14, 1998 (63 FR 18335).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[Fr Doc. 98–20399 Filed 7–29–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; VSI Alliance

Notice is hereby given that, on February 27, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Bytes & Rights, Ltd., London, UNITED KINGDOM; ASIC Alliance Corporation, Burlington, MA; BOPS, Inc., Chapel Hill, NC; Canadian Microelectronics Corporation, Kingston, Ontario, CANADA; Chip & Chip, Inc., Santa Clara, CA; ChipLogic, Inc., Sunnyvale, CA; Cimaron Communications, Lawrence, MA; Credence Systems Corporation, Fremont, CA; Denso Corporation, Nukata-gun, Aichi Prefecture, JAPAN; Design & Reuse, Grenoble, FRANCE; Eigen Tek, Inc., Cherry Hill, NJ; Electronic Tools Company, Sonoma, CA; Fraunhofer Institute IMS, Dresden, GERMANY; Macronix International Co., Ltd. Hsinchu, Taiwan, R.O.C.; Microelectronics Research Institute PROGRESS, Moscow, RUSSIA; Pivotal Technologies, Pasadena, CA; Power X Limited, Sale, Cheshire, UNITED KINGDOM; Real 3D, Orlando, FL; SpaSE BV, Nijmegen, THE NETHERLANDS; Syntest Technologies, Inc., Sunnyvale, CA; Tundra Semiconductor Corporation, Kanata, Ontario, CANADA; and Virage Logic Corporation, Milpitas, CA have been added as parties to this venture. Also, Compass Design Automation, San Jose, CA; GEC Plessey, Plymouth, Devon, UNITED KINGDOM; and Tower Semiconductor Ltd., San Jose, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 27, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on November 19, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 14, 1998 (63 FR 18226).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 98–20398 Filed 7–29–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Submitted for Public Comment; Employment Services Report System

AGENCY: Employment and Training Administration.

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 (PRA95) [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 the impact of collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed ten month extension of the Employment Service Program Reporting System from the current end date of August 31, 1999 to a new end date of June 30, 2000.

A copy of the previously approved information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the

ADDRESSES section below on or before September 28, 1998.

The Department of Labor 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.

ADDRESSES: John R. Beverly, III, United States Employment Service, U.S. Department of Labor, 200 Constitution Avenue NW., Room N4470, Washington, DC 20210, Tel. 202–219–5257, Fax 202–219–6643, E-mail jbeverly@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Information on basic labor exchange services is necessary to assure that the States are complying with legal requirements of the Wagner-Peyser Act as amended by the Job Training Partnership Act (JTPA). Program data items are required from States reporting to the Department of Labor as part of other information in order to determine if the States are complying with the basic labor exchange requirements.

Information regarding employment and training services provided to veterans by State public employment services agencies must be collected by the Department of Labor to satisfy legislative requirements, as follows: (a) to report annually to Congress on specific services (38 U.S.C. 2007(c) and 2012(c)); (b) to establish administrative controls (38 U.S.C. 2007 (b)); and (c) for administrative purposes. These data are reported on the VETS 200 A and B, the VETS 300, and Manager's reports.

II. Current Action

The Department is requesting an extension of the Employment Service Program Reporting System without changes to data elements, definitions, reporting instructions and/or reporting requirements from the current end date of August 31, 1999 to a new end date of June 30, 2000.

In response to the requirements of the Government Performance and Results Act (GPRA) of 1993, the national call for government programs to be more accountable and results oriented, the Department of Labor (DOL), Employment and Training Administration (ETA), United States Employment Services (USES) has taken the first step to establish performance measures for the public labor exchange programs and labor exchange function for the Workforce Development and One-Stop Career Center service delivery systems.

The United States Employment Service (USES) worked cooperatively with States and other stakeholders to develop program specific performance measures. Performance measures were proposed and comments from stakeholders were requested in the **Federal Register** (63 FR 32564–32578).

The proposed measures are a starting point for development of comprehensive measures for the labor exchange function of the emerging Workforce Development system. It is the Department's intent to use the comments received to develop performance measures for implementation on July 1, 2000.

The effort to finalize the performance measures, to identify the data elements needed to produce the performance measures and to define specific changes to the ETA reporting requirements will take several months to accomplish the transition to a new reporting system. States will also need time to make the necessary procedural, reporting, and computer software changes that will be necessary. This may be complicated by State efforts to respond to necessary computer program changes for Year 2000 compliance.

In consideration of these issues, the Department is requesting an extension of the Employment Service Program Reporting System without changes from the current end date of August 31, 1999 to a new end date of June 30, 2000.

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) to extend collection of the Employment Service Program Reporting System data previously approved and assigned OMB Control No. 1205–0240 and the data reporting for the ETA 9002 A, B, C, including the data reporting for the VETS 200 A and B, VETS 300, the manager's report on services to veterans and recordkeeping.

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Employment Service Program Reporting System.

OMB Number: 1250–0240.

Total Respondents: 54 States and territories.

Estimated Burden Hours: 7213.

Reports	Respondents	Frequency	Total responses	Average time per response (hours)	Burden (hours)
USES Rpt	54	Quarterly	216	2.75	594
VETS Rpt	54	Quarterly	216	.25	54
USES Rec	54	Annually	54	12.00	648
VETS 200A	54	Quarterly	216	.85	184
VETS 200B	54	Quarterly	216	.85	184
VETS 300	54	Quarterly	216	1.00	216
Mgt. Rpt	1,600	Quarterly	6,400	.83	5,333
TOTALS			7,534		7,213

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or 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.

Dated: July 24, 1998.

John R. Beverly, III,

Director, United States Employment Service, U.S. Department of Labor.

[FR Doc. 98–20378 Filed 7–29–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Record of Individual Exposure to Radon Daughters

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 (PRA95) [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 the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Record of Individual Exposure to Radon Daughters. MSHA 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 on 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before September 28, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: Mrs. Theresa O'Malley, Program Analysis Office, Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. O'Malley can be reached at tomalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

MSHA's primary goal is the protection of America's most precious resource, the miner. To achieve this goal, this agency has to keep information regarding the hazards faced and the progress made within the industry to develop and maintain a safe and healthy work environment. Records concerning the health and welfare of miners are especially important, given that the nature of the exposure could result in medical complications later in the miner's life. To this end, the record keeping of Radon Daughters is essential information. Each year the industry records and reports the exposure levels that its workforce has faced during the past 12 months. This information is archived and stored for retrieval by the exposed party, or legal representative, should a medical release be deemed necessary. This reporting of the exposure numbers also serves to inform MSHA of the industry expansion or decrease as well as health threats incurred.

During the past calendar year MSHA has received an increased number of industry responses. These responses indicated that an increasing number of miners are being employed and exposed within this industry grouping. Concurrently, the United States economy is calling for production rates that are higher than those in recent years. The increase in production has resulted in a larger number of employees being exposed to Radon Daughters. MSHA needs to keep the recording requirements for Radon Daughters to ensure that the records regarding the miners' level of exposure today is available to them tomorrow and throughout their lifetimes.

II. Current Actions

This information collection needs to be extended to provide miners protection from radon daughter exposure.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Record of Individual Exposure to Radon Daughters.

OMB Number: 1219–0003.

Agency Number: MSHA 4000–9.

Recordkeeping: 2 years.

Affected Public: Business or other for-profit.

Cite/Reference	Total respondents	Frequency (weeks)	Total responses	Average time per response (hours)	Burden
Sampling	20	50	50	5.00	5,000
Recording Results	20	50	50	1.50	1,500
Calculating Reporting	20	50	50	1.25	1,250
Clerical	20	50	50	.25	250
Totals	.....	.....	50	.....	8,000

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $182,500.

Comments submitted in response to this notice will be summarized and/or 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.

Dated: July 24, 1998.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 98–20379 Filed 7–29–98; 8:45 am]

BILLING CODE 4510–43–M

NUCLEAR REGULATORY COMMISSION

Docket No. 40–3453–MLA–2, ASLBP No. 98–747–02–MLA

Atlas Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.1207 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

Atlas Corporation

(Request for Material License Amendment)

The hearing, if granted, will be conducted pursuant to 10 CFR Subpart L of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing by the State of Utah with respect to NRC's approval of the reclamation plan of The Atlas Corporation, particularly the effects of possible migration of the Colorado River on the tailings stored on the Atlas Moab site.

The Presiding Officer in this proceeding is Administrative Judge Peter B. Bloch. Pursuant to the provisions of 10 CFR 2.722, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bloch and Judge Murphy in accordance with CFR 2.701. Their addresses are:

Administrative Judge Peter B. Bloch, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Issued at Rockville, Maryland, this 23rd day of July 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–20357 Filed 7–29–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Proposed Information Collection Activities; Request For Comments

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal without change of ten (10) standard forms. These forms are required by OMB Circulars A–102, "Grants and Cooperative Agreements with State and Local Governments," and A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

DATES: Comments must be submitted on or before September 28, 1998. Late comments will be considered to the extent practicable.

ADDRESSES: Comments should be mailed to F. James Charney, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, N.W., Room 6025, Washington, DC 20503. Electronic mail (E-mail) comments may be submitted to charney_f@a1.eop.gov. Please include the full body of the comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: F. James Charney, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993. The standard forms can be obtained via fax by calling OMB's FAX Information Line (202–395–9068). The forms can also be downloaded from the OMB Grants Management home page (http://www.whitehouse.gov/WH/EOP/OMB/Grants).

SUPPLEMENTARY INFORMATION:

OMB Control No.: 0348–0039.

Title: Financial Status Report (Long Form).

Form No: SF–269.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 200,000.

Estimated Time Per Response: 90 minutes.

Needs and Uses: The SF–269 is used to monitor grantee expenditures in circumstances where grantees earn program income or contribute matching funds. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0038.

Title: Financial Status Report (Short Form).

Form No: SF–269A.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 200,000.

Estimated Time Per Response: 30 minutes.

Needs and Uses: The SF–269A is used to monitor grantee expenditures in circumstances where grantees earn program income or contribute matching funds. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0004.

Title: Request for Advance or Reimbursement.

Form No: SF–270.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 100,000.

Estimated Time Per Response: 60 minutes.

Needs and Uses: The SF–270 is used to request funds for all nonconstruction grant programs when letters of credit or predetermined advance methods are not used. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0002.

Title: Outlay Report and Request for Reimbursement for Construction Programs

Form No: SF–271.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit organizations.
Number of Responses: 40,000.
Estimated Time Per Response: 60 minutes.
Needs and Uses: The SF–271 is used to request reimbursement for all construction programs. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0003.
Title: Federal Cash Transactions Report.
Form No: SF–272 and SF–272A.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit organizations.
Number of Responses: 100,000.
Estimated Time Per Response: 120 minutes.
Needs and Uses: The SF–272 & 272A are used to report disbursement information for each financial assistance agreement when funds are advanced to them through letters of credit or with direct Treasury check. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0043.
Title: Application for Federal Assistance.
Form No: SF–424.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit organizations.
Number of Responses: 400,000.
Estimated Time Per Response: 45 minutes.
Needs and Uses: The SF–424 is used to apply for Federal grants. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0044.
Title: Budget Information—Nonconstruction Programs.
Form No: SF–424A.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit organizations.
Number of Responses: 360,000.
Estimated Time Per Response: 180 minutes.
Needs and Uses: The SF–424A is used to budget and request grant funds for nonconstruction programs. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0040.
Title: Assurances—Nonconstruction Programs.
Form No: SF–424B.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit organizations.
Number of Responses: 360,000.
Estimated Time Per Response: 15 minutes.
Needs and Uses: The SF–424B is used to assure compliance with statutory requirements for nonconstruction grant programs. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0041.
Title: Budget Information—Construction Programs.
Form No: SF–424C.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit organizations.
Number of Responses: 40,000.
Estimated Time Per Response: 180 minutes.
Needs and Uses: The SF–424C is used to budget and request grant funds for construction grant programs. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0042.
Title: Assurances—Construction Programs.
Form No: SF–424D.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit organizations.
Number of Responses: 40,000.
Estimated Time Per Response: 15 minutes.
Needs and Uses: The SF–424D is used to assure compliance with statutory requirements for construction grant programs. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

Office of Management and Budget
G. Edward DeSeve,
Controller.
[FR Doc. 98–20312 Filed 7–29–98; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension:
Rule 17a–3 SEC File No. 270–26 OMB Control No. 3235–0033

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–3 [17 CFR 240.17a–3] under the Securities Exchange Act of 1934 requires records to be made by certain exchange members, brokers, and dealers, to be used in monitoring compliance with the Commission's financial responsibility program and antifraud and antimanipulative rules as well as other rules and regulations of the Commission and the self-regulatory organizations. It is estimated that approximately 7,786 active broker-dealer respondents registered with the Commission incur an average burden of 1,938,714 hours per year to comply with this rule.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: July 24, 1998.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 98–20365 Filed 7–29–98; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26899; International Series Release No. 1147]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 23, 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 August 18, 1998, to this 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 August 18, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–8733)

The Southern Company ("Southern"), a registered holding company, 270 Peachtree Street, N.W., Atlanta, Georgia 30303, and its nonutility subsidiaries Southern Energy, Inc. (formerly SEI Holdings, Inc.) ("Southern Energy"), Mobile Energy Services Holdings, Inc. ("Holdings"), Southern Energy Resources, Inc. (formerly Southern Energy, Inc.) ("Resources"), Southern Energy North America, Inc. ("SENA") and Mobile Energy Services Company, L.L.C. ("MESCA"), each at 900 Ashwood Parkway, Atlanta, Georgia 30338, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(c), 12(d) and 12(f) of the Act and rules 43, 45, and 54 under the Act to an application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), 12(f), 13, 32 and 33 of the Act and rules 43, 45 and 54 under the Act.

MESC is a limited liability company established under Alabama law that owns and operates a dedicated, "inside-the-fence," industrial cogneration complex in Mobile, Alabama. Holdings, a direct nonutility subsidiary of Southern, owns 99% of the outstanding membership interests of MESC, and Resources, an indirect nonutility subsidiary of Southern, owns the remaining one percent of the membership interests.[1] Southern Energy is a direct nonutility subsidiary of Southern engaged in owning interests in certain businesses, including qualifying facilities (as defined in the Public Utility Regulatory Policies Act of 1978). SENA is a direct subsidiary of Southern Energy, which owns interests in Southern Energy's domestic businesses.

Applicants propose to restructure the ownership of membership interests in MESC. Alabama law provides for the bifurcation of membership interests of limited liability companies into economic interests and voting interests. Economic interests encompass the right to share in profits and losses and voting interests include all rights of management and control. Applicants propose that Holdings and Resources transfer a 99% economic interest and a 1% voting interest in MESC to a direct or indirect subsidiary of Southern Energy. Applicants state that the proposed relocation of economic interest in MESC to a Southern Energy subsidiary will facilitate evaluations of the performance of Southern's independent energy portfolio by interested parties, including the investment community.

Applicants propose to accomplish this restructuring in several steps. Southern Energy would establish a special purpose subsidiary ("SE Mobile") as a vehicle to hold its interests in MESC. Holdings would exchange its existing membership interests in MESC for two classes of membership interests, one representing voting interests and the other nonvoting economic interests. Holdings would then transfer a 98% nonvoting economic interest in MESC to SE Mobile and Resources would then contribute its one percent economic and voting interest to SE Mobile. As a result, Holdings would retain its 99% voting interest and a one percent economic interest in MESC and SE Mobile would own a 99% economic interest and a one percent voting interest in MESC.

The Applicants request authority to complete the restructuring by June 30, 2000.

UtiliCorp United Inc. (70–9325)

UtiliCorp United Inc. ("UtiliCorp"), 20 West Ninth Street, Kansas City, Missouri 64105, a Delaware public utility holding company claiming exemption from registration under rule 10 of the Act, has filed a declaration under section 3(b) and rules 10 and 11(b)(1) under the Act.

UtiliCorp is a publicly traded corporation which engages primarily, through divisions, in the sale and distribution of gas and electrically to retail and wholesale customers in nine states, Canada, New Zealand and Australia. UtiliCorp is a public-utility holding company solely because of its ownership of West Kootenay Power and Light Company, Limited,[2] a Canadian public utility company, WEL Energy Group Limited,[3] a New Zealand electric utility company, and United Energy Ltd.,[4] an Australian electric distribution company. As of December 31, 1997, UtiliCorp had sales of $8.926 billion, earnings before interest and taxes of $359.1 million and total assets of $5.113 billion.

UtiliCorp states that the government of the State of Victoria, Australia ("Victoria government") has decided to privatize its natural gas industry to develop a competitive energy market in order to facilitate lower gas prices and improved service for consumers. Through one or more subsidiaries, UtiliCorp proposes to participate in the bidding process for one or more following seven businesses, each organized under the laws of Australia and each operating solely in Australia: (1) Kinetick Energy ("Kinetick"), a retail gas company, serving the northeastern and western suburbs of Melbourne; (2) Westar ("Westar"), a gas distribution company, serving the western suburbs of Melbourne, with fixed assets valued at approximately N.Z. $591.8 million; (3) Ikon Energy ("Ikon"), a gas retail company, operating primarily in the western central and southeastern suburbs of Melbourne; (4) Multinet ("Multinet"), a gas distribution company, operating in the eastern

[1] Alabama law requires that domestic limited liability companies have at least two members.

[1] *UtiliCorp United Inc.*, Holding Company Act Release No. 24204 (Oct. 1, 1986).

[2] *UtiliCorp United Inc.*, Holding Company Act Release No. 25850 (July 8, 1993).

[3] *UtiliCorp United Inc.*, Holding Company Act Release No. 26353 (Aug. 7, 1995).

metropolitan area of Melbourne, with fixed assets valued at approximately N.Z. $650.5 million; (5) Energy 21 ("Energy 21"), a gas retail company, serving eastern Melbourne, the Morningstar Peninsula and northern and western Victoria; (6) Stratus ("Stratus"), a gas distribution company, with fixed assets valued at approximately N.Z. $650.5 million, serving the northern and southeastern suburbs of Melbourne and the Morningstar Peninsula; and (7) Gas Transmission Corporation ("GTC"), a gas transmission and supply company (Kinetick, Westar, Ikon, Multinet, Energy 21, Stratus and GTC collectively, "Australian Companies").

The bidding process for the Australian Companies will be conducted by the Victorian government in two phases, commencing in June 1998 and ending in November 1998. For purposes of the bidding process, the paired companies of Kinetik and Westar, Ikon and Multinet, and Energy 21 and Stratus, are regarded as "stapled" businesses. UtiliCorp expects to submit bids for the Australian Companies through one or more subsidiaries, which may invest as a member of a group on consortium. For Australian tax considerations, UtiliCorp explains that it may structure the proposed acquisitions as a series of asset and stock acquisitions.

UtiliCorp proposes to acquire an equity ownership interest of up to, but not more than, 50% in one or more of the three stapled businesses. With respect to GTC, UtiliCorp proposes to acquire a less than twenty percent interest. UtiliCorp plans to invest no more than $500 million in any combination of permissible acquisitions under the bidding rules established by the Victorian government.[5]

Neither UtiliCorp nor any corporation owned or controlled by UtiliCorp is a holding company subject to regulation under the Act or a subsidiary company of a holding company subject to regulation under the Act. None of the Australian Companies is a public utility company operating in the United States. None of the Australian Companies presently serves, and following the proposed acquisitions by UtiliCorp none will serve, customers in the United States. None of the Companies is qualified to do business in any state of the United States; each operates exclusively within Australia.

UtiliCorp requests an order under section 3(b) of the Act exempting each of the Australian Companies from all provisions of the Act. UtiliCorp states that none of the Australian Companies will derive any material part of its income, directly or indirectly, from sources within the United States. Further, none of the Australian Companies will be, or have any subsidiary company which is, a public utility company operating in the United States. UtiliCorp asserts that rule 10(a)(1) will provide an exemption for UtiliCorp and any subsidiary of UtiliCorp insofar as they are holding companies of the Australian Companies. Further, UtiliCorp asserts that rule 11(b)(1), together with rule 10(a)(1), will provide an exemption from the approval requirements of sections 9(a)(2) and 10 to which UtiliCorp would otherwise be subject.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20314 Filed 7–29–98; 8:45 am]

BILLING CODE 8010–01–M

[5] UtiliCorp expects to acquire the Australian Companies in the near term using bank borrowings at a subsidiary level, which may require a guarantee by UtiliCorp or from its existing earnings and/or debt facilities at the UtiliCorp level. UtiliCorp states that its obligations are subject to multiple state approvals.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40260; File No. 4–208]

RIN 3235–AH49

Intermarket Trading System ("ITS") Plan; Proposed Amendments to Expand the ITS/Computer Assisted Execution System Linkage to all Listed Securities and to Eliminate the Unanimous Vote Provision

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to national market system plan.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing amendments to the plan governing the operation of the Intermarket Trading System ("ITS Plan" or "Plan") that was approved pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934, as amended ("Exchange Act" or "Act"). The proposed amendments expand the ITS/Computer Assisted Execution System ("CAES") linkage to all listed securities, including non-Rule 19c–3 securities. The amendments to the Plan also eliminate the requirement that amendments to the ITS Plan be approved by a unanimous vote of all Participants; instead, a two-thirds supermajority of the Participants would be required for amendments.

DATES: Comments should be submitted by August 31, 1998.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comments should refer to File No. 4–208; this file number should be included in the subject line if E-mail is used. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room at the same address. Electronically submitted comment letters will be posted on the Commission's web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Katherine A. England, Assistant Director at (202) 942–0154; Elizabeth Prout Lefler, Special Counsel at (202) 942–0170; Heather A. Seidel, Attorney at (202) 942–4165; or Christine Richardson, Attorney at (202) 942–0748, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 10–1, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to the ITS Plan [1] to expand the NASD's ITS/CAES linkage to all listed securities. The Commission is also proposing amendments to the Plan to eliminate the unanimous vote requirement for amendments to the ITS Plan. The amendments, published by the Commission on its own initiative pursuant to Rule 11Aa3–2 under the Exchange Act,[2] are necessary to

[1] ITS is a communications and order-routing network linking eight national securities exchanges and the electronic over-the-counter ("OTC") market operated by the National Association of Securities Dealers, Inc. ("NASD"). ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Participants to the ITS Plan are the American Stock Exchange, Inc. ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the NASD, the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx").

[2] Rule 11Aa3–2 (17 CFR 240.11Aa3–2) establishes procedures for initiating or approving amendments to national market system plans such as the ITS Plan. Paragraph (b)(2) of Rule 11Aa3–2 states that the Commission may propose amendments to an effective national market system plan by publishing the text thereof together with a statement of purpose

encourage the statutory goals of efficient execution of securities transactions and opportunities for best execution of customer orders. They also address features of governance requirements of the ITS Plan that discourage intermarket competition. The Commission is proposing these amendments only after the ITS Participants have been unable to take action in these areas. The Commission is publishing this proposal for comment from interested persons.

I. Background

A. ITS/CAES Interface

Section 11A(a)(2) of the Exchange Act, adopted by the Securities Acts Amendments of 1975 ("1975 Amendments"),[3] directs the Commission, having due regard for the public interest, the protection of investors and the maintenance of fair and orderly markets, to use its authority under the Act to facilitate the establishment of a National Market System for securities in accordance with the Congressional findings and objectives set forth in Section 11A(a)(1) of the Act. Among those findings and objectives is the "linking of all markets for qualified securities through communication and data processing facilities."[4]

On January 26, 1978, the Commission issued a statement on the national market system calling for, among other things, the prompt development of comprehensive market linkage and order routing systems to permit the efficient transmission of orders among the various markets for qualified securities, whether on an exchange or over-the-counter.[5] In particular, the Commission stated that an intermarket order routing system was necessary to "permit orders for the purchase and sale of multiple-traded securities to be sent directly from any qualified market to another such market promptly and efficiently."[6] The Commission further stated that "[t]he need to develop and implement a new intermarket order routing system to link all qualified markets could be obviated if participation in the ITS market linkage currently under development were made available on a reasonable basis to all qualified markets and if all qualified markets joined that linkage."[7]

As requested by the Commission, in March 1978, various exchanges[8] filed jointly with the Commission a "Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage," now known as the ITS Plan.[9] On April 14, 1978, the Commission, noting that ITS might provide the basis for an appropriate market linkage facility in a national market system, issued a provisional order, pursuant to Section 11A(a)(3)(B) of the Act,[10] authorizing the filing exchanges (and any other self-regulatory organization ("SRO") which agreed to become a participant in the ITS Plan) to act jointly in planning, developing, operating and regulating the ITS in accordance with the terms of the ITS Plan for a period of 120 days.[11]

In 1979, during the Commission's hearings regarding proposed Rule 19c–3 under the Act,[12] the NASD announced plans to enhance its Nasdaq System to include, among other things, a computer assisted execution system which would enable participating firms to route their orders for listed securities through the system to obtain automatic executions against quotations of "third market makers" participating in the enhanced Nasdaq,[13] later known as the NASD's Computer Assisted Execution System ("CAES"). The NASD also contemplated an automated interface between the ITS and CAES ("ITS/CAES interface") to permit automated execution of commitments sent from participating exchanges and to permit market makers participating in the enhanced Nasdaq to route commitments efficiently to exchange markets for execution.[14]

The Commission later extended its authorization for the joint operation of the ITS[15] but indicated several concerns with respect to the ITS that would require the attention of the ITS participants during the extension period. In particular, the Commission indicated that, in order for ITS to serve as a means to achieve price protection on an intermarket basis, the ITS Participants should implement "a linkage between the ITS and over-the-counter market makers regulated by the NASD. * * *"[16] The Commission further indicated its expectation that the NASD would become an ITS participant before October 1980, and stated that if the contemplated ITS/NASD interface was not implemented promptly, the Commission was prepared to review whether the temporary approval granted in the order should continue and to take appropriate steps to require the inclusion of those market centers.[17]

On June 11, 1980, the Commission adopted Rule 19c–3 under the Act, which eliminated off-board trading restrictions with respect to most newly-listed securities and thereby permitted member firms of the NYSE and Amex to make markets over-the-counter in what was then a small number of NYSE and Amex-listed securities.[18] Although the

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of the amendments. Paragraph (c)(2) requires the Commission to publish notice of any amendments initiated by the Commission and provide interested parties an opportunity to submit written comments. Further, Paragraph (c)(2) of Rule 11Aa3–2 requires that promulgation of an amendment to an effective national market system plan initiated by the Commission be by rule.

[3] Pub. L. 94–29 (June 4, 1975).

[4] Section 11A(a)(1)(D) of the Act, 15 U.S.C. 78k–1(a)(1)(D).

[5] Securities Exchange Act Release No. 14416 (January 26, 1978) ("1978 Statement"), at 26, 43 FR 4354, 4358. Previously, on June 23, 1977, the Commission had indicated that a national market system would include those "regulatory and technological steps [necessary] to achieve a nationwide interactive market system." *See* Securities Exchange Act Release No. 13662 (June 23, 1977), at 20, 42 FR 33510, 33512.

[6] 1978 Statement, *supra* note 5, at 4358.

[7] In this connection, the Commission specifically indicated that "qualified markets" would include not only exchanges but OTC market makers as well. *Id.*

[8] The exchanges involved were Amex, BSE, NYSE, PCX (than called the "PSE"), and Phlx.

[9] The ITS Plan is contained in File No. 4–208.

[10] 15 U.S.C. 78k–1(a)(3)(B).

[11] Securities Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419. In authorizing the implementation of ITS, the Commission urged those SROs not yet ITS participants to participate in ITS. *Id.* at 7 n. 15, 43 FR 17421. On August 11, 1978, the Commission extended ITS authority for an additional period of one year. Securities Exchange Act Release No. 15058 (August 11, 1978), 43 FR 36732. In the interim the ITS Plan had been amended to include the Midwest Stock Exchange ("MSE") as a participant. The MSE is now the CHX.

[12] Securities Exchange Act Release No. 15769 (April 26, 1979), 44 FR 26688. Rule 19c–3 precludes exchange off-board trading restrictions from applying to most securities listed after April 26, 1979.

[13] The term "third market makers" refers to OTC market makers in listed securities.

[14] In its discussions with the ITS Participants, the NASD indicated that the enhanced Nasdaq would encompass trading of listed securities and that it intended to pursue an automated interface. *See In re* Off-Board Trading Restrictions, File No. 4–220, at 9–10, 23–34.

[15] The authorization for the joint operation was extended until January 31, 1983. *See* Securities Exchange Act Release No. 16214 (September 21, 1979), 44 FR 56069.

[16] *Id.* at 12, 44 FR 56072. The Commission also called for a linkage between the ITS and the Cincinnati Stock Exchange's ("CSE") National Securities Trading System ("NSTS").

[17] *Id.* at 14–15, 44 FR 56072. The Commission substantially reiterated these views in a letter to Congress shortly thereafter. *See* letter from Harold M. Williams, Chairman, SEC, to the Honorable Bob Eckhardt, Chairman, Subcommittee on Oversight and Investigations and the Honorable James Scheuer, Chairman, Subcommittee on Oversight and Investigations and the Subcommittee on Consumer Protection and Finance, House Committee on Interstate and Foreign Commerce, dated November 9, 1979, included in Progress Toward the Development of a National Market System, Joint Hearings before the Subcommittee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce, House of Representatives, 90th Cong., 1st Sess., Serial 96–89.

[18] Securities Exchange Act Release No. 16888 (June 11, 1980), 45 FR 41125 ("Rule 19c–3 Adopting Release"). The rule, as adopted, precludes exchange off-board trading restrictions from applying to securities listed after April 26, 1979 ("Rule 19c–3 securities").

Commission recognized many potential concerns regarding the rule, such as internalization,[19] the Commission determined that they were outweighed by the benefits of the rule, including an opportunity for competition between the OTC and exchange markets, with concomitant benefits to investors. For example, the Commission stated that the presence of additional market makers might (1) place competitive pressure on primary market specialists, thereby possibly resulting in narrower spreads in Rule 19c–3 securities; and (2) create incentives for markets to disseminate quotations of greater size and add to the depth, liquidity, and continuity of the markets for those securities.[20]

The Commission indicated that achieving efficient linkages between traditional exchange trading floors and over-the-counter markets was essential to obtaining maximum order interaction between the various types of markets. The Commission therefore expected the NASD and the ITS Participants to establish an automated linkage between the ITS and Nasdaq system and to provide the Commission with formal status reports on the ITS–Nasdaq linkage.[21]

In September 1980, several Participants submitted identical letters which indicated that they were not at that time willing to commit to the development of an automated interface.[22] The MSE, in a separate letter, raised various regulatory concerns with respect to the automated interface.[23] In contrast, the NASD responded by reaffirming its commitment to the automated interface[24] and provided the Commission and the ITS participants with a functional description of the automated interface.[25] On January 7, 1981, the NYSE Board of Directors approved participation in a two-step "test" linkage between ITS and the enhanced Nasdaq system.[26] The Commission determined that ITS, because of its ability to permit market participants to send orders from one market to another, was consistent with national market system goals and, if efficiently linked with all markets, could become a permanent feature of a national market system. Nonetheless, the Commission continued to believe that the absence of any established linkage between the exchanges and OTC market makers preserved an environment in which there were reduced opportunities to ameliorate market fragmentation,[27] to eliminate pricing inefficiencies, to obtain best execution and to promote the type of competitive market structure which a national market system was designed to achieve.[28]

Therefore, on April 28, 1981, the Commission issued an order[29] requiring the ITS Participants to implement an automated interface between CAES and ITS by March 1, 1982, limited to Rule 19c–3 securities, and to submit proposed amendments to the ITS Plan reflecting the inclusion of the NASD as an ITS Participant. On March 11, 1982 the Commission delayed the implementation date of the interface until May 1, 1982 and published its own proposed amendments to the ITS Plan.[30] Consequently, due to the failure of the ITS Participants to submit an amendment on May 12, 1982, the Commission adopted its own amendments to the ITS Plan.[31] The

[19] The term "internalization" refers to "the withholding of retail orders from other market centers for the purpose of executing them "in-house," as principal, without exposing those orders to buying and selling interest in those other market centers." *Id.* at 18 n.31, 45 FR 41128 n.31.

[20] The Commission believed that off-board trading restrictions had anti-competitive effects because they effectively confined trading in listed securities to exchange markets by precluding exchange members from trading as principal in the OTC market. Adopting Rule 19c–3 limited the expansion of the anti-competitive effects. The Commission also announced the development of a monitoring program to study the issues raised by commentators, determined to publish monitoring reports on a periodic basis and committed to a reexamination of those issues as appropriate in light of development in the markets. In connection with the adoption of Rule 19c–3, the Commission noted the importance of the NASD's completion of the Nasdaq enhancements in order to provide "a more efficient mechanism for over-the-counter market making in listed securities." *Id.* at 14–15, 45 FR 41127. *See* Rule 19c–3 Adopting Release, *supra* note 18, at 49–53, 45 FR 41134. The Commission notes that it is not, at this time, proposing to amend or expand Rule 19c–3.

[21] *Id.* at 15–16, 45 FR 41127.

[22] These Participants were the Amex, BSE, NYSE, Phlx and PCX. *See e.g.* letter from John J. Phelan, Jr., President and Chief Operating Officer, NYSE, to George A. Fitzsimmons, Secretary, SEC, dated September 16, 1980. In addition, the Amex submitted a separate letter in which it expressed its opposition to efforts to link upstairs markets to exchange markets in the context of its continuing opposition to Rule 19c–3. *See* letter from Robert J. Birnbaum, President, Amex, to George A. Fitzsimmons, Secretary, SEC, dated September 22, 1980, contained in File No. 4–208. *See also* letter from Robert J. Birnbaum, President, Amex, to George A. Fitzsimmons, Secretary, SEC, dated December 12, 1980, contained in File No. 4–208.

[23] *See* letter from John G. Weithers, President, MSE, to George A. Fitzsimmons, Secretary, SEC, dated September 15, 1980 ("September MSE Letter"), contained in File No. 4–208. *See also* letter from John G. Weithers, President, MSE, to John J. Phelan, Jr., President, NYSE, dated July 31, 1980 ("July MSE Letter"), contained in File No. 4–208.

[24] *See* letter from Gordon S. Macklin, President, NASD, to George A. Fitzsimmons, Secretary, SEC, dated September 12, 1980 ("NASD Letter"), contained in File No. 4–208. The NASD indicated that there were no significant technical concerns in connection with building the automated interface and estimated that the automated interface could be implemented within six months of an agreement among the parties to proceed.

[25] *See* Description of NASD Market Services, Inc., Computer Assisted Execution System, contained in File No. 4–208. In its functional description, the NASD also committed to developing a capability to provide the ITS participants with the best bid and offer among all market makers participating in the enhanced Nasdaq.

[26] With respect to the actual operation of the automated interface, the NYSE plan contemplated an initial "pilot" phase in which trading through the automated interface would be limited to the 30 most active Rule 19c–3 securities. The other ITS participants were in general agreement with the NYSE's position with respect to the automated interface. During the pilot phase, the NYSE anticipated that the ITS participants and the Commission would evaluate trading under the Preliminary Rule and other policy concerns which may have been raised by trading Rule 19c–3 securities through the automated interface. The NYSE plan further anticipated that in the subsequent phase the automated interface would be expanded to include the trading of all Rule 19c–3 securities, but only after the completion of the pilot phase evaluation and agreement among the ITS participants and the NASD on any additional measures to address policy concerns identified by that evaluation.

[27] Fragmentation occurs when investor order flow is directed to several markets that are not connected. Among other things, fragmentation reduces the probability of matching customer buy and sell orders because of the smaller number of orders in each market.

[28] Indeed, in mandating that the Commission facilitate the establishment of a national market system, the Congress found that the linking of all markets for qualified securities through communication and data processing facilities would foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders and contribute to best execution of such orders. Section 11A (A)(1)(D) of the Act, 15 U.S.C. 78k–1(a)(1)(D).

[29] Securities Exchange Act Release No. 17744 (April 21, 1981), 46 FR 23856 (April 28, 1981).

[30] Securities Exchange Act Release No. 18536 (March 11, 1982), 47 FR 10658. The Commission deferred the implementation date in part because the Participants had failed to submit amendments to the Plan.

[31] A majority of the amendments were non-controversial and had been agreed upon by the parties or reflected the parties' decision to defer resolution of certain issues until after the pilot phase of the interface. The areas where the parties could not reach agreement were resolved by the Commission. *See* Securities Exchange Act Release No. 18713 (May 12, 1982), 47 FR 20413. The amendments included language requiring the NASD to apply trade-through safeguards to provide for a sufficient assurance of consistency with the exchanges' trade-through rules. A "trade-through" occurs when a transaction is effected at a price below the best bid, or above the best prevailing offer. The NASD submitted a proposed trade-through rule on May 4, 1982, which the Commission approved on an accelerated basis for six months. The Commission believed that the NASD rule was adequate even through it was not identical to the exchangers' trade-through rules. *See* Securities Exchange Act Release No. 18714 (May 6, 1982), 47 FR 20429 (May 12, 1982). The Commission had approved the exchanges' trade-through rules on April 9, 1981. *See* Securities Exchange Act Release No. 17704 (April 9, 1981), 46 FR 22520.

On January 27, 1983, the Commission granted permanent approval to the ITS Plan. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983) ("Final Approval

Commission order applied to Rule 19c–3 securities initially because the Commission believed that OTC trading would be more active in these securities. The Commission fully intended the ITS/CAES linkage to subsequently expand to all listed securities.[32]

On November 12, 1991, the NASD submitted an application to the Commission, pursuant to Rule 11Aa3–2(e), to review the ITS Operating Committee's failure to approve two NASD recommendations that would have amended the ITS Plan to expand the ITS/CAES linkage to include non-Rule 19c–3 securities.[33] Since that submission, the Division of Market Regulation ("Division") issued its Market 2000 Study,[34] which included the Division's findings that it was necessary to expand the ITS/CAES linkage,[35] as well as identifying several regulatory issues that the Commission believed the NASD and Nasdaq needed to address prior to any expansion of the ITS/CAES linkage.[36]

More recently, the Commission solicited comment on whether the ITS/CAES linkage should be expanded to cover non-Rule 19c–3 securities in the proposing release for the Order Execution Rules.[37] In the adopting release for those rules, the Commission deferred action on the expansion of the ITS/CAES linkage, and instead encouraged the ITS Participants to work jointly to expand the linkage.[38]

B. Unanimous Vote Requirement

A unanimous vote of all the Participants is required for any amendment to the ITS Plan. Section 4(c) of the ITS Plan states that any proposed change in, addition to, or deletion from the ITS Plan may be effected only by means of a written amendment to the Plan which is executed on behalf of each Participant. In addition, Section 3(c), regarding New Participants, states that any national securities exchange or national securities association may subscribe to the ITS Plan and become a participant by agreeing, in an amendment to the Plan adopted in accordance with its provisions, to comply and enforce compliance with the provisions of the Plan (as provided in Section 3(b)). This in effect requires a unanimous vote before a new participant can be admitted to the Plan.

II. Discussion

In 1997, the Commission initiated a review concerning certain anti-competitive aspects of ITS. The review was prompted by the significant changes in the equity markets since the inception of ITS and the slowness or inability of ITS to accommodate these changes. The Commission believed that certain structural aspects of ITS impeded innovation and competition in the national market system. Accordingly, the Commission sent a letter to the ITS Participants on May 27, 1997 outlining four anti-competitive aspects of the ITS Plan and requesting that they develop reasonable recommendations to the Commission in the form of proposed ITS Plan amendments and proposed SRO rule changes.[39] The Division followed up this letter with another letter to the Participants on September 25, 1997, in which the Division reinforced the Commission's concerns and provided specific examples of the anti-competitive nature of the unanimous vote requirement.[40] The responses that the Commission received in reply to both of these letters indicated that a number of the Participants will not agree to expand the ITS/CAES interface or to eliminate the unanimous vote requirement. Because of the unanimous vote requirement, these changes therefore cannot be approved by the Participants. Accordingly, the Commission is proposing rules to address the anti-competitive operation of these ITS provisions.[41]

Order"). On September 15, 1983 the pilot phase ended and all Rule 19c–3 securities became eligible for trading through the ITS/CAES interface. *See* Securities Exchange Act Release Nos. 19825 (May 31, 1983), 48 FR 25043 (June 3, 1983); and 19970 (July 20, 1983), 48 FR 33103.

[32] *See* Final Approval Order, *supra* note 31, at 4940 ("The Commission also notes that in order to achieve fully the Congressional goal that all markets for qualified securities be linked (Section 11A(a)(1)(D) of the Act), it will be necessary in the future for the ITS/CAES interface to be expanded to include all stocks traded in the third market.").

[33] In a July 8, 1997 letter, commenting on four issues relating to ITS that the Commission preliminarily viewed as "unreasonably impeding competition among the various markets," the NASD reaffirmed its position originally made in its 1991 application. *See* letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission ("NASD 1997 Letter"). However, the NASD has since withdrawn its application submitted to the Commission pursuant to Exchange Act Rule 11Aa3–2(e). *See* letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated July 23, 1998.

[34] Division Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* (January 1994) ("Market 2000 Study").

[35] Specifically, the Market 2000 Study noted that the possibility of execution in the OTC market of a significant percentage of the total volume in multiply traded securities increased the need to enhance interaction of orders in all market centers to eliminate trade throughs and to provide market makers in those securities the ability to compete for order flow through their displayed quotations. *Id.*

[36] In February 1995, the NASD submitted a rule filing addressing those recommendations but subsequently withdrew that filing in light of the Commission's publication of its Order Handling Rules (Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Execution Rules" or "Order Handling Rules")), which addressed many of the topics covered by the NASD's proposed rules. The NASD has stated that it is prepared to submit remaining aspects of this 1995 filing, when appropriate, that the Commission believes are necessary to achieve expansion of the ITS/CAES linkage. The NASD also states it is prepared to present any other rule changes to its Board that the Commission believes are necessary to achieve this expansion. *See* NASD 1997 Letter, *supra* note 33. On June 22, 1998, the NASD submitted a Petition for Rulemaking ("NASD Petition") to adopt rules necessary to remove the limitation on access to ITS with respect to non-Rule 19c–3 securities. The NASD Petition adopts by reference the substance of the NASD's 1991 appeal mentioned above.

[37] *See* Securities Exchange Act Release No. 36310 (September 29, 1995), 60 FR 52792 (October 10, 1995).

[38] *See* Order Execution Rules, *supra* note 36.

[39] Preliminarily, the Commission found four elements of the current operation of ITS and the ITS Plan to be unreasonably impeding competition among the various markets: (1) Minimum increments for ITS commitments; (2) the lack of access to ITS for OTC market makers; (3) the unanimous vote requirement for ITS Plan amendments; and (4) the ITS Participants' special right of review for CSE proposed rule changes. *See* letter from Jonathan G. Katz, Secretary, Commission, to ITS Participants, dated May 27, 1997 ("May 27 Letter"). The Participants have voted to eliminate the limitation on access to increments through ITS, and the review of CSE rule changes.

[40] *See* letter from Richard R. Lindsey, Director, Market Regulation, Commission, to Allan A. Bretzer, Committee Chairman, ITS Operating Committee ("ITSOC"), dated September 25, 1997 ("September 25 Letter").

[41] Section 11A(a)(3)(B) of the Act authorizes the Commission, in furtherance of its statutory directive to facilitate the development of a national market system, by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating or regulating a national market system (or a subsystem thereof) or one or more facilities thereof. 15 U.S.C. 78k–1(a)(3)(B). The language of Section 11A(a)(3)(B) states explicitly that the Commission not only may approve national market system facilities in response to an application by SROs, but also may require SROs to implement such facilities on their own initiative. Moreover, the possible need for Commission regulatory compulsion in connection with the development of a national market system where necessary to supplement competitive forces was specifically recognized by the Congress in enacting the 1975 Amendments. For example, the Committee of Conference of both Houses of Congress, in discussing the implemention of a national market system stated: It is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed. The conferees expect, however, in those situations where competition may not be sufficient, such as the creation of a composite quotation system or a consolidated transaction reporting system, the Commission will use the power granted to it in [1975 Amendments] to act promptly and efficiently to ensure that the essential mechanisms of an integrated secondary trading system are put into place as rapidly as possible.

Committee of Conference, Report To Accompany S 249, H.R. Rep. No. 94–249, 94th Cong., 1st Sess., at 92, reprinted in [1975] U.S. Code Cong. & Ad. News 321, 323. *See also* Securities Exchange Act

Continued

A. Need for Expanded ITS/CAES Interface

In its permanent approval order for ITS, the Commission stated that "in order to achieve fully the Congressional goal that all markets for qualified securities be linked (Section 11A(a)(1)(D) of the Act), it will be necessary in the future for the ITS/CAES interface to be expanded to include all stocks traded in the third market."[42] The Commission continues to believe that it is necessary to expand the ITS/CAES linkage to all listed securities in order to fully implement the 1975 Congressional mandate to create a national market system to link the exchanges and the OTC market. Originally, the Commission realized the need for an efficient lingage between ITS and the OTC market, especially in light of the adoption of Rule 19c–3, but limited the ITS/CAES linkage to Rule 19c–3 securities as an interim measure because it could not predict how the linkage would work in practice.[43] However, the Commission explicitly stated that it intended this limitation to be temporary and wanted it removed eventually through joint action by ITS Participants.

The Commission now believes that the significant changes to the third market that have occurred since 1982, when the Commission first approved the ITS/CAES linkage for Rule 19c–3 securities, support the expansion of the linkage. Any NASD member that acts in the capacity of an OTC market maker must provide continuous two-sided quotations for any exchange-listed security in which that member, during the most recent calendar quarter, comprised more than 1% of the aggregate trading volume for such security as reported in the consolidated system ("1% Rule").[44] The NASD now requires all third market makers registered as CQS market makers to register and participate in ITS/CAES.[45] Moreover, all specialists and OTC market makers must now display the price and size of all customer limited orders that improve their quote ("Limit Order Display Rule").[46] Thus, the significant limitations in transparency that previously distinguished the OTC market from the exchange market have been reduced.

The increase in transparency has been accompanied by a growth in trading in the third market. In 1996, third market trading of NYSE listed stocks accounted for 8.14% of the volume and 10.74% of the trades reported to the consolidated tape. In 1981, however, 98.5% of the consolidate tape volume in exchange-listed securities occurred on exchange floors.[47] The growth of third market activity makes it even more important to expand the ITS/CAES linkage to all listed securities in order to ensure that customers receive the best price regardless of the market of execution. In addition, the Commission does not believe there have been any substantial adverse effects of the ITS/CAES linkage to date. There is no evidence that the linkage has led to poorer executions in Rule 19c–3 stocks versus other listed stocks. On the contrary, the linkage enables third market makers to make more competitive markets and allows orders routed to exchanges to obtain those prices. The lack of any adverse effects makes the ITS distinction between Rule 19c–3 securities and non-Rule 19c–3 securities a historical anachronism. Indeed, this distinction seems to create and inappropriate barrier to trading. The Commission preliminarily cannot identify convincing justification for maintaining an arbitrary barrier which prevents the expansion of the ITS/CAES linkage to non-Rule 19c–3 securities. Moreover, the absence of an ITS/CAES linkage, in light of growing trading in the third market and the presence at times of superior quotes in that market, raises questions about whether best execution can be obtained by default routing of customer orders to any exchange or NASD market maker,[48] rather than order-by-order routing to exchange and market makers, based on the best available quotation.

Consequently, the Commission believes that expansion of the ITS/CAES linkage to all listed stocks is warranted. Such an expansion will increase a broker-dealer's ability to obtain best execution for the customer and promote competition in listed securities. It also will help ensure more equivalent access to the markets, reduce market fragmentation, and provide for additional liquidity and more efficient executions. The Commission continues to believe that it is desirable for the industry to take a lead in the development, implementation and enhancement of national market system facilities and in the formulation of solutions to national market system issues. Affected industry participants should have every reasonable opportunity to advance national market system goals without direct Commission intervention. In this instance, however, the Commission believes that change will not occur without Commission intervention.

In the Commission's view, the failure to achieve a linkage between exchange and OTC markets in all listed securities inhibits a broker's ability to ensure best execution of its customer orders.[49] With regard to non-Rule 19c–3 securities, orders routed to exchange floors cannot be easily redirected to the OTC market in situations where more favorable prices are offered by OTC market makers. Conversely, OTC market makers are precluded from using an efficient means of achieving rapid delivery of their orders to exchange floors when the exchange has a more favorable price.[50] Currently, an OTC market maker may be trading a security at a better price than an exchange specialist (or vice versa) and the exchange specialist (or OTC market maker) is not able to access

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Release No. 16410 (December 7, 1979), at 13–14, 44 FR 72607, 72608–09.

[42] *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

[43] More recently, in its Market 2000 Study, the Division stressed that "the Commission limited its mandated link (in 1981) to Rule 19c–3 securities because it concluded that the adoption of Rule 19c–3 heightened the need for an efficient linkage between the exchanges and the OTC market." *See* Market 2000 Study, *supra* note 34, at AII–12. Furthermore, the Commission already has encouraged the ITS Participants to solve this issue, but with no results. *See* Order Execution Rules, *supra*, note 36.

[44] The 1% Rule applied only to Rule 19c–3 securities prior to being expanded in the Order Execution Rules. *See* Securities Exchange Act Release No. 39367 (November 26, 1997), 62 FR 64242 (December 4, 1997) ("Autoquote Order").

[45] *See* Securities Exchange Act Release No. 34280 (June 29, 1994), 59 FR 34880 (July 7, 1994).

[46] *See* Order Execution Rules, *supra*, note 36. In addition, if a specialist or market maker enters an order into an electronic communications network ("ECN") that improves its quote, it has to either (1) reflect that limit order in its quote, or (2) use an ECN that is linked to the National Market System, displaying its specialist and market maker top of book, and that top of book quote must be accessible.

[47] *See* NYSE 1996 Fact Book at 26 and 14.

[48] The Commission has previously stated its belief that broker-dealers automatically routing order flow to a particular market center must regularly and rigorously examine execution quality likely to be obtained from the different markets or market makers trading a security, carefully examine the extent to which directed order flow would be afforded better terms if executed in a market or with a market maker offering price improvement opportunities, and in the event that material differences exist between the price improvement opportunities offered by markets or market makers, the broker-dealer must take such differences into account. *See, e.g.*, Order Handling Rules, *supra* note 36.

[49] The Commission indicated in the Rule 19c–3 Adopting Release that intermarket exposure of orders in a national market system should maximize competition between and among markets and market participants, and further the efficiency and fairness of the securities markets. *See* Rule 19c–3 Adopting Release, *supra* note 18, at 10, 45 FR at 41126.

[50] Non-exchange member OTC market makers presently are able to access exchange floors only through correspondent relationships with member firms.

directly the better quote for non-Rule 19c–3 securities. Expanding the ITS/CAES linkage to non-Rule 19c–3 securities will enable the OTC market maker and the exchange specialist to directly access those superior priced quotes through ITS, rather than potentially executing an order at an inferior price.

The Commission also believes that the failure to expand the ITS/CAES linkage impedes "fair competition among brokers and dealers * * * and between exchange markets and markets other than exchange markets,"[51] and that competitive OTC markets cannot develop fully in the absence of a linkage for all listed securities. Without an expanded ITS/CAES linkage, OTC market makers in non-Rule 19c–3 securities have little ability to interact with the vast majority of retail orders, which presently are routed to the primary exchange markets, or to attract additional order flow through their displayed quotations. The expansion of the ITS/CAES linkage should promote competition in non-Rule 19c–3 securities by encouraging market makers or specialists to improve their quotes to match or better the bid or offer in another ITS market, in order to attract order flow from those other markets. The Commission also believes the expansion should help equalize access to all the markets because OTC market makers and exchange specialists will have an ability to access directly each other's markets for non-Rule 19c–3 securities.

The expansion of the ITS/CAES linkage should also decrease market fragmentation because all exchanges and the OTC market would be linked directly through ITS for all listed securities. The failure to extend the linkage between the OTC market and exchange markets to all listed securities obviates trade-through protection for third market trades and quotes, and inhibits efforts to achieve comprehensive nation-wide price protection. Expanding the ITS/CAES linkage should make ITS a more efficient and useful linkage by expanding the applicability of the ITS trade-through rule because all market maker trades and quotes in listed securities would be subject to the rule.[52]

Although an expansion of the ITS/CAES linkage should produce significant benefits to the national market system, the Commission and market participants have suggested in the past that certain improvements to third market trading rules and NASD procedures should be implemented before the expansion. As discussed below, the Commission believes that most of these improvements have been implemented, and that the rest could be completed during the pendency of this rulemaking.

The Division, in its Market 2000 Study, identified several areas where the NASD should amend its rules prior to an expansion of the ITS/CAES linkage. Specifically, the Division recommended that the NASD amend its rules to provide for: the display of customer limit orders that improve the existing ITS best bid or offer ("BBO"); customer limit order protection; fixed standards for queuing and executing customer orders; crossing of customers' orders, if possible, without dealer intervention; and compliance with ITS trade-through and block trade policies. The Division also stated that the NASD should develop a program specifically designed to enhance oversight examination of the third market.[53]

In addition, in response to a Commission letter,[54] the ITS Participants recently submitted their views in writing to the Division on the expansion of the ITS/CAES interface.[55] Eight of the nine Participants supported eliminating the ITS/CAES linkage restriction as long as certain significant changes are made to the NASD's rules prior to the expansion. Several Participants express concern about the accessibility of all third market quotes in listed securities and the application of the ITS Plan, including the trade-through rule, if the linkage were expanded. One Participant believes that the NASD must implement a trade-through rule that would apply to all third market makers, even non-ITS/CAES market makers, who trade listed stocks.[56] Several Participants believe the NASD should require all third market makers and "unregulated exchanges" to participate in ITS,[57] and another believes all NASD members, both market makers and brokers, who trade listed securities should be accessible through ITS and willing to comply with the Order Handling Rules and all ITS rules, including the trade-through rules.[58] Another commenter suggested that all block positioners and non-market makers (that trade listed stocks) linked with the National Market System should also be required to comply with the ITS trade-through rule. The Commission is soliciting comment on whether this is necessary or appropriate, and how it could be achieved.[59]

The Participants also expressed concerns regarding adequate trade-reporting and surveillance of the third market. The Participants believe additional oversight of the third market and third market makers is necessary prior to any expansion of the ITS/CAES linkage. One Participant believes that the third market must implement timely and accurate trade reporting because the operation of ITS, especially the operation of the trade-through and block trade policies, depends upon timely trade reporting at the actual price of the transaction.[60] The Participant argues that currently, third market transactions can be reported that at a price "reasonably related to the prevailing market," taking into consideration all relevant circumstances, including the costs of executing transactions, market conditions, and the number of shares involved.[61] The Participants also states

[51] *See* Section 11A(a)(1)(C)(ii) of the Act, 15 U.S.C. 78k–1(a)(1)(C)(ii).

[52] Currently, third market makers can trade non-Rule 19c–3 listed securities without complying with the ITS trade-through rule. The NASD, however, has indicated its willingness to amend its rules to conform with trade-through protection if the ITS/CAES link is expanded. *See* NASD 1997 Letter, *supra*, note 33.

[53] *See* Market 2000 Study, *supra*, note 34.

[54] *See* May 27 Letter, *supra*, note 39. In that letter, the Commission commented on four aspects of the ITS Plan that it believes are anti-competitive; the ITS/CAES limitation to Rule 19c–3 securities was one of those provisions.

[55] *See* letter from Thomas F. Ryan, Jr., President and Chief Operative Officer, Amex, to Jonathan B. Katz, Secretary, Commission, dated June 26, 1997 ("Amex Letter"); letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, Commission, dated June 26, 1997; letter from Robert H. Forney, President and Chief Executive Officer, CHX, to Jonathan G. Katz, Secretary, Commission, dated November 3, 1997 ("CHX Letter"), letter from David Colker, Executive Vice President and Chief Operating Officer, CSE, to Jonathan G. Katz, Secretary, Commission, dated July 3, 1997 ("CSE Letter"); NASD 1997 letter, *supra*, note 33; letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated June 25, 1997 ("NYSE Letter"); and letter from William G. Morton, BSE, Robert H. Forney, CHX, Robert M. Greber, PCX, and Nicholas Giordano, Phlx, to Jonathan G. Katz, Secretary, Commission, dated June 23, 1997 ("Joint Letter").

[56] *See* NYSE Letter, *supra* note 55.

[57] *See* Joint Letter, *supra* note 55.

[58] *See* CSE Letter, *supra* note 55.

[59] *See* Amex Letter, *supra* note 55.

[60] *See* NYSE Letter, *supra* note 55. If the transaction is not reported accurately, there is no way of ascertaining if that transaction would have traded-through a superior priced quotation in another ITS market. *See id.* The Commission notes that the ITS block trade policy requires anyone handling a block transaction to satisfy all superior ITS quotes at the block price.

[61] Prior to 1980, third market principal transactions were reported to the consolidated system at a "net" price which included the mark-up or mark-down charged to the customer on the transaction. In 1980 the Commission approved an NASD proposed rule change requiring third market reporting at a "gross" price, excluding the mark-up or mark-down charged a customer. The rule

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that the Commission has cited its confirmation rule[62] as resolving the trade reporting issue, but the Participant does not think that this addresses the issue because that rule merely requires the NASD member to report the same price to the customer as they do to the tape.[63]

The Commission believes that most of these issues have already been addressed and that the NASD could address the others prior to the implementation of the expansion of the ITS/CAES linkage. The Commission's adoption of the Limit Order Display Rule eliminates the need for the NASD to implement a rule to require the display of customer limit orders that improve the existing ITS/BBO, as recommended in the Market 2000 Study.[64] In addition, the Limit Order Display Rule provides enhanced opportunity for public orders to interact with other pubic orders without the intermediation of a specialist or market maker by requiring certain customer limit orders to be displayed in the quote.[65] The Commission also notes that there is an NASD rule that prohibits third market makers from trading ahead of their customer limit orders.[66]

In addition, the Commission believes that, for the most part, the issue of timely and accurate trade reporting has already been adequately addressed. The Commission notes that third market transactions during regular market hours must be reported to the consolidated tape within 90 seconds of execution; this is the same as the reporting of transactions on all the exchanges. Moreover, the Commission has enacted a rule requiring the third market to report transactions to the consolidated tape at the same price as they report the transactions to the customer.[67] Although the Commission believes that the rule relating to third market trade reporting could be clarified, they are the same for Rule 19c–3 and non-Rule 19c–3 securities, and thus provide no basis for not extending the ITS/CAES linkage to all securities. Nonetheless, the Commission believes that the NASD must continue to ensure that it is actively and adequately surveilling trade reporting in the third market.[68]

The Commission also believes that the NASD should provide for trade-through and block trade policy rules that will apply to all third market makers who trade in listed securities, prior to an expansion of the ITS/CAES linkage. In addition, the NASD should consider developing standards for queuing and executing customer orders. The Commission invites the NASD to submit proposed rule changes to address these concerns. However, while these standards are needed to better protect OTC customers, they are not relevant to orders received via the linkage, and so are not fundamentally the concern of other markets.

Finally, the Commission also wishes to emphasize that all ITS Participants need to enforce strictly Rule 11Ac1–1 under the Exchange Act (the "Firm Quote Rule") to ensure that investors receive best execution and that the market receives reliable quotation information. The Firm Quote Rule requires that every exchange specialist or OTC market maker execute any order to buy or sell a security it receives at a price at least at favorable as its published bid or offer in any amount up to its published size, subject to two exceptions. The Commission emphasizes that the Firm Quote Rule applies to ITS commitments; where a specialist or market makers fails to honor its quote by refusing to execute an ITS commitment received at its published bid or offer, and neither of the exceptions contained in the Firm Quote Rule apply, the specialist or market maker is in violation of the Firm Quote Rule. A market maker or specialist who fails to meet his or her quote obligations is said to have "backed away."[69]

There are only two exceptions to the Firm Quote Rule. The first exception occurs when, prior to the receipt of the order, the market maker or specialist has communicated to its association of exchange a revised quotation size or revised bid or offer. The second exception applies when, prior to the receipt of an order, the market maker or specialist is in the process of effecting a transaction in a security when an order in the same security is presented, and immediately after the completion of such transaction, the market maker or specialist communicates to its association or exchange a revised quotation size or revised bid or offer (the "trade ahead" exception). In its Section 21(a) Report, the Commission specifically stated that the fact that SelectNet orders may have scrolled off a market maker's Nasdaq workstation terminal screen did not excuse traders from complying with the Firm Quote

requires that the price reported to the consolidated system shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances, including, but not limited to, market conditions with respect to the security, the number of shares involved in the transaction, the published bids and offers with size at the time of execution (including the reporting firm's own quotation), accessibility to market centers publishing bids and offers with size, the cost of the execution, and the expenses involved in clearing the transaction. *See* Securities Exchange Act Release No. 18536 (March 11, 1982), 47 FR 10658, 10662 n.21 and NASD Rule 6420(d)(3)(A). NASD Rule 5230 states that transactions in ITS securities executed in CAES by ITS/CAES market makers or receive through the ITS system and executed by an ITS/CAES market maker are reported to the Consolidated Tape by the CAES system at the price specified in the ITS commitment or, if executed at a better price, the execution price.

[62] *See* Rule 10b–10 under the Exchange Act, 17 CFR 240.10b–10. This rule requires that when a NASD member is acting as an agent for a customer, the member must confirm to the customer the gross trade price, which is the price that was reported to the Consolidated Tape, and the commission equivalent as well as the net price to the customer. When an NASD member is acting as principal for its own account, the member must include in the confirmation the price reported to the Consolidated Tape, the net price to the customer, and the difference.

[63] In the original order adopting amendments to the ITS Plan in 1982, the Commission discussed the trade-reporting issue. *See* Final Approval Order, *supra* note 31. The ITS Participants had stated that they believed it was necessary for the NASD to agree to require market makers to report trades to the consolidated tape at the same price they confirm transactions to their customers, believing that such a requirement would impose, through customer monitoring of trade confirmations, a discipline on market makers to ensure that they reported trades as the true wholesale price. The Commission responded that it believed that concerns about accurate trade reporting could be effectively resolved through surveillance. The Commission believes that its confirmation rule amendments help enforce the trade reporting obligations by requiring disclosure of the mark-up resulting from the actual reported price. *See* Securities Exchange Act Release No. 18713 (May 6, 1982), 47 FR 20413, 20415 n.13 (May 12, 1982). The Commission notes that the NASD, in its petition for rulemaking to expand the ITS/CAES linkage to non-Rule 19c–3 securities, has indicated that it intends to modify its last trade reporting rules for exchange-listed securities in order to address concerns relating to the ITS/CAES linkage expansion. *See* NASD Petition, *supra* note 36.

[64] The Limit Order Display Rule requires all specialist and market makers to display customer limit orders that improve their quotes. *See* Order Execution Rules, *supra* note 36.

[65] *Id.*

[66] The Commission notes that NASD's Rule 6440(f)(1)(2), which applies to listed securities, states that no member shall buy (or sell) (or initiate the purchase or sale of) any security at or above (or below) the price at which it personally holds or has knowledge that any person associated with it holds an unexpected limited price order to buy (or sell) such security in the unit of trading for a customer.

[67] *See supra* notes 61–62 and accompanying text.

[68] In its Report Pursuant to Section 21(a) of the Securities Exchange Act of 1935 Regarding the NASD and the Nasdaq Market, the Commission noted that the NASD failed to monitor and enforce rigorously trade reporting compliance by NASD members trading exchange-listed securities in the OTC market, and that they were many transactions that constituted trade-through. *See* U.S. Securities and Exchange Commission, Report Pursuant to Section 21(a) of the Securities Exchange Act of 1935 Regarding the NASD and the Nasdaq Market (August 8, 1996) ("Section 21(a) Report") at A–44. Since that time, the NASD has taken various measures designed to comply with the undertakings contained in its settlement of an enforcement proceeding with the Commission. One of the undertakings required the NASD to improve substantially the reliability of trade reporting.

[69] The Firm Quote Rule by its terms applies to ITS commitments.

Rule for those orders.[70] Similarly, the Commission stresses that a market maker or specialist cannot claim as a valid excuse for not executing an ITS commitment that he did not see the commitment before it expired ("timing out"). The Commission wishes to reiterate that order expiration is not an exception to the Firm Quote Rule.[71]

B. Unanimous Vote Requirement

The Commission preliminarily believes that the unanimous voting requirement for amendments to the ITS Plan, including the admission of new participants, is anti-competitive and impedes the ability of ITS to adapt to market changes. As the Commission stated in a May 27, 1997 letter[72] to the ITS Participants, the unanimous vote requirement allows any single Participant to veto changes to the Plan that could increase competition faced by that Participant, such as the entry of another market into ITS or expansion of business by a particular ITS Participant. It also allows any Participant to block modifications to ITS designed to adapt to changed circumstances. As a result, ITS has not been able to evolve significantly as the markets changed over the past two decades.

There are several recent instances that demonstrate the anti-competitive impact of the unanimous vote requirement.[73] The first instance involved the issue of trading derivative-type securities, such as Standard & Poor's Depository Receipts ("SPDRs"), through ITS.[74] Initially, there was disagreement among the Participants over amending the ITS Plan to allow eligible securities to trade in increments smaller than ⅛th of a dollar. this modification was necessary before a derivative-type product such as SPDRs, which trades in increments of 1/64th of a dollar, could begin trading over ITS. The Participants originally disagreed on whether to amend the Plan to accommodate trading in smaller increments, and what, if any, the smaller increment should be. Eventually, after much debate, the Participants agreed to amend the Plan in two stages, to first allow trading in smaller increments, and eventually in decimals. Nevertheless, due to opposition by a single Participant, resolution of this issue was delayed for several months. As a consequence, competing markets could not trade SPDRs for an extended period of time.

Further, as noted in the May 27, 1997 letter, the Commission believes that the ITS provision which provides ITS Participants a special right of review for proposed rule changes involving the operation of the CSE's NSTS is anti-competitive because it permits other Participants to prevent the CSE from improving its market without prior notice to and comment from its market competitors. At the recent ITS meeting, a single Participant was able to block action on elimination of this provision by voting against a motion to amend the Plan. All the other Participants voted in favor of the motion.[75]

Another recent example of the significance of the unanimous vote requirement relates to OptiMark, a Commission-approved facility of PCX. The Commission notes that PCX and other ITS Participants have not been able yet to unanimously agree on whether the Participants need to amend the ITS Plan prior to the time OptiMark begins to operate, much less on the substance of a plan amendment, despite continuous discussion of the issue.[76] The OptiMark experience illustrates that a unanimous vote requirement has the potential to block changes in ITS to accommodate innovation on the part of Participants. It also suggests the obstacles that a new market could face in becoming a new Participant in ITS.

The above instances underscore the limiting effect of the unanimous vote requirement. They may represent only a small portion of potential changes to ITS hindered by the unanimous vote requirement. Most proposals may not even get proffered by ITS Participants because of the difficulty of overcoming the unanimous vote requirement. The potential veto by a single Participant can slow or prevent ideas for modifying ITS to accommodate developments in the markets from even reaching the proposal stage, let along being adopted.

In response to the Commission May 27, 1997 letter, several of the Participants argue that the unanimous vote requirement fosters competition and the development of the national market system because ITS, in conjunction with the Consolidated Quotation System, encourages a Participant market to compete for order flow with the knowledge that its superior-priced quotations must be honored.[77] These Participants further assert that "[o]ther than providing [a] limited form of access, the Plan has no other effect on market competition", and that "[t]here are no Plan provisions that allow one or more Participant markets to veto a competitive initiative of another Participant market."[78] However, the Commission strongly believes that ITS can affect a market's ability to compete because the unanimous vote requirement could effectively prevent a competing market implementing structural or operational changes from becoming an ITS Participant, which in turn could affect that market's ability to compete for order flow and to reach quotations in the competing ITS Participant markets.

Several of the Participants also believe that the unanimous vote requirement, "rather than being anti-competitive, * * * [constitutes a] prudent safeguard[s] to ensure that all Participants are able to protect the integrity of their markets and their membership status."[79] In other words, a market can exercise its veto to prevent the other ITS Participants from imposing restrictive conditions through ITS rules, or from eroding its membership value by creating unlimited ITS access to its market. Although the Commission recognizes these concerns, the Commission believes that there are other means to protect a market's interests that are less restrictive and anti-competitive. Specifically, the Commission preliminarily believes that a two-thirds supermajority voting requirement, with a right to appeal to the Commission, could foster a regulatory system that will promote innovation and competition while still permitting the Participants to preserve the integrity of their markets and membership status.[80]

[70] *See* Section 21(a) Report at note 134 and accompanying text.

[71] *See* Exchange Act Rule 11Ac1–1.

[72] *See* May 27 Letter, *supra* note 39.

[73] *See* Minutes from the ITS Users' Committee and ITSOC meetings held on September 18 and 19, 1997, respectively.

[74] CHX, CSE and PCX have received Commission approval to trade SPDRs and MidCap SPDRs, both Amex products.

[75] The single Participant subsequently changed its position to support the Plan amendment.

[76] Two Participants, the NYSE and Amex, refused to participate in a vote in December 1997, on whether an amendment to the Plan is necessary, while the other seven Participants voted that an amendment is not needed prior to the operation of OptiMark. Nevertheless, on June 3, 1998, the PCX proposed to the ITSOC two Plan amendments to link the PCX Application of the OptiMark System to ITS. The amendments were not approved by a vote of 5–4. Although a super-majority voting provision would not have made a difference in the June 3 vote, the June 3 vote would never have been necessary had a super-majority voting provision been in place for the December vote. The Commission notes that it issued a companion release to amend the ITS Plan to link the PCX Application of the OptiMark System to ITS. *See* Securities Exchange Act Release No. 40204 (July 15, 1998).

[77] *See* Joint Letter, *supra* note 55.

[78] *See id.*

[79] *See id.*

[80] *See* May 27 Letter, *supra* note 39. Several commenters support, to varying degrees, this approach. *See* letter from Leopold Korins, Chairman and Chief Executive Officer, Phlx, to Jonathan G. Katz, Secretary, SEC, dated November 12,1997

Continued

Several of the Participants argue that the right to appeal to the Commission, in the event that a Participant objects to a certain amendment approved by a two-thirds majority, does not provide adequate protection of their interests.[81] The Commission believes that the appeal right to the Commission in the Plan Rule, and the review it undertakes in approving a Plan amendment, provides additional protection to all Participants, in part because such review is done in accordance with and in furtherance of the purposes of the Exchange Act.[82]

The Commission has recommended that the ITS Participants eliminate the unanimous vote requirement but no consensus has been reached.[83] Consequently, the Commission is proposing an amendment to eliminate the unanimous vote requirement contained in Section 4(c) of the ITS Plan and replace it with a supermajority/two-thirds vote requirement for Plan amendments.[84]

("Phlx letter") (supporting a supermajority for most issues, including Plan amendments, and a simple majority for resolution of certain ministerial issues); letter from David Colker, Executive Vice President and Chief Operating Officer, CSE, to Jonathan G. Katz, Secretary, SEC, dated January 19, 1998 ("CSE Unanimous Vote Letter") (supporting a supermajority vote for all ITS Plan amendments except admission of new participants under the existing regulatory structure, for which it supports a simple majority vote); letter from Gary K. Staggs, Vice President, Equity Floor Operations, PCX, to Jonathan G. Katz, Secretary, Commission ("PCX Letter") (supporting a majority or supermajority vote for general Plan amendments); and CHX letter, *supra* note 55 (supporting a supermajority vote requirement of two-thirds of the Participants for Plan amendments, including the admission of new Participants).

[81] *See id.*

[82] Paragraph (c)(2) of Rule 11Aa3–2 (the "Plan Rule") provides that the Commission will approve a filing only if it finds that a plan or amendment "is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the [Exchange] Act."

[83] *See* Phlx letter, *supra* note 80 (supporting a supermajority for most issues, including Plan amendments, and a simple majority for resolution of certain ministerial issues); CSE Unanimous Vote Letter, *supra* note 80 (supporting a supermajority vote for all ITS Plan amendments except admission of new participants under the existing regulatory structure, for which its supports a simple majority vote); PCX Letter, *supra* note 80 (supporting a majority or supemajority vote for general Plan amendments); CHX Letter, *supra* note 55 (supporting a supermajority vote requirement of two-thirds of the Participants for Plan amendments, including the admission of new participants). *But see* Joint Letter, *supra* note 55 (stating that the unanimous vote requirement in particular is appropriate because it fosters competition and the development of the National Market System).

[84] Those opposing the amendment would have the right to appeal to the Commission.

III. Request for Comment

The Commission solicits comment on the substance of the proposed amendment to the ITS Plan to expand the ITS/CAES linkage as discussed above, and also requests comment on specific questions relating to this proposed expansion.

With regard to the substance of the trade-through rule the NASD must implement prior to expansion of the ITS/CAES linkage, the Commission requests comment on whether such rule should apply to all NASD members who trade listed securities, or only those market makers who trade listed securities. The Commission also requests comment on the specifics of a trade-through rule and whether a trade-through rule for the third market should be identical to the exchange trade-through rules, or whether such rule should be similar to the trade-through rule that already applies to ITS/CAES market makers,[85] but expanded in scope and application. Finally, the Commission requests comment on what, if any, other amendments to NASD rules are necessary prior to expanding the ITS/CAES linkage.[86]

The Commission notes that under current NASD rules, participation in CAES and the ITS/CAES linkage is limited to registered CQS market makers. As a result, if ITS/CAES linkage were expanded to include non-Rule 19c–3 securities, ECNs must be CQS market makers to have the ability to access the listed markets through ITS, or else exchange specialists will be unable to make full use of the ECN Alternative under the Order Handling Rules. The Commission requests comment on whether the NASD's rules need to be amended to allow ECN participation in CAES and the ITS/CAES linkage. The Commission is interested in commenters' views on what rule changes would be necessary to accommodate ECN participation in CAES and ITS/CAES linkage.

The Commission is soliciting comment on whether the unanimous vote requirement should be eliminated, and what impact such a change would have on the operation of ITS and the respective Participant markets, if any. The Commission also is soliciting comment on what alternative voting scheme should be required for Plan amendments if the unanimous vote requirement is eliminated, such as a simple majority vote or a two-thirds vote. Should the alternative voting scheme chosen by the Commission more directly take into account the actual number of its participants? For example, should the Commission adopt a simple majority or two-thirds voting scheme if the number of participants is—as it is now—nine, but allow for automatic modification of that scheme by the Commission if the number of participants is 7, 8, 10, or 11? In addition, the Commission is soliciting comment on whether all amendments to the ITS Plan should be treated equally, or whether amendments to admit new participants (currently Section 3(c)) should be treated differently from all other ITS Plan amendments, and, if so, why the disparate treatment is necessary.

Some ITS Participants have expressed concerns that non-unanimous voting threatens their sovereignty as independent markets. At the same time, the existing ITS Plan constrains the market structure of Participants, which limits innovation, in order to prevent unbridled order routing to other markets through ITS. To address these concerns, the Commission requests comment on whether other market linkages should be developed to replace ITS. All of the Participants now operate automated order routing systems that provide access to their markets. As an alternative to ITS, these systems could be opened to other markets for use on an order-by-order basis. Alternatively, ITS Participants could provide access to other markets directly or through one of many private vendors providing order routing services. The Commission is requesting comment on two possible alternatives to the existing ITS System: (1) Eliminating ITS and requiring each national securities exchange and national securities association to provide access to other markets through one or more private vendors for the purpose of allowing access to better-priced quotations in their markets; or (2) eliminating ITS and requiring each participant national securities exchange and national securities association to provide other markets access to its order routing systems.

Finally, the Commission requests comment on whether the changes it has proposed to the ITS Plan should be supplemented, or wholly replaced, by other revisions to the ITS Plan. The current provisions can produce a restraint on competition, impediments to ITS' ability to adapt to market changes, barriers to new Participants joining the Plan, the encumbrances on innovation by the current Participants. The Commission recognizes the possibility that eliminating the

[85] *See* NASD Rule 5262.

[86] The Commission notes that the NASD's autoquote rule would have to be revised if the ITS/CAES linkage is expanded, as the rule is currently inconsistent with the ITS Plan.

unanimous vote requirement may not be sufficient to address the restrictive nature of the current ITS Plan, including the difficulty involved in the Plan, before change can occur to remove the provisions that control the internal operation of Participant markets. Commentators should address whether it would be productive to revise the ITS Plan to remove or modify other provisions that unnecessarily limit the internal operation of Participants, such as the descriptions of specific ITS interfaces and the requirement of two-sided quotations. Instead, the Plan could express standards or principles governing use by Participants, such as the existing prohibition contained in Plan Rule 8(a)(v),[87] dealing with routing a substantial portion of order flow to other markets through ITS. Regardless of whether commentators believe that the current changes proposed by the Commission provide for an adequate solution to the problems mentioned above, the Commission requests additional comment on whether further action, including, but not limited to, a revision of the entire ITS Plan by the Commission, is warranted.

IV. Costs and Benefits of the Proposed Amendments and Their Effects on Competition, Efficiency and Capital Formation

Section 23(a)(2) of the Exchange Act requires that the Commission, when promulgating rules under the Exchange Act, to consider the competitive effects of such rules and to not adopt any rule that would impose a burden on competition that is not necessary or appropriate in furthering the purpose of the Act.[88] The Commission preliminarily has considered the proposed amendments to the ITS Plan in light of the standards cited in Section 23(a)(2) of the Act and believes that they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. Indeed, the Commission believes that the proposed amendment to expand the ITS/CAES linkage should promote competition in non-Rule 19c–3 securities because OTC market makers will now be able to attract orders initially routed to exchange specialists, by disseminating a superior quote, in all listed securities, not just Rule 19c–3 securities. Additionally, the expansion of the ITS/CAES linkage will allow exchange specialists to attract orders held by OTC market makers in non-Rule 19c–3 securities. The Commission also believes that eliminating the unanimous vote requirements should promote competition by restricting the ability of one or more Participants to block an ITS Plan amendment that would promote competition between the markets or within one market.

Commentators should consider the proposed amendment's effect on competition, efficiency and capital formation.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed amendment on the economy on an annual basis. If possible, commentators should provide empirical data to support their views.

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed amendments, commenters are requested to provide analysis and data relating to costs and benefits associated with the proposal herein. The Commission preliminarily believes that the amendment to the ITS Plan proposed herein to expand the ITS/CAES linkage to all listed securities will increase efficiency because investors will be able to access directly the exchange and OTC markets for all listed stocks. The Commission also notes the impact of the proposed ITS Plan amendments on the NYSE in the proposal would allow all ITS Participants to access the NYSE for non-Rule 19c–3 securities, and for the NYSE to access other Participant markets for those securities. In addition, the Commission preliminarily believes that the proposed amendments would benefit ECNs by allowing them to fully integrate into the NMS in all listed securities, which in turn would allow for more efficient use of the ECN Alternative mentioned in the Order Execution Rules. The Commission also preliminarily believes that the proposal would enhance competition between market in non-Rule 19c–3 securities and improve execution quality for non-Rule 19c–3 securities. Finally, the Commission notes that there would be implementation costs and costs of expanding the linkage to include all non-Rule 19c–3 securities.

In addition, the proposed amendment to eliminate the unanimous vote requirement for ITS Plan amendments would remove a significant barrier to imposing new and innovative modifications to ITS by preventing a small minority of ITS Participants from thwarting innovation that could improve market efficiency. The Commission is requesting comment on the costs and benefits of the proposed amendments and any possible anti-competitive impact of the proposed amendments. Specifically, the Commission requests comments to address whether the proposed amendment would generate the anticipated benefits or impose any costs on U.S. investors or others.

Comments should be submitted by August 31, 1998.

V. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis ("IRFA") has been prepared in accordance with Section 3 of the Regulatory Flexibility Act ("RFA").[89] It relates to proposed amendments to the ITS Plan to expand the linkage between ITS and the NASD/CAES to all listed securities and would eliminate the unanimous vote requirement for amendments to the ITS Plan.

A. Reasons for and Objectives of the Proposal

Although the ITS participants have addressed two of the four anti-competitive aspects of the ITS Plan identified by the Commission, they have been unable to take action regarding the expanded linkage and the unanimous vote requirement. The Commission thus is proposing to amend the ITS Plan on its own initiative.

The objective of the expanded linkage is to achieve the statutory goals of efficient execution of securities transactions and opportunities for best execution of customer orders for all listed securities. The elimination of the unanimous vote requirement is intended to improve the governance of the ITS Plan—the unanimous vote requirement in the past has been used by the ITS participants to veto changes to the ITS Plan that could increase intermarket competition.

B. Legal Basis

Section 11A(a)(3)(B) of the Exchange Act authorizes the Commission, by rule or order, to authorize or require SROs to act jointly with respect to matters as to which they share authority under the Exchange Act in planning, developing, operating or regulating a national market system (or a subsystem thereof) or one or more facilities thereof. It states explicitly that the Commission not only may approve national market system facilities in response to an application

[87] Section 8(a)(v) of the ITS Plan provides that ITS is not permitted to be used as an automated order delivery system whereby all or a substantial portion of orders are routinely rerouted from the market where they are received to another market for execution. This provision further requires that each Participant take reasonable efforts to probe its market to achieve a satisfactory execution there before reformatting the order as an ITS commitment to trade and rerouting it to another market.

[88] *See* 15 U.S.C. 78w(a)(2).

[89] 5 U.S.C. 603(a).

by SROs, but also may require SROs to implement such facilities on their own initiative. Rule 11Aa3–2,[90] adopted by the Commission under Section 11A, establishes procedures for proposing amendments to national market system plans such as the ITS Plan. Paragraph (b)(2) states that the Commission may propose amendments to an effective national market system plan by publishing the text of the amendment together with a statement of purpose of the amendments.

C. Small Entities Affected by the Proposed Amendments

The proposal would directly affect the nine ITS Participants, none of which are small entities. However, specialists on the exchange floors who trade ITS securities, broker-dealers that have access to ITS through terminals located on exchange floors, and registered ITS/CAES market makers who trade in ITS securities in the third market could be indirectly affected. There would be no impact on these broker-dealers by the proposed change in the vote requirement as it relates only to the governance of the ITS Plan.

Paragraph (c)(1) of Rule 0–10[91] states that the term "small business" or "small organization," when referring to a broker-dealer, means a broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 in its prior fiscal year audited financial statements or, if not required to file such statements, on the last business day of the preceding fiscal year; and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization. The Commission currently does not have any data on the number of small entities that could be affected.[92]

To the extent, however, that a specialist or market maker does fall under the definition of "small entity," the effect is likely to be indirect and positive. Under the current system, an OTC market maker may be trading a security at a better price than an exchange specialist (or vice versa) and the exchange specialist (or OTC market maker) is not able to access directly the better quote for non-Rule 19c–3 securities. Expanding the ITS/CAES linkage to non-Rule 19c–3 securities would enable the OTC market maker and the exchange specialist to access directly those superior priced quotes through ITS, rather than potentially executing an order at an inferior price. Finally, the expansion of the ITS/CAES linkage to non-Rule 19c–3 securities also would have an indirect, beneficial effect upon the ability of a broker with ITS access on an exchange floor to achieve best execution of customer orders.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposals would not impose any new reporting, recordkeeping, or other compliance requirements.

E. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed amendments.

F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant economic impact on small entities. In connection with the proposal, the Commission considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the Rule, of any part thereof, for small entities.

The Commission believes that none of the above alternatives is applicable. The ITS Participants are the only parties that are subject to the requirements of the ITS Plan. The ITS Participants are all national SROs and, as such, are not "small entities." The Commission believes that any effect that could possibly be experienced by a "small entity" would be indirect and beneficial. Therefore, having considered the foregoing alternatives in the context of the proposed amendments, the Commission does not believe they would accomplish the stated objectives of the proposal.

G. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this IRFA. The Commission requests comment as well as empirical data on the impact the proposal will have on small broker-dealers, specialists or market makers that utilize ITS. Comment is specifically requested on whether broker-dealers that access ITS meet the revised definition of "small business" and on the number of small entities that would be affected by the proposed rules. Also, the Commission is seeking comment on the perceived nature of the impact of the proposed amendments on these entities. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. 4–208; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

VI. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed amendments do not impose recordkeeping or information collection requirements, or other collections of information which require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

VII. Description of Proposed Amendments to the ITS Plan

The Commission hereby proposes to amend the ITS Plan to provide for the expansion of the ITS/CAES interface to non-Rule 19c–3 securities, as well as for the elimination of the unanimous vote requirement for amendments to the ITS Plan, pursuant to Rule 11Aa3–2(b)(2) and (c)(1) and the Commission's authority under Section 11A(a)(3)(B) of the Act.[93] Below is the text of the

[90] 17 CFR 240.11Aa3–2.

[91] 17 CFR 240.0–10(c)(1).

[92] The Commission recently adopted revised definitions of "small entity." *See* Definitions of "Small Business" or "Small Organization" Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933, Exchange Act Release No. 40122 (June 24, 1998). The revision, among other things, expanded the affiliation standard applicable to broker-dealers, to exclude from the definition of a small entity many introducing broker-dealers, to exclude from the definition of a small entity many introducing broker-dealers that clear customer transactions through large firms. Currently, approximately 1,079 of all registered broker-dealers will be characterized as "small." *See* revised Rule 0–10(i). [The Commission estimates there are 8,300 registered brokers-dealers.]

[93] 5 U.S.C. 78k–1(a)(3)(B). Section 11A(a)(3)(B) authorizes the Commission, in furtherance of its statutory directive to facilitate the development of a national market system, by rule or order, to

amended ITS Plan.[94] Deleted text is [bracketed] and new language is italicized.

* * * * *

Section 1. Definitions.

(1)–(16) No Change.

(17) "ITS/CAES Security (stock)" means a security (stock) (a) that is a System security[, (b) that is a 19c–3 security and (c)] *and (b)* as to which one or more ITS/CAES Market Makers are registered as such with the NASD for the purposes of Applications. When used with reference to a particular ITS/CAES Market Maker, "ITS/CAES security" means any such security (stock) as to which the particular ITS/CAES Market Maker is so registered.

(18)–(25) No Change.

[(26) "19c–3" security" means an Eligible Security that is not a "covered security" as that term is defined in SEC Rule 19c–3 as in effect on May 1, 1982.]

[(27)]*(26)*
[(27A)]*(26A)*
[(27B)]*(26B)*
[(27C)]*(26C)*
[(27D)]*(26D)*
[(27E)]*(26E)*
[(28)]*(27)*
[(29)]*(28)*
[(30)]*(29)*
[(31)]*(30)*
[(32)]*(31)*
[(33)]*(32)*
[(34)]*(33)*
[(34A)]*(33A)*
[(34B)]*(33B)*
[(35)]*(34)*
[(36)]*(35)*
[(37)]*(36)*

Section 2. No Change.

Section 3. No Change.

Section 4. Administration of ITS Plan.

(a)–(b) No Change.

(c) Amendments to the ITS Plan. Any proposed change in, addition to, or deletion from the ITS Plan may be effected only by a means of a written amendment to the ITS Plan which sets forth the change, addition or deletion, is executed on behalf of [each Participant]*two-thirds of the Participants,* and is approved by the SEC or otherwise becomes effective pursuant to section 11A of the Act and Rule 11Aa3–2.

(d)–(f) No Change.

Section 5. The System.

(a) No Change.

(b) General Operation.

(i) No Change.

(ii) Selection of System Securities. The System is designed to accommodate trading in any Eligible Security in the case of any ITS/CAES Market Maker, trading in one or more ITS/CAES securities in which he is registered as such with the NASD for the purposes of the Applications. The particular securities that may be traded through the System at any time ("System securities") shall be selected by the Operating Committee. The Operating Committee may add or delete System securities as it deems appropriate and may delay the commencement of trading in any Eligible Security if capacity or other operational considerations shall require such delay. [ITS/CAES securities may be traded by Exchange Participants and ITS/CAES Market Makers as provided in the ITS Plan and other System securities may be traded by Exchange Participants as provided in the ITS Plan.]

(c)–(d) No Change.

Section 6. No Change.

Section 7. No Change.

Section 8. No Change.

Section 9. No Change.

Section 10. No Change.

Section 11. No Change.

* * * * *

The proposed amendments do not address the manner which the costs of implementing these changes would be apportioned because the Commission believes the ITS Participants should decide this issue among themselves.

Dated: July 24, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20313 Filed 7–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40197A; File No. SR–MSRB–98–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Rule G–32, on Disclosures in Connection With New Issues

July 23, 1998.

Correction

In FR Document No. 98–19445, beginning on page 39322 for Wednesday, July 22, 1998, the first full paragraph of the page is revised to read:

The amendment provides an alternate method of compliance with Rule G–32 in the case of Exempt VRDOs where the final official statement is either unavailable or incomplete. The amendment is intended to provide relief to dealers in the event they do not receive the final official statement from the issuer with enough time to deliver the document to their customers by settlement. Therefore, in those limited circumstances where dealers may in fact receive the official statement in final form in sufficient time to deliver it to customers by settlement (*e.g.*, if an issuer approves completion of the official statement in final form prior to execution of the purchase contract), dealers would have the option of complying with the existing provision of the rule by delivering the official statement in final form to the customer by settlement.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20366 Filed 7–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40252; File No. SR–NASD–98–46]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Technical Corrections to Delegation Plan and IM–1000–4

July 23, 1998.

On July 9, 1998, the National Association of Securities Dealers, Inc. ("NASD") through its regulatory subsidiary NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] The proposed rule change is described in Items I, II, and III below, which Items have been prepared by NASD Regulations. NASD Regulation has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning of an existing rule under Section 19(b)(3)(A)(i) of the Act, which

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authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating, or regulating a national market system (or subsystem thereof) or one or more of the facilities thereof.

[94] The text reflects the latest unofficial compilation of the ITS Plan supplied by the ITSOC, including all previously incorporated amendments up to May 30, 1997.

[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

renders the proposal effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to make a technical correction to NASD Interpretive Material IM–1000–4 and a clarifying amendment to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan") regarding NASD Regulation's authority to inspect the books and records of The Nasdaq Stock Market, Inc. ("Nasdaq"). Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

IM–1000–4. [Appointment of Executive Representative] *Branch Offices and Offices of Supervisory Jurisdiction*

[The term "executive representative" as found in Section 3 of Article III of the By-Laws means that person designated by the member to represent, vote and act for the member in all the affairs of the Association. Pursuant to the provisions of Section 8 of Article III of the By-Laws, every member who maintains a registered branch office in a district of the Association other than the one in which its main office is located, is entitled to one vote on all matters pertaining solely to the district in which such registered branch office is located, including the election of members of the Board of Governors from such district. Should a member maintain more than one branch office in a district, it is entitled to only one vote in that district. Therefore, each member shall designate one executive representative and shall designate one "district executive representative" for each district other than the one in which the main office is located in which the member maintains a registered branch office.]

Each member is under a duty to insure that its membership application with the Association is kept current at all times by supplementary amendments to its original application and that any offices other than the main office are properly designated and registered, if required, with the Association.

Each member must designate to the Association those offices of supervisory jurisdiction, including the main office, and must register those offices which are deemed to be branch offices in accordance with the standards set forth in Rule 3010.

Plan of Allocation and Delegation of Functions by NASD to Subsidiaries

I. NASD, Inc.

* * * * *

D. Access to and Status of Offices, Directors, Employees, Books, Records, and Premises of Subsidiaries

Notwithstanding the delegation of authority to the Subsidiaries, as set forth in Sections II.A. and III.A. below, the staff, books, records, and premises of the Subsidiaries are the staff, books, records, and premises of the NASD subject to oversight pursuant to the Act, and all officers, directors, employees, and agents of the Subsidiaries are officers, directors, employees, and agents of the NASD for purposes of the Act. *The books and records of Nasdaq shall be subject at all times to inspection and copying by NASD Regulation.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change makes a technical correction to Interpretive Material 1000–4 by removing an obsolete provision regarding election procedures and district executive representatives. All regional nomination and district election procedures are now set forth in Articles VI and VIII of the NASD Regulation By-Laws, which permit only the Executive Representative of a member firm to cast a vote for a nomination or election.

The proposed rule change also adds a clarifying provision to the Delegation Plan specifically authorizing NASD Regulation to inspect and copy Nasdaq records. Nasdaq has always provided NASD Regulation with full access to its records. The clarification to the Delegation Plan was recommended by the Independent Consultant retained by the NASD in accordance with Securities Exchange Act Release No. 37538 (August 8, 1996), SEC's Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, *In the Matter of National Association of Securities Dealers, Inc.*, Administrative Proceeding File No. 3–9056 ("Order"). Undertaking No. 2 of the Order requires that NASD Regulation have full access to the records of Nasdaq.

(2) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[3] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the technical and clarifying corrections set forth in the proposed rule change are consistent with the provisions of the Section 15A(b)(6).[4]

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[5] and subparagraph (e)(1) of Rule 19b–4 thereunder[6] in that it constitutes a stated policy, practice, or interpretation with respect to the meaning of an existing rule. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act,[7] the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[3] 15 U.S.C. 78o–3(b)(6).
[4] *Id.*
[5] 15 U.S.C. 78s(b)(3)(A)(i).
[6] 17 CFR 240.19b–4(e)(1).
[7] 15 U.S.C. 78s(b)(3)(A).

or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–46 and should be submitted by August 20, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20363 Filed 7–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40261; File No. SR–NASD–98–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Selection of Arbitrators in Arbitrations Involving Public Customers

July 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10, 1998,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary NASDA Regulation, filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10308 to set forth new procedures to be used to select arbitrators for arbitrations involving public customers.[2] Under the new procedures, NASD Regulation will allow the parties to an arbitration to rank arbitrators from lists generated primarily using an automated process, providing parties with a substantial role in determining the composition of their arbitration panels. NASD Regulation is proposing conforming changes to Rules 10104, 10309, 10310, 10311, 10312, and 10313. In addition, NASD Regulation proposes to amend Rule 10315 concerning the scheduling of the first meeting of the parties and the arbitration panel to reflect that such meetings usually occur prior to the first hearing of an arbitration proceeding. Finally, NASD Regulation proposes to correctly state in the Rule 10000 Series and any other Rules the name of the NASD Regulation committee that addresses arbitration and related matters, the National Arbitration and Mediation Committee.

Below is the text of the proposed rule change. Proposed new language is in italics proposed deletions are in brackets.

* * * * *

10104. Composition and Appointment of Panels

Except as otherwise specifically provided in Rule 10308, t[T]he Director [of Arbitration] shall compose and appoint panels of arbitrators from the existing pool of arbitrators of the Association to conduct the arbitration of any matter which shall be eligible for submission under this Code. [The Director of Arbitration may request that the Executive Committee of the National Arbitration Committee undertake the composition and appointment of a panel or undertake consultation with the Executive Committee regarding the composition and appointment of a panel in any circumstance where he determines such action to be appropriate.]

* * * * *

10308. [Designation of Number of Arbitrators] *Selection of Arbitrators in Customer Disputes*

[(a) Except as otherwise provided in Rule 10302, in all arbitration matters involving public customers and where the amount in controversy does not exceed $30,000, the Director of Arbitration shall appoint a single public arbitrator knowledgeable in but who is not from the securities industry to decide the dispute, claim or controversy. Upon the request of a party in its initial filing or the arbitrator, the Director of Arbitration shall appoint a panel of three (3) arbitrators which shall decide the matter in controversy. At least a majority of the arbitrators appointed shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.

(b) In arbitration matters involving public customers and where the amount in controversy exceeds $50,000, exclusive of attendant costs and interest, or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint a panel of three (3) arbitrators, at least a majority of whom shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.

(c) An arbitrator will be deemed as being from the securities industry if he or she:

(1) Is a person associated with a member or other broker/dealer, municipal securities dealer, government securities broker, or government securities dealer, or

(2) Has been associated with any of the above within the past three (3) years, or

(3) Is retired from any of the above, or

(4) Is an attorney, accountant, or other professional who has devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two years, or

(5) Is an individual who is registered under the Commodity Exchange Act or is a member of a registered futures association or any commodities

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[8] In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

[1] The NASD filed Amendment Nos. 1 and 2 to the proposed rule change on July 14, 1998 and July 23, 1998, respectively, the substance of which is incorporated into this notice. *See* letters from Alden S. Adkins, Senior Vice-President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated July 14, 1998 ("Amendment No. 1") and July 23, 1998 ("Amendment No. 2").

[2] NASD Regulation also intends to file a proposed rule change to use a similar list selection process for intra-industry arbitrations.

exchange or is associated with any such person(s).

(d) An arbitrator who is not from the securities industry shall be deemed a public arbitrator. A person will not be classified as a public arbitrator if he or she has a spouse or other member of the household who is a person who is associated with a member of other broker/dealer, municipal securities dealer, government securities broker, or government securities dealer.]

This rule specifies how parties may select or reject arbitrators, and who can be a public arbitrator in arbitration proceedings involving a customer.

(a) Definitions

(1) "Day"

For purposes of this rule, the term "day" means calendar day.

(2) "Claimant"

For purposes of this rule, the term "claimant" means one or more persons who file a single claim.

(3) "Neutral List Selection System"

The term "Neutral List Selection System" means the software that maintains the roster of arbitrators and performs various functions relating to the selection of arbitrators.

(4) "Non-Public Arbitrator"

The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(A) Is, or within the past three years, was:

(i) Associated with a broker or a dealer (including a government or a municipal securities broker or dealer);

(ii) Registered under the Commodity Exchange Act;

(iii) A member of a commodities exchange or a registered futures association; or

(iv) Associated with a person or firm registered under the Commodity Exchange Act;

(B) Is retired from engaging in any of the business activities listed in subparagraph (4)(A);

(C) Is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or

(D) Is an employee of a bank or other financial institution and effects transactions in securities and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

(5) "Public Arbitrator"

(A) The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and is not:

(i) Engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); or

(ii) The spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

(B) For the purpose of this rule, the term "immediate family member" means:

(i) A family member who shares a home with a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);

(ii) A person who receives financial support of more than 50 percent of his or her annual income from a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); or

(iii) A person who is claimed as a dependent for federal income tax purposes by a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

(6) "Respondent"

For purposes of this rule, the term "respondent" means one or more persons who individually or jointly file an answer to a complaint.

(7) "Send"

For purposes of this rule, the term "send" means to send by first class mail, facsimile, or any other method available and convenient to the parties and the Director.

(b) Composition of Arbitration Panel; Preparation of Lists for Mailing to Parties

(1) Composition of Arbitration Panel

(A) General Rule Regarding Panel Composition

(i) If the amount of a claim is $50,000 or less, the Director shall appoint an arbitration panel composed of one public arbitrator, unless the parties agree otherwise.

(ii) If the amount of a claim is more than $50,000, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree otherwise.

(B) Special Request

If the amount of a claim is greater than $25,000 and not more than $50,000 and the claimant requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree otherwise.

(2) One List for Panel of One Arbitrator

If one arbitrator will serve as the arbitration panel, the Director shall send to the parties one list of public arbitrators, unless the parties agree otherwise.

(3) Two List for Panel of Three Arbitrators

If three arbitrators will serve as the arbitration panel, the Director shall send two lists to the parties, one with the names of public arbitrators and one with the names of non-public arbitrators. The lists shall contain numbers of public and non-public arbitrators, in a ratio of approximately two to one, respectively, to the extent possible, based on the roster of available arbitrators.

(4) Preparation of Lists

(A) Except as provided in subparagraph (B) below, the Neutral List Selection System shall generate the list of public and non-public arbitrators on a rotating basis within a designated geographic hearing site and shall exclude arbitrators based upon conflicts of interest.

(B) If a party requests that the lists include arbitrators with expertise classified in the Neutral List Selection System, the list may include some arbitrators having the designated expertise.

(5) Sending of Lists to Parties

The Director shall send the list of arbitrators to all parties at the same time approximately 30 days after the last answer is due.

(6) Information About Arbitrators

The Director shall send to the parties employment history for each listed arbitrator for the past 10 years and any information disclosed by the arbitrator under Rule 10312 relating to personal financial interests or the existence of a relationship that gives rise to an appearance of a conflict of interest or bias. If a party requests additional information about an arbitrator, the Director shall send such request to the arbitrator, and shall send the arbitrator's response to all parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for the parties to return the ranked lists under paragraph (c)(2).

(c) Striking, Ranking, and Appainting Arbitratars on Lists

(1) Striking and Ranking Arbitrotors

(A) Striking An Arbitrotor

A porty may strike one or mare af the orbitrators from eoch list for any reoson.

(B) Ranking—Ponel of One Arbitrotor

Eoch porty shall ronk all of the arbitrotors remaining on the list by ossigning each arbitrator o different, sequential, numerical ronking.

(C) Ranking—Panel af Three Arbitrotors

Each porty sholl rank all af the public orbitratars remaining on the list by assigning eoch orbitratar a different, sequential, numericol ronking, ond separotely shall ronk all af the nan-public arbitratars remoining on the list, using the some procedure.

(D) Jaint Actian Permitted

All cloimonts may act jointly and all respandents, including thirdporty respandents, may act jointly to file a single list thot reflects their unonimous ogreement os to the striking ond ronking af arbitratars. If multiple claimonts or respondents da nat act jointly, the rankings of multiple cloimonts or respandents will be consalidated as described in subporograph (b)(3)(A).

(2) Period for Ronking Arbitrotors; Failure Ta Timely Strike ond Rank

A party must return to the Director the list or lists with the ranking not loter than 20 days after the Directar sent the lists to the parties, unless the Director has extended the period. If a porty does nat timely return the list ar lists, the Director sholl treat the porty os hoving retoined oll the orbitrotors on the list or lists ond os having no preferences.

(3) Process of Cansalidating Porties' Ronkings

(A) General Rule

The Director shall prepore one or twa cansolidated lists af arbitratars, as appropriate under subparagroph (b)(2) or (b)(3), bosed upon the parties' numericol rankings. The arbitrotors sholl be ronked by adding the rankings of oll cloimonts together and all respandents together, including third-party respondents, to produce seporote consolidoted ronkings of the cloimonts ond the respondents. The Director sholl then rank the orbitrotors by odding the consolidoted ronkings of the cloimonts, the respondents, including third porty respondents, ond any other party together, ta praduce o single cansalidated ranking number, excluding arbitratars wha were stricken by any party.

(B) Exceptian

If the Director determines that the interests of o party are sufficiently different fram the interests of other claimants or respondents, the Directar may determine not to consolidate the rankings af that party with the rankings af the ather claimants ar respandents.

(4) Appaintment of Arbitratars

(A) Appointment of Listed Arbitrators

The Director sholl appaint orbitrators to serve an the orbitration panel bosed an the order of ronkings on the cansalidated list of lists, subject to availability and disquolification.

(B) Discretion To Appoint Arbitrotors Nat on List

If the number af arbitratars available to serve from the consolidoted list is not sufficient ta fill a panel, the Director shall appaint ane ar mare arbitrators ta complete the orbitrotion ponel; provided, however, unless the porties ogree otherwise, the Director may not oppaint a non-public arbitrator under porographs (o)(4)(B) or (o)(4)(C).

(5) Selecting a Chairpersan far the Panel

The parties shall have 15 days from the dote the Director sends natice af the nomes of the orbitrotors to select a chairperson. If the porties cannot agree, the Director shall oppoint one af the public arbitratars as the chairpersan. Unless all parties agree otherwise, the Director sholl not oppoint as the chairperson a public arbitrator wha:

(A) Is an ottorney, occountont, or other prafessional, ond

(B) Has devoted 50% ar mare of his or her professional or business octivities, within the lost two years, to representing or advising public customers in motters reloting to disputed securities ar commadities tronsoctians or similor matters.

(6) Additional Parties

If a porty is added to an arbitrotion proceeding before the Director hos cansolidated the ather parties' rankings, the Director shall send to thot party the list or lists or orbitrotors ond permit the party ta strike and ronk the orbitrotors. The porty must return to the Director the list or lists with numericol ronkings not loter thon 20 doys ofter the Director sent the lists to the porty. The Director shall then consolidote the ronking as specified in this poragraph (c).

(d) Disqualification ond Remaval of Arbitrator Due to Conflict af Interest or Bias

(1) Disqualificatian by Directar

After the appaintment of on orbitratar and prior to the commencement of the eorlier of (i) the first prehearing conference or (ii) the first hearing, if the Director ar a porty objects to the continued service of the arbitrotor, the Director shall determine if the orbitratar should be disqualified. If the Directar sends a natice to the porties that the arbitrator sholl be disqualified, the orbitrotor will be disqualified unless the porties unanimously ogree otherwise in writing ond notify the Director not later thon 15 days after the Director sent the natice.

(2) Autharity of Director of Disquolify Ceases

After the commencement of the earlier af (i) the first prehearing conference or (ii) the first hearing, the Director's authority to remove on arbitratar from an orbitration panel ceases.

(3) Vacancies Created by Disqualificatian ar Resignatian

If on orbitrotor appointed to on arbitratian panel is disqualified ar resigns from an orbitration ponel, the Director sholl oppoint from the cansalidated list af arbitrators the orbitrotor who is the most highly ronked avoiloble orbitrotor of the proper classificatian remaining an the list. If there ore no ovoiloble orbitrators of the proper classificotion in the consolidoted list, the Directar shall appoint an orbitrator of the proper classificotion subject to the limitotion set forth in parogroph (s)(4)(B).

(e) Discretianory Authority

The Directar may exercise discretionary outhority ond make any decisian that is consistent with the purposes of this rule and the Rule 10000 Series to focilitote the oppointment of orbitrotion ponels ond the resolution of arbitration disputes.

Rule 10309. Composition of Panels

Except os atherwise specifically provided in Rule 10308, t[T]he individuals who shall serve on a particular arbitration panel shall be determined by the Director [of Arbitration]. *Except os otherwise specifically provided in Rule 10308,* t[T]he Director [of Arbitration] may name the chairman of the panel.

Rule 10310. Notice of Selection of Arbitrators

(*a*) The Director shall inform the parties of the arbitrators' names and employment histories for the past 10 years, as well as information disclosed pursuant to Rule 10312, at least 15 business days prior to the date fixed for the first hearing session. A party may make further inquiry of the Director [of Arbitration] concerning an arbitrator's background. In the event that, prior to the first hearing session, any arbitrator should become disqualified, resign, die, refuse or otherwise be unable to perform as an arbitrator, the Director shall appoint a replacement arbitrator to fill the vacancy on the panel. The Director shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past 10 years, as well as information disclosed pursuant to Rule 10312. A party may make further inquiry of the Director [of Arbitration] concerning the replacement arbitrator's background and within the time remaining prior to the first hearing session or the 10 day period provided under Rule 10311, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Rule 10311.

(b) This rule shall not apply to arbitration proceedings that are subject to Rule 10308.

Rule 10311. Peremptory Challenge

(*a*) In an[y] arbitration proceeding, each party shall have the right to one [(1)] peremptory challenge. In arbitrations where there are multiple Claimants, Respondents, and/or Third-Party Respondents, the Claimants shall have one [(1)] peremptory challenge, the Respondents shall have one [(1)] peremptory challenge, and the Third-Party Respondents shall have one [(1)] peremptory challenge. The Director [of Arbitration] may in the interests of justice award additional peremptory challenges to any party to an arbitration proceeding. Unless extended by the Director [of Arbitration], a party wishing to exercise a peremptory challenge must do so by notifying the Director [of Arbitration] in writing within 10 business days of notification of the identity of the person(s) named under Rule 10310 or Rule 10321(d) or (e), whichever comes first. There shall be unlimited challenges for cause.

(b) This rule shall not apply to arbitration proceedings that are subject to Rule 10308.

Rule 10312. Disclosures Required of Arbitrators *and Director's Authority To Disqualify*

(a) through (c) No change.

* * * * *

(d) The Director shall inform the parties to an arbitration proceeding of any information disclosed to the Director under this Rule unless the arbitrator who disclosed the information withdraws from being considered for appointment voluntarily and immediately after the arbitrator learns of any interest or relationship described in paragraph (a) that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding.

([d]*e*) [Prior to the commencement of the first hearing session] *Prior to the commencement of the earlier of (i) the first prehearing conference or (ii) the first hearing,* the Director [of Arbitration] may remove an arbitrator based on information disclosed pursuant to this Rule. [The Director of Arbitration shall also inform the parties of any information disclosed pursuant to this Rule if the arbitrator who disclosed the information is not removed.]

(f) After the commencement of the earlier of (i) the first prehearing conference or (ii) the first hearing, the Director's authority to remove an arbitrator from an arbitration panel ceases.

Rule 10313. Disqualification or Other Disability of Arbitrators

In the event that any arbitrator, after the commencement of the first hearing session but prior to the rendition of the award, should become disqualified, resign, die, refuse or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) shall continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within 5 days of notification of the vacancy on the panel. Upon objection, the Director [of Arbitration] shall appoint a replacement arbitrator to fill the vacancy and the hearing shall continue. The Director [of Arbitration] shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past 10 years, as well as information disclosed pursuant to Rule 10312. A party may make further inquiry of the Director [of Arbitration] concerning the replacement arbitrator's background. *If the arbitration proceeding is subject to Rule 10308, the party may exercise his or her right to challenge the replacement arbitrator within the time remaining prior to the next scheduled hearing session by notifying the Director in writing of the name of the arbitrator challenged and the basis for such challenge. If the arbitration proceeding is not subject to Rule 10308,* [and] within the time remaining prior to the next scheduled hearing session or the 5 day period provided under Rule 10311, whichever is shorter, *a party* may exercise *the party's* [its] right to challenge the replacement arbitrator as provided in Rule 10311.

* * * * *

Rule 10315. Designation of Time and Place of *First Meeting* [Hearing]

The Director shall determine [T]the time and place of the *first meeting of the arbitration panel and the parties, whether the first meeting is a pre-hearing conference or a hearing,* [initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators.] *and shall give* [N]notice of the time and place [for the initial hearing shall be given] at least [eight (8)]*15* business days prior to the date fixed for the *first meeting* [hearing] by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this Rule. *The arbitrators shall determine the time and place for all subsequent meetings, whether the meetings are pre-hearing conferences, hearings, or any other type of meetings, and shall give* [N]notice [for each hearing thereafter shall be given] as the arbitrators may determine. Attendance at a *meeting* [hearing] waives notice thereof.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Recommendations of the Task Force

The Arbitration Policy Task Force ("Task Force") in *Securities Arbitration Reform: Report of the Arbitration Policy Task Force To the Board of Governors of NASD* ("*Task Force Report*"), published in January 1996, made fourteen broad recommendations to the NASD Board to improve the securities arbitration process administered by the NASD. Recommendation No. 8 provided: "Arbitrator selection, quality, training, and performance should be improved by various means, including adoption of a list selection method, earlier appointment of arbitrators, enhancement of arbitrator training, and increased [arbitrator] compensation."[3]

The Task Force recommended that the NASD adopt "a variant of the AAA's method of selecting arbitrators" ("Recommendation One").[4] Under the system proposed by the Task Force:

> The parties would be provided with three lists of candidates: (1) A list of public arbitrators qualified to be panel chairs to contain no fewer than three names, (ii) a list of other public arbitrators, to contain no fewer than five names; and (iii) a list of industry arbitrators, to contain no fewer than five names. Each party could strike names from any of the lists and would then rank the remaining names on each list in order of preference. If mutually agreeable arbitrators are not selected, new lists would be provided for each category in which agreement was not reached. This process would continue for no more than three rounds. If, at the end of three rounds, an industry and two public arbitrators, one qualified as a panel chair, had not been chosen, the NASD Arbitration Department would appoint the remaining arbitrator or arbitrators. Arbitrators selected by the staff could be challenged only for cause. (Footnotes omitted)[5]

The Task Force also made two other recommendations to implement improvements in the selection of arbitrators. The Task Force recommended that the appropriate NASD staff (now NASD Regulation's Office of Dispute Resolution ("ODR") should be able to exercise flexibility in designating arbitrators as either "public" or "industry" ("Recommendation Two").[6] In addition, the Task Force recommended that arbitrators be placed on the selection lists on a rotating basis to promote more frequent selection of arbitrators who complete an arbitrator training program ("Recommendation Three").[7]

Parties Consulted in Development of Rule

NASD Regulation considered the Task Force's recommendations at length. NASD Regulation also consulted with its National Arbitration and Mediation Committee ("NAMC"),[8] the Securities Industry Conference on Arbitration ("SICA"),[9] PIABA, the staff of the SEC, and others about the efficacy of the proposals. All persons consulted favored the selection of arbitrators by the parties using some form of list selection. In addition, most were in favor of developing a system featuring the capability, when appropriate and as technologically feasible, to generate the arbitrator lists from a computer programmed to incorporate relevant selecting factors, such as geographic proximity of an arbitrator to the proposed site of the hearing, subject matter expertise, and classification of an arbitrator as a public arbitrator[10] or a non-public arbitrator,[11] rather than developing a system in which the lists of arbitrators to be forwarded to parties for ranking would be generated solely on the basis of ODR's judgment.

General Principles Underlying Proposed Rule Change

NASD Regulation recommends as a general principle that parties in arbitration be given more input into the selection of arbitrators. In furtherance of this principle, NASD Regulation has developed a rule providing that, in a one-arbitrator panel case, the parties to the arbitration will be provided a list of public arbitrators, and, in a three-arbitrator panel case, the parties will be provided a list of public and a list of non-public arbitrators.[12] The parties will use the lists to express numerical preferences for the arbitrators listed and those rankings will determine the outcome of the arbitrator selection process, unless all ranked arbitrators decline to serve because they are unavailable, recuse themselves, or are disqualified because of conflicts of interests.

The list or lists of arbitrators will be generated from an arbitrator database by a computer to further fairness and neutrality. This automated system is the Neutral List Selection System ("NLSS").[13] However, to preserve the exercise of discretion and judgment when appropriate and to act on behalf of a party's request, when a party or parties express a request for a process that may legitimately be considered in the selection of an arbitration panel but that NLSS is not capable of performing, or request an arbitration panel that may not be "selected" or "sorted" using NLSS, the Director of Arbitration ("Director") may supplement the NLSS process.

In developing an arbitrator list selection rule to implement the Task Force's Recommendation One, NASD Regulation concluded that there were not enough arbitrators on the arbitrator roster of the ODR to provide sufficient names for three selection rounds. In addition, although NASD Regulation also initially considered a two-round, two-list selection method, NASD Regulation concluded that the operational burdens of administering such a process, especially given the limited number of arbitrators relative to the large caseload, would be too great. Also, NASD Regulation was concerned that a two-round, two-list selection method would make the process of appointing arbitrators too lengthy and would be too costly. Accordingly, NASD Regulation is proposing that the list selection contain a single-round, two-list selection process as set forth in greater detail below.

Notwithstanding, NASD Regulation's proposed rule change implements the fundamental aspect of Recommendation One in that it sets forth a list selection process that allows the parties to play the dominant role in selecting their arbitrators. In this proposed rule filing, NASD Regulation is also implementing Recommendation Three by placing arbitrators on a rotating list. By implementing Recommendations One and Three, the list selection process will function primarily through the

[3] *Task Force Report* at 2.

[4] *Task Force Report* at 94.

[5] *Task Force Report* at 94–95.

[6] *Task Force Report* at 96.

[7] *Task Force Report* at 97.

[8] The NAMC is a balanced committee of NASD Regulation. Committee members are individuals with broad and diverse experience in securities arbitration and mediation as representatives of investors, firms, firm employees, and neutrals (arbitrators and mediators).

[9] The membership of SICA is diverse and includes persons representing the interests of public customers (including members of the Public Investors Arbitration Bar Association ("PIABA")), representatives from the self-regulatory organizations, and the Securities Industry Association ("SIA").

[10] The term "public arbitrator" is defined in proposed Rule 10308(a)(5).

[11] The term "non-public arbitrator" is defined in proposed Rule 10308(a)(4).

[12] In this rule filing, for ease of reference the discussion of the process of selecting an arbitration panel focuses more on the selection of a three-person arbitration panel than a one-person panel because the process of selecting one arbitrator is simpler and much less frequently employed.

[13] The term "Neutral List Selection System" is defined in proposed Rule 10308(a)(3).

operation of the NLSS, supplemented by the actions and judgments of the Director, but only when required to effect the appointment of a panel.

NASD Regulation is not implementing the Task Force's Recommendation Two that NASD staff should have discretionary authority regarding the classification of an arbitrator. Applying the explicit standards set forth in proposed paragraph (a) of Rule 10308, ODR will designate an arbitrator as either "public" or "non-public" (i.e., "industry") based upon the information provided about the person. At this time, NASD Regulation believes that it is impracticable to grant to the Director or the ODR the discretion or flexibility to modify the classification of an arbitrator based on information or criteria other than that which is set forth in the defined terms of "public arbitrator" or "non-public" arbitrators. Perceptions and expectations of participants about the backgrounds of potential arbitrators indicate that the participants do not believe that this flexibility would enhance the arbitrator selection process.[14]

NASD Regulation believes that the proposed methodology for selecting arbitrators will benefit investors, firms, associated persons, and other users of the arbitration forum. First, proposed Rule 10308 and NLSS, the technology developed to implement key parts of the proposed Rule, provide a system for selecting arbitrators that allows parties to have the greatest impact in the composition of their arbitration panel. Second, Proposed Rule 10308 is a more streamlined process than the process envisioned in the Task Force's Recommendation One. Third, proposed Rule 10308, a single-round process, will be less costly. Fourth, the proposed process borrows from the process used successfully for some time by the American Association of Arbitration ("AAA"), the largest domestic arbitration forum sponsor

Description of Proposed Rule Change

The proposed rule change, which only governs the selection of arbitrators in cases involving public customers, is divided into five parts. Paragraph (a) contains definitions. In paragraph (b), NASD Regulation specifies how the lists of public and non-public arbitrators will be compiled and forwarded to the parties. Paragraph (c) specifies how the parties indicate their preferences by numerical rankings and how the Director reconciles the preferences of the parties, selects the arbitrators, selects the chairperson if the parties do not make the selection, and, if necessary, disqualifies an arbitrator before the arbitrator is appointed. Paragraph (d) describes generally how parties and the Director may remove a person from serving as an arbitrator if the person has a conflict of interest or a bias. Paragraph (e) specifies that the Director has discretionary authority to resolve issues arising in the administration of the list selection process.

There are several other rules in the Rule 10000 Series that NASD Regulation must amend in order to make the Rule Series 10000 consistent. The proposed amendments to those rules are discussed at the end of the discussion of the proposed changes to Rule 10308.[15] Finally, NASD Regulation requests comments on the proposed rule change, including one important specific topic set forth separately below.[16]

Definitions—Paragraph (a)

Paragraph (a) of Rule 10308 of the proposed rule change contains seven definitions: "day," "claimant," "Neutral List Selection System," "non-public arbitrator ," "public arbitrator," "respondent" and "send." "Public arbitrator," "non-public arbitrator," and "Neutral List Selection System" are the three terms that are central to understanding how proposed Rule 10308, the proposed list selection rule, will operate.

In proposing paragraph (a)(4) of Rule 10308, a "non-public arbitrator" is defined as a person who is otherwise qualified to be an arbitrator and is employed in or retired from the securities or commodities industry or in a related position in the banking industry. The rule includes in the definition a person who is a professional, such as a lawyer or an accountant, who has a substantial client base that is engaged in the securities or commodities industry, or in a related banking activity described in the rule. Specifically, for arbitrator classification purposes, a non-public arbitrator is a person who:

(A) Is, or within the past three years, was:

(i) Associated with a broker or a dealer (including a government or a municipal securities broker or dealer);

(ii) Registered under the Commodity Exchange Act;

(iii) A member of a commodities exchange or a registered futures association; or

(iv) Associated with a person or firm registered under the Commodity Exchange Act;

(B) Is retired from engaging in any of the business activities listed in subparagraph (4)(A);

(C) Is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or

(D) is an employee of a bank or other financial institution and effects transactions in securities and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

The definition largely retains the existing definition of the Rule 10000 Series of an arbitrator who is deemed to be "from the securities industry," but it adds to that defined term persons employed by banks and other financial institutions who are engaged in securities activities or in the supervision of such activities.

The second key defined term, "public arbitrator," is defined in paragraph (a)(5) of Rule 10308. "Public arbitrator" generally means a person who is otherwise qualified to serve as an arbitrator and is not engaged in the conduct of, or business activities that indicate an affiliation with, the securities industry or the related industries. Thus, in order to be classified as a public arbitrator one may not be engaged in any of the activities listed under the definition of "non-public arbitrator" in paragraphs (a)(4)(A) through (D), set forth above. The definition generally excludes: A person currently employed in the securities or commodities industry or a person retired from such business activities; a professional who devotes 20 percent or more of his or her time to securities industry clients; and an employee of a bank or other financial institution who is engaged in securities activities or in the supervision of such activities.

In addition, a spouse or an immediate family member of a current or retired member of the securities or commodities industry, or a person engaged in any of the other types of business activities that require one to be classified as a "non-public arbitrator," is also excluded from being a "public

[14] However, the ODR will have authority to change the classification of an arbitrator already classified in the NLSS based upon new information (e.g., an arbitrator changes his or her employment and, after such change, the arbitrator fits the criteria for non-public arbitrator, rather than the criteria for a public arbitrator).

[15] *See Miscellaneous Related Proposed Rule Changes, infra.*

[16] *See Request for Comments on Specific Issue, Infra.*

arbitrator" because such persons' economic interests are too closely tied to those of the securities or commodities industry, even though such spouses and immediate family members may not be directly involved in the relevant business activities. "Immediate family member" is defined in proposed Rule 10308(a)(5)(B) with reference to the person's familial or economic ties to the person associated with the securities or commodities industry.[17] A person who has a close familial, personal, or economically dependent relationship with an associated person may be viewed as possessing a bias in favor of the securities or commodities industry even though he or she is not involved directly with the identified industry.[18]

The third key defined term, "Neutral List Selection System," defines the new software program that will implement the proposed list selection rule. NASD Regulation defines "Neutral List Selection System" as "the software that maintains the roster of arbitrators and performs various functions relating to the selection of arbitrators."[19] Among other things, NLSS will maintain the roster of arbitrators, identify arbitrators as public or non-public, screen arbitrators for conflicts of interest with parties, list arbitrators according to geographic hearing sites and, on occasion, by expertise, and consolidate the numerical rankings that parties assign to listed arbitrators.

Two other terms, "claimant" and "respondent," are defined in paragraph (a) to simplify certain aspects of the rule. Under proposed Rule 10308(a)(2), if one or more persons files a single claim they will be treated as one claimant. A parallel definition is proposed for respondents; one or more persons who file the same answer will be treated as one respondent.[20] The ODR views claimants who file one claim or respondents who file one answer as generally having sufficiently similar interests in the outcome of the proceeding to be considered as one party for purposes of the list selection process.[21] This approach will simplify consolidating the parties' preferences for arbitrators described below.[22]

Composition of Arbitration Panel; Compilation of Lists of Arbitrators for Parties' Selection—Paragraph (b)

Under proposed Rule 10308(b)(1), the rule sets for the number of arbitrators that the Director should appoint to a panel, general panel composition requirements, and exceptions to those requirements. If the claim is $50,000 or less, the claim will be heard by a single public arbitrator, unless the parties agree otherwise.[23] If the claim is more than $50,000, a panel of two public arbitrators and one non-public arbitrator will hear the dispute, unless the parties agree otherwise.[24] Under proposed paragraph (b)(1)(B) of Rule 10308, a claimant with a claim valued greater than $25,000 and not more than $50,000 may request a three-person arbitration panel.[25] Whether for a one-person or a three-person panel, the requirement that public arbitrators be empaneled is for the protection of investors, and parties may agree to waive this compositional requirement.

When the parties agree to change the composition of an arbitration panel from that set forth in proposed paragraph (b)(1)(A) (i) or (ii), references in the balance of the rule to a panel must be interpreted according to the panel composition that the parties have chosen. For example, if the parties agree to a panel composed of three public arbitrators, under proposed paragraph (c)(1)(C) the parties would rank a list of public arbitrators only, since the Director would not send the parties a list of non-public arbitrators. In addition, parties should be aware that if the panel composition varies from that provided in proposed paragraph (b)(1)(A) (i) or (ii), NLSS is not capable of processing all such combinations. NLSS can generate the lists and consolidate the rankings for a one-person panel of either public or non-public classification. For a three-person panel, NLSS can generate the lists and consolidate the rankings for a panel composed of one non-public and two public arbitrators or three non-public arbitrators. NLSS cannot process requests for a panel composed for one public arbitrator and two non-public arbitrators or three public arbitrators.[26]

Under proposed paragraphs (b)(2) and (b)(3) of Rule 10308, the Director will send lists of names of arbitrators for ranking to the claimant and the respondent. As noted above, by operation of paragraph (a) of the proposed rule, a group of claimants who have filed one complaint will be viewed as one claimant; the same treatment is accorded to respondents who file a single answer. Thus, when reviewing the lists and otherwise taking action under the proposed rule, one or more persons viewed as one claimant must act jointly, and one or more persons viewed as one respondent must act jointly.

When only one arbitrator will hear the proceeding, the Director will send to the parties one list of public arbitrators.[27] When three arbitrators will hear the proceeding, the Director will sent the parties two lists, one containing the names of public arbitrators and the other containing the names of non-public arbitrators.[28]

(i) Director's Minimum Numbers for Lists

Proposed Rule 10308 is flexible, and although subparagraphs (b)(2) and (b)(3) do not set a fixed ratio of arbitrators or a minimum number of arbitrators that ODR must list, ODR has established the following guidelines, For a panel of one arbitrator, the Director intends to provide five names of public arbitrators whenever possible, but not less than three names. For a panel of three

[17] "Immediate family member" means:

(i) a family member who shares a home with a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);

(ii) a person who receives financial support of more than 50 percent of his or her annual income from a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); or

(iii) a person who is claimed as a dependent for federal income tax purposes by a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

[18] A small group of persons will be excluded from serving as either public or non-public arbitrators (e.g., spouse and immediate family members of registered representatives). Excluded by subparagraph (a)(5) from serving as public arbitrators, such persons are also excluded from serving under subparagraph (a)(4) as non-public arbitrators because a non-public arbitrator must have the professional securities experience (or the related qualifications) listed in subparagraph (a)(4). For example, unless the spouse of a registered representative was also employed in the securities or commodities industry (or engaged in one of the business activities related to the securities industry), that person might not possess securities industry experience (or the related qualifications) and therefore could not serve as a non-public arbitrator. In addition, because of the marital relationship, the spouse would be excluded from serving as a public arbitrator.

[19] Proposed Rule 10308(a)(3).

[20] Proposed Rule 10308(a)(6).

[21] The consolidation process is described in greater detail below. However, it should be noted that a group of claimants that does not file a single claim, or, similarly, a group of respondents that does not file a single answer, does not obtain an advantage in the consolidation process or in the weighting of their preferences for arbitrators. For example, if in a case there are two claimants who are not viewed as one claimant under the rule, and one respondent, the two claimants' arbitrator rankings will be weighted as only 50% of the total; the one respondent's arbitrator rankings will be weighted as the other 50%.

[22] The terms "day" and "send" are also defined in paragraph (a).

[23] Proposed Rule 10308(b)(1)(A)(i).

[24] Proposed Rule 10308(b)(1)(A)(ii).

[25] Obtaining a three-person panel under this subparagraph then obligates the parties to pay hearing session deposit fees for a three-person panel under Rule 10332.

[26] Although in theory the parties could agree to an arbitration panel composed of three public arbitrators, experience indicates that a panel of this type for disputes involving customers is almost never convened.

[27] Proposed Rule 10308(b)(2).

[28] Proposed Rule 10308(b)(3).

arbitrators, the Director intends to provide lists that contain up to 10 public arbitrator names and five non-public arbitrator names; when that is not possible, the Director will provide a public arbitrator list of not less than six names, and a non-public arbitrator list of not less than three names. In addition, as illustrated by the example of the minimum numbers set forth above, to the extent possible, for a three-person panel, the list of public arbitrators will contain approximately twice as many names as the list of non-public arbitrators. The Director's ability to provide full lists of names will vary and is dependent on the number of available arbitrators and the local demands on the arbitrator roster. Circumstances may arise where a small arbitrator roster in a particular hearing location (for example, Richmond, Va., Norfolk, Va., Alaska, or Hawaii), combined with a high demand for arbitrators, will prevent the Director from meeting the objectives.

To address possible arbitrator shortages, the Director plans to combine arbitrators from proximate hearing locations when necessary. For example, under proposed paragraph (b)(2), the list to be sent to the parties should contain, at a minimum, three names of public arbitrators. If, with one hearing location coded into NLSS, NLSS does not generate the names of three public arbitrators, the Director will return to NLSS, add a second hearing location code, and generate a list of public arbitrators that will include the additional arbitrators. The second hearing location coded will be one that is geographically proximate to the first hearing location code used (e.g., for a Richmond, VA hearing, the Richmond hearing location code will be used first, and then the Atlanta or the Washington, D.C. hearing location code could be added). The additional process in NLSS will be performed at no additional cost to the parties. The same process will be used to address any shortages in arbitrators under the lists prepared under proposed paragraph (b)(3).

(ii) NLSS Functions and Capabilities

Proposed paragraphs (b)(2), (3), and (4) of Rule 10308 together set forth the four factors which are used by NLSS to generate the list or lists of arbitrators by "selecting" or "sorting" the NLSS database. The four factors are arbitrator classification, hearing location code, rotation, and identified conflicts of interests.

To generate a list, NLSS performs the following steps. NLSS first identified the subgroup of arbitrators by classification (public or non-public arbitrators). NLSS then identifies those arbitrators in the same hearing location as the arbitration. Thereafter, NLSS selects such public or no-public arbitrators who are located in the hearing location in rotation from the NLSS database.[29] Finally, NLSS excludes from the selection an arbitrator subject to a clear conflict of interest with one of the parties.[30]

Although some who participated in developing the proposed rule suggested selecting arbitrators on a random basis, NASD Regulation selected the rotation method instead. Among other things, random number selection algorithms in computer programs are extremely difficult to design, and such algorithms ultimately do not produce mathematically perfect randomness. If NASD Regulation used an imperfect random-selection software program, over time, some arbitrators would be chosen more often than others. Arbitrators chosen less often or not at all would be underutilized even though they might be highly qualified. By using a rotation method, all arbitrators on the roster will be placed on a selection list with the same regularity.

Under proposed Rule 10308(b)(4)(B), the automated NLSS selection process that generate the arbitrators may be altered in order to accommodate a fifth factor, expertise. Expertise has three subcategories: (1) Subject matter expertise (also know as a controversy code); (2) security expertise (also known as a security code); and (3) case expertise (also known as a qualification code).

Two of these types of expertise, subject matter expertise and security expertise, are factors that may be included in the NLSS' selection or sorting process at the option of a party as provided in proposed paragraph (b)(4)(B) of Rule 10308. These are discussed in the following paragraphs. The third type of expertise, case expertise, will be a factor in the NLSS selection process at the option of the Director or at the request of the parties; the category is very narrow and its use is primarily to aid in the administration of a case. Case expertise contains only three subcategories: injunctive relief cases; employment law cases; and large and complex cases. Only one of the subcategories, that identifying expertise in large and complex cases, is relevant for any customer arbitration and is very infrequently utilized.[31] When used, the NLSS will search for the names of arbitrators, if such arbitrators exists, in the appropriate hearing location with expertise in large and complex cases.

As noted above, the two types of expertise that may be factors to be included in the NLSS's selection or sorting process at the option of a party are subject matter expertise and security expertise. First, a party may request for listing arbitrators who possess certain types of subject matter expertise.[32] Thus, although NLSS will always "sort" or "search" for arbitrators according to the four primary factors (arbitrators classification, hearing location code, rotation, and identified conflicts of interest), when a party requests that the lists include arbitrators with subject matter expertise, the NLSS will add the additional factor and sort or select for placement on the lists some arbitrators having the subject matter expertise identified. However, the Director is not obligated to provide a list that contains one or more arbitrators having the requested subject matter expertise

[29] The NLSS rotation feature also may be described as a "first-in-first-out" feature. For a case that will be heard by one public arbitrator, the following steps would apply. As an arbitrator's name rise to the top of the list of all arbitrators who are, for example, public arbitrators and found in one hearing location, the arbitrator's name will be generated by NLSS, absent an identified conflict of interest, on a list for ranking by parties to an arbitration. Once the arbitrator's name is sent to the parties, even if the arbitrator is later not appointed an arbitrator for the panel, NLSS places such arbitrator at the bottom of the computerized NLSS list. Thus, an arbitrator may be listed, and thereafter rotated to the bottom of the NLSS list even if: (1) The arbitrator recuses him or herself: (2) the arbitrator is not ranked highly enough by the parties to be appointed or the arbitrator was struck; or (3) the arbitrator is ranked highly enough to serve, is contacted, has no conflict or interest or bias that would disqualify him, to is unavailable to serve.

When a three person panel will be appointed, generally two public arbitrators and one non-public arbitrator are needed. For the generation of the list of non-public arbitrators and the list of public arbitrators, the same process would be used. For the selection of the non-public arbitrators, the first five non-public arbitrators in the system will be rotated forward for the first arbitration case. However, if, for example, the case is against Firm X and the first person that NLSS generates, Arbitrator A51000, is employed by Firm X, NLSS will not select Arbitrator A51000 but will skip over time or her and will list the next person classified as a non-public arbitrator. Arbitrator A51000 will remain at the top of the internal NLSS rotating list for non-public arbitrators, and the NLSS will generate his or her name when next requested to produce the names of non-public arbitrators for a case in the same hearing location. The process for obtaining the list of public arbitrators is the same.

[30] Proposed Rule 10308(b)(4). NLSS can identify only obvious, disclosed conflicts of interest. For example, NLSS recognizes a conflict of interest when the member firm that is the respondent is also the employer of an arbitrator rotating forward in NLSS. NLSS would not list such a person on a non-public arbitrator list being generated for that case.

[31] The two other types of case expertise, expertise involving injunctive relief and employment issues, are used only in intra-industry arbitrations.

[32] An arbitrator is deemed to have certain subject matter expertise if he or she represents on an NASD arbitration intake form that he or she possesses it. ODR does not verify such representations.

because (1) such arbitrators may not be available in the applicable hearing location; or, (2) even if such persons exist in the hearing location, the NLSS or the Director may be required to exclude them from the lists under another provision of the proposed rule (e.g., a conflict of interest identified by the ODR upon a review of the proposed arbitrator's Central Registration Depository ("CRD") record, discussed below). In addition, NLSS currently is limited to those areas of subject matter expertise that have been coded for the NLSS and, if not coded into the NLSS, ODR does not have the administrative capacity to identify arbitrators who might possess in-depth knowledge in the desired subject (e.g., bankruptcy is not a category of expertise identified in the NLSS; "churning" and "suitability" are subject matter categories that are identified.)[33]

The second subcategory of expertise, security expertise, is also added to the NLSS selection process at the option of a party. There are 22 security subcategories, listing various types of securities or other financial instruments (e.g., common stock, municipal bonds, stock index futures, Ginnie Maes, etc.), and a party may indicate whether expertise regarding a particular instrument is desired. The same procedure described above regarding NLSS selection to accommodate the additional factor of subject matter expertise will apply if a party opts to include security expertise in the NLSS selection process. If available in the hearing location, certain arbitrators may be include in the arbitrator lists generated by NLSS. However, the Director is not obligated to provide a list that contains one or more names having the requested security expertise.

(iii) Conflicts-of-Interest

During the preparation of the arbitrator lists, two types of conflict-of-interest checks will occur. The first is the check for conflicts of interests between parties and potential arbitrators that will be performed as part of the automated NLSS process that was noted above.[34] The second process will be review for conflicts of interest performed manually by ODR.

The second review for conflicts of interest will occur after the NLSS creates a list of arbitrators, but before the list is finalized, ODR will perform a review based upon information that each arbitrator discloses to ODR and, for non-public arbitrators, additional information found in the CRD. After a review of available information, ODR may remove an arbitrator based upon such disclosure.[35] ODR's screening for a conflict of interest will avoid limiting the parties' choices later. ODR will eliminate arbitrators from a list who would almost certainly be disqualified at a later stage in the proceeding due to conflict of interest. If arbitrators are eliminated during his process, ODR will replace them by returning to NLSS so that the minimum number of public arbitrators, and, if applicable, non-public arbitrators, are on the list or lists that will be mailed to the parties.

After the parties receive the lists, the parties also will have the ability to review information disclosed by the potential arbitrators to determine if a conflict of interest exists. Under proposed paragraph (b)(6) of Rule 10308, for each arbitrator listed, the Director will provide the parties with the arbitrator's employment history for the past 10 years and other background information. This information may disclose a conflict of interest between a party and the arbitrator listed and permits the parties to make more informed decisions during the process of ranking and striking the listed arbitrators. Under paragraph (b)(6), the parties may request additional information from the arbitrators; any response by an arbitrator is forwarded to all parties. If a party identifies a conflict of interest, the party's remedy is to strike the person from the list, in the process described in greater detail below.[36]

(iv) Transmittal to Parties

The Director shall send the lists to all parties approximately 30 days after the respondent's answer is due, or, if there are multiple respondents, approximately 30 days after the last answer is due. If there is a third-party claim, the Director shall send the lists approximately 30 days after the third-party respondent's answer is due or, if there are multiple third-party respondents, approximately 30 days after the last answer is due.[37] Under proposed paragraph (a)(7) of Rule 10308, "send" means to send by first class mail, facsimile, or any other method available and convenient to the parties and the Director, and the lists and all other transmissions between the parties and the Director shall be sent using one of these methods.

Striking, Ranking, and Appointing Arbitrators—Paragraph (c)

Generally, paragraph (c) of proposed Rule 10308 sets forth the method by which a party strikes and ranks arbitrators and the procedures ODR will use to consolidate the parties' preferences and appoint an arbitration panel. Under paragraph (c), the parties rank the arbitrators on the list according to the parties' preferences, and strike arbitrators to remove them from consideration. Proposed paragraph (c) will implement the most important feature of the list selection rule, that of allowing a party to exercise significant influence over the composition of the party's arbitration panel.

(i) Striking and Ranking Arbitrators

Proposed paragraph (c)(1) provides the basic structure for the parties to exercise their influence in selecting arbitrators for their arbitration proceeding. First, each claimant and each respondent may strike any one or more arbitrators from the list (or lists, if there are two lists) for any reason, including the party's concern that the arbitrator may have a conflict of interest. Second, the party ranks each arbitrator remaining on the list by assigning the arbitrator a different numerical ranking. A "1" rank indicates the party's first choice, a "2" indicates the party's second choice, and so on, until all the arbitrators are ranked. When a party receives one list of public arbitrators and one list of non-public arbitrators, the party must rank arbitrators on each list separately.[38] As noted above, all claimants who file a single claim are treated as one claimant; and similar treatment is accorded to all respondents who file one answer. Thus, frequently, persons must act jointly to determine which arbitrators to strike and how to rank the remaining arbitrators on the lists in order for persons who are parties to have their preferences for arbitrators weighed appropriately. Moreover, even when all claimants do not file a single claim (or all respondents do not file a single answer), the party claimants' (or the party respondents') rankings will be consolidated prior to the consolidation that occurs of claimant and respondent rankings, where the party claimants (or

[33] The areas of subject matter expertise that are coded in NLSS are those that previously have been identified in arbitrator disclosure forms. NASD Regulation plans in the future to update and to amend the designated subject matter areas. At that time, NASD Regulation will make corollary changes to NLSS.

[34] *See* discussion regarding proposed Rule (b)(4)(A) and n. 30, *supra*.

[35] At this stage of the arbitrator appointment process, ODR staff would not make telephone inquiries.

[36] Proposed Rule 10308(c)(1)(A).

[37] Proposed Rule 10308(b)(5).

[38] Proposed Rule 10308(c)(1).

party respondents) do not submit one set of rankings.[39]

Under proposed paragraph (c)(2), each party's lists of arbitrators reflecting the party's strikes and rankings must be returned to the Director not later than twenty days after the Director's letter communicating the lists was sent. If a party does not timely return the lists, the Director shall treat the party as having retained all the arbitrators on the lists and as having no preferences. If the lists are returned but a party fails to rank an arbitrator on a list, the Director will assign the arbitrator the next lower ranking after the lowest-ranked arbitrator on that list. For example, if a party ranks arbitrators on a list containing ten public arbitrators by striking six arbitrators and ranking arbitrators A, B, and C, as "1," "2," and "3," respectively, and fails to rank public arbitrator D, ODR will assign arbitrator D a ranking of "4."

If a party fails to rank more than one arbitrator on the same list or gives two or more arbitrators on the same list the same numerical ranking, then the Director shall rank the multiple, unranked arbitrators in the same order of preference that the list originally generated by NLSS reflected and transmitted to the parties for their ranking. (When NLSS generates a list, the person listed first is ranked as high or higher by NLSS selection factors than the person listed second, third, and so on. Generally, this NLSS ranking is not relevant because the ranking by the parties is the basis for appointing arbitrators. NLSS "ranking" only becomes relevant when the parties fail to rank, or improperly rank multiple arbitrators on a list.)[40]

(ii) Consolidating Parties' Rankings

After the claimant and respondent have returned their lists to the Director, the Director implements the parties' preferences for arbitrator selection using the process described in proposed paragraph (c)(3) of Rule 10308. Under proposed paragraph (c)(3), the Director, using the NLSS, creates a consolidated list of the public arbitrators, and, if non-public arbitrators are also ranked, a second consolidated list of non-public arbitrators, using a one or two-step consolidation process.

Since generally all parties who file a single claim are treated as one claimant and all respondents who file one answer are treated as one respondent, in most cases, the Director will consolidate the parties' preferences for arbitrators using a one-step process. The Director will add the consolidated rankings of the claimant and the respondent to produce a single consolidated list for the public arbitrators and, if necessary, a second consolidated list for the non-public arbitrators.[41] NLSS performs the consolidation functions.

When there are multiple claimants or respondents, the Director will use a two-step consolidation process. First, the Director will consolidate all rankings of the multiple claimants or respondents. For example, if there are two respondents, R #1 and R #2, the rankings of R #1 and R #2 are added together, resulting in one consolidated respondent ranking for each listed non-public arbitrator. This first step in the two-step consolidation process may be avoided by cooperation. The parties may file a list to which the parties have jointly agreed.[42] The first step of the consolidation process, consolidating all the preferences of multiple claimants and, separately, those of multiple respondents, prevents numerous parties on one side of the case from unfairly affecting the selection of the arbitrators. By consolidating the rankings of parties on the same side, the process ensures that claimants' and respondents' choices will have the same weight in the arbitrator selection process. Second, as previously described, the NLSS will consolidate the rankings of the claimants and the respondents to produce a single consolidated list for public arbitrators and, if necessary, a second list for non-public arbitrators.[43]

In instances where the Director determines the interests of a claimant or a respondent (including a third party respondent) are so substantially different from the interests of other claimants or respondents, the Director may determine not to consolidate the numerical rankings of that party with the numerical rankings of the other claimants (or with the other respondents, as the case may be).[44] In those instances, NLSS will not have the capacity to create the consolidated list (or lists). Instead, the consolidated list (or lists) will be created based upon calculations performed manually by the ODR with each party's rankings having an equal weighting (e.g., where a claimant, a respondent, and a third party respondent are recognized as having substantially different interests, each of the parties rankings will have a 33⅓% weight in the consolidated list or lists).

The following examples illustrate the consolidation process.

- If the dispute will be heard by one public arbitrator, the NLSS will produce a consolidated list that will contain the names of five public arbitrators, ranked 1 through 5, based upon the consolidated rankings derived from the parties' rankings.
- If the list of public arbitrators sent to both parties contained five names and the claimant strikes one name, then the consolidated list will rank, numerically, the four names remaining on the list. If the claimant strikes one name and the respondent strikes a second name, then the consolidated list will contain only the names of the three public arbitrators that neither party chose to strike.

A detailed example is set forth below:[45]

ORIGINAL LIST

Arb#[46]	List position	Arb name
A00001	1	Red.
A00100	2	Orange.
A01000	3	Yellow.
A10000	4	Green.
A10001	5	Blue.
A00500	6	Indigo.
A99999	7	Violet.
A20000	8	Cvan.
A00200	9	Magenta.
A02200	10	Fuchsia.

[39] *See* proposed Rule 10308(c)(1)(D).

[40] In this process, when only the four factors are considered in the NLSS-list generation process (*e.g.*, arbitrator classification, hearing location code, rotation, and no identified conflicts of interest), the person who has taken part in the fewest list selection processes (*i.e.*, having a higher rotation number) would be placed higher on the NLSS-generated list than a person who has participated in more list selection processes. (E.g., P, a public arbitrator in Richmond, Virginia who has participated in the list selection process six times would be listed more highly by NLSS than Z, a public arbitrator from Richmond, Virginia who has participated in the list selection process seven times, if both were generated for the same list. Therefore, if a party failed to rank both P and Z, the Director would refer to the original NLSS-generated list and rank P more highly than Z). If additional factors are introduced, such as subject matter expertise, those persons having the greatest cluster of desired factors or characteristics would be listed most highly on the NLSS-generated lists and that ordering would be used by the Director for the default "ranking" process list is used only when the parties fail to rank multiple arbitrators.

[41] Proposed Rule 10308(c)(3).

[42] Proposed Rule 10308(c)(1)(D).

[43] Proposed Rule 10308(c)(3). The proposed rule also accommodates the interests of a party added to the case if the party is added before the Director has consolidated the other parties' rankings. Proposed rule 10308(c)(6).

[44] Proposed Rule 10308(c)(3)(B).

[45] The example illustrates the process that will be used for each list of arbitrators distributed to the parties. Therefore, in cases where a panel of one non-public and two public arbitrators will be selected, this process will be used to produce two consolidated arbitrators lists.

WITH PARTIES' RANKINGS

Arb#	List position	Arb name	Consolidated claimant	Consolidated respondent	Total	Difference
A00001	1	Red	1	6	7	5
A00100	2	Orange	Strike	7	N/A	N/A
A01000	3	Yellow	2	1	3	1
A10000	4	Green	3	5	8	2
A10001	5	Blue	4	4	8	0
A00500	6	Indigo	5	3	8	2
A99999	7	Violet	6	2	8	4
A20000	8	Cyan	7	Strike	Strike	N/A
A00200	9	Magenta	8	8	16	0
A02200	10	Fuchsia	9	Strike	Strike	N/A

SYSTEM RESULTS

Arb#	List position	Arb name	Consolidated rank	Notes
A00001	1	Red	2	Total is 7.
A00100	2	Orange	Strike	N/A.
A01000	3	Yellow	1	Total is 3.
A10000	4	Green	4	Total is 8 Difference is 2 List Position is 4.
A10001	5	Blue	3	Total is 8 Difference is 0 List Position is 5.
A00500	6	Indigo	5	Total is 8 Difference is 2 List Position is 6.
A99999	7	Violet	6	Total is 8 Difference is 4 List Position is 7.
A20000	8	Cyan	Strike	N/A
A00200	9	Magenta	7	Total is 16
A02200	10	Fuchsia	Strike	N/A.

REARRANGED BY RANK

Arb#	Arb name	Consolidated rank	Notes
A01000	Yellow	1	Total is 3.
A00001	Red	2	Total is 7
A10001	Blue	3	Total is 8 Difference is 0 List Position is 7.
A10000	Green	4	Total is 8 Difference is 2 List Position is 4.
A00500	Indigo	5	Total is 8 Difference is 2 List Position is 6.
A99999	Violet	6	Total is 8 Difference is 4 List Position is 7.
A00200	Magenta	7	Total is 16.

Numerical ties between two or more arbitrators during consolidation will be broken by NLSS by the following principles. First, NLSS will break a tie during consolidation by preferentially ranking one arbitrator above another based upon which of the tied arbitrators has a set of rankings, that, when compared, result in the smallest numerical difference between the claimant ranking and the respondent ranking. For example, in the tabular example above, the consolidated rankings of the consolidated claimant and the consolidated respondent have

[46] Each arbitrator in the NLSS is assigned an arbitrator identification number as he or she enters the system. For example, a person who has been an NASD arbitrator since 1995 has a lower arbitration identification number (e.g., A13888) than a person who has been an NASD arbitrator since 1997 (e.g., A17050).

resulted in four arbitrators, Green, Blue, Indigo, and Violet, each receiving a consolidated ranking of 8, resulting in a four-way tie. (See table entitled "With Parties Rankings.") Of the four tied arbitrators, Blue will be assigned a ranking as the most preferred arbitrator because the difference between Blue's consolidated claimant's ranking and Blue's consolidated respondent's ranking is 0 (i.e., 4 − 4=0); conversely, Violet would be given the fourth (or lowest or least preferred) ranking of the four arbitrators in the four-way tie because of the largest difference in the rankings that the consolidated claimant and the consolidated respondent gave Violet, compared to the three others (i.e., the consolidated claimant ranked Violet 6 and the consolidated respondent ranked Violet 2, resulting in a difference of 4 (i.e., 6 − 2=4), whereas the differences in the rankings assigned Blue, Green, and Indigo are, respectively, 0,2 and 2.) (See table entitled, "Rearranged by Rank").

A second principle that governs tie-breaking within NLSS is that, given an equal difference in the consolidated ranking, an arbitrator who was listed higher (as more preferred) on the list as originally generated by the NLSS and transmitted to the parties will be given a more preferred or higher ranking in order to break this type of tie. Referring to the same example, Green and Indigo both show consolidated rankings of 8, resulting in the first type of tie discussed above. In addition, Green and Indigo each received rankings from consolidated claimants and respondents that are different by only 2. The first principle applied to break a tie does not provide any assistance; the second principle must be applied. Applying the second principle, during the consolidation process NLSS will rank Green as more preferred (or higher) than Indigo because, on the original list generated by NLSS, Green had a list position of 4, which was higher than Indigo's list position of 6. (See table entitled, "Rearranged by Rank," and the column entitled "Notes," for the final NLSS consolidated rankings taking into account these two tie-breaking principles, and the table entitled "Original List" for the position of the arbitrators on the list as originally generated by NLSS.)

(iii) Appointing Arbitrators

Proposed Rule 10308(c)(4) sets forth the steps the Director will take to appoint arbitrators after consolidation occurs. Assuming that the tabular example above is a list of public arbitrators, if the arbitration is to be heard by one public arbitrator, the Director contacts the public arbitrator ranked highest on the list. Thus, the Director would contact Yellow first to determine if Yellow was available to serve and, if not disqualified, Yellow would be appointed. Using the tabular example above, if the Director were required to appoint a three-person arbitration panel, the Director would contact Yellow and Red to determine if they were available to serve and, if not disqualified, would appoint them. If necessary, due to the unavailability or disqualification of one of the two arbitrators, the Director would then contact Blue, and invite Blue to serve. The Director would refer to a second list, generated according to the same principles, to determine which non-public arbitrator should be contacted first.

The contact is to determine if the arbitrator is available and, after being provided the issues of the case and the names of the parties, if the arbitrator is aware of any conflicts of interest or bias or other reason that may preclude the arbitrator from rendering an objective and impartial decision. Based upon the information that the arbitrator has previously provide, any information provided to the Director under Rule 10312,[47] and any information obtained from any other source, the Director shall determine if the arbitrator should be disqualified. If the Director determines that the arbitrator should not be disqualified and that the arbitrator is available, the Director appoints the arbitrator.[48]

The Director will establish a time frame for ODR's guidance if a listed arbitrator is contacted but fails to respond to ODR's inquiries regarding availability and disqualification. For example, if an arbitrator is telephoned and fails to respond, ODR will eliminate such arbitrator and contact the next listed arbitrator after an appropriate, but relatively brief, period. ODR must exercise such discretion in fairness to all parties who are waiting for their arbitration cases to be resolved.

(iv) Selecting a Chairperson

The Director notifies the parties of the appointments and requests that the parties appoint a chairperson. The parties may jointly select one of the arbitrators (including the non-public arbitrator) to be the chairperson of the panel.[49] If the parties fail to appoint a chairperson by mutual agreement within 15 days, the Director will appoint the chairperson. If the Director appoints the chairperson, the chairperson will be one of the public arbitrators, but one who is not an attorney or other professional who has devoted 50% or more of his or her professional or business activities, within the past two years, to representing or advising public customers in adversarial proceedings concerning disputed securities or commodities transactions or related matters.[50] This provision also excludes a person who is employed by a person engaged in the listed professional activities from being appointed as chairperson.

(v) When the Consolidated List Is Insufficient

Under proposed Rule 10308(c)(4), if the Director is not able to appoint the number of arbitrators needed for the panel using the consolidated list, the Director may appoint other arbitrators from the NLSS roster as necessary. If the Director is required to appoint a non-public arbitrator, the Director may not appoint a non-public arbitrator who meets the criteria set forth in paragraph (a)(4)(B) or (a)(4)(C), unless the parties otherwise agree. A non-public arbitrator in proposed paragraph (a)(4)(B) is one who is retired form the securities or commodities industry; proposed paragraph (a)(4)(C) describes a non-public arbitrator who is a professional who devotes 20 percent or more of his or her professional time to clients who are engaged in any of the securities or commodities business activities described in subparagraph (a)(4).[51] When the Director appoints a non-public arbitrator in this state of the proceeding, the parties no longer have the ability to strike. Thus, the rule requires that the Director choose a non-public arbitrator who is active and fully involved in the securities or

[47] Current Rule 10312, also discussed below, requires an arbitrator to disclose, with respect to a particular case and the issues, parties, and witnesses in the case, any information which might preclude the arbitrator from rendering an objective and impartial determination in the case.

[48] Proposed Rule 10308(c)(4).

[49] Proposed Rule 10308(c)(5).

[50] Specifically, proposed paragraph (c)(5) of Rule 10308 prohibits the Director from appointing as the chairperson a public arbitrator who:

(A) is an attorney, accountant, or other professional, and

(B) has devoted 50% or more of his or her professional or business activities, within the last two years, to representing or advising public customers in matters relating to disputed securities or commodities transactions or similar matters.

[51] Although a party does not have the right to strike an arbitrator appointed under the process described in proposed paragraph (c)(4)(B), a party retains the right to request that the Director consider disqualifying an arbitrator appointed pursuant to proposed Rule 10308(c)(4)(B).

commodities industry or related industry.

Arbitrator Disclosures and Removing Arbitrators—Paragraph (d)

Proposed Rule 10308(d)(1) provides a mechanism for the Director to disqualify an arbitrator after the arbitrator has been appointed by the Director under proposed paragraph (c)(4). As noted previously, during the period that a party is reviewing and ranking the lists of arbitrators (see paragraphs (c)(1) and (2)), a party has an unlimited right to eliminate a listed arbitrator by striking the arbitrator from the list, and may do so to eliminate an arbitrator who the party believes may not be impartial or fair, among other reasons. Thus, prior to sending the party's rankings to the Director for consolidation, the party has an unlimited right to strike any potential arbitrator as to whom the party suspects bias. Proposed paragraph (d)(1) applies after the parties has exercised this unlimited right to strike, the arbitrator lists have been consolidated, the arbitrators have made initial disclosures to the Director under Rule 10312 about concerns regarding the specific parties, issues and witnesses in the case as discussed below, and the arbitrators have been appointed.[52]

An arbitrator has a continuing obligation under Rule 10312 of the Code to disclose to the Director any circumstances that might preclude the arbitrator from rendering an objective and impartial determination in an arbitration, including a direct or indirect financial or personal interest in the outcome of the arbitration, or any existing or past financial, business, professional, family or social relationships with a party, counsel, or representative (or, when later identified, a witness) that might affect impartiality or might reasonably create an appearance of partiality or bias. Generally, the ODR, in turn, must disclose to the parties any information the arbitrators provide.

Under paragraph (d)(1), a party or the Director may raise a disqualification issue. However, the decision to disqualify an arbitrator already appointed lies solely with the Director. The Director may not make any decision to disqualify an arbitrator, however, after the commencement of the earlier of two events: (i) The first prehearing conference or (ii) the first hearing.[53] At that point or thereafter, if a party believes that an arbitrator should be disqualified, the matter must be raised before the arbitration panel. Vacancies created as a result of a disqualification under proposed paragraph (d)(1) are filled by the Director by referring to the appropriate consolidated list from which the panelists were originally obtained (proposed Rule 10308(d)(3)) or, if there are no persons remaining on the consolidated list, by a person the Director selects under proposed Rule 10308(c)(4)(B).

Discretionary Authority—Paragraph (e)

Under paragraph (e) of Rule 10308, the Director's authority to exercise discretionary authority is stated explicitly. In paragraph (e), the Director has authority to resolve a problem that arises relating to the appointment of arbitrators or any other procedure under the rule if (i) the rule does not have an applicable provision, or (ii) the application of a specific provision in the rule would not result in a resolution of the underlying problem because the facts and circumstances are unanticipated or unusual.

Miscellaneous Related Proposed Rule Changes

Proposed Conforming Amendments

NASD Regulation is proposing conforming amendments to Rules 10104, 10309, 10310, 10311, 10312, and 10313.

NASD Regulations proposes to make parallel amendments to Rule 10104 and Rule 10309. NASD Regulation proposes to amend Rule 10104 to reflect that the specific provisions of proposed Rule 10308, rather than the general provisions of Rule 10104, regarding the composition and appointment or arbitrators panels, will apply to arbitrations involving public customers. Rule 10104 would not apply to a question regarding the composition and appointment of such arbitrator panels unless none of the specific provisions in proposed Rule 10308 would be applicable.[54] NASD Regulation proposes the same types of amendment to Rule 10309, a similarly general provision relating to the composition of arbitrator panels.

NASD Regulations proposes to amend Rule 10310 and 10311 to make both of them inapplicable to proceedings subject to Rule 10308. Under Rule 10310, NASD Regulation notifies parties of arbitrators appointed, and under Rule 10311, parties have the right to a peremptory challenge of an arbitrator. Because proposed Rule 10308 deals with both types of procedures, NASD Regulations proposes to amend Rules 10310 and Rule 10311 so that neither will apply to arbitration proceedings involving public customers.

NASD Regulation is proposing to amend Rule 10312 to make it consistent with proposed Rule 10308. Both Rules contain provisions regarding an arbitrator's obligation to disclose information to the Director and disqualification based upon such disclosure. The proposed changes to Rule 10312 state explicitly when the Director's authority to disqualify an arbitrator terminates, and provide an arbitrator the option to withdraw from an arbitration panel prior to disclosure of arbitrator information to the parties. A final change in Rule 10312 makes the timing of a disclosure consistent with the parallel provision in proposed Rule 10308.

The proposed changes to Rule 10313 are necessary because Rule 10313 incorporates by reference certain procedures in Rule 10311, and that rule, if amended, will not apply to arbitrations involving public customers. Specifically, NASD Regulation proposes to amend the last sentence of current Rule 10313 so that, for arbitration proceedings involving public customers, a party may exercise the right to challenge a replacement arbitrator within the time remaining prior to the next scheduled hearing session by notifying the Director in writing of the challenge arbitrator's name and the basis for such challenge.

Proposed Amendments to Rule 10315

In the past, the first formal meeting of the arbitration panel and the parties generally was the first hearing. As the arbitration process has evolved, NASD Regulation has encouraged most arbitration panels to hold prehearing conferences. For most arbitrations currently, the first formal meeting of the arbitration panel and the parties is a prehearing telephone conference. NASD Regulation proposes to amend Rule 10315 regarding the scheduling of the first meeting to reflect the current practice.

NASD Regulation also proposes to amend from eight business days to 15 business days the period that NASD has for giving notice of the first meeting to the parties and the arbitrators. The period is being amended to conform to the 15 business day period set forth in Rule 10310, which formerly also was a period of only eight business days.

[52] As noted above, disqualification issues that arise after the Director, using NLSS, has begun consolidating parties' preferred arbitrators, may be addressed by the Director directly as part of the appointment process described in paragraph (c)(4).

[53] Proposed Rule 10308(d)(2).

[54] Rule 10104 and certain other rules in the Rule 10000 Series may be amended further or rescinded when a list of selection rule applicable to intra-industry arbitration proceedings is approved. NASD Regulation plans to file a rule shortly so that NLSS may be used for panel selection in intra-industry arbitrations, as well as in customer arbitrations.

Proposed Amendments to Various Rules To Correctly Identify Committee Name

The committee of NASD Regulation that addresses arbitration matters is the National Arbitration and Mediation Committee. NASD Regulation proposes to amend each rule in which the outdated term "National Arbitration Committee" is used by replacing the outdated term with the current committee name, the "National Arbitration and Mediation Committee."[55]

Request for Comments on Specific Topic

NASD Regulation proposes to allow parties to have the right to strike an unlimited number of arbitrators from lists under proposed Rule 10308(c)(1)(A). NASD Regulation specifically requests comment on whether parties should have an unlimited number of strikes, or whether the right to strike should be limited. If a claimant, for example, strikes every arbitrator listed, all the listed arbitrators are ineligible, the respondent's preferences are nullified, and the Director appoints arbitrators who are not listed. Thus, the unlimited right to strike any be too broad to accomplish the purposes intended by the rule proposal.

NASD Regulation is requesting that the proposed rule change be effective within 45 days of SEC approval.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[56] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[55] *See e.g.*, Rule 10102, Rule 10103, Rule 10104 referenced specifically above, Rule 10301, and Rule 10401.

[56] 15 U.S.C. 78*o*–3.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 NASD. All submissions should refer to File No. SR–NASD–98–48 and should be submitted by August 20, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[57]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20364 Filed 7–29–98; 8:45 am]

BILLING CODE 8010–01–M

[57] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3110]

State of Florida

Polk County and the contiguous Counties of Hardee, Highlands, Hillsborough, Lake, Manatee, Okeechobee, Orange, Osceola, Pasco, and Sumter in Florida constitute a disaster area as a result of damages caused by a fire at the International Market World Flea Market in Auburndale that occurred on July 14, 1998. Applications for loans for physical damages may be filed until the close of business on September 21, 1998 and for economic injury until the close of business on April 21, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000.
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 311005 and for economic injury the number is 994400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 21, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–20333 Filed 7–29–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3108]

State of Florida; (And Contiguous Counties in Georgia)

Leon County and the contiguous Counties of Gadsden, Jefferson, Liberty, and Wakulla in Florida, and Grady and Thomas Counties in Georgia constitute a disaster area as a result of damages caused by heavy rains and flooding that occurred on July 13, 1998. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on September 18, 1998 and for economic injury until the close of business on April 20, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office,

One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damages are 310806 for Florida and 310906 for Georgia. For economic injury the numbers are 994200 for Florida and 994300 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 20, 1998.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 98–20329 Filed 7–29–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3103]

State of Iowa; (Amendment #1)

In accordance with a notice from the Federal Emergency Management Agency dated July 13, 1998, the above-numbered Declaration is hereby amended to include Lee, Osceola, and Tama Counties in the State of Iowa as a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on June 13, 1998 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Clay, Dickinson, Lyon, O'Brien, and Sioux Counties in Iowa; Clark County, Missouri; Hancock County, Illinois; and Jackson and Nobles Counties in Minnesota.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 31, 1998 and for economic injury the termination date is April 2, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 14, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–20327 Filed 7–29–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3105]

State of New York; Amendment #1

The above numbered declaration is hereby amended to reflect the correct declaration numbers for this disaster. The number assigned to this disaster for physical damage is 310506, and for economic injury the numbers are 993200 for New York and 993300 for Pennsylvania. All other information remains the same, i.e., the deadline for filing applications for physical damage is September 5, 1998 and for economic injury the termination date is April 7, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 17, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–20328 Filed 7–29–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3111]

State of South Carolina

Berkeley County and the contiguous Counties of Charleston, Clarendon, Dorchester, Georgetown, Orangeburg, and Williamsburg Counties in South Carolina constitute a disaster area due to damages caused by a fire that occurred on July 12, 1998 at the Coastal Carolina Flea Market. Applications for loans for physical damages may be filed until the close of business on September 21, 1998 and for economic injury until the close of business on April 21, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.000
Homeowners without credit available elsewhere	3.500
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damages is 311105 and for economic injury the number is 994500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 21, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–20330 Filed 7–29–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3101]

State of Vermont; Amendment #2

In accordance with a notice from the Federal Emergency Management Agency dated July 15, 1998, the above-numbered Declaration is hereby amended to include Essex County, Vermont as a disaster area due to damages caused by severe storms and flooding beginning on June 17, 1998 and continuing.

All counties contiguous to the above-named primary county have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 29, 1998 and for economic injury the termination date is March 30, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 20, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–20331 Filed 7–29–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3101]

State of Vermont; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency dated July 10, 1998, the above-numbered Declaration is hereby

amended to include Caledonia and Orleans Counties in the State of Vermont as a disaster area due to damages caused by severe storms and flooding beginning on June 17, 1998 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Essex, Vermont may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-name primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 29, 1998 and for economic injury the termination date is March 30, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 14, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–20332 Filed 7–29–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Senior Executive Service Performance Review Boards Membership

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Performance Review Board (PRB) appointments.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental PRBs as required by 5 U.S.C. 4314(c)(4).

FOR FURTHER INFORMATION CONTACT: William Freed, Acting Departmental Director, Office of Human Resource Management, (202) 366–4088.

SUPPLEMENTARY INFORMATION: The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on July 24, 1998.

Melissa J. Spillenkothen,

Assistant Secretary for Administration.

Federal Railroad Administration

Jane H. Bachner, Deputy Associate Administrator for Industry and Intermodal Policy, Federal Railroad Administration
James T. McQueen, Associate Administrator for Railroad Development, Federal Railroad Administration
Ray Rogers, Associate Administrator for Administration and Finance, Federal Railroad Administration
Charles White, Associate Administrator for Policy and Program Development, Federal Railroad Administration
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
George S. Moore, Associate Administrator for Administration, Federal Highway Administration
Luz A. Hopewell, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary

Federal Transit Administration

Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Richard M. Biter, Deputy Director, Office of Intermodalism, Office of the Secretary
James T. McQueen, Associate Administrator for Railroad Development, Federal Railroad Administration
Janet L. Sahaj, Deputy Associate Administrator, Office of Program Management, Federal Transit Administration
Gloria J. Jeff, Deputy Administrator, Federal Highway Administration
Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration

Office of Inspector General

Joyce N. Fleischman, Deputy Inspector General, Department of Agriculture
John J. Connors, Deputy Inspector General, Department of Housing and Urban Development
Judith J. Gordon, Assistant Inspector General for Systems Evaluation, Department of Commerce
Nancy Hendricks, Assistant Inspector General for Audit, Federal Emergency Management Administration
Karen S. Lee, Assistant Inspector General, Small Business Administration
Steven A. McNamara, Assistant Inspector General for Audit, Department of Education
Everett Mosley, Deputy Inspector General, Agency for International Development
Robert S. Terjesen, Assistant Inspector General for Investigations, Department of State
Joseph R. Willever, Deputy Inspector General, Office of Personnel Management
Raisa Otero-Cesario, Assistant Inspector General for Investigations and Oversight, Department of Treasury

United States Coast Guard

RADM F.L. Ames, Assistant Commandant for Human Resources, United States Coast Guard
RADM Ernest R. Riutta, Assistant Commandant for Operations, United States Coast Guard
RADM Joyce M. Johnson, Director, Health and Safety Directorate, United States Coast Guard
RADM John T. Tozzi, Assistant Commandant for Systems, United States Coast Guard
Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration
Patricia D. Parrish, Principal, TASC Customer Service, TASC
Lynn Sahaj, Deputy Associate Administrator for Program Management, Federal Transit Administration
Charles White, Associate Administrator for Policy and Program Development, Federal Railroad Administration

National Highway Traffic Safety Administration

Herman Simms, Associate Administrator for Administration, National Highway Traffic Safety Administration
Adele Derby, Associate Administrator for Regional Operations, National Highway Traffic Safety Administration
Kenneth Weinstein, Associate Administrator for Safety Assurance, National Highway Traffic Safety Administration
Dennis C. Judycki, Associate Administrator for Safety and Systems Applications, Federal Highway Administration
Luz A. Hopewell, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary

Federal Highway Administration

Dennis C. Judycki, Associate Administrator for Safety and System Applications, Federal Highway Administration
Vincent F. Schimmoller, Regional Administrator, Region 8, Federal Highway Administration
George L. Reagle, Associate Administrator for Motor Carriers, Federal Highway Administration
Patricia D. Parrish, Principal, TASC Customer Service, TASC
Gail R. Shibley, Director of External Communications, Federal Highway Administration
Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration,

Maritime Administration

Bruce J. Carlton, Associate Administrator for Policy and International Affairs, Maritime Administration

James J. Zok, Associate Administrator for Ship Financial Assistance and Cargo Preference, Maritime Administration
Margaret D. Blum, Associate Administrator for Port, Intermodal and Environmental Activities, Maritime Administration
John L. Mann, Jr., Associate Administrator for Administration, Maritime Administration
James E. Caponiti, Associate Administrator for National Security, Maritime Administration
Joan M. Bondareff, Chief Counsel, Maritime Administration
Luz A. Hopewell, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary
Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration,

Office of the Secretary, Transportation Administrative Service Center, Bureau of Transportation Statistics

Donald Trilling, Director, Office of Environment, Energy and Safety, Office of the Secretary
Roberta D. Gabel, Assistant General Counsel for Environmental, Civil Rights, and General Law, Office of the Secretary
Douglas V. Leister, Executive Assistant, Office of the Secretary
Luz A. Hopewell, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary
Beverly Pheto, Director, Office of Budget and Program Performance, Office of the Secretary
Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, Office of the Secretary
Patricia A. Prosperi, Principal, TASC Information Services, TASC
Rolf R. Schmitt, Associate Director for Transportation Studies, Bureau of Transportation Statistics
Edward L. Thomas, Associate Administrator for Research, Demonstration and Innovation, Federal Transit Administration
Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration

Research and Special Programs Administration

Patricia Grace Smith, Associate Administrator for Commercial Space, Federal Aviation Administration
David J. Litman, Director, Acquisition and Grant Management, Office of the Secretary
Quentin S. Taylor, Deputy Associate Administrator for Airports, Federal Aviation Administration
Richard Felder, Associate Administrator for Pipeline Safety, Research and Special Programs Administration
Judith Kaleta, Chief Counsel, Research and Special Programs Administration
William E. Vincent, Director, Office of Policy and Program Support, Research and Special Programs Administration.

[FR Doc. 98–20360 Filed 7–29–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 1998–4182]

Towing Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.
ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Towing Safety Advisory Committee (TSAC). TSAC provides advice and makes recommendations to the Secretary of Transportation on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

DATES: Applications must reach the Coast Guard on or before October 1, 1998.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–1), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–0229; or by faxing 202–267–4570. Submit application forms to the same address. This notice and the application form are available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Lionel Mew, Assistant Executive Director, telephone 202–267–0218, fax 202–267–4570. For questions on this docket, contact Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: The Towing Safety Advisory Committee (TSAC) is a Federal advisory committee constituted under 5 U.S.C. App. 2. It provides advice and makes recommendations to the Secretary of Transportation on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. The advice and recommendations also assist the Coast Guard in formulating the position of the United States in advance of meetings of the International Maritime Organization.

TSAC meets at least once a year at Coast Guard Headquarters, Washington, DC, or another location selected by the Coast Guard. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

The Coast Guard will consider applications for five positions that expire or become vacant in October 1998, as follows: Two members from the barge and towing industry, reflecting a geographical balance; one member from the offshore mineral and oil supply vessel industry; one member from shippers; and one member from the general public. To be eligible, applicants should have experience in towing operations, marine transportation, occupational safety and health, environmental protection, or business operations associated with the towing industry. Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Applicants selected may be required to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: July 22, 1998.

Joseph J. Angelo,
Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–20289 Filed 7–29–98; 8:45 am]
BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4203]

Commercial Fishing Vessel Industry Advisory Committee

AGENCY: Coast Guard, DOT.
ACTION: Notice of meeting.

SUMMARY: The Commercial Fishing Industry Advisory Committee (CFIVAC) will meet to discuss various issues relating to the safety of commercial

fishing vessels. The meeting will be open to the public.

DATES: CFIVAC will meet on Monday and Tuesday, August 31 and September 1, 1998 from 9:30 a.m. to 3 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before August 14, 1998. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before August 7, 1998.

ADDRESSES: CFIVAC will meet in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. Send written material and requests to make oral presentations to Lieutenant Commander Clark, Commandant (G–MSO–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Commander Randy Clark, Assistant to the Executive Director of CFIVAC, or Lieutenant Junior Grade Karen Weaver, 202–267–1217, fax 202–267–4570. For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Commercial Fishing Industry Vessel Advisory Committee

The agenda includes the following:

(1) Introduction and review of minutes from last meeting, swearing-in of the new Executive Director, and new members.

(2) Election of new Chairman and Vice Chairman.

(3) Development and review of "Task Statements" which will provide the basis for new subcommittees and give focus to the committee's efforts.

(4) Presentation of work plans from these newly formed subcommittees.

(5) Presentation on New England scallop industry.

(6) Presentation on inflatable Personal Flotation Devices.

(7) Review of National Transportation Safety Board Recommendations M–95–23 and M–96–9.

(8) Recognition of outgoing CFIVAC members.

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than August 14, 1998. Written material for distribution at a meeting should reach the Coast Guard no later than August 7, 1998. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than August 7, 1998 or make other arrangements with Lieutenant Commander Clark.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: July 23, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–20388 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on August 13, 1998, at 12:30 p.m.

ADDRESSES: The meeting will be held at Federal Aviation Administration, Conference Room 9 a/b/c, 800 Independence Ave., SW, Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9685.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on August 13, 1998. The agenda for this meeting will include status reports on the All Weather Operations Working Group and discussion of Advisory Circular 120–29, the Airplane Performance Working Group, and the formation of the working group on Reserve Duty/Rest Requirements. Attendance is open to the interested public but may be limited by the space available. The Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on July 22, 1998.

Gary L. Davis,

Acting Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–20348 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Amend an Approved Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Los Angeles International Airport, Los Angeles, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on a request to amend an approved PFC application.

SUMMARY: The FAA proposes to rule and invites public comment on the request to amend the approved application to impose and use the revenue from a PFC at Los Angeles 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) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 31, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to: Federal Aviation Administration, Airports Division,

15000 Aviation Blvd., Room 3024, Lawndale, CA 90261.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jerald K. Lee, Deputy Executive Director at the following address, Los Angeles World Airports, 1 World Way, Los Angeles, CA 90045–5803.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Los Angeles World Airports under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John Milligan, Supervisor, Standards Section, Airports Division, Federal Aviation Administration, 15000 Aviation Blvd., Room 3024, Lawndale, CA 90261, telephone (310) 725–3621. The request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to amend the application to impose and use the revenue from a PFC at Los Angeles 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) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 3, 1998, the FAA received the request to amend the application to impose and use the revenue from a PFC submitted by the Los Angeles World Airports within the requirements of section 158.37(b) of Part 158. The FAA will approve or disapprove the amendment no later than October 2, 1998.

The following is a brief overview of the request.

PFC amendment number: PFC No. 97–04–C–01–LAX.

Proposed increase in the total estimated PFC revenue: From $150,000,000 to $440,000,000.

Proposed change in estimated charge expiration date: From March 31, 2000 to January 31, 2004.

Proposed altered description of approved project: The Noise Mitigation project is modified to decrease residential soundproofing in the city of Los Angeles by approximately 2,557 units and to increase the amount of land to be acquired for noise mitigation purposes by 90 acres or 563 parcels.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, CA on July 6, 1998.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 98–20344 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–13–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 Monterey Peninsula Airport, Monterey, CA

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 Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990). (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 31, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261 or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Susan Kovalenko, Manager, Support Services of the Monterey Peninsula Airport District, at the following address: 200 Fred Kane Drive, Suite 200, Monterey, CA 93940.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Monterey Peninsula Airport District under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Specialist, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. 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 the Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On July 13, 1998, the FAA determined that the application to use the revenue from a PFC submitted by the Monterey Peninsula Airport District was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 13, 1998. The following is a brief overview of the use application No. 96–03–U–00–MRY:

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1994.

Proposed charge expiration date: June 1, 2002.

Total estimated PFC revenue: $396,006.

Brief description of proposed projects: Westside Access Connection to Garden Road (Sky Park Way Connection to Garden Road); Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for "New Northside" Ground Access Road (Environmental Assessment (EA)/EIR for Airport Road Extension); "New Northside" Ground Access Road (Airport Road Extension); and "Old Northside" Road Relocation (Airport Road Realignment).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: unscheduled/intermittent Part 135 air taxis.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports office located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monterey Peninsula Airport District.

Issued in Hawthorne, California, on July 14, 1998.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 98–20343 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Amended notice of intent.

SUMMARY: The FHWA is issuing this amended notice to advise the public that an environmental impact statement will not be prepared for a proposed highway project in Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, Chief, District Operations—South, Federal Highway Administration, 980—9th Street, Suite 400, Sacramento, CA 95814–2724; Telephone: (916) 498–5037.

SUPPLEMENTARY INFORMATION: No federal funding is proposed to be used by the City of Santa Clarita to construct the extension of Magic Mountain Parkway (State Route 126) from west of San Fernando Road to Via Princessa (2.5 miles) and to construct the extension of Via Princessa from Magic Mountain Parkway to Rainbow Glen Drive (1.7 miles). Since there is no federal action for the proposed project, the preparation of an environmental impact statement (EIS) to satisfy the requirements of the National Environmental Policy Act (NEPA) of 1969 will not be needed. Thus this amended notice is to rescind the earlier notice which was published in the **Federal Register** on February 24, 1998 (63 FR 9293).

Per the California Environmental Quality Act (CEQA), a Notice of Preparation on an Environmental Impact Report (EIR) for this project was published on February 12, 1997 and a 45-day public comment period followed from February 12, 1997 to March 31, 1997, including a Public Scoping Meeting held on March 5, 1997. In addition to the comment period and scoping meeting, three public meetings were conducted by the City of Santa Clarita in November 1996. The public and review agencies have had the opportunity to comment on the scope and content of the project.

Issued on: July 9, 1998.

C. Glenn Clinton,

Chief, District Operations—South, Sacramento, California.

[FR Doc. 98–20317 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3129; Notice 2]

Ford Motor Company; Grant of Application for Decision of Inconsequential Noncompliance

Ford Motor Company, Dearborn, Michigan, has estimated that approximately 853,000 of its 1995–1997 Ford Explorer and 1997 Mercury Mountaineer multipurpose passenger vehicles with console armrests fail to comply with 49 CFR 571.302, Federal Motor Vehicle Safety Standard (FMVSS) No. 302, "Flammability of Interior Materials," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." On September 11, 1997, Ford applied to the National Highway Traffic Safety Administration (NHTSA) to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

On November 25, 1997, NHTSA published a notice of receipt of the application in the **Federal Register** (62 FR 62798) and requested comments on it. The agency received no comments.

FMVSS No. 302, Paragraphs S4.2 and S4.3, specify that any portion of a single or composite material which is within ½ inch of the occupant compartment air space, when tested in accordance with paragraph S5, shall not burn, nor transmit a flame across its surface, at a rate of more than 4 inches per minute. Composite is defined as a material that adheres to other material(s) at every point of contact. FMVSS No. 302's burn rate testing requires a 4-inch wide by 14-inch long sample, wherever possible (S5.2).

The Ford Explorer and Mercury Mountaineer armrests have multi-layer cover materials: a 1.5mm thick exterior cover, a 2mm thick second layer Ethylene Vinyl Acetate/Polyethylene (EVA/PE), referred to in the application as "plus pad," a 13mm thick third layer foam bun pad, and a 3mm polycarbonate substratum. The subject of Ford's application is the 2mm thick "plus pad" layer.

Ford acknowledged that the "plus pad" material does not adhere to its 1.5mm exterior cover material or the 13mm foam bun under it at every point of contact. Therefore, as specified in FMVSS No. 302, the "plus pad" material cannot be tested with other materials as a composite material and has to be tested separately. Ford reported that when the "plus pad" material was tested separately, it showed a burn rate range from 8 to 10 inches per minute—a noncompliance with FMVSS No. 302. Ford stated that all other affected materials in the armrest satisfy the 4-inch per minute maximum burn rate. Ford explained that the supplier of the "plus pad" material only "certified" the raw material for FMVSS No. 302 by testing 11mm thick samples, not the designed 2mm thickness.

Ford supported its application for inconsequential noncompliance with the following:

A. Ford stated that the FMVSS No. 302 burn rate testing requirement of cutting a sample from the "normal configuration and packaging in the vehicle" is conservative in regard to the actual fire spreading potential of the tested material.

B. The 2mm "plus pad" failed the FMVSS No. 302 test requirements when tested as a single material. However, a series of further testing demonstrates that the noncompliance does not adversely affect occupant safety because it does not increase the burn rates of the assembly or the adjacent materials in the assembly to levels higher than specified by FMVSS No. 302.

C. The "plus pad" accounts for less than 10 percent of the armrest material and is an insignificant percentage of the vehicle's remaining materials. All other flammable interior materials of the subject vehicles complied with FMVSS No. 302. Therefore, the noncompliance of the "plus pad" offers an insignificant portion of interior materials that could potentially support an interior fire.

Ford attached the following summary results of several alternative tests, including a "worst case scenario" test:

1. FMVSS No. 302 type tests (cover, plus pad, and foam)—treated the assembly materials as a composite material.

2. FMVSS No. 302 type tests (cover, plus pad, and foam)—added simulations of cut and torn of the materials:

a. Cut the cover layer longitudinally,

b. Cut a hole in the cover layer, and

c. Cut through the cover layer and the "plus pad" longitudinally.

3. FMVSS No. 302 type tests (plus pad and foam)—with the cover layer completely removed to simulate a worst case scenario.

4. Cut a complete armrest assembly in half along the lateral-vertical plane:

a. Exposed the opposite of the cut end to the flame, and

b. Exposed the cut cross-section to the flame.

All test results were less than FMVSS No. 302's maximum permissible 4-inch per minute burn rate, thereby meeting the standard.

In conclusion, Ford requested NHTSA to grant the inconsequentiality petition since the "plus pad" complied with FMVSS No. 302's requirements in every other test except that when tested by itself. Ford's request was based on the fact that the "plus pad" represents an insignificant adverse effect on interior material burn rate and the potential for

occupant injury due to interior fire and that the noncompliance presents no reasonably anticipated risk to motor vehicle safety.

On October 30, 1997, NHTSA wrote Ford for additional information about the tests described in the application. Ford responded to the request on November 20, 1997. Following an evaluation of the information provided by Ford, on December 4, 1998, the agency requested Ford to conduct an additional "composite" test, i.e., with the cover, plus pad, and foam bun. The additional test would simulate another possible "worst case scenario" different from the one Ford performed. Ford did not conduct the additional test requested by the agency and requested to be provided with an opportunity to explain its position. On February 19, 1998, NHTSA and representatives from Ford met at the agency. The Ford representatives explained why they believed that sufficient data were already provided to NHTSA for reviewing the application. Subsequent to the meeting, Ford sent a letter to NHTSA on March 12, 1998, formally responding to the agency's December 4, 1997, request. The March 12, 1998, letter explained that the term "worst case scenario" used in the Ford application was intended to describe its "functional composite" test results which simulate long term vehicle use conditions (durability performance). All the above-mentioned correspondence has been placed in the docket.

NHTSA has thoroughly evaluated the data Ford provided and carefully considered its subsequent explanations about the data. It agrees with Ford. The agency has concluded that the "plus pad" in the noncompliant Ford Explorer and Mercury Mountaineer vehicles is unlikely to pose a flammability risk due to the unlikelihood of its exposure to an ignition source, if the exterior cover is not present in the first instance.

NHTSA's evaluation of the consequentiality of this noncompliance should not be interpreted as a diminution of the agency's safety concern for the flammability of interior materials. Rather, it represents NHTSA's assessment of the gravity of this specific noncompliance based upon the likely consequences. Ultimately, the issue is whether this particular noncompliance is likely to create a risk to safety. NHTSA is not aware of any occupant injuries to date in vehicle post-crash fires that were caused by burning of console armrests in the Ford Explorer and Mercury Mountaineer vehicles. Based on the foregoing, NHTSA has decided that Ford Motor Company has met its burden of persuasion that the noncompliance herein described is inconsequential to motor vehicle safety. Accordingly, the application is granted, and Ford Motor Company is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 27, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–20383 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4008; Notice 1]

Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that certain 1998 GMC Sonoma pickup trucks, GMC Jimmy and Oldsmobile Bravada sport utility vehicles are equipped with daytime running lamps (DRLs) that fail to meet the spacing requirements of Federal Motor Vehicle Safety Standard (FMVSS) 108—Lamps Reflective Devices and Associated Equipment. Pursuant to section 30118 and 30120 of Title 49 of the United States Code, GM applied to the National Highway Traffic Safety Administration (NHTSA) for a decision that the noncompliance is inconsequential to motor vehicle safety. Concurrently, in accordance with 49 CFR 556.4(b)(6), GM has submitted a 49 CFR 573.5 noncompliance notification to the agency.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The DRLs on the noncompliant vehicles are provided by the upper beam headlamps operating at reduced intensity, with a maximum output of approximately 6,700 candela per lamp. As such, FMVSS 108 requires the DRL be located "so the distance from its lighted edge to the optical center of the nearest turn signal lamp is not less than 100 mm." (The DRLs on the noncompliant vehicles are not deactivated when the turn signal or hazard flashers are activated. If they were deactivated under those conditions, they would comply with the spacing requirements of FMVSS 108 (see S5.5.11(a)(4)(iv))). In this case, the 122,455 vehicles involved provide less than the requisite 100 mm clearance between the DRL and the turn signal. As a result, they fail to meet the requirements of FMVSS 108.

GM believes that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The subject vehicles meet all requirements of Canadian Motor Vehicle Safety Standard No. 108 (CMVSS108) and the identical DRL requirements found in FMVSS 108 prior to October 1, 1995.

2. CMVSS 108 requires turn signals that are located less than 100 mm from a DRL to have increased intensities of 2½ times the minimum photometric values to help assure the turn signals are readily visible. The subject vehicles have turn signals that are much brighter. When photometered, the turn signals on the noncompliant vehicles were actually more than four times brighter than the minimum required intensities. This increased brightness helps to assure the turn signals are not masked by the DRL.

3. The method for determining the optical center of the turn signal is open to some interpretation. Traditionally, automobile manufacturers have used the filament axes as the determining factor. Transport Canada has supported this methodology. More recently, some manufacturers have used the centroid of the lamp as the optical center. Depending on the method used, the turn signal of the noncompliant vehicles is either 71 mm (using centroid) or 85 mm (using filament axes) away from the DRL. Therefore the condition is within 15 percent, or using the more conservative figure, within 30 percent of the requirement. (For the purposes of the application all other references to optical center of the turn signal will be based on the centroid, which generates a more conservative estimate of the distance between the turn signal and lighted edge of the DRL.)

4. Regardless of the whether the distance is within 15 percent or 30 percent of the 100 mm requirement, the turn signal and the DRL diagonal to each other. Therefore, the closest lighted edge of the DRL is the corner of the lamp (see figure 1). This portion of the lamp does not significantly contribute to the DRL beam pattern, and therefore does not have a significant potential to mask the turn signal.

5. Photometric values of the turn signal 71 mm from the DRL, are not significantly different than a turn signal 100 mm from the DRL. To demonstrate this, on-vehicle evaluations of the turn

signal output were made using a video-based photometer (digital CCD camera system). First, the photometric output of the turn signal was measured with the DRL activated. Then a portion of the DRL was blocked, as shown in Figure 2, and the output of the turn signal was re-measured with the modified DRL activated. The zonal values of the turn signal changed an average of just 12.7 percent. The largest difference in turn signal output was found in zone 5, closest to the DRL, and it only changed 17.5 percent.

6. Subjective evaluations were run using GM personnel whose jobs do not involve vehicle lighting. They were asked to rate the relative visibility of turn signals on the subject vehicles and other vehicles that meet the FMVSS 108 spacing requirement. The results, shown in figure 3, indicate the visibility of subject turn signals is substantially better than vehicles that just meet the minimum requirement. In addition, the turn signals are rated nearly identical to vehicles modified to be fully compliant to the requirements, and preferred only slightly less than turn signals on the Chevrolet Blazer (which is a similar vehicle whose turn signal/DRL spacing meets the requirements of FMVSS 108). A copy of the report *Subjective Evaluation* by GM Truck Group Engineering Operations, Milford Proving Ground, Publication Date: 22 May 1998, has been placed in Docket No. NHTSA–98–4008; Notice 1.

7. The turn signals on the noncomplying vehicles are 116 square centimeters, which is larger than typical turn signals found on similar vehicles. FMVSS 108 requires the functional lighted area of a turn signal lamp to be a minimum of 22 square centimeters. (Table III of FMVSS 108 requires turn signals meet SAE J588 NOV'84—TURN SIGNAL LAMPS FOR USE ON MOTOR VEHICLES LESS THAN 2032 MM IN OVERALL WIDTH. SAE J588 NOV84 S5.3.2 requires, "The functional lighted lens area of single compartment lamp shall be at least . . . 22 square centimeters for a front [turn signal] lamp.") Therefore, the subject turn signals provide 5.3 times the area necessary to meet the requirement. The larger size of the turn signal helps to minimize any potential for masking by the DRL.

GM believes the noncompliance discussed here is inconsequential to motor vehicle safety. In consideration of the foregoing, GM applied for a decision that it be exempted from the notification and remedy provisions of 49 U.S.C. 30118 and 30120 for this specific noncompliance with FMVSS 108.

Interested persons are invited to submit written date, views, and arguments on the application of GM described above. Comments should refer to the Docket Number and be submitted to: Docket Management, Room PL 401, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 31, 1998.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

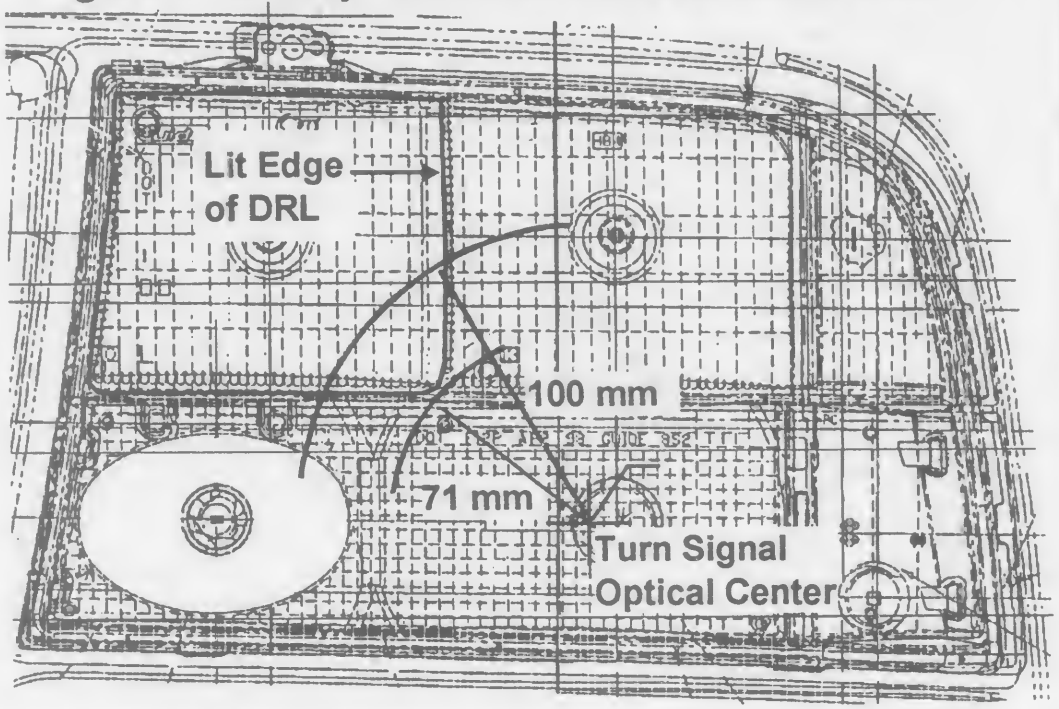
Issued on July 24, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

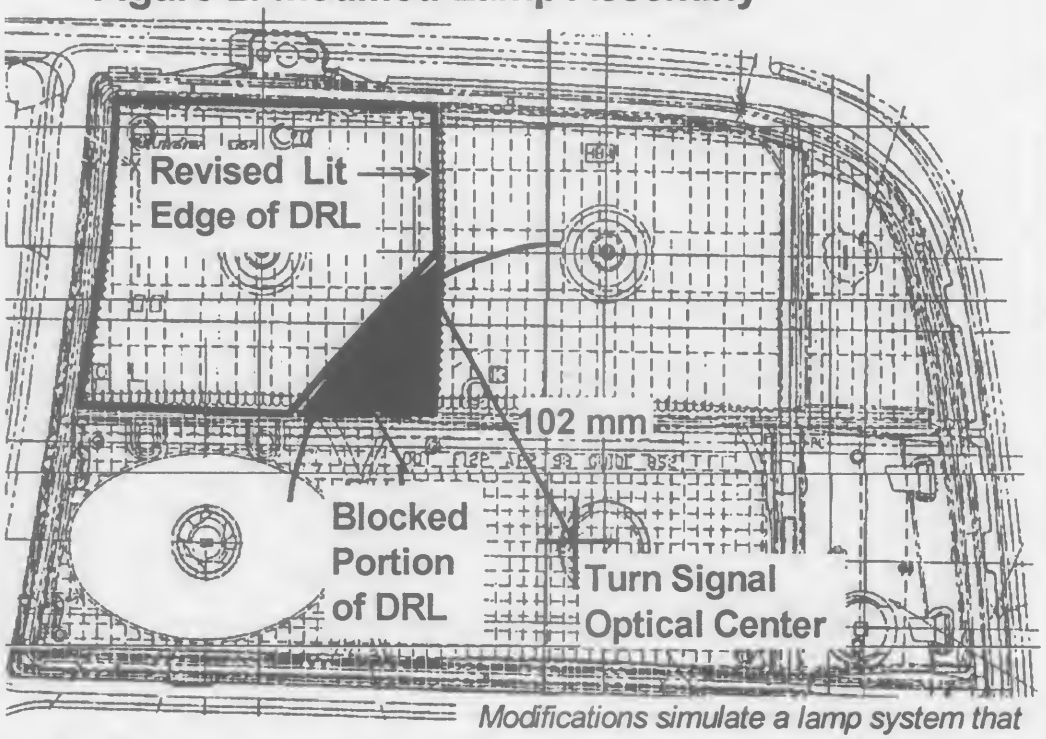
BILLING CODE 4910–M

Figure 1: Jimmy, Sonoma, Bravada Lamp Asm.



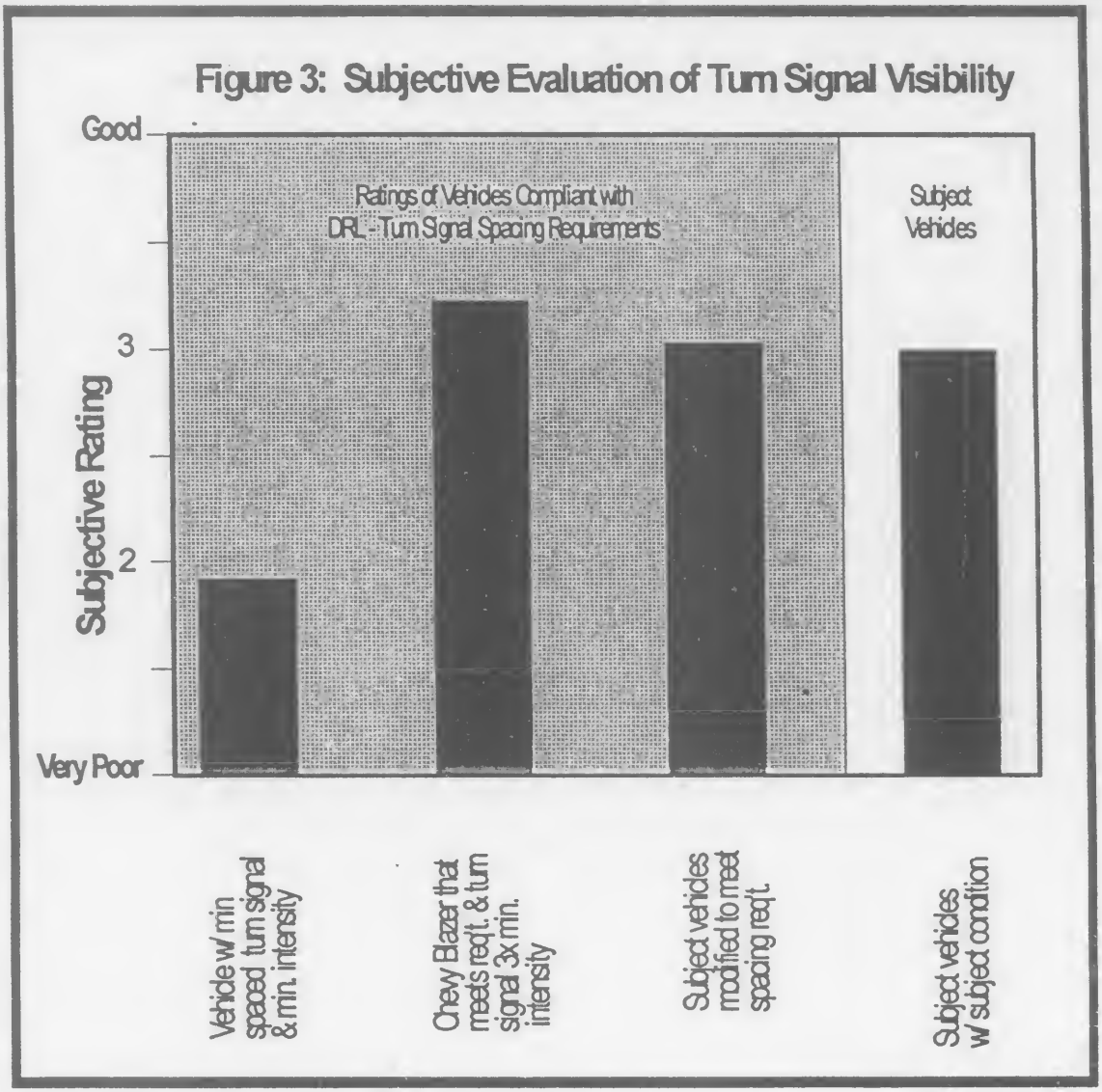
Measurements not shown to scale

Figure 2: Modified Lamp Assembly



Modifications simulate a lamp system that meets the requiremnts in FMVSS 108

Measurements not shown to scale



[FR Doc. 98–20382 Filed 7–29–98; 8:45 am]
BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 98–7]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety Advisory Notice.

SUMMARY: This is to notify the public that RSPA is investigating the unauthorized marking of high-pressure compressed gas cylinders. On March 12, 1998, RSPA inspectors conducted a compliance inspection at City Fire Equipment Company, Inc. (CFECI), 518 34th Street, Gulfport, Mississippi. During the inspection it was determined that CFECI had improperly retested a number of cylinders. The President of CFECI told inspectors that his company had not done any type of cylinder retesting since January 1998. Subsequent inspections of CFECI's customers indicate that CFECI has charged some of its customers for cylinder retesting and has marked cylinders as having been properly retested in accordance with the Hazardous Materials Regulations (HMR) after January 1998.

Failure to properly conduct a hydrostatic retest can result in cylinders that should be condemned being returned to service. Serious personal injury, death, and property damage could result from rupture of a cylinder. Cylinders that have not been retested in accordance with the HMR may not be charged or filled with a hazardous material.

FOR FURTHER INFORMATION CONTACT: Cheryl K. Johnson, Hazardous Materials Enforcement Specialist, Southern Region, telephone (404) 305–6120, Fax (404) 305–6125, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, Department of Transportation, 1701 Columbia Ave, DHM–46, Suite 520, College Park, GA 30337.

SUPPLEMENTARY INFORMATION: Through follow-up inspections of CFECI's customers, the inspectors found cylinders marked after January 1998 with CFECI's retester identification number (RIN):

B 8
X Y
8 9

[Where B898 is CFECI's RIN number, X=month of retest (/e.g., (4) and Y=year of retest (e.g., 98)]

CFECI provided inspectors with a list of customers with whom it has done business over the past year; however, RSPA has reason to believe that any cylinder that was marked with RIN B898 and last serviced by CFECI is not in compliance with the Hazardous Materials Regulations (HMR) (49 CFR Parts 171–180). Under the HMR, hydrostatic retesting is required to verify a cylinder's structural integrity.

Any person who has a cylinder marked with RIN B898 that was last serviced by CFECI should not charge or fill the cylinder with a hazardous material without first having it inspected/retested by a DOT-authorized retest facility. Filled cylinders (if filled with an atmospheric gas) described in this safety advisory should be vented or otherwise properly and safely evacuated and purged, and taken to a DOT-authorized cylinder retest facility for visual reinspection and retest to determine compliance with the HMR. Under no circumstances should a cylinder described in this safety advisory be filled, refilled or used for any purpose other than scrap, until it is reinspected and retested by a DOT-authorized retest facility.

It is further recommended that persons finding or possessing cylinders described in this safety notice contact Ms. Cheryl K. Johnson, for further information.

Issued in Washington, DC on July 23, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98–20350 Filed 7–29–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33631 (Sub-No. 1)]

Union Pacific Railroad Co.—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Co.

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33631 [1] to permit the trackage rights to expire on July 31, 1998, in accordance with the agreement of the parties.

DATES: This exemption is effective on July 30, 1998.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33631 (Sub-No. 1) must be filed with the Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Joseph D. Anthofer, Esq., Union Pacific Railroad Company, 1416 Dodge Street, #830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 22, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–20256 Filed 7–29–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–63]

Revocation of Customs Broker License

AGENCY: Customs Service, Department of the Treasury .

ACTION: Broker license revocation.

Notice is hereby given that the Commissioner of Customs, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and §§ 111.52 and 111.74 of the Customs regulations, as amended (19 CFR 111.52 and 111.74), is canceling the following Customs broker licenses without prejudice.

[1] On July 6, 1998, UP filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by BNSF to grant temporary overhead trackage rights to UP from milepost 345.6, at Tower 55–UPRRX near Fort Worth, to milepost 217.3, near Temple, a distance of 128.3 miles in the State of Texas. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 33631 (STB served July 17, 1998). The trackage rights operations under the exemption became effective and were scheduled to be consummated on July 13, 1998.

Port	Individual	License #
New York	Michael Maraventano	03186
New York	Fast Cargo, Inc	10026
New York	Alex Zadroga	06263
New York	Judith M. Barzilay	16619
Los Angeles	Ronald G. Sleeis	05092
Laredo	Sandra L. Herrera	11622
Washington, DC	Christopher M. Schmitt	11577

Dated: July 24, 1998.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 98–20404 Filed 7–29–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

July 22, 1998.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

Dates: Written comments should be received on or before August 31, 1998 to be assured of consideration.

OMB Number: 1550–0087.

Form Number: OTS Form 1603.

Type of Review: Extension of an already approved information collection.

Title: Measurement Survey—Examination Standards.

Description: This information collection will survey those institutions who recently have undergone an OTS examination. The purpose is to determine the effectiveness of the examination process.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 3003.

Estimated Burden Hours Per Respondent: .25 average hours.

Frequency of Response: 1 per examination.

Estimated Total Reporting Burden: 751 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW, Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–20335 Filed 7–29–98; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register
Vol. 63, No. 146
Thursday, July 30, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

ARMS Initiative Implementation

Correction

In notice document 98–19918 appearing on page 40108 in the issue of Monday, July 27, 1998, make the following corrections:

1. In the first column, **PLACE OF MEETING:**, second line,"Law" should read "Las".

2. In the first column, **TIME OF MEETING:**, second line, "August 13" should read "August 12".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

28 CFR Part 0

[AG Order No. 2167–98]

Office of the Inspector General

Correction

In rule document 98–17770, beginning on page 36846, in the issue of Wednesday, July 8, 1998, make the following correction.

§ 0.29e [Corrected]

On page 36848, in the first column, in § 0.29e(a)(1), in the sixth line, "of administrative misconduct on the part of an employee" should be added after "allegation".

BILLING CODE 1505-01-D

federal register

Thursday
July 30, 1998

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements; Montana; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements; Montana

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Governor of the State of Montana (Governor) and the Secretary of the Department of the Interior (Secretary) are amending the cooperative agreement between the Department of the Interior and the State of Montana for the regulation of surface coal mining and reclamation operations on Federal lands within Montana. Cooperative agreements are provided for under section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These amendments clarify Montana's responsibility for the administration of its approved State program on lands subject to the Federal lands program in Montana.

EFFECTIVE DATE: August 31, 1998.

FOR FURTHER INFORMATION CONTACT: Ranvir Singh, P.E., Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202–5733; Telephone: (303) 844–1489.

SUPPLEMENTARY INFORMATION:

I. Background

On June 4, 1980, the Governor submitted a request for a cooperative agreement between the Department of the Interior and the State of Montana to give the State primacy in the administration of its approved regulatory program on Federal lands within Montana. The Secretary approved the cooperative agreement on January 19, 1981 (46 FR 20983, April 8, 1981). The text of the existing cooperative agreement can be found at 30 CFR 926.30.

On July 5, 1994, the Governor, pursuant to 30 CFR 745.14 and at the recommendation of the Office of Surface Mining Reclamation and Enforcement (OSM), submitted a proposed modified cooperative agreement to address among other things, elimination of duplicative State-Federal permitting efforts and streamlining of the permitting processes in accordance with the revised Federal lands regulations at 30 CFR Part 740 (48 FR 6912, February 16, 1983). OSM published the requested amendments in the January 10, 1997, **Federal Register** (62 FR 1408) and announced a public comment period on the proposed rules until March 11, 1997. The notice also provided that, if requested, OSM would hold a public hearing. However, since no person contacted OSM to express an interest in testifying at the public hearing, no public hearing was held. OSM reopened the comment period on the proposed rule for an additional 30 days on April 7, 1997 (62 FR 16506) but did not receive any written comments on the proposed amendments during either of the two comment periods.

II. Summary of the Cooperative Agreement

No written comments were received from any person or organization on the proposed amendments during the specified comments period. Therefore, no changes are being made and the proposed amendments as published in the **Federal Register** on January 10, 1997 (62 FR 1408) are being adopted as final. A discussion of the terms of the cooperative agreement follows.

Article I: Authority, Purposes, and Responsible Agencies

Paragraph A of Article I sets forth the legal authority for the Montana Cooperative Agreement (Agreement); which is provided by section 523(c) of SMCRA. This paragraph states that the Agreement provides for State regulation of coal exploration operations [1] not subject to 43 CFR Group 3400, and surface coal mining and reclamation operations and activities in Montana on Federal lands.

Paragraph B sets out the purposes of the Agreement.

Paragraph C states that the Department of Environmental Quality (DEQ) is the agency responsible for administering the Agreement on behalf of the Governor of Montana. Paragraph C also names OSM as the agency responsible for administering the Agreement on behalf of the Secretary.

Article II: Effective Date

Article II provides that after the Agreement has been signed by the Secretary and the Governor, it will become effective 30 days after publication in the **Federal Register**. It will remain in effect until terminated as provided in Article XI.

Article III: Definitions

Article III provides that the terms and phrases used in the Agreement, except the term "permit application package (PAP)," would have the same meanings as they have in SMCRA, 30 CFR Parts 700, 701, 740, and the State Program. As explained in the proposed rule published in the **Federal Register** on January 10, 1997, 62 FR 1408, 1409–1410, additional language has been included in Article III to define the term "Permit Application Package (PAP)." Defining terms and phrases in this manner ensures consistency between applicable regulations and the Agreement. Where there is a conflict between the referenced State and Federal definitions, the definitions used in the State Program will apply, unless otherwise required by Federal regulation.

Article IV: Applicability

Article IV states that the laws, regulations, terms and conditions of the State Program are applicable to Federal lands in Montana except as otherwise stated in the Agreement, SMCRA, 30 CFR 740.4, 740.11(a), and 745.13 or other applicable Federal laws, Executive Orders, or regulations.

[1] The term "Exploration operations" is referred to as "Prospecting" in the Montana State Program.

Article V: Requirements for the Agreement

Paragraph A mutually binds the Governor and the Secretary to comply with all provisions of the Agreement.

Paragraph B.1 requires DEQ to devote adequate funds to the administration and enforcement of the requirements of the State Program on Federal lands. OSM is required to reimburse the State, as provided in section 705(c) of SMCRA and 30 CFR 735.16, for the costs of administration and enforcement if the State complies with the terms of this Agreement and necessary funds have been appropriated to OSM. The amount of such funds shall be determined in accordance with the provisions of Chapter 3–10 and Appendix 111 of the Federal Assistance Manual.

Paragraph B.2 provides that if DEQ applies for a grant but sufficient funds have not been appropriated to OSM, OSM and DEQ shall promptly meet to decide on appropriate measures that will insure that surface coal mining and reclamation operations on Federal lands in Montana are regulated in accordance with the State Program.

Paragraph B.3 provides that the funds reimbursed to DEQ under this Agreement will be adjusted in accordance with the program income provisions of 43 CFR Part 12.

Paragraph C provides that DEQ shall submit annual reports to OSM as required by 30 CFR 745.12(d). The report will contain information about DEQ's compliance with the terms of the Agreement. OSM and DEQ shall exchange information that is developed under the Agreement, unless prohibited by Federal or State law. OSM is also required to provide DEQ with a copy of OSM's final evaluation report regarding State administration and enforcement of the Agreement, and if the State has any comments on the evaluation report, OSM shall attach those comments to the report before sending it to the Congress or other interested parties.

Paragraph D requires DEQ to maintain necessary personnel to fully implement the Agreement in accordance with the provisions of SMCRA, the Federal lands program, and the State Program.

Paragraph E provides that DEQ shall assure itself access to equipment, laboratories, and facilities to perform all necessary inspections, investigations, studies, tests, and analyses.

Paragraph F states that the amount of fee charged from an applicant to obtain a permit to conduct surface coal mining and reclamation operations, will be determined by the provisions of section 82–4–223(1) of Montana Code Annotated (MCA), and the applicable provisions of Federal law. Permit fee collected by DEQ will be considered program income, and all permit fees and civil penalty fines shall be accounted for in accordance with the requirements of 43 CFR Part 12. However, civil penalty fines shall not be considered program income. The Financial Status Report submitted by DEQ pursuant to the requirements of 30 CFR 735.26 shall include the amount of permit application fees collected and attributable to Federal lands during the State fiscal year.

Article VI: Review and Approval of the PAP or Application for Transfer, Assignment or Sale of Permit Rights (Transfer Application)

Paragraph A describes the process that DEQ is required to follow for receipt and distribution of the PAP or transfer application.

Under paragraph A.1 an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands is required by DEQ to submit an appropriate number of copies of a PAP or transfer application to DEQ. Such PAP or transfer application shall be in the form required by DEQ and shall, at a minimum, contain the information required by 30 CFR 740, and any supplemental information required by OSM, the Bureau of Land Management (BLM) and the Federal land management agency.

Under paragraph A.2, upon receipt of the PAP or transfer application, DEQ shall ensure that an appropriate number of copies of the PAP or transfer application are provided to OSM, the Federal land management agency and any other appropriate Federal agency.

Paragraph B describes the procedures for review of the PAP or transfer application.

Paragraph B.1 describes the responsibilities of DEQ with respect to review, analysis, and approval or disapproval of the permit application component of the PAP or transfer application. As authorized in 30 CFR 740.4(c), DEQ is responsible for: (1) being the primary point of contact with the applicant regarding the review of the PAP or transfer application, and all decisions and determinations on the PAP or transfer application; (2) analysis, review and approval or disapproval of the PAP or transfer application; (3) obtaining comments and findings of Federal agencies; (4) obtaining OSM's determination if a permit revision issued by DEQ will constitute a mining plan modification pursuant to 30 CFR 746.18, and informing the applicant of such determination; (5) consulting with and obtaining the consent, as necessary, of the Federal land management agency as required by 30 CFR 740.4(c)(2); (6) consulting and obtaining the consent, as necessary, of BLM as required by 30 CFR 740.4(c)(3); (7) approval and release of performance bonds, and approval and maintenance of liability insurance; (8) review and approval of exploration operations as provided in 30 CFR 740.4(c)(6); (9) preparation of documentation to assist OSM in assuring compliance with the requirements of the National Environmental Policy Act (NEPA) and preparation of a State decision package when a mining plan action is required pursuant to 30 CFR 746.18. In the proposed rulemaking, paragraph B.1.a(2) provided, among other things, that DEQ is responsible for the analysis, review, and approval, conditional approval, or disapproval of the permit application component of the PAP or the transfer application for surface coal mining and reclamation operations on Federal lands in Montana.

In "Article III: Definitions" of the proposed rule, the term PAP was defined, for purposes of the Agreement, to mean "a proposal to conduct surface coal mining and reclamation operations on Federal lands, including an application for a permit, permit revision, permit amendment, or permit renewal, and all information required by SMCRA, the Federal regulations, the State Program, this agreement, and all other applicable laws and regulations, including, with respect to leased Federal coal, the Mineral Leasing Act of 1920 (MLA) and its implementing regulations."

Pursuant to the Agreement, DEQ has the responsibility to analyze, review, and approve, conditionally approve or disapprove only that information in the PAP that is submitted by the applicant for a permit, permit revision, permit amendment, or permit renewal, and all information required by SMCRA, the Federal regulations, the State Program. The phrase "the permit application component of the PAP," therefore, clarifies that DEQ will not be expected to review, analyze, review, and approve, conditionally approve or disapprove the information in the PAP that is submitted by the applicant pursuant to the requirements of "all other applicable laws and regulations, including, with respect to leased Federal coal, the MLA and its implementing regulations."

Paragraph B.2 describes the responsibilities of OSM with respect to: (1) making determinations and evaluations for NEPA compliance documents required by 30 CFR 740.4(c)(7)(i) through (vii); (2) reviewing appropriate portions of the PAP to

assure compliance with the non-delegable responsibilities of the Secretary pursuant to SMCRA and 30 CFR 745.13; (3) consulting with BLM prior to making a determination required by 30 CFR 746.18; (4) exercising its responsibilities in a timely manner; (5) providing assistance to DEQ in carrying out its responsibilities; and (6) when a mining plan action is required pursuant 746.18, consulting with and obtaining concurrences of BLM, the Federal land management agency, and any other Federal agency, resolving issues when certain conditions required by the Federal land management agency are not included in the permit by DEQ, and preparing a decision document and recommendations to the Secretary for approval, disapproval or approval with conditions of a mining plan or modification thereof pursuant to 30 CFR 746.13.

Paragraph B.3 provides that the Secretary shall: (1) concurrently and in a timely manner, carry out his responsibilities that cannot be delegated to DEQ pursuant SMCRA and 30 CFR 745.13 and other laws and regulations; (2) reserve the right to act independently of DEQ under laws other than SMCRA, and to delegate some of the responsibilities to OSM; and (3) approve, disapprove, or approve with conditions, the mining plan actions for leased Federal coal pursuant to 30 CFR 740.4(a)(1).

Paragraph B.4 sets forth the coordination obligations of OSM and DEQ in order to meet the purposes of the Agreement. Accordingly, OSM and DEQ will be required to coordinate with each other in developing a work plan and designating project leaders for the PAP or transfer application review process, and in scheduling meetings with the applicant. OSM will not independently initiate contacts with applicants regarding completeness or deficiencies during the review of a PAP or transfer application. As review of the PAP or transfer application progresses, DEQ will keep OSM informed of its findings that may affect the responsibilities of OSM and other Federal agencies. DEQ will also send to OSM copies of any correspondence with the applicant, and allow OSM access to DEQ files concerning operations of Federal lands. Likewise, OSM shall send to DEQ copies of the correspondence or any other information received from the applicant. Any differences of opinion that may surface during the PAP or transfer application review process, should be resolved at the lowest possible staff level.

Paragraph B.4 also provides for OSM and DEQ, with the concurrence of any appropriate Federal agency, to enter into working agreements without amending this Agreement to delegate to DEQ additional responsibilities and decisions that are authorized under applicable Federal laws other than SMCRA. DEQ is also required to work with appropriate agency to develop mutually acceptable terms and conditions for inclusion in the permit issued pursuant to section 522(e)(3) to mitigate adverse impacts on any publicly owned park or places included in the National Register of Historic Sites (NRHS).

Paragraph C describes the process that DEQ is required to follow during the approval of the PAP or transfer application.

Paragraph C.1 provides that DEQ shall make a decision on the permit application component or the PAP or transfer application on Federal lands.

In paragraph C.2, during this decision-making process, DEQ is required to consider the comments of Federal agencies in the context of permit issuance and document these comments in the record of permit decisions. If the permit conditions recommended by Federal agencies are not adopted by DEQ, DEQ is required to provide OSM with documentation as to why they were not included as permit conditions.

Under paragraph C.3, if DEQ approves the PAP or transfer application before the Secretarial decision on a mining plan, DEQ is required to advise the applicant that Secretarial approval of the mining plan must be obtained before the applicant may conduct surface coal mining and reclamation operations on the Federal lands.

Paragraph C.4 provides that after making a decision on the PAP or transfer application, DEQ is required to send a copy of the signed permit form and State decision document to the applicant, OSM and other appropriate agencies.

Article VII: Inspections

Paragraphs A and B state that DEQ will conduct inspections on lands covered by this Agreement and prepare and file State inspection reports in accordance with the State Program.

Paragraph C designates DEQ as the point of contact and inspection authority in dealing with the operator. However, this Agreement shall not prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

Paragraph D provides that authorized representatives of the Secretary may conduct any inspections necessary to comply with 30 CFR Parts 842 and 843 and with the Secretary's obligations under laws other than SMCRA.

Paragraph E states that when OSM intends to conduct an inspection under 30 CFR 842.11, DEQ will be given reasonable notice of such an inspection to provide opportunity for State inspectors to join in the inspection. When OSM intends to conduct an inspection in response to a citizen complaint supplying adequate proof of imminent danger to public health and safety, or a significant imminent environmental harm to land, air, or water resources, DEQ will be given at least a 24-hour notice, if practicable, to facilitate a joint Federal-State inspection. Citizen complaints not involving an imminent harm to the public or the environment will be initially referred to DEQ for action. However, the Secretary reserves the right to conduct inspections without prior notice to DEQ, if necessary, to carry out his responsibilities under SMCRA.

Article VIII: Enforcement

Article VIII sets forth the enforcement obligations and authorities of OSM and DEQ.

Under paragraph A, DEQ will have primary enforcement authority on Federal lands in accordance with the requirements of the Agreement and State Program. Enforcement authority given to the Secretary under Federal laws and Executive Orders will be reserved by the Secretary.

Under paragraph B, DEQ will have primary responsibility for enforcement during joint inspections with OSM. Paragraph B also includes a requirement that DEQ notify OSM prior to suspending or revoking a permit, BLM of any suspension, rescission or revocation of a permit containing leased Federal coal.

Paragraph C preserves OSM's authority to take any enforcement action necessary to comply with 30 CFR Parts 842, 843, 845 and 846 where OSM conducted an inspection or where, during a joint inspection with DEQ, the two cannot agree on the appropriateness of a particular enforcement action.

Paragraph D provides that OSM and DEQ will notify each other of all violations of applicable regulations and all actions taken on the violations.

Paragraph E provides that personnel of DEQ and OSM will be mutually available to serve as witnesses in enforcement actions taken by either party.

Paragraph F specifies that this Agreement will not limit the Secretary's

authority to enforce Federal laws other than SMCRA.

Article IX: Bonds

Under paragraph A, DEQ and the Secretary will require each operator conducting operations on Federal lands to submit a single performance bond, sufficient to cover the operator's responsibilities, jointly payable to both the United States and DEQ. All applicable State and Federal requirements must be fulfilled during the bond period. If the Agreement is terminated, paragraph A requires that the portion of the bond covering Federal lands shall be payable only to the United States.

Paragraph B provides that DEQ will have the primary responsibility to approve and release performance bonds, however, DEQ must obtain OSM's concurrence prior to releasing a performance bond on lands subject to an approved mining plan. OSM, in turn, will be required to coordinate with the appropriate Federal land management agency before concurring to such bond release. DEQ will annually advise OSM of any adjustments to the performance bond.

Paragraph C states that forfeiture of performance bonds will be in accordance with the State Program and subject to OSM concurrence.

Paragraph D clarifies that the performance bond does not meet the requirement for a Federal lease bond under 43 CFR Part 3474, or for the lessee protection bond required in certain circumstances by section 715 of SMCRA.

Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities, and Valid Existing Rights and Compatibility Determinations

Paragraph A.1 provides that a petition to designate areas of Federal lands as unsuitable for all or certain types of surface coal mining and reclamation operation will be filed with OSM for processing in accordance with 30 CFR 769, and that the Secretary reserves the authority to designate or terminate such designation.

Paragraph A.2 provides that DEQ and OSM will notify each other of any petition to designate lands as unsuitable that could impact adjacent Federal and non-federal lands, and solicit and consider each other's views on a petition. OSM will coordinate with the Federal land management agency with jurisdiction over the area covered by the petition, and will solicit comments. OSM and DEQ shall fully consider data, information, and recommendations of all agencies.

Paragraph B.1 provides that the Secretary will make the valid exiting rights (VER) determination for Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA. Where surface coal mining and reclamation operations would be conducted on both Federal and non-Federal lands within such areas, the Secretary will make the VER determination for the Federal lands and DEQ will make the VER determination for State and private lands.

Paragraph B.2 states that the Secretary will make VER determinations for Federal lands within the boundaries of any national forest where proposed surface coal mining and reclamation operations are prohibited or limited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b). OSM will process requests for determinations of compatibility under section 522(e)(2) of SMCRA and part 30 CFR 761.12(c).

Paragraph B.3 provides that DEQ will make the VER determination when a VER determination is requested for Federal lands protected under section 522(e)(3). DEQ will determine, in consultation with the State Historic Preservation Officer, whether any proposed operation will adversely affect any publicly-owned park or place listed on the NRHS.

Paragraph B.3 also states that surface coal mining and reclamation operations of Federal lands protected under section 522(e)(3) of SMCRA may be permitted if approved jointly by DEQ, and the Federal, State, or local agency with jurisdiction over the park or historic place. In these instances, DEQ will coordinate with any agency with jurisdiction over the publicly-owned park or historic place to develop mutually acceptable terms and conditions for incorporation into the permit in order to mitigate environmental impacts.

Paragraph B.4 provides that DEQ will process determinations of VER on Federal lands for all areas limited or prohibited by section 522(e)(4) and (5) of SMCRA as unsuitable for mining.

Paragraph B.5 states that for operations on Federal lands, whenever DEQ is responsible for making the VER determinations, DEQ will consult with OSM and any affected agency.

Article XI: Termination of the Agreement

Article XI specifies that the Agreement may be terminated as specified under 30 CFR 745.15.

Article XII: Reinstatement of the Agreement

Article XII provides that, if terminated, the Agreement may be reinstated under 30 CFR 745.16. That provision allows for reinstatement of a cooperative agreement upon application by the State after remedying the defects for which the agreement was terminated and the submission of evidence to the Secretary that the State can and will comply with all of the provisions of the Agreement.

Article XIII: Amendments to the Agreement

Article XIII provides that the Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

Paragraph A recognizes that the Secretary or the Governor may, from time to time, revise and promulgate new or revised performance or reclamation requirements or enforcement and administrative procedures. If it is determined to be necessary to keep this Agreement in force, each party shall change or revise its respective laws or regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR Part 732 for changes to the State Program and under the procedures of section 501 of SMCRA for changes to the Federal lands program.

Paragraph B requires that DEQ and OSM to provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

Article XV: Changes in Personnel and Organization

Paragraph A states that DEQ and OSM shall advise each other of changes in the organization, structure, functions, duties and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of the principal offices of the program. DEQ and OSM shall advise each other in writing of changes in the location of their respective offices, addresses, telephone numbers, as well as changes in the names, addresses, and telephone numbers of their respective personnel.

Paragraph B provides that if the State Act be amended to transfer administration of the State Act to another agency, all references to DEQ in this Agreement shall be deemed to apply to the successor regulatory agency as of the date of the transfer. The provisions in this Agreement shall thereafter apply to that agency.

Article XVI: Reservation of Rights

This agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than the Act and the State Program, including, but not limited to those listed in Appendix A of this Agreement.

III. Procedural Determinations

1. Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will amend the cooperative agreement between the Department of the Interior and the State of Montana. It will streamline the permitting process in Montana by delegating to Montana the sole responsibility to issue permits for coal mining and reclamation operations on Federal lands under the Federal lands program regulations. It will eliminate duplicative permitting requirements, thereby increasing governmental efficiency. The rule will also update the cooperative agreement to reflect current regulations and agency structures.

3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The rule only affects the State of Montana and the costs of carrying out the functions under the cooperative agreement are offset by grants from the Federal government.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because the rule does not impose any new requirements on the coal mining industry or consumers. The functions being performed by the State under the cooperative agreement are offset by grants from the Federal government.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

4. Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

5. Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule revises an existing cooperative agreement at the request of the State of Montana and will result in the delegation of authority to the State. A takings implication assessment is not required.

6. Executive Order 12612—Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. The rule revises an existing cooperative agreement at the request of the State of Montana and will result in the delegation of authority to the State. Therefore, a Federalism assessment is not required.

7. Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

9. National Environmental Policy Act

This rule has been reviewed by OSM and it has been determined to be categorically excluded from the NEPA process in accordance with the Departmental Manual 516 DM 6, Appendix 8.4(B)(21).

10. Author

The principal author of this final rule is Ranvir Singh, P.E., Western Regional Coordinating Center, 1999 Broadway, Suite 3320, Denver, CO 80202–5733.

List of Subjects in 30 CFR Part 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 15, 1998.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

Accordingly, 30 CFR Part 926 is amended as follows:

PART 926—MONTANA

1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 926.30 is revised to read as follows:

§ 926.30 State-Federal cooperative agreement.

COOPERATIVE AGREEMENT

The Governor of the State of Montana (Governor) and the Secretary of the Department of the Interior (Secretary) enter into a State-Federal Cooperative Agreement (Agreement) to read as follows:

Article I: Authority, Purposes, and Responsible Agencies

A. Authority

This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary, under 30 U.S.C. 1253, to elect to enter into an agreement for State control and

regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of coal exploration operations [1] not subject to 43 CFR Group 3400, and surface coal mining and reclamation operations and activities in Montana on Federal lands consistent with SMCRA, the Federal lands program (30 CFR) Chapter VII, Subchapter D), and the Montana State Program (State Program), including among other things, the Montana Strip and Underground Mine Reclamation Act, Part 2, Chapter 4, Title 82, Montana Code Annotated (State Act or MCA).

B. Purposes

The purposes of the Agreement are to (1) foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations on Federal lands and coal exploration operations not subject to 43 CFR Group 3400; (2) minimize intergovernmental overlap and duplication; and (3) provide effective and uniform application of the State Program on all non-Indian lands in Montana.

C. Responsible Agencies

The Montana Department of Environmental Quality (DEQ) shall administer this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSM) shall administer this Agreement on behalf of the Secretary.

Article II: Effective Date

Upon signing by the Secretary and the Governor, this Agreement will take effect 30 days after final publication as a rule making in the **Federal Register**.[2] This Agreement shall remain in effect until terminated as provided in Article XI.

Article III: Definitions

The term and phrases used in this Agreement, except the term "permit application package (PAP)," will be given the meanings set forth in SMCRA, 30 CFR Parts 700, 701, 740, and 761, and the State Program, including the State Act and the regulations promulgated pursuant to the State Act. Where there is a conflict between the above-referenced State and Federal definitions, the definitions used in the State Program will apply, unless otherwise required by Federal regulation.

The term "permit application package (PAP)" for the purposes of this Agreement, means a proposal to conduct surface coal mining and reclamation operations on Federal lands, including an application for a permit, permit revision, permit amendment, or permit renewal, and all information required by SMCRA, the Federal regulations, the State Program, this Agreement, and all other applicable laws and regulations, including, with respect to leased Federal coal, the Mineral Leasing Act of 1920 (MLA) and its implementing regulations.

[1] The term "Exploration Operations" is referred to as "Prospecting" in the Montana State Program.

[2] See explanation in Article II at 46 FR 20983, April 8, 1981.

Article IV: Applicability

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the State Program are applicable to Federal lands in Montana except as otherwise stated in this Agreement, SMCRA, 30 CFR 740.4, 740.11(a), and 745.13 or other applicable Federal laws, Executive Orders, or regulations.

Article V: Requirements for the Agreement

The Governor and the Secretary affirm that they will comply with all provisions of this Agreement.

A. Funds

1. The State shall devote adequate funds to the administration and enforcement on Federal lands in Montana of the requirements contained in the State Program. If the State complies with the terms of this Agreement, and if necessary funds have been appropriated, OSM shall reimburse the State as provided in section 705(c) of SMCRA and 30 CFR 735.16 for the costs associated with carrying out responsibilities under this Agreement. The amount of such funds shall be determined in accordance with the provisions of Chapter 3–10 and Appendix 111 of the Federal Assistance Manual.

2. If DEQ applies for a grant but sufficient funds have not been appropriated to OSM, OSM and DEQ shall promptly meet to decide on appropriate measures that will insure that surface coal mining and reclamation operations on Federal lands in Montana are regulated in accordance with the State Program.

3. Funds provided to DEQ under this Agreement will be adjusted in accordance with the program income provisions of 43 CFR Part 12.

B. Reports and Records

1. DEQ shall submit annual reports to OSM containing information with respect to its compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). Upon request, DEQ and OSM shall exchange, except where prohibited by Federal or State law, information developed under this Agreement. OSM shall provide DEQ with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DEQ comments on the report will be attached before being sent to the Congress or other interested parties.

C. Personnel

DEQ shall maintain the necessary personnel to fully implement this Agreement in accordance with the provisions of SMCRA, the Federal lands program, and the State Program.

D. Equipment and Facilities

DEQ shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

E. Permit Application Fees and Civil Penalties

The amount of the fee accompanying the PAP shall be determined in accordance with section 82–4–223(1), of MCA, and the applicable provisions of Federal law. All permit fees and civil penalty fines shall be accounted for in accordance with the provisions of 43 CFR Part 12. Permit fees will be considered program income. Civil penalties will not be considered program income. The Financial Status Report submitted pursuant to 30 CFR 735.26 shall include the amount of the permit application fees collected and attributable to Federal lands during the State fiscal year.

Article VI: Review and Approval of the PAP or Application for Transfer, Assignment or Sale of Permit Rights (Transfer Application)

A. Receipt and Distribution of the PAP or Transfer Application

1. DEQ shall require an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands to submit to DEQ the appropriate number of copies of a PAP or transfer application. The PAP or transfer application shall meet the requirements of 30 CFR Part 740, shall be in the form required by DEQ, and shall contain, at a minimum, the information required by 30 CFR 740.13(b), including:

a. Information necessary for DEQ to make a determination of compliance with the State Program;

b. Any supplement information required by OSM, the Bureau of Land Management (BLM), and the Federal Land Management Agency. This information shall be appropriate and adequate for OSM and the appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA,the MLA, as amended, the Federal lands program, and other Federal laws, Executive Orders, and regulations which these agencies administer.

2. Except as otherwise agreed in writing by Federal agencies, upon receipt of a PAP or transfer application, DEQ shall ensure that an appropriate number of copies of the PAP or transfer application are provided to OSM, Federal land management agency, and any other appropriate Federal agency.

B. Review of the PAP or Transfer Application

1. DEQ is responsible for:

a. As authorized by 30 CFR 740.4(c),

(1) Being the primary point of contact with the applicant regarding the review of the PAP or transfer application and communications regarding all decisions and determinations with respect to the PAP or transfer application;

(2) Analysis, review, and approval, conditional approval, or disapproval of the permit application component of the PAP or the transfer application for surface coal mining and reclamation operations on Federal lands in Montana;

(3) Obtaining the comments and findings of Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP or transfer application, unless otherwise agreed in writing by Federal agencies. DEQ shall request such Federal agencies to provide to

DEQ their requests for additional information or their findings within 45 days of the receipt of the request;

(4) Obtaining OSM's determination whether the PAP involving leased Federal coal constitutes a mining plan modification under 30 CFR 746.18, and informing the applicant of such determination;

(5) Consulting with and obtaining the consent, as necessary, of the Federal land management agency pursuant to 30 CFR 740.4(c)(2), with respect to post-mining land use and to any special requirements necessary to protect non-coal resources of the areas that will be affected by surface coal mining and reclamation operations;

(6) Consulting with and obtaining the consent, as necessary, of BLM pursuant to 30 CFR 740.4(c)(3), with respect to requirements relating to the development, production and recovery of mineral resources on lands affected by surface coal mining and reclamation operations involving leased Federal coal pursuant to 43 CFR Group 3400;

(7) Approval and release of performance bonds pursuant to Article IX.B, and approval and maintenance of liability insurance;

(8) Review and approval of exploration operations not subject to the requirements of 43 CFR Group 3400, as provided in 30 CFR 740.4(c)(6).

b. In addition, where a mining plan action is required under 30 CFR Part 746, as determined by OSM:

(1) Preparation of documentation to comply with the requirements of National Environmental Policy Act (NEPA). However, OSM will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7)(l) through (vii). DEQ and OSM shall coordinate and cooperate with each other so that, if possible, one Environmental Assessment or Environmental Impact Statement is produced to comply with NEPA and the Montana Environmental Policy Act (MEPA);

(2) Preparation of a State decision package, which includes written findings indicating that the permit application component of the PAP is in compliance with the terms of the State Program, a technical analysis of the PAP, and supporting documentation.

2. OSM is responsible for:

a. When the PAP includes Federal lands,

(1) Making determinations and evaluations for NEPA compliance documents as required by 30 CFR 740.4(c)(7)(l) through (vii);

(2) Reviewing the appropriate portions of the PAP for compliance with the non-delegable responsibilities of the Secretary pursuant to SMCRA and 30 CFR 745.13, and for compliance with the requirements of other Federal laws, Executive Orders, and regulations;

(3) Consulting with the Federal land management agency, and determining whether the PAP constitutes a mining plan modification under 30 CFR 746.18, and informing DEQ, whenever practical within 30 days of receiving a copy of the PAP for operations on Federal lands, of such determination;

(4) Exercising its responsibilities in a timely manner governed, to the extent possible, by the deadlines established in the State Program;

(5) Assisting DEQ, upon request, in carrying out its responsibilities by:

(a) Coordinating resolution of conflicts between DEQ and other Federal agencies in a timely manner;

(b) Obtaining comments and findings of other Federal agencies with jurisdiction or responsibility over Federal lands;

(c) Scheduling joint meetings between DEQ and Federal agencies;

(d) Reviewing and analyzing the PAP, to the extent possible, and providing to DEQ the work product within 50 days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSM and DEQ; and

(e) Providing technical assistance, if available OSM resources allow.

b. In addition, where a mining plan action is required pursuant to 30 CFR Part 746:

(1) Consulting with and obtaining the concurrences of BLM, the Federal land management agency, and any other Federal agency, as necessary, prior to making recommendation to the Secretary concerning approval of the mining plan;

(2) Upon notification from the DEQ that certain permit conditions required by the Federal land management agency are not incorporated in the State permit, OSM will determine whether such conditions are necessary. When OSM believes the conditions are necessary, OSM will work with the Federal land management agency to find another means to resolve the issue and, where appropriate, OSM will facilitate the attachment of conditions to the appropriate Federal authorizations; and

(3) Providing a decision document to the Secretary recommending approval, disapproval, or conditional approval of mining plans or modifications thereof.

3. The Secretary:

a. Shall concurrently carry out his responsibilities that cannot be delegated to DEQ pursuant to SMCRA and 30 CFR 745.13, the Federal lands program, the MLA, NEPA, this Agreement, and other applicable Federal laws including, but not limited to, those listed in Appendix A. The Secretary shall carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the State Program;

b. Reserves the right to act independently of DEQ to carry out his responsibilities under laws other than SMCRA, and where Federal law permits, to delegate some of the responsibilities to OSM; and

c. Shall be responsible for approval, disapproval, or conditional approval of mining plans and modifications thereof with respect to lands containing leased Federal coal in accordance with 30 CFR 740.4(a)(1).

4. Coordination:

a. As a matter of practice, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of a PAP or transfer application with respect to matters covered by the State Program.

b. OSM and DEQ shall coordinate with each other during the review process of a PAP or transfer application as needed.

c. OSM and DEQ may request and schedule meetings with the applicant with adequate advance notice to each other.

d. DEQ shall keep OSM informed of findings made during the review process which bear on the responsibilities of OSM or other Federal agencies. DEQ shall send to OSM copies of any correspondence with the applicant and any information received from the applicant regarding the PAP or transfer application. OSM shall send to DEQ copies of all OSM correspondence with the applicant and any other information received from the applicant which may have a bearing on the PAP or transfer application. Any conflicts or differences of opinions that may develop during the review process should be resolved at the lowest possible staff level.

e. OSM shall have access to DEQ files concerning operations on Federal lands.

f. Where a mining plan action is required pursuant to 30 CFR Part 746, OSM and DEQ shall develop a work plan and schedule for the PAP review and each will designate a project leader. The project leaders will serve as the primary points of contact between OSM and DEQ throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSM shall furnish DEQ with its review comments on the PAP and specify any requirements for additional data. DEQ shall provide OSM all available information that may assist OSM in preparing any findings for the mining plan action.

g. On matters concerned exclusively with regulations under 43 CFR Group 3400, BLM will be the primary contact with the applicant and shall inform DEQ of its actions and provide DEQ with a copy of documentation on all decisions.

h. Responsibilities and decisions which can be delegated to DEQ under applicable Federal laws other than SMCRA may be specified in working agreements between OSM and DEQ, with the concurrence of any Federal agency involved, and without amendment to this Agreement.

i. In the case that valid existing rights (VER) are determined to exist on Federal lands under section 522(e)(3) of SMCRA where the proposed operation will adversely affect either a publicly-owned park, or a historic place listed in the National Register of Historic Sites, DEQ shall work, respectively, with the agency with jurisdiction over the publicly-owned park or the agency with jurisdiction over the historic place, to develop mutually acceptable terms and conditions for incorporation into the permit to mitigate adverse impacts.

C. Approval of the PAP or Transfer Application

1. DEQ shall make a decision on approval, conditional approval, or disapproval of the permit application component of the PAP or the transfer application on Federal lands.

2. DEQ must consider the comments of Federal agencies in the context of permit issuance and will document these comments in the record of permit decisions. To the extent allowed by Montana law, permits issued by DEQ will include terms and conditions imposed by the Federal land management agency pursuant to applicable Federal laws and regulations other than SMCRA, in accordance with 30 CFR 740.13(c)(1). When Federal agencies

recommend permit conditions and these conditions are not adopted by DEQ. DEQ will provide OSM with documentation as to why they were not incorporated as permit conditions.

3. When a mining plan action is required pursuant to 30 CFR Part 746, DEQ may make a decision on approval, conditional approval, or disapproval of the permit application component of the PAP on Federal lands in accordance with the State Program prior to the necessary Secretarial decision on the mining plan, provided that DEQ advises the applicant that Secretarial approval of the mining plan action must be obtained before the applicant may conduct surface coal mining and reclamation operations on the Federal lands. To the extent allowed by the State law, DEQ shall reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

4. After making its decision on the permit application component of the PAP or transfer application, DEQ shall send a copy of the signed permit form and State decision document to the applicant, OSM, the Federal land management agency, and any agency with jurisdiction over a publicly-owned park, or historic property included in the NRHS which would be adversely affected by the surface coal mining and reclamation operations.

Article VII: Inspections

A. DEQ shall conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the approved State Program.

B. DEQ shall, subsequent to conducting any inspection on Federal lands, file with OSM's appropriate Field Office an inspection report describing: (1) the general conditions of the lands under the lease, permit, or license; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance standards and reclamation requirements.

C. DEQ will be the point of contact and inspection authority in dealing with the operator concerning operations and compliance with requirements covered by this Agreement, except as described in this Agreement and in the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

D. Authorized representatives of the Secretary may conduct any inspections necessary to comply with 30 CFR Parts 842 and 843, and with the Secretary's obligations under laws other than SMCRA.

E. OSM shall give DEQ reasonable notice of its intent to conduct an inspection in order to provide State inspectors with an opportunity to join in the inspection. When OSM is responding to a citizen complaint supplying adequate proof of an imminent danger to the public health and safety, or a significant imminent environmental harm to land, air, or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it shall contact DEQ no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger to the public health and safety, or a significant imminent environmental harm to land, air, or water resources, must be referred initially to DEQ for action. The Secretary reserves the right to conduct inspections without prior notice to DEQ, if necessary, to carry out his responsibilities under SMCRA.

Article VIII: Enforcement

A. DEQ shall have primary enforcement authority under SMCRA concerning compliance with the requirements of this Agreement and the State Program in accordance with 30 CFR 740.4(c)(5) and 740.17(a)(2). Enforcement authority given to the Secretary under SMCRA, and its implementing regulations, or other Federal laws and Executive Orders, including, but not limited to, those listed in Appendix A, is reserved to the Secretary.

B. During any joint inspection by OSM and DEQ, DEQ will have primary responsibility for enforcement procedures, including issuance of cessation orders and notices of violation. DEQ shall consult with OSM prior to issuance of any decision to suspend, rescind or revoke a permit on Federal lands. DEQ shall notify BLM of any suspension, rescission or revocation of a permit containing leased Federal coal pursuant to 30 CFR 740.13(f)(2).

C. During any inspection made solely by OSM or any joint inspection where DEQ an OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 842, 843, 845 and 846.

D. DEQ and OSM shall promptly notify each other of all violations and of all actions taken with respect to such violations.

E. Personnel of DEQ and OSM shall be mutually available to serve as witnesses in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than SMCRA.

Article IX: Bonds

A. DEQ and the Secretary shall require all operators on Federal lands to submit a single performance bond jointly payable to both the United States and DEQ. The board shall be of sufficient amount to cover the operator's responsibilities under SMCRA and the State Program. The bond shall be conditioned upon continued compliance with all requirements of SMCRA, 30 CFR Chapter VII, the State Program, and the permit. Such bond shall provide that if this Agreement is terminated under the provisions of 30 CFR 745.15, the portion of the bond covering the Federal lands shall be payable only to the United States.

B. DEQ will have primary responsibility for the approval and release of performance bonds required for surface coal mining and reclamation operations on Federal lands. However, release of a performance bond on lands subject to an approved mining plan requires the concurrence of OSM as provided in 30 CFR 740.15(d)(3). Prior to such concurrence, OSM shall coordinate with other Federal agencies having the authority over the lands involved. DEQ shall annually advice OSM of adjustments to the performance bond.

C. Performance bonds will be subject to forfeiture with he concurrence of OSM, in accordance with the procedures and requirements of the State Program. OSM may not withhold its concurrence unless DEQ's forfeiture decision is not in accordance with the requirements and procedures of the State program.

D. Submission of a performance bond does not satisfy the requirements for either a Federal lease bond required by 43 CFR Part 3474 or a lessee protection bond which is required in certain circumstances by section 715 of SMCRA.

Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities, and Valid Existing Rights and Compatibility Determinations

A. Unsuitability Petitions

1. Authority to designate or terminate the designation of areas of Federal lands as unsuitable for mining is reserved to the Secretary. Unsuitability petitions shall be filed with OSM and would be processed in accordance with 30 CFR 769.

2. When either DEQ or OSM receives a petition that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of receipt of the petition and the anticipated schedule for reaching a decision. OSM shall coordinate with and solicit comments from the applicable Federal land management agency. OSM and DEQ shall fully consider data, information, and recommendations of all agencies.

B. Valid Existing Rights (VER) and Compatibility Determinations

The following actions will be taken when requests for determinations of VER pursuant to section 522(e) of SMCRA, or for determinations of compatibility pursuant to section 522(e)(2) of SMCRA are received:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA, the Secretary will make the VER determination. If surface coal mining and reclamation operations would be conducted on both Federal and non-Federal lands within such areas, the Secretary will make the VER determination for the Federal lands and DEQ will make the VER determination for State and private lands.

2. For Federal lands within the boundaries of any national forest where proposed surface coal mining and reclamation operations are prohibited or limited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b), the Secretary will make VER determinations. OSM will process requests for determinations of compatibility under section 522(e)(2) of SMCRA and part 30 CFR 761.12(c).

3. Where a VER determination is requested for Federal lands protected under section 522(e)(3), DEQ will make the VER

determination. DEQ will determine, in consultation with the State Historic Preservation Officer, whether any proposed operation will adversely affect any publicly-owned park or historic place listed on the National Register of Historic Sites (NRHS).

Surface coal mining and reclamation operations of Federal lands protected under section 522(e)(3) of SMCRA may be permitted if approved jointly by DEQ, and the Federal, State, or local agency with jurisdiction over the park or historic place. DEQ will coordinate with any agency with jurisdiction over the publicly-owned park or historic place to develop mutually acceptable terms and conditions for incorporation into the permit in order to mitigate environmental impacts.

4. DEQ will process determinations of VER on Federal lands for all areas limited or prohibited by section 522(e)(4) and (5) of SMCRA as unsuitable for mining.

5. For operations on Federal lands, whenever DEQ is responsible for making the VER determinations, DEQ will consult with OSM and any affected agency.

Article XI: Termination of the Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of the Agreement

If this Agreement has been terminated in whole or part, it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendments of the Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

A. The Secretary or the State may, from time to time, revise and promulgate new or revised performance or reclamation requirements or enforcement and administrative procedures. Each party shall, if it is determined to be necessary to keep this Agreement in force, change or revise its respective laws or regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR Part 732 for changes to the State Program and under the procedures of section 501 of SMCRA for changes to the Federal lands program.

B. DEQ and OSM shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

Article XV: Changes in Personnel and Organization

A. DEQ and OSM shall, consistent with 30 CFR Part 745, advise each other of changes in the organization, structure, functions, duties and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of the principal offices of the program. DEQ and OSM shall advise each other in writing of changes in the location of their respective offices, addresses, telephone numbers, as well as changes in the names, addresses, and telephone numbers of their respective personnel.

B. Should the State Act be amended to transfer administration of the State Act to another agency, all references to DEQ in this Agreement shall be deemed to apply to the successor regulatory agency as of the date of the transfer. The provisions in this Agreement shall thereafter apply to that agency.

Article XVI: Reservation of Rights

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under laws other than the Act and the State Program, including, but not limited to those listed in Appendix A.

Approved:

Dated: May 8, 1998.

Marc Racicot,

Governor of Montana.

Dated: July 7, 1998.

Bruce Babbitt,

Secretary of the Interior.

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR Part 3480.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR Part 1500.

4. The Endangered Species Act, 16 U.S.C. 1531 *eq seq.*, and implementing regulations, including 50 CFR Part 402.

5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR Part 800.

6. Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 *et seq.*

7. The American Indian Religious Freedom Act, 42 U.S.C. 1986 *et seq.*

8. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa *et seq.*

9. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

10. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

11. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

12. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

13. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

14. Executive Order 11988 (May 24, 1977), for flood plain protection.

15. Executive Order 11990 (May 24, 1977), for wetlands protection.

16. Executive Order 12898 (February 11, 1994) for Federal Actions to Address Environmental Justice on Minority Populations and Low Income Populations.

17. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

18. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

19. The Constitution of the United States.

20. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

21. 30 CFR Chapter VII.

22. The Constitution of the State of Montana.

23. Montana Strip and Underground Mine Reclamation Act (MSUMRA), Part 2, Chapter 4, Title 82, Montana Code Annotated.

24. Title 26, Chapter 4, Subchapter 3, Administrative Rules of Montana.

25. Montana Environmental Policy Act (MEPA).

[FR Doc. 98–20195 Filed 7–29–98; 8:45 am]

BILLING CODE 4310–05–M

federal register

Thursday
July 30, 1998

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56, 57, and 77
Safety Standards for Surface Haulage; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, and 77

Safety Standards for Surface Haulage

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: MSHA is considering rulemaking to address factors believed to cause or contribute to the occurrence or severity of surface haulage accidents. Surface haulage equipment accidents are a leading safety concern in the mining industry. MSHA is sharing its ideas and seeking suggestions to reduce these accidents.

DATES: Submit comments and requests for meetings on or before August 31, 1998.

ADDRESSES: A copy of this notice may be obtained from the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203 and from any MSHA district office. Send mail comments to MSHA, Office of Standards, Regulations, and Variances, at the above address. Commenters are encouraged to submit comments on a computer disk along with an original hard copy. Send comments by electronic mail to comments@msha.gov or by facsimile to 703–235–5551.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; MSHA, Office of Standards, Regulations, and Variances; 703–235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

Thirty percent of fatal mining accidents at surface mines and surface areas of underground mines over the past three years involved surface haulage equipment. Further, this equipment was cited as the primary cause in 40 percent of the fatalities last year in the metal and nonmetal mining industry.

MSHA examined approximately 8,000 surface accidents (from 1987 to 1996) involving powered haulage equipment which resulted in either fatalities or lost work days. During that time, 120 miners were killed and 1,377 were injured due to three causes or contributing factors: unused or inadequate occupant restraint systems on the equipment; blind areas on self-propelled mobile equipment; and lack of adequate illumination.

II. Discussion of the Contributing Factors

Restraint Systems

The Agency is considering a requirement for all vehicles to have restraint systems for the lower torso (seat belts) for both equipment operators and passengers, whether or not the vehicle has Roll Over Protective Structures (ROPS).

For newly manufactured equipment, except for on-highway trucks, the Agency is considering requiring upper torso restraint systems (e.g., harnesses or equivalent) and an interlock system to prevent movement of the vehicle unless the equipment operator's restraint system is engaged. As an added safety feature, a light on the cab exterior could indicate when the equipment operator's restraint system is engaged. The Agency is also considering whether to extend the metal/nonmetal requirement that grader operators wear safety lines and a harness when operating the grader from a standing position to coal mines, instead of a restraint system with interlock.

Issues to be considered include (1) requiring use of an interlock system together with a mandated seat belt rule; (2) whether it is safe to use restraint systems on vehicles not equipped with ROPS; (3) whether there is a need to require restraint systems for passenger seats; and (4) whether upper torso restraints would result in more neck injuries. Specific examples, including documented evidence, if available, would be useful.

Illumination

Illumination deficiencies contributed to a number of surface haulage accidents because of problems associated with inability to see victims, judge distances, clearly see berms and slope edges, and restricted vision during inclement weather such as fog.

MSHA is considering the following requirements for illumination:

- Permanently mounted lighting for pre-operational examination of equipment;
- Automatic backup lights that illuminate the rear-tire-to-ground contact area;
- Ground surface lighting for certain excavating equipment operating in areas with uneven or irregular surfaces;
- Lighting necessary to see the road ahead and objects in blind areas; and
- For off-highway equipment only, lighting on steps and hand grip areas used to get in and out of the operator's compartment, and to illuminate the ground area at the base of the steps.

Blind Areas

Surface haulage equipment involved in most fatal accidents include rear dump trucks and articulated front-end loaders; they are also the most used. The Agency is considering that this surface haulage equipment should: (1) Have a system, such as video cameras, to enable the operator to see blind areas; (2) have an automatic sensor to detect objects or people in the blind area; (3) have a signal to alert people that they are in blind areas; and (4) provide a signal to the operator when objects or people have been sensed. The sensor could use infrared, radio frequency, Doppler radar, or equivalent technology, so long as it emits a signal. In order to be effective, object sensors would have to automatically activate a viewing device (such as a video camera) and monitor when an object is sensed. When a spotter is used to assist a rear dump truck operator, two-way electronic communication between the spotter and the operator is necessary for adequate protection.

MSHA is considering a performance approach where mine operators would be required to eliminate left, right, and front blind areas on all rear dump trucks and articulated front-end loaders. The Agency is considering a requirement that all blind areas, including the rear, must be eliminated on off-highway rear dump trucks and articulated front-end loaders.

To enhance the visibility of smaller vehicles, such as service trucks, pick-ups, and other vehicles that may operate in close proximity to large surface haulage equipment, MSHA is considering a requirement for flashing lights and pole or antenna-mounted flags on these vehicles. Experience has shown that these smaller vehicles are often obscured from the field of view of operators of larger equipment.

List of Subjects in 30 CFR Parts 56, 57, and 77

Mine safety and health, Surface mining.

Dated: July 24, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–20351 Filed 7–29–98; 8:45 am]

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federal register

Thursday
July 30, 1998

Part IV

The President

Executive Order 13094—Proliferation of Weapons of Mass Destruction

Federal Register
Vol. 63, No. 146
Thursday, July 30, 1998

Presidential Documents

Title 3—

The President

Executive Order 13094 of July 28, 1998

Proliferation of Weapons of Mass Destruction

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*) (AECA), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, in order to take additional steps with respect to the proliferation of weapons of mass destruction and means of delivering them and the national emergency described and declared in Executive Order 12938 of November 14, 1994, hereby order:

Section 1. *Amendment of Executive Order 12938.*

(a) Section 4 of Executive Order 12938 of November 14, 1994, is revised to read as follows:

"**Sec. 4.** *Measures Against Foreign Persons.*

(a) *Determination by Secretary of State; Imposition of Measures.* Except to the extent provided in section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)), where applicable, if the Secretary of State determines that a foreign person, on or after November 16, 1990, the effective date of Executive Order 12735, the predecessor order to Executive Order 12938, has materially contributed or attempted to contribute materially to the efforts of any foreign country, project, or entity of proliferation concern to use, acquire, design, develop, produce, or stockpile weapons of mass destruction or missiles capable of delivering such weapons, the measures set forth in subsections (b), (c), and (d) of this section shall be imposed on that foreign person to the extent determined by the Secretary of State in consultation with the implementing agency and other relevant agencies. Nothing in this section is intended to preclude the imposition on that foreign person of other measures or sanctions available under this order or under other authorities.

(b) *Procurement Ban.* No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods, technology, or services from any foreign person described in subsection (a) of this section.

(c) *Assistance Ban.* No department or agency of the United States Government may provide any assistance to any foreign person described in subsection (a) of this section, and no such foreign person shall be eligible to participate in any assistance program of the United States Government.

(d) *Import Ban.* The Secretary of the Treasury shall prohibit the importation into the United States of goods, technology, or services produced or provided by any foreign person described in subsection (a) of this section, other than information or informational materials within the meaning of section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

(e) *Termination.* Measures pursuant to this section may be terminated against a foreign person if the Secretary of State determines that there is reliable evidence that such foreign person has ceased all activities referred to in subsection (a) of this section.

(f) *Exceptions.* Departments and agencies of the United States Government, acting in consultation with the Secretary of State, may, by license, regulation, order, directive, exception, or otherwise, provide for:

(i) Procurement contracts necessary to meet U.S. operational military requirements or requirements under defense production agreements; intelligence requirements; sole source suppliers, spare parts, components, routine servicing and maintenance of products for the United States Government; and medical and humanitarian items; and

(ii) Performance pursuant to contracts in force on the effective date of this order under appropriate circumstances."

(b) Section 6 of Executive Order 12938 of November 14, 1994, is amended by deleting "4(c)" and inserting "4(e)" in lieu thereof.

Sec. 2. *Preservation of Authorities.* Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under the authority of IEEPA, AECA, the Nuclear Non-Proliferation Act of 1978, the Nuclear Proliferation Prevention Act of 1994, the Atomic Energy Act, the Export Administration Act (50 U.S.C. App. 2401 *et seq.*), Executive Order 12730 of September 30, 1990, Executive Order 12735 of November 16, 1990, Executive Order 12924 of August 18, 1994, Executive Order 12930 of September 29, 1994, or Executive Order 12938 of November 14, 1994.

Sec. 3. *Judicial Review.* Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 4. *Effective Date.*

(a) This order is effective at 12:01 a.m. eastern daylight time on July 29, 1998.

(b) This order shall be transmitted to the Congress and published in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
July 28, 1998.

[FR Doc. 98–20590
Filed 7–29–98; 10:40 am]
Billing code 3195–01–P

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