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WHERE: Ralph H. Metcalfe Federal Building
Conference Room 328
77 W. Jackson
Chicago, IL
Federal Information Center
RESERVATIONS: 1–800–688–9889 x0

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–056–13]

Mediterranean Fruit Fly; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding a portion of Manatee County, FL, to the list of quarantined areas and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the continental United States.

DATES: Interim rule effective June 5, 1998. Consideration will be given only to comments received on or before August 10, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–056–13, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–056–13. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The regulations in 7 CFR part 301.78 through 301.78–10 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

In an interim rule effective on April 17, 1998, and published in the **Federal Register** on April 23, 1998 (63 FR 20053–20054, Docket No. 98–046–1), we added a portion of Dade County, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from the quarantined area. In a second interim rule effective on May 5, 1998, and published in the **Federal Register** on May 11, 1998 (63 FR 25748–25750, Docket No. 97–056–11), we expanded the quarantined area in Dade County, FL. In a third interim rule effective May 13, 1998, and published in the **Federal Register** on May 19, 1998 (63 FR 27439–27440, Docket No. 97–056–12), we added a portion of Lake and Marion Counties, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from the quarantined area.

Recent trapping surveys by inspectors of Florida State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of Medfly has occurred in a portion of Manatee County, FL.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately four-and-one-half miles from the detection sites. The boundary lines may vary due to factors such as the location of Medfly host material, the location of transportation centers such as bus stations and airports, the patterns of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78–3 by adding a portion of Manatee County, FL, to the list of quarantined areas. The new quarantined area is described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by adding a portion of Manatee County, FL, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Medfly into noninfested areas of the United States.

This interim rule affects the interstate movement of regulated articles from the quarantined area in Manatee County, FL. We estimate that there are 225 entities in the quarantined area of Manatee County, FL, that sell, process, handle, or move regulated articles; this estimate includes 82 commercial growers, 1 transportation terminal, 37 fruit stands, 8 flea markets, 1 processing plant, 14 vegetable packinghouses, 20 farmer's markets, 15 mobile vendors, and 47 food stores. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of the 225 entities are small in size, since the overwhelming majority of businesses in Florida, as well as the rest of the United States, are small entities by SBA standards.

We believe that few, if any, of the 225 entities will be significantly affected by the quarantine action taken in this interim rule because few of these types of entities move regulated articles outside the State of Florida during the normal course of their business. Nor do consumers of products purchased from these types of entities generally move those products interstate. The effect on the small entities that do move regulated articles interstate from the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow those small entities to move regulated articles interstate with very little additional costs. Also, many of these types of small entities sell other items in addition to the regulated articles, so the effect, if any, of the interim rule should be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The site specific environmental assessment and programmatic Medfly environmental impact statement provide a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c), the entry for Florida is amended by adding an entry for Manatee County, FL, to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

FLORIDA

* * * * *

Manatee County. That portion of Manatee County beginning at the intersection of Interstate Highway 75 and Linger Lodge Road; then west along Linger Lodge Road, along the section line, to Whitfield Avenue; then west along Whitfield Avenue, along the section line, to 69th Avenue West; then west along 69th Avenue West to Bay Drive; then west along Bay Drive to the Sarasota Bay; then north along the shoreline of the Sarasota Bay, including Tidy Island, Cortez, Perico Island, and Mead Point; then across the Manatee River, including Snead Island, Little Bird Key and crossing Terra Ceia Bay to 33rd Street West; then north along the southern shoreline of the Terra Ceia Bay to the Terra Ceia River; then along the eastern shoreline of the Terra Ceia River to Interstate Highway 275; then east along Interstate Highway 275 to Interstate Highway 75; then south along Interstate Highway 75 to 69th Street East; then east along 69th Street East to its end; then south along Erie Road to its end; then directly south along an imaginary line to the Manatee River Basin; then west along the northern shoreline of the Manatee River Basin to Interstate Highway 75; then south along Interstate Highway 75 to the point of beginning.

Done in Washington, DC, this 5th day of June 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–15580 Filed 6–10–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

8 CFR Part 3

[EOIR No. 120F; AG Order No. 2163–98]

RIN 125–AA21

Executive Office for Immigration Review; Board of Immigration Appeals: En Banc Procedures

AGENCY: Executive Office for Immigration Review; Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 8 CFR part 3 by revising the en banc decision procedures of the Board of Immigration Appeals. This rule streamlines the Board's en banc process by permitting a majority of permanent Board Members or the Chairman to designate en banc cases to be heard by nine-member, limited en banc panels.

DATES: This final rule is effective June 11, 1998.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, (703) 305–0470.

SUPPLEMENTARY INFORMATION: This regulation revises and streamlines the en banc procedures of the Board of Immigration Appeals. The current regulation requires that the entire 15-member Board decide each en banc case. While this system has served the Board well in the past by promoting thoughtful decision-making and permitting each Board Member to participate in important precedent setting decisions, with the expansion of the Board to 12 members and most recently to 15 members, this procedure has become cumbersome and time-consuming.

This rule streamlines the Board's en banc process by permitting a majority of permanent Board Members or the Chairman to designate en banc cases to be heard by nine-members, limited en banc panels. Each limited en banc panel shall contain the Chairman or Vice Chairman (as decided by the Chairman). If the Chairman and Vice Chairman are both disqualified in a particular case, then the most senior remaining permanent Board Member who is not disqualified shall sit on the limited en banc panel as the Presiding Board Member. If the Chairman and Vice Chairman are both unavailable in a particular case for reasons other than disqualification, then the Chairman shall designate a Presiding Board Member to sit on the limited en banc panel. If the Chairman is unavailable and disqualified, then the Vice Chairman, if unavailable and not disqualified, shall designate a presiding Board Member to sit on the limited en banc panel. If the case was considered or decided by a three-member panel, the limited en banc panel shall also contain all available Board Members who considered or decided that case as part of a three-member panel. The remaining members of each limited en banc panel will be randomly selected from among the permanent Board Members. In light of the Board's increasing membership and caseload, these changes are necessary to maintain an effective, efficient system of appellate adjudication.

Generally, each limited en banc panel would consider an individual case. However, the Chairman could refer a group of cases to the same limited en banc panel. It is expected that such authority would be used when the Board has a group of cases with related issues pending before it. To maintain consistency and uniformity among limited en banc panel decisions, the rule provides for referral of any limited en banc panel decision to the full Board en banc upon a majority vote of the permanent Board Members or by direction of the Chairman. This rule does not change the requirement of a majority vote of the permanent Board Members to designate a decision of the Board as a published precedent. The rule also makes certain technical and administrative changes, such as recognizing the existing position of Vice Chairman of the Board and designating retired Board Members, retired Immigration Judges, and Administrative Law Judges as persons eligible to serve as temporary Board Members. Currently, only sitting Immigration Judges can serve in this capacity. These temporary appointments are intended to assist the Board when extenuating circumstances arise, or in the absence of permanent Members or in other situations in which the temporary appointment of qualified and experienced adjudicators will allow the Board to efficiently and effectively handle its caseload.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is not necessary because this rule relates to internal agency procedure and practice.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule affects only individuals in immigration proceedings before the Executive Office for Immigration Review whose appeals are decided by the Board of Immigration Appeals. Therefore, this rule does not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. This rule falls within a category of actions that the Office of Management and Budget has determined not to constitute "significant regulatory actions" under § 3(f) of Executive Order 12866, Regulatory Planning and Review, and, accordingly, it has not been reviewed by OMB.

Executive Order 12612

This regulation 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 section 6 of Executive Order 12612, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

The rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration, Lawyers, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.1 is amended by revising paragraph (a)(1) and adding paragraphs (a) (4), (5) and (6) to read as follows:

§ 3.1 General authorities.

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review. The Board shall consist of a Chairman, a Vice Chairman, and thirteen other members. The Board Members shall exercise their independent judgment and discretion in the cases coming before the Board. A vacancy, or the absence or unavailability of a Board Member, shall not impair the right of the remaining members to exercise all the powers of the Board. The Director may in his discretion designate Immigration Judges, retired Board Members, retired Immigration Judges, and Administrative Law Judges employed within EOIR to act as temporary, additional Board Members for terms not to exceed six months. The Chairman may divide the Board into three-member panels and designate a Presiding Member of each panel. The Chairman may from time to time make changes in the composition of such panels and of Presiding Members. Each panel shall be empowered to decide cases by majority vote. A majority of the number of Board Members authorized to constitute a panel shall constitute a quorum for such panel. Each three-member panel may exercise the appropriate authority of the Board as set out in part 3 that is necessary for the adjudication of cases before it. In the case of an unopposed motion or a motion to withdraw an appeal pending before the Board, a single Board Member or the Chief Attorney Examiner may exercise the appropriate authority of the Board as set out in part 3 that is necessary for the adjudication of such motions before it.

* * * * *

(4) *En banc Process*—(i) *Full Board en Banc.* A majority of the permanent Board Members shall constitute a quorum of the Board for purposes of convening the full Board en banc. The Board may on its own motion, by a majority vote of the permanent Board Members, or by direction of the Chairman, consider any case as the full Board en banc, or reconsider as the full Board en banc any case that has been considered or decided by a three-member panel or by a limited en banc panel.

(ii) *Limited en banc panels.* The Board may on its own motion, by a majority vote of the permanent Board Members, or by direction of the Chairman, assign a case or group of cases for consideration by a limited en banc panel, or assign a case that has been considered or decided by a three-member panel for reconsideration by a limited en banc panel. Each limited en banc panel shall consist of nine members. Each limited en banc panel shall contain the Chairman or Vice Chairman (as decided by the Chairman). If the Chairman and Vice Chairman are both disqualified in a particular case, then the most senior permanent Board Member who is not disqualified shall sit on the limited en banc panel as the Presiding Board Member. If the Chairman and Vice Chairman are both unavailable to hear a case that has been assigned to a limited en banc panel, but the Chairman is not disqualified, then the Chairman shall designate a Presiding Board Member to sit on the limited en banc panel. If the Chairman is unavailable and disqualified, then the Vice Chairman, if unavailable and not disqualified, shall designate a presiding Board Member to sit on the limited en banc panel. Where a case that has been considered or decided by a three-member panel is assigned for review by a limited en banc panel, the en banc panel shall contain all available permanent Board Members who considered or decided that case as part of a three-member panel. The remaining members of each limited en banc panel will be randomly selected from among the permanent Board Members. The decision reached by a limited en banc panel shall be considered as the final decision of the Board in the case, unless the Chairman or a majority of the permanent Board Members vote to decide to assign the case to a full en banc panel for reconsideration in accordance with paragraph (a)(4)(i) of this section.

(5) *Precedents.* By majority vote of the permanent Board Members, a decision of the Board, whether rendered by a three-member panel, a limited en banc panel, or by the entire Board sitting en banc, may be designated to serve as a Board precedent pursuant to paragraph (g) of this section.

(6) *Board staff.* There shall also be attached to the Board such number of attorneys and other employees as the Deputy Attorney General, upon recommendation of the Director, shall from time to time direct.

* * * * *

Dated: June 5, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–15589 Filed 6–10–98; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

8 CFR Part 3

[EOIR No. 121P; AG Order No. 2162–98]

RIN 1125–AA23

Executive Office for Immigration Review; Motion to Reopen: Suspension of Deportation and Cancellation of Removal

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the regulations of the Executive Office for Immigration Review (EOIR) by establishing a special procedure for the filing and adjudication of motions to reopen to apply for suspension of deportation and cancellation of removal pursuant to section 203(c) of the Nicaraguan Adjustment and Central American Relief Act.

DATES: *Effective date:* This interim rule is effective June 11, 1998.

Comment date: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Please submit written comments, in triplicate, to Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION: This interim rule with request for comments amends 8 CFR part 3 by creating new § 3.43.

Background

This regulation relates to a previous notice, signed by the Attorney General

on January 15, 1998, and published at 63 FR 3154, on January 21, 1998, which designated the time period for filing motions to reopen pursuant to section 203(c) of the Nicaraguan Adjustment and Central American Relief Act (Pub. L. 105–100; 111 Stat. 2160, 2193) (NACARA). Section 203 of NACARA, signed into law on November 19, 1997, amended section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208; 110 Stat. 3009–625) (IIRIRA) to provide special rules regarding applications for suspension of deportation and cancellation of removal by certain aliens. These aliens include Guatemalan, Salvadoran, and certain former Soviet bloc nationals described in section 309(c)(5)(C)(i) of IIRIRA, as amended by section 203 of NACARA.

Section 203(c) of NACARA also amended section 309 of IIRIRA by creating a provision for motions to reopen under NACARA. Section 309(g) of IIRIRA, as amended, permits aliens with final orders of deportation or removal who have become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of NACARA to file one motion to reopen removal or deportation proceedings to apply for such relief, without regard to the limitations imposed by law on motions to reopen. Section 309(g) of IIRIRA, as amended, further requires the Attorney General to designate a specific time period for filing motions to reopen for such relief beginning no later than 60 days after the date of enactment of NACARA and extending for a period not to exceed 240 days.

The Attorney General's notice in the **Federal Register** designated from January 16, 1998 to September 11, 1998 as the time period for filing NACARA motions to reopen. *See* 63 FR 3154. That notice waived the filing fee for motions to reopen filed pursuant to NACARA, but did not disturb any other regulatory provisions with respect to the filing or adjudication of motions to reopen.

The Interim Rule

The Attorney General is simplifying the filing process for NACARA motions to reopen in two ways. First, this rule clarifies who can file a motion to reopen pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, by defining who has become eligible for "special rule" cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of NACARA. Second, the rule permits any alien who is moving to reopen pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, to file such motion initially without a suspension or cancellation application and supporting documents. The alien then will have until February 8, 1999 to file the application for suspension of deportation or cancellation of removal and to provide all other supporting evidence and arguments in favor of reopening. The alien should note at that time that he or she is filing such application to complete a NACARA motion to reopen filed earlier without an application and supporting documentation.

The Attorney General is clarifying who can file a motion to reopen pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, to ensure a fair and efficient administrative process. In addition, the Attorney General has decided to permit the initial filing of NACARA motions to reopen to pursue relief under NACARA without applications for relief and supporting documents because NACARA gives eligible aliens the opportunity to file only one NACARA-based motion to reopen and permits a 240-day time period during which the motion must be filed. Many potential NACARA beneficiaries may have been in proceedings years ago and it may take some time to accumulate the documents necessary to prepare an application for suspension of deportation.

Aliens Eligible To File a Motion To Reopen Pursuant to NACARA

Section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, permits an alien who has a final order of deportation or removal to file one motion to reopen only if he or she has become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of NACARA. Section 203(c) of NACARA provides:

"[N]otwithstanding any limitation imposed by law on motions to reopen removal or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined in section 101(a) of the Immigration and Nationality Act)), any alien who has become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of the Nicaraguan Adjustment and Central American Relief Act may file one motion to reopen removal or deportation proceedings to apply for cancellation of removal or suspension of deportation." See Public Law 105–100, § 203(c).

This rule clarifies who can file a motion to reopen pursuant to NACARA by defining "who has become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of the Nicaraguan Adjustment and Central American Relief Act." Several provisions of IIRIRA must be examined to determine "who has become eligible" for cancellation of removal or suspension of deportation as a result of the amendments made by NACARA.

IIRIRA consolidated deportation and exclusion proceedings into one unified removal proceeding and abolished the relief from deportation known as "suspension of deportation" contained in section 244(a) of the Immigration and Nationality Act (INA) (as it existed prior to April 1, 1997). Persons placed in removal proceedings after April 1, 1997 may, instead, apply for cancellation of removal pursuant to section 240A of the INA, as amended. While cancellation of removal resembles suspension of deportation, an applicant for cancellation must generally establish continuous physical presence for ten years instead of seven years, must establish "exceptional and extremely unusual hardship" instead of "extreme hardship," and must establish hardship to the applicant's United States citizen or lawful permanent resident spouse, parent, or child rather than hardship to the applicant or a United States citizen or lawful permanent resident spouse, parent, or child.

Special rules terminating continuous physical presence also apply to cancellation of removal relief. Section 240A(d) (1) and (2) provides three rules relating to the termination of continuous residence or physical presence. Any period of continuous residence or continuous physical presence in the United States shall be deemed to end when the alien is: (1) served a notice to appear under section 239(a); or (2) has committed an offense referred to in section 212(a)(2) that renders the alien inadmissible to the United States under section 212(a)(2) or removable from the United States under section 237(a)(2) or 237(a)(4), whichever is earlier. See section 240A(d)(1) of the INA, as amended. In addition, an alien shall be considered to have failed to maintain continuous physical presence in the United States if the alien has departed the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days. *See* section 240A(d)(2) of the INA, as amended. These "stop-time rules" of IIRIRA apply to all aliens in removal proceedings under section 240A of the INA, as amended.

Section 309(c)(5) of IIRIRA as in effect prior to amendment by NACARA contained a transitional rule providing

that paragraphs (1) and (2) of section 240A(d) of the INA (which established these "stop-time rules" relating to continuous physical presence) shall apply to notices to appear issued before, on, or after the date of enactment of IIRIRA. This transitional rule has been interpreted as applying the "stop-time rules" of IIRIRA also to orders to show cause issued against persons in deportation proceedings seeking suspension of deportation relief. Under this interpretation, an alien affected by any of the "stop-time rules" relating to continuous physical presence—for example, an alien who failed to accrue seven years of continuous physical presence before being served with an order to show cause—was made ineligible for suspension of deportation. Therefore, under IIRIRA an alien generally must establish seven years of continuous physical presence in the United States prior to service of a charging document, along with good moral character and extreme hardship, in order to qualify for suspension of deportation. (Aliens who cannot establish continuous physical presence because of commission of an offense, or because the continuity of their physical presence was interrupted by a departure from the United States exceeding 90 days (or 180 days in the aggregate), would also be ineligible for suspension of deportation.)

Section 203 of NACARA amends section 309(c)(5) of IIRIRA by eliminating this transitional restriction on suspension of deportation for six classes of aliens in deportation proceedings and similarly exempts persons in removal proceedings who are within those six categories from operation of the "stop-time rules" contained in section 240A(d)(1) of the INA. Section 203 also creates a "special rule" for cancellation of removal which generally restores pre-IIRIRA suspension rules for those who are applying for cancellation of removal and fall within the six classes of aliens.

Generally, an alien within one of the six classes who would have been ineligible for suspension of deportation at the time of adjudication as a result of section 309(c)(5) of IIRIRA may now be eligible for suspension under the NACARA amendments. Thus, an alien who was served with an order to show cause before being physically present in the United States for a continuous period of seven years may now be eligible for suspension of deportation as a result of the amendments made by section 203 of NACARA. Similarly, an alien within one of the six classes who was ineligible for cancellation of removal under the heightened standard of "exceptional and extremely unusual hardship" may now be eligible under the special rule for cancellation of removal. For example, an alien served with a notice to appear before being physically present in the United States for a continuous period of 10 years, or an alien who could not establish that his removal would result in exceptional and extremely unusual hardship to a United States citizen or lawful permanent resident spouse, parent, or child, may now be eligible for the special rule for cancellation of removal as a result of the amendments made by section 203 of NACARA.

This rule provides that a motion to reopen pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, must establish that the alien: (1) is prima facie eligible for suspension of deportation pursuant to section 244(a) of the INA (as in effect prior to April 1, 1997) or the special rule for cancellation of removal pursuant to section 309(f) of IIRIRA, as amended by section 203(b) of NACARA; and (2) was or would be ineligible (a) for suspension of deportation by operation of section 309(c)(5) of IIRIRA (as in effect prior to November 19, 1997); or (b) for cancellation of removal pursuant to section 240A of the INA, but for operation of section 309(f) of IIRIRA, as amended by section 203(b) of NACARA; and (3) has not been convicted at any time of an aggravated felony; and (4) falls within one of the six classes of aliens described in section 203(a)(1) of NACARA.

Prima Facie Eligibility and Statutory Bars

As mentioned above, an alien reopening pursuant to NACARA must establish prima facie eligibility for suspension of deportation or cancellation of removal under the applicable standards governing such forms of discretionary relief pursuant to section 244 of the INA, as in effect prior to April 1, 1997. In general, the alien must have been physically present in the United States for a continuous period of at least seven years immediately preceding the date of such application; must be a person of good moral character during such period; and must establish that deportation or removal would result in extreme hardship to the alien or to the alien's spouse, parent, or child who is a citizen of the United States or an alien lawfully admitted for permanent residence. Different standards apply to aliens who are deportable because of a criminal conviction or certain other grounds. See section 244(a)(2) of the INA, as in effect prior to April 1, 1997. The period of continuous physical presence must be established as of no later than September 11, 1998.

Further, to be prima facie eligible to apply for suspension of deportation or cancellation of removal, the alien must not be subject to any of the statutory bars to seeking such relief. Section 240A(c) of the INA, and section 244(f) of the INA as it existed prior to April 1, 1997, provide that certain categories of aliens are ineligible for cancellation of removal or suspension of deportation. Moreover, an alien who was previously granted voluntary departure and received oral and written notice of the consequences of failing to depart, but did not depart the United States voluntarily within the time specified, is barred for a specific period of time from various forms of discretionary relief, including cancellation of removal and suspension of deportation, pursuant to section 240B(d) of the INA and section 242B(e)(2) of the INA as it existed prior to April 1, 1997. Sections 242B(e)(1), (3) and (4) of the INA as it existed prior to April 1, 1997, also bar eligibility for such relief for certain aliens who, after receiving the required oral and written notices, failed to appear at their removal or deportation hearings, failed to appear as ordered for deportation, or failed to appear at an asylum hearing. These and any other statutory bars to eligibility for suspension of deportation or cancellation of removal are not waived by the provisions of NACARA. Although there may be only a limited number of aliens who are affected by these provisions, the Attorney General has no authority to waive these statutory bars in the cases where they do apply.

Motion To Reopen Without Application for Relief

The Attorney General is creating an exception to the regulatory requirements, found at 8 CFR §§ 3.2(c) and 3.23(b)(3), providing that "[a]ny motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents" for any alien eligible to reopen under section 309(g) of IIRIRA, as amended by section 203 of NACARA. Such aliens may elect to file a motion to reopen initially without an application for relief and supporting documents. The alien must allege in such motion that the alien: (1) is prima facie eligible for suspension of deportation pursuant to section 244(a) of the INA (as in effect prior to April 1, 1997) or the special rule for cancellation of removal pursuant to section 309(f) of IIRIRA, as amended by section 203(b) of NACARA; and (2) was or would be

ineligible (a) for suspension of deportation by operation of section 309(c)(5) of IIRIRA (as in effect prior to November 19, 1997); or (b) for cancellation of removal pursuant to section 240A of the INA, but for operation of section 309(f) of IIRIRA, as amended by section 203(b) of NACARA; and (3) has not been convicted at any time of an aggravated felony; and (4) falls within one of the six classes of aliens described in section 203(a)(1) of NACARA. The alien will then have until February 8, 1999 to file an application for suspension of deportation or cancellation of removal and all other supporting documents that would have been filed initially with a standard motion to reopen. A copy of both the motion to reopen and the subsequently filed application for suspension of deportation or cancellation of removal with all other supporting evidence must be served on the Immigration and Naturalization Service (INS or Service). The Service shall have 45 days from the date of service of the completed motion to respond to the motion.

The motion will be adjudicated only after it has been completed by the filing of the required application for suspension of deportation or cancellation of removal and the Service has submitted a response or the time for response has elapsed. The completed motion will be adjudicated under all applicable statutory and regulatory provisions. Persons filing a motion to reopen under NACARA should follow standard motion practice, as set forth in the regulations, with the exception of the special provisions regarding the filing fee, the submission of the application for relief, and the provisions relating to Immigration Court jurisdiction as set forth in this rule.

If the alien fails to file the required application by February 8, 1999, the motion will be denied as abandoned. In that case, the alien will have lost the alien's one opportunity to move to reopen under section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, for suspension of deportation or cancellation of removal relief. However, an individual may still be eligible to reopen for other reasons as permitted by statute and regulation. The front page of a motion to reopen pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, and any envelope containing such motion should include the notation "Special NACARA Motion." The $110 filing fee is waived for these motions to reopen pursuant to section 203(c) of NACARA. The requirements and procedures in 8 CFR §§ 3.31(b), 103.7(b)(1) and 240.11(f) for paying the application fee for suspension or cancellation after a motion to reopen is granted, however, are not waived. The alien should submit an Application for Suspension of Deportation (Form EOIR–40) whether or not he or she is in deportation or removal proceedings. The time period for filing the motion is from January 16, 1998 to September 11, 1998. See 63 FR 3154.

This special provision allowing for the filing of a motion to reopen without the application for relief and supporting documents applies only to motions to reopen under the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA. An alien moving to reopen pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, may choose to file a complete motion to reopen accompanied by an application for suspension of deportation or cancellation of removal and all other supporting evidence within the designated time period of January 16, 1998 to September 11, 1998. The Service will then have 45 days to respond to the motion.

ABC Class Members

Any alien listed in section 309(c)(5)(C)(i) of IIRIRA with a final order of deportation or removal must file a motion to reopen pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, in order to apply for suspension of deportation or "special rule" cancellation of removal. This includes, but is not limited to, the defined class of Salvadorans and Guatemalans who are afforded de novo asylum adjudications pursuant to the settlement agreement in *American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796 (1991) (ABC class members) who were issued final orders by the Board or the Immigration Judge.

The Attorney General anticipates promulgating regulations this year to delegate to Service asylum officers the authority to adjudicate the applications of certain NACARA beneficiaries for suspension of deportation and "special rule" cancellation of removal. It is anticipated that ABC class members who are eligible for ABC benefits (that is, are registered for ABC benefits and have filed an asylum application by the requisite dates: for Guatemalans, by January 3, 1995; for Salvadorans, by February 16, 1996) and who have a final order of deportation will have the option to seek adjudication of suspension of deportation before an asylum officer at INS if the motion to reopen is granted. Thus, ABC class members may request administrative closure at the time they file their motion to reopen or after the motion is granted. Their cases may be administratively closed pending promulgation of regulations governing adjudication of suspension of deportation or "special rule" cancellation of removal before the INS. An ABC class member who is eligible for ABC benefits, as described above, and whose case previously had been administratively closed by the Immigration Court, is not required to file a motion to reopen under section 309(g) of IIRIRA, as amended by section 203(c) of NACARA , however, as no final order has been issued in such a case.

Jurisdiction Over Motions To Reopen Under Section 203 of NACARA

All motions to reopen filed pursuant to the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, shall be filed with the Immigration Court, even if the Board of Immigration Appeals (Board) issued an order in the case. An alien should make all efforts to file such motion to reopen and the completed application for suspension of deportation or cancellation of removal with the Immigration Court that last had jurisdiction over the proceedings because that is the Immigration Court that will adjudicate the motion to reopen. Any motion to reopen under the special rules of section 309(g), as amended by section 203(c) of NACARA, filed with the Board or with an Immigration Court other than the one that last had jurisdiction over the proceedings, will be forwarded to the appropriate Immigration Court for adjudication as a timely filed motion if filed on or before September 11, 1998.

The Department's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the exception for rules of agency organization, procedures, or practice in 5 U.S.C. § 553(b)(3)(A) and upon the "good cause" exception found at 5 U.S.C. §§ 553(b)(3)(B), 553(d)(3). Immediate implementation is necessary because the time period has already been designated for filing motions to reopen under NACARA and will terminate on September 11, 1998.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because it affects individual aliens, not small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Attorney General has determined that this rule is a significant regulatory action under Executive Order 12866, and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 12612

The regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988: Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

Accordingly, part 3 of chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100.

2. Section 3.43 is added to subpart C to read as follows:

§ 3.43 Motion to Reopen for Suspension of Deportation and Cancellation of Removal pursuant to Section 203(c) of the Nicaraguan Adjustment and Central American Relief Act (NACARA).

(a) *Standard for Adjudication.* Except as provided in this section, a motion to reopen proceedings under section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, will be adjudicated under applicable statutes and regulations governing motions to reopen.

(b) *Aliens eligible to reopen proceedings under section 203 of NACARA.* A motion to reopen proceedings to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, must establish that the alien:

(1) Is prima facie eligible for suspension of deportation pursuant to section 244(a) of the INA (as in effect prior to April 1, 1997) or the special rule for cancellation of removal pursuant to section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(2) Was or would be ineligible:

(i) For suspension of deportation by operation of section 309(c)(5) of IIRIRA (as in effect prior to November 19, 1997); or

(ii) For cancellation of removal pursuant to section 240A of the INA, but for operation of section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(3) Has not been convicted at any time of an aggravated felony; and

(4) Is within one of the following six classes:

(i) A national of El Salvador who:

(A) First entered the United States on or before September 19, 1990;

(B) Registered for benefits pursuant to the settlement agreement in *American Baptist Churches, et al.* v. *Thornburgh*, 760 F.Supp. 796 (N.D. Cal. 1991) (ABC) on or before October 31, 1991, or applied for Temporary Protected Status (TPS) on or before October 31, 1991; and

(C) Was not apprehended after December 19, 1990, at time of entry; or

(ii) A national of Guatemala who:

(A) First entered the United States on or before October 1, 1990;

(B) Registered for ABC benefits on or before December 31, 1991; and

(C) Was not apprehended after December 19, 1990, at time of entry; or

(iii) A national of Guatemala or El Salvador who applied for asylum with INS on or before April 1, 1990; or

(iv) An alien who:

(A) Entered the United States on or before December 31, 1990;

(B) Applied for asylum on or before December 31, 1991; and

(c) At the time of filing such application for asylum was a national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia; or

(v) The spouse or child of a person described under paragraphs (b)(4)(i) through (b)(4)(iv) of this section who was a spouse or child of such person at the time the person was granted suspension of deportation or cancellation of removal; or

(vi) An unmarried son or daughter of a parent, who is described under paragraphs (b)(4)(i) through (b)(4)(iv) of this section, at the time the parent is granted suspension of deportation or cancellation of removal, provided that, if the son or daughter is 21 years of age or older at the time the parent is granted suspension of deportation or cancellation of removal, the son or daughter must have entered the United States on or before October 1, 1990.

(c) *Motion to reopen under section 203 of NACARA.* (1) An alien filing a motion to reopen proceedings pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, may initially file a motion to reopen without an application for suspension of deportation or cancellation of removal and supporting documents, but the motion must be filed no later than September 11, 1998. The alien must allege in such motion to reopen that the alien:

(i) Is prima facie eligible for suspension of deportation pursuant to section 244(a) of the INA (as in effect prior to April 1, 1997) or the special rule for cancellation of removal pursuant to section 309(g) of IIRIRA, as amended by section 203(b) of NACARA;

(ii) Was or would be ineligible:

(A) For suspension of deportation by operation of section 309(c)(5) of IIRIRA (as in effect prior to November 19, 1997); or

(B) For cancellation of removal pursuant to section 240A of the INA, but for operation of section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(iii) Has not been convicted at any time of an aggravated felony; and

(iv) Falls within one of the six classes described in paragraph (b)(4) of this section.

(2) A motion to reopen filed without an application for suspension of deportation or cancellation of removal shall not be considered complete until it has been supplemented with the application for suspension of deportation or cancellation of removal and all other supporting documentation. An alien shall have until February 8, 1999 to complete that motion. A motion to reopen filed without an application and supporting documents will not be adjudicated until it is completed with the required application for suspension of deportation or cancellation of removal and supporting documents. The Service shall have 45 days from the date of service of the application for suspension of deportation or cancellation of removal to respond to that completed motion. If the alien fails to file the required application by 150 days after September 11, 1998 the motion will be denied as abandoned.

(c) *Fee for motion to reopen waived.* No filing fee is required for a motion to reopen to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA.

(d) *Jurisdiction over motions to reopen under section 203 of NACARA and remand of appeals.* (1) Notwithstanding any other provisions, any motion to reopen filed pursuant to the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, shall be filed with the Immigration Court, even if the Board of Immigration Appeals issued an order in the case. The Immigration Court that last had jurisdiction over the proceedings will adjudicate a motion to reopen filed pursuant to the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA.

(2) The Board will remand to the Immigration Court any presently pending appeal in which the alien appears eligible to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) of IIRIRA, as amended by section 203 of NACARA, and appears prima facie eligible for that relief. The alien will then have the opportunity to apply for suspension or cancellation under the special rules of NACARA before the Immigration Court.

Dated: June 5, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–15588 Filed 6–10–98; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1751–96]

RIN 1115–AE29

Effect of Parole of Cuban and Haitian Nationals on Resettlement Assistance Eligibility

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without change an interim rule published by the Immigration and Naturalization Service (Service) in the **Federal Register** on July 12, 1996. The interim rule amended Service regulations to clarify that, with certain exceptions specified in the interim rule, nationals of Cuba or Haiti who were paroled into the United States since October 10, 1980, are to be considered to have been paroled in an immigration status referred to in section 501(e)(1) of the Refugee Education Assistance Act of 1980, Pub. L. 96–422, dated October 10, 1980, as amended. This amendment was necessary to ensure that these aliens are not inadvertently considered to hold an immigration status other than the status referred to in section 501(e)(1).

DATES: This rule is effective June 11, 1998.

FOR FURTHER INFORMATION CONTACT: Janice B. Podolny, Associate General Counsel, Chief of Examinations Division, Office of the General Counsel, Immigration and Naturalization Service, Room 6100, 425 I Street NW., Washington, DC 20536, telephone: (202) 514–2895. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On July 12, 1996, the Service published an interim rule in the **Federal Register** at 61 FR 36610–11. The interim rule clarified that, with certain exceptions specified in the interim rule, nationals of Cuba and Haiti who were paroled into the United States since October 10, 1980, are to be considered to have been paroled in the immigration status referred to in section 501(e)(1) of the Refugee Education Assistance Act of 1980, as amended.

The comment period expired September 10, 1996. The Service received only one comment, from a commenter who supported the promulgation of this rule. The commenter made further comments regarding the expiration of the validity of Forms I–94 issued to parolees, and the parolees' concomitant need to obtain extensions of their parole and of their employment authorization. Since these further comments do not relate to the purpose and substance of the interim rule, nor of this final rule, the Service need not address these further comments in promulgating this final rule.

Effective Date

Because of the urgent need to clarify the status of the aliens affected by the interim rule, the Commissioner found that good cause existed to make the interim rule effective on July 12, 1996, the date the Service published the interim rule in the **Federal Register**, as stated at 61 FR 36611. This final rule makes no substantive change. For this reason, the Commissioner finds that good cause also exists to make this final rule effective upon publication in the **Federal Register**, as permitted under 5 U.S.C. 553.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is that this rule simply clarifies the immigration status that the affected aliens already hold, and does not alter the rights or obligations of any person or entity.

Unfunded Mandates Reform Act of 1995

This final rule is not a Federal mandate, as defined by 2 U.S.C. 658. For this reason, it is not necessary to conduct the analyses provided for under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 12866

The Commissioner does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived the required review.

Executive Order 12612

This final rule will not have substantial direct effects on the States, on the relationship between the Federal 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,

the Commission has determined that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration.

Accordingly, the interim rule amending 8 CFR part 212, which was published in the **Federal Register** at 61 FR 36610–36611 on July 12, 1996, is adopted as a final rule without change.

Dated: May 14, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–15542 Filed 6–10–98; 8:45 am]

BILLING CODE 4410–10–M

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125, and 126

HUBZone Empowerment Contracting Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The HUBZone Act of 1997, Title VI of Public Law 105–135, enacted on December 2, 1997 (111 Stat. 2592), created the HUBZone Empowerment Contracting Program (hereinafter "the HUBZone Program"). This final rule adds a new Part 126 to Title 13 of the Code of Federal Regulations to implement the HUBZone program.

DATES: The effective date of this rule is September 9, 1998. However, at the conclusion of the congressional review, if the effective date has been changed, the Small Business Administration (SBA) will publish a document in the **Federal Register** to establish the actual effective date or to terminate the rule.

FOR FURTHER INFORMATION CONTACT: Michael McHale, Assistant Administrator, Office of Procurement Policy and Liaison, 409 Third Street, SW, Washington, DC 20416, (202) 205–6731.

SUPPLEMENTARY INFORMATION: On April 2, 1998, SBA published a proposed rule to implement the HUBZone program. See 63 FR 16148. The proposed rule set forth the program requirements for qualification as a HUBZone small business concern (HUBZone SBC), the federal contracting assistance available to qualified HUBZone SBCs, and other aspects of this program. SBA published a technical correction on April 14, 1998. See 63 FR 18150.

The public comment period closed on May 4, 1998. SBA received 35 comment letters on the proposed rule. This final rule includes changes based on some of the comments received.

Section-by-Section Analysis

The conforming amendments to Part 121 of this title remain as proposed. However, SBA has added a second conforming amendment to Part 125 of this title. Section 125.2 of this title must be amended to include HUBZone contracts in the contracts reviewed by SBA's procurement center representatives.

A new part 126 is added to Title 13 of the Code of Federal Regulations to implement the HUBZone program.

Section 126.100 explains that the purpose of the HUBZone program is to provide federal contracting assistance for qualified small business concerns (SBC) located in historically underutilized business zones in an effort to increase employment opportunities and investment in those areas. SBA received no comments concerning this section and it remains as proposed.

Section 126.101 lists the departments and agencies affected directly by the HUBZone program. SBA received no comments concerning this section and it remains as proposed.

Section 126.102 describes the effect the HUBZone program will have on the 8(d) subcontracting program. The HUBZone Act of 1997 amended section 8(d) of the Small Business Act, 15 U.S.C. 637(d), to include qualified HUBZone SBCs in the formal subcontracting plans required by 8(d) of the Small Business Act and described in section 125.3 of this title. Two comments on this section stated that SBA has not adequately addressed how SBA will implement the inclusion of qualified HUBZone SBCs in the 8(d) subcontracting assistance program. SBA refers commenters to changes made to section 125.3 of this title, concerning SBA's 8(d) subcontracting program, to implement the inclusion of qualified HUBZone SBCs in this program. Changes to the Federal Acquisition Regulation also will need to be made to further implement these changes. This section remains as proposed.

Section 126.103 defines terms that are important to the HUBZone program. SBA received comments regarding several of the proposed definitions.

In defining some terms essential to the HUBZone program, the HUBZone Act of 1997 relied upon definitions provided by other federal agencies. This final rule cross-references those definitions for use in connection with the HUBZone program.

HUBZone definition: The HUBZone Act defines a HUBZone as "a historically underutilized business zone which is in an area located within one or more qualified census tracts, qualified non-metropolitan counties, or lands within the external boundaries of an Indian reservation." Further, the HUBZone Act states that the term "qualified census tract" has the meaning given that term in § 42(d)(5)(C)(ii)(I) of the Internal Revenue Code. This section of the Internal Revenue Code refers to the low-income housing credit program maintained by the Department of Housing and Urban Development (HUD). The Secretary of HUD designates the qualified census tracts by Notice published periodically in the **Federal Register**. These notices are titled "Statutorily Mandated Designation of Qualified Census Tracts and Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986." The most recent Notice may be found at 59 FR 53518 (1994). The rule includes a cross-reference to § 42(d)(5)(C)(ii)(I) of the Internal Revenue Code.

Qualified non-metropolitan counties definition: The term qualified non-metropolitan counties is based on the most recent data available concerning median household income and unemployment rates. The Bureau of Census of the Department of Commerce gathers the data regarding median household income and the Bureau of Labor Statistics of the Department of Labor gathers the data regarding unemployment rates. The public can find the information from the Bureau of Census at any local Federal Depository Library. To find the nearest Federal Depository Library, call toll-free (888) 293–6498. The information from the Bureau of Labor Statistics is available for public inspection at the U.S. Department of Labor, Bureau of Labor Statistics, Division of Local Area Unemployment Statistics office in Washington, D.C. (the text of the rule lists the complete address). Again, the rule cross-references this information to provide guidance in determining whether or not a small business concern is located in a HUBZone.

Qualified census tract definition: The terms qualified census tract and qualified non-metropolitan counties are based on statistics gathered periodically by various federal agencies. The census reflects changes every 10 years, while unemployment statistics are calculated

annually. Changes in either can generate changes in the areas that qualify as HUBZones—even as often as annually.

Several commenters requested that SBA make various changes to these definitions that create HUBZones. Several comments stated that the definitions are unfair because communities that need the assistance of the HUBZone program will not get it because they do not fall within one of the definitions of HUBZone, especially small rural states and rural counties. One commenter stated that the criteria should include actual population and employment trends in a particular area. Another commenter stated that a definition based on poverty rates would be more appropriate in an inner-city community that does not contain low income housing. Some commenters suggested alternative definitions. For example, one comment suggested that SBA use Department of Commerce's Economic Development Administration's designation of "Long Term Economic Deteriorated Areas" as one definition of HUBZone. Two comments suggested that areas in which an active SBA Certified Development Company operates should be considered HUBZones. The definition of HUBZone is based on statutory language in the HUBZone Act of 1997 and, therefore, SBA has no authority to modify it. The definitions remain as proposed.

Lands within the external boundaries of an Indian reservation definition: The HUBZone Act of 1997 does not define "lands within the external boundaries of an Indian reservation." For purposes of the HUBZone program, SBA proposed a definition of "Indian reservation" used in the Bureau of Indian Affairs" (BIA) regulations and the rule includes a cross-reference to 25 CFR 151.2(f). The BIA definition of "Indian reservation" includes "that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma or where there has been a final judicial determination that a reservation has been disestablished or diminished, Indian reservation means that area of land constituting the former reservation of the tribe as defined by the Secretary [of the Interior or authorized representative]." 25 CFR 151.2(f). BIA's definition of "tribe" includes Alaska Native entities. See 25 CFR 81.1(w).

Indian reservation definition: Several commenters objected to the proposed definition of "Indian reservation" by reference to a Bureau of Indian Affairs regulation. One commenter said that using BIA's definition is inappropriate because it includes only federally recognized Indian tribes and that SBA should include in the definition state-recognized tribes and individual Indians residing on "former Indian lands." One comment stated that the BIA definition should not control because it restricts the definition to lands over which the tribes exercise governmental jurisdiction and there are pockets of land within the outermost boundaries of a reservation that were allotted to individual Indians and therefore passed out of tribal ownership and control, creating a "checkerboard" pattern. This commenter suggested that the phrase "lands within the external boundaries of an Indian reservation" includes those pockets of land, even though those pockets are not considered part of the reservation itself.

SBA has decided to keep the definition of "Indian reservation" as proposed. SBA believes that its use of a definition of "Indian reservation" created by the Federal agency responsible for Indian affairs is appropriate. SBA believes that if Congress had intended to include other than federally recognized Indian tribes or Indian land not part of an Indian reservation, Congress would have expressly stated that in the HUBZone Act of 1997.

However, to accommodate the "checkerboard" pattern of ownership, SBA has added a definition for the term "lands within the external boundaries of an Indian reservation." The definition states that all lands within the outside perimeter of an Indian reservation, whether tribally owned and governed or not, are included in the scope of "lands within the external boundaries of an Indian reservation" and, therefore, are in a HUBZone.

Contract opportunity definition: SBA has redefined contract opportunity in light of several comments received which point out practical difficulties with the proposed rule and its reliance on goal achievement statistics. After further consideration of the issue, SBA has chosen to eliminate goaling statistics to define HUBZone contracting opportunities. That approach was considered impractical by procuring agencies and, therefore, was not likely to encourage the use of HUBZone contracting. In resolving this issue, SBA balanced HUBZone contracting with the stated Congressional purpose in the Small Business Act of maximizing 8(a) contracting, where practicable. In effect, SBA has replaced the three percent limitation on HUBZone set-aside contracting with revised provisions at § 126.607 which create a priority for HUBZone firms which are also 8(a) participants and other 8(a) participants. No limitation on the amount of HUBZone contracting would then apply. This approach is also consistent with comments asking for a clear order of precedence regarding HUBZone contracting. In terms of priority, this approach would also retain consistency with the existing Defense Federal Acquisition Regulation Supplement. SBA anticipates that the HUBZone statutory goals will be readily achieved by this approach, and that there will now be no regulatory impediment to exceeding those goals.

County definition: SBA has added a definition of "county" to make clear that county equivalents are considered counties for purposes of the "non-metropolitan county" definition of HUBZone.

Employee definition: Two commenters suggested alternative definitions for "employee." One stated that the proposed definition is limiting and should be expanded to include temporary employees. Another commenter recommended that SBA use the term "full-time equivalent" in lieu of "employee." The purpose behind the definition as proposed was to focus on those jobs that best fulfill the statutory purpose of the HUBZone Act of 1997. This is why SBA specifically excluded temporary and leased employees and independent contractors from the definition. SBA also sought to encourage the maximum number of jobs by allowing companies to count part-time employees but only where their combined hours added up to at least 40 hours per week. This definition remains as proposed.

HUBZone small business concern definition: One commenter objected that the 100 percent ownership requirement is too rigid. Two commenters noted that this requirement may be especially difficult for publicly-held corporations to meet. SBA considers that the statutory language in the HUBZone Act of 1997 requires that the HUBZone SBC be 100 percent owned and controlled by U.S. citizens. This definition remains as proposed.

HUBZone 8(a) concern definition: SBA has added a definition for HUBZone 8(a) concerns to provide guidance in applying § 126.607.

Principal office definition: The six comments received on this definition stated either that: (1) the "principal office" may change contract-by-contract for certain types of businesses with on-site contract performance (e.g., construction, trash removal); or (2) the term "principal office" is generally understood to mean the central headquarters or center of operations of the business, not where most of the businesses' employees are located.

Suggestions for alternative definitions included "where the company performs its general and administrative business functions," "central headquarters or center of operations," and "where the greatest proportion of the concern's labor cost is incurred."

According to the HUBZone Act of 1997, a HUBZone SBC's principal office must be located in a HUBZone. SBA crafted the definition to fulfill the statutory purpose of hiring residents in HUBZones by encouraging businesses to move to or expand their business operations in a HUBZone (as opposed to just their headquarters, which may be where only a few employees work). As a result, SBA declines to accept these suggested changes. SBA acknowledges that for some types of businesses, their "principal office" may change contract by contract. However, this should not prevent those businesses from meeting the terms of this definition and participating in the HUBZone program. SBA has retained the definition as proposed.

Reside definition: Several comments stated that it is unclear how SBA or the qualified HUBZone SBC will determine an employee's intent to reside in a HUBZone indefinitely. One commenter suggested that the criteria be more stringent than voter registration, noting that persons may have a voter registration in a state where they have not lived for some time. Another commenter stated that it will be a burden on SBA to check on residency and voting registration.

SBA has retained the definition as proposed. According to the HUBZone Act of 1997, at least 35 percent of a qualified HUBZone SBC's employees must reside in a HUBZone. SBA's definition requires either of two means of indicating a permanent residence in the HUBZone (living there for 180 days or more or being a registered voter), along with "intent to remain there indefinitely." SBA believes that the HUBZone SBC can readily obtain documentation regarding its employees' length of residency or voting registration in order to meet this definition. SBA also believes that a HUBZone SBC reasonably may rely on its employees' representation of their intent to remain in the HUBZone indefinitely.

Section 126.200 contains the HUBZone eligibility requirements. In general, as described in the regulations, the company must be a small business concern; the company must be owned and controlled by one or more persons each of whom is a citizen of the United States; the principal office of the concern must be located in a HUBZone; at least 35 percent of the concern's employees must reside in a HUBZone; the concern must attempt to maintain this percentage during the performance of any HUBZone contract; and the concern must comply with certain contract performance requirements in connection with HUBZone contracts. To be counted as residing in the HUBZone, an employee either must be registered to vote in the HUBZone or have resided in the HUBZone for a period of not less than 180 days.

SBA received two general comments on this section. One commenter recommended that large businesses be included in the HUBZone program in order to encourage further economic growth within HUBZones. SBA considers the statutory language in the HUBZone Act of 1997 to include only small business concerns in the HUBZone program. Another commenter suggested that the 35-percent residency requirement will have a disproportionately adverse affect on smaller HUBZones which may not have an adequate pool of individuals residing within the HUBZone to hire as employees in order to meet the 35-percent requirement. SBA does not consider the statutory language in the HUBZone Act of 1997 to allow any exception to this 35-percent requirement. As a result, SBA did not incorporate either of these suggestions.

In addition, SBA received six comments suggesting that the phrase "attempt to maintain" the appropriate percentage of employees who reside in a HUBZone is not appropriate language. Commenters suggested that SBA should strengthen the language to make it mandatory. SBA declines to accept this recommendation because the phrase "attempt to maintain" comes directly from section 3(p)(5)(A)(i)(II) of the Small Business Act, as amended by section 602(a) of the HUBZone Act of 1997. This language remains the same as in the proposed section.

For additional clarity and to ensure consistency with section 126.304, SBA has inserted all of the statutory requirements into this section.

Section 126.201 describes who is considered to own a HUBZone SBC. SBA received no comments concerning this section and it remains as proposed.

Section 126.202 explains who is considered to control a HUBZone SBC. SBA received no comments on this section and it remains as proposed.

Section 126.203 states that a HUBZone SBC must meet SBA's size standards for its primary industry classification as defined in Part 121 of this title. SBA asked for comments on a proposal to set a minimum size standard of at least 16 employees and a maximum size standard of one-half of the procurement assistance size standard for initial qualification only. SBA received 22 comments addressing these issues.

Minimum size standard of 16 employees: SBA received two comments in support of this idea and 13 comments in opposition. The reasons behind the opposition were primarily that the size standard would (1) be an unnecessary barrier to start-up businesses; (2) unduly burden rural states where many businesses are under 16 employees; (3) eliminate opportunities for businesses most likely to create new jobs; (4) negatively affect some types of businesses that do not carry 16 full-time employees (e.g., retailers, service providers); and (5) eliminate from eligibility those businesses with fewer than 16 employees that already are located in HUBZones. One commenter noted that SBA's own statistics show that about 80 percent of small business concerns have fewer than 10 employees, so the overwhelming majority of small businesses would be excluded from the program under this minimum size standard. The commenter further noted that the impact would be even greater on minority- and women-owned concerns which tend to be smaller and have fewer employees. The commenter stated that the HUBZone statute did not give SBA discretion to add limitations to the statutory definition. Other commenters stated that HUBZones could benefit from businesses of any size.

Maximum size standard at time of initial qualification of one-half of the procurement assistance size standard: SBA received two comments in support and five in opposition. One opposing commenter stated that this approach would reduce the number of contracts available for award to qualified HUBZone SBCs. This reduction would hinder procuring agencies' ability to reach the HUBZone contracting goal and reduce the benefit to HUBZone communities. Additionally, this commenter believed that there are certain industries in which most of the businesses would be over one-half of the size standard for that industry. The commenter observed that SBA's rationale stated that the HUBZone program is not a business development program so SBA should not be concerned with whether a firm grows out of its size standard due to receiving HUBZone contracts. Rather, SBA should be concerned primarily with accomplishing the statutory purpose of job creation and investment in HUBZones.

Two commenters believed that providing an exception to the one-half

size standard for 8(a) participants and women-owned businesses (WOBs) might not survive legal challenge. SBA also received four comments in support of including Indian-owned businesses as another exception to a one-half size standard. SBA received another comment stating that SBA should deem Indian-owned businesses 8(a) participants for purposes of this program. This commenter also stated that 8(a) participants owned by white women or white men and WOBs owned by white women should not receive the benefit of this exception to the maximum one-half size standard.

SBA has carefully considered all of these comments on this issue and has decided not to impose either a minimum size standard of 16 employees or a maximum one-half size standard for initial qualification for the program. As a result, § 126.203 remains as proposed with regard to what size standards apply to HUBZone SBCs.

Under § 126.203(a), if SBA cannot verify that a concern is small, SBA may deny the concern status as a qualified HUBZone SBC or request a formal size determination from the responsible Government Contracting Area Director or designee. SBA received no comments on this section and it remains as proposed.

Section 126.204 provides that qualified HUBZone SBCs may have affiliates so long as the affiliates are qualified HUBZone SBCs, 8(a) participants, or WOBs. SBA received two comments in opposition to the proposed rule regarding affiliation. Both commenters opposed restricting allowable affiliation to only specified types of SBCs. One commenter noted that there is no similar restriction under the 8(a) program. Another commenter suggested expanding allowable affiliation to include any other SBC. SBA has considered these comments but has declined to accept these recommendations. For the reasons stated in the preamble to the proposed rule, SBA continues to believe the regulation as proposed is appropriate. The regulation remains as proposed.

Section 126.205 explains that WOBs, 8(a) participants, and small disadvantaged business concerns (SDBs) also can qualify as HUBZone SBCs if they meet the requirements set forth in this part. SBA received two comments on this section. One stated that the section adds nothing substantive. The other stated that allowing firms to qualify under more than one "preference" program likely will result in higher contracting costs to the government. SBA believes that the HUBZone Act of 1997 does not permit excluding any other types of SBCs (i.e., SDBs, WOBs, 8(a) participants, etc.) from participating in the HUBZone program. As a result, SBA retains the section as proposed.

Section 126.206 states the conditions under which non-manufacturers can qualify as HUBZone SBCs. SBA received five comments concerning this section. Three stated that the section does not specifically require that the HUBZone SBC non-manufacturer supply the products of a manufacturer that is located in a HUBZone and that meets the employee residency requirement. Four comments stated that the term "regular dealer" is obsolete and suggested SBA use the term "non-manufacturer" or "dealer" instead.

SBA has modified the section to state that the non-manufacturer must use a manufacturer that is a qualified HUBZone SBC. SBA believes this requirement will further enhance the impact of HUBZone contracting on job creation in HUBZones. Also, SBA has replaced the term "regular dealer" with "non-manufacturer" throughout Part 126. This term is consistent with current law and practice in government contracting, including § 121.406(b) of this title (SBA's non-manufacturer rule). To show an equivalency, SBA notes in this section that the HUBZone Act of 1997 uses the term "regular dealer."

Section 126.207 explains that a qualified HUBZone SBC may have offices or facilities located in another HUBZone or even outside a HUBZone. However, in order to qualify as a HUBZone SBC, the concern's principal office must be located in a HUBZone. SBA addresses the comments it received referring to this section under other sections. This section remains as proposed.

Sections 126.300 through 126.306 describe how a concern is certified as a qualified HUBZone SBC. Those sections explain how SBA certifies a concern for the program, when the certification takes place, and whether a concern can certify itself.

Several commenters addressed the certification process as a whole. One commenter suggested that the mere existence of a certification process might discourage participation in the program. Another feared that self-certification risked fraud and abuse and asked SBA to specify when it would seek further information or pursue verification. A third commenter suggested that the period between self-certifications should be three years, not one year. That commenter believed that annual re-certification would be burdensome to the HUBZone SBCs.

SBA has retained these sections essentially as proposed. Both the self-certification and the verification portions of the HUBZone program are based upon the HUBZone Act of 1997. SBA modeled its annual certification process on the 8(a) program where experience has demonstrated that waiting longer than one year postpones addressing too many significant changes in a concern's eligibility. A longer period would allow too many substantive changes to occur, whether voluntary or involuntary, without SBA's knowledge. Although there may be qualified HUBZone SBCs that do not experience changes in the course of a three-year period, SBA's program experience suggests that one year is the optimum period between self-certifications.

Section 126.300 describes how SBA will certify a concern as a qualified HUBZone SBC. One comment suggested that SBA should not rely solely on the submitter's information and should modify its procedure based upon a review of various state and local empowerment programs' certification processes. This commenter believed that lack of verification might result in protests.

SBA has retained the section as proposed. SBA believes that the application process, including an applicant's representations and SBA's ability to request additional information to verify those representations, along with the program examination process, adequately addresses the commenter's concerns.

Section 126.301 states that only SBA may certify a qualified HUBZone SBC. Section 126.302 prescribes when a concern may apply for certification and section 126.303 provides the address where concerns must file their certifications. SBA received no comments on these sections and therefore they are retained without change.

Section 126.304 sets forth what a concern must submit to be certified by SBA as a qualified HUBZone SBC. Two commenters raised concerns about the language governing a concern's application and submissions to SBA. The first commenter observed that SBA should move paragraphs (a)(4) and (a)(5) of this section (setting forth the "good faith efforts" requirement to maintain the 35 percent residence standard and ensuring that limitations on subcontracting are met, respectively) to other sections. SBA has not adopted this recommendation because paragraphs (a)(4) or (a)(5) contain representations that the concern is required to make in the application process. The second

commenter was concerned with the substantive requirements. Those are dealt with in the discussion of § 126.500 and § 126.700, respectively.

SBA has revised § 126.304(a) to eliminate unnecessary verbiage and to add a cross-reference to § 126.700 for more complete details regarding contract performance requirements.

Section 126.304(b) explains that if a concern is applying for certification based on a location "within the external boundaries of an Indian reservation," it must submit official documentation from the Bureau of Indian Affairs Land Titles and Records Office governing their area that confirms that the concern is located within the external boundaries of an Indian reservation. This additional requirement is necessary because, although the qualified census tracts and qualified non-metropolitan counties are contained in databases available in an electronic format, the data concerning Indian reservations is available only through the BIA Land Titles and Records Offices, not in an electronic format. Consequently, concerns applying for HUBZone status based on location within the external boundaries of an Indian reservation must submit the additional documentation. SBA has added a sentence to this subsection stating that if BIA is unable to verify whether a business is located within the external boundaries of an Indian reservation, applicants should contact SBA.

SBA intends to develop electronic data for lands within the external boundaries of an Indian reservation. If SBA succeeds in this effort, it may be able to eliminate this requirement in the future'.

One commenter recommended that "a letter signed by an official" of BIA be required instead of "official documentation from the appropriate Bureau of Indian Affairs (BIA) Land Titles and Records Office with jurisdiction over the concern's area * * *." The commenter suggested that the proposed provision was more complex than necessary and would create potential delays and hindrances for Alaska Native applicants. Another commenter noted that specifying a particular BIA office might create problems if BIA reorganized.

SBA has retained the section as proposed. The section requires "official documentation," which may include a letter. BIA, in consultation with SBA, will decide what documentation best meets this requirement, provides efficient service for applicants, and protects the government against fraud and abuse. SBA does not expect Alaska Native applicants to encounter unusual or unexpected delays and hindrances in obtaining BIA approval and, therefore, has not modified the section. Although BIA may restructure itself, the function which that office provides to HUBZone applicants would be transferred to a successor office. SBA believes that specifying the name of the BIA office is the most accurate procedure.

Another commenter recommended adding the Form 912 ("Statement of Personal History") to the list of required items in § 126.304(c). SBA declined to adopt this recommendation for three reasons. First, any listing of forms runs the risk of omitting others. Moreover, as presently worded, the subsection already requires the concern to "submit the forms, attachments, and any additional information required by SBA." Thus, SBA already is authorized to request any form it may deem appropriate. Finally, specifying a form by its number would necessitate another formal rulemaking procedure to modify the section in the event a form number changes.

Section 126.305 explains the format for certifications to SBA and § 126.306 describes how SBA will process the certifications. Section 126.307 states where SBA will maintain the List and § 126.308 explains what a concern can do in the event SBA inadvertently omits a qualified HUBZone SBC from the List. SBA received no comments on any of these sections and therefore they remain as proposed.

Section 126.309 provides a procedure for declined or de-certified concerns to seek certification at a later date. One commenter objected that the certification process lacks the procedural due process safeguards (rights of appeals and reconsideration) that are present in the 8(a) program. SBA has retained this section as proposed (except for a clarifying word) because a firm does not enter or depart, or participate in the HUBZone program in the same way it does with the 8(a) program. The 8(a) program not only helps program participants to obtain federal contracts but also provides ongoing support from SBA program staff to assist participants in their business development. There is a definite entry date, normally a nine-year term, and there is a termination. The HUBZone program merely determines a concern's eligibility to be placed on a list that may permit it to obtain federal contracts. There is no other SBA support available to HUBZone SBCs through the HUBZone program; Congress designed the program to foster community development, not the development of individual concerns.

Four commenters addressed the one-year waiting period imposed on declined or de-certified concerns. One recommended that "reservation-based concerns" be exempt from the one-year waiting period before reapplying. Another suggested that a 30–60 day period was more appropriate. Two other commenters believed a one-year period might be appropriate for intentional misrepresentations or fraud but not for unintentional or minor technical errors.

SBA will not decline applicants for technical errors or problems easily remedied by supplying clarifying information. Instead, SBA will screen out such errors and problems during the application process and will work with applicants who wish to overcome the errors or omissions. SBA is aware that difficulties might arise and § 126.306(b) specifically authorizes SBA to request that the concern provide additional information or that it clarify the information contained in its submission.

SBA considered the comments received and has decided to retain the one-year waiting period. SBA chose the one-year period to give HUBZone SBCs a reasonable period of time within which to make the changes or modifications that are necessary to enable them to qualify for the HUBZone program, and at the same time to allow SBA to administer the HUBZone program effectively with available resources.

Sections 126.400 through 126.405 discuss program examinations, including who will conduct program exams, what the examiners will review, and when examinations will be conducted. In addition, these sections set out the action SBA may take when it cannot verify a concern's eligibility and what action SBA will take once it has verified a concern's eligibility. Qualified HUBZone SBCs have an obligation to maintain relevant documentation for six years.

Proposed § 126.401(b) required that qualified HUBZone SBCs retain all documentation demonstrating that it satisfied program qualifying requirements for six years. One commenter believed that SBA should require HUBZone concerns to maintain relevant documents for three years. SBA has decided to retain this section as proposed in order not to hinder enforcement. Many relevant statutes have statutes of limitation much longer than three years.

Sections 126.402 and 126.403 set forth when SBA may conduct program examinations and state that SBA may require additional information from a HUBZone SBC. SBA received no

comments on these sections and has retained them as proposed.

Section 126.404 discusses the action SBA may take if it is unable to verify a HUBZone SBC's eligibility. One commenter suggested adding language to make clear that the AA/HUB's decision on de-certification is final. SBA has adopted this recommendation and inserted language in § 126.404(c) stating that the AA/HUB's decision is the final Agency decision. Although SBA received no comments on § 126.404(b) (which governs the situation when SBA is unable to verify a qualified HUBZone SBC's eligibility), it added language to clarify the rule. Subsection (a) provides that SBA will notify the concern in writing that it is no longer eligible and subsection (b) granted the concern "10 business days to respond to the notification." SBA has modified subsection (b) to make clear that the 10-day period runs from the date the concern receives SBA's letter of notification.

Sections 126.500 through 126.503 set forth how a concern maintains its qualified HUBZone SBC status; a qualified HUBZone SBC's ongoing obligation to SBA and the consequences for failure to uphold that obligation; the length of time a concern may qualify as a HUBZone SBC; and when SBA may remove a concern from the List. Specifically, a concern wishing to remain on the List must self-certify annually to SBA that it remains a qualified HUBZone SBC. This self-certification must take place within 30 days after each annual anniversary of their date of certification.

One commenter pointed out that two sentences in §§ 126.500 and 126.502 are inconsistent. SBA has modified the language in §§ 126.500(a) and 126.502 to clarify how long a concern may remain on the List. SBA eliminated the second sentence in § 126.500(a) because it answered a question that is not posed in this section and there is a more complete and correct answer in § 126.502. Section 126.500(a) only addresses a HUBZone SBCs responsibilities for maintaining its status whereas § 126.502 speaks directly to the time limit for inclusion on SBA's List. SBA also corrects the cross-references listed in § 126.502 by adding § 126.200 and eliminating § 126.503.

Section 126.500 states the requirements for a qualified HUBZone SBC to maintain its status. Two commenters objected that the proposed regulations did not adequately address the situation when an area that had previously qualified as a HUBZone ceases to be a HUBZone. Both commenters noted that the regulations do not indicate how or when the HUBZone SBCs in that area would be notified. One also suggested that the three-year grandfathering period should be extended to a five-year minimum.

SBA has eliminated the "grandfathering" provision (in section 126.502) after careful re-examination. SBA believes that it is consistent with congressional intent to not afford HUBZone program benefits to concerns in a location when that location no longer meets the definition of "HUBZone." Congress elected to tie the HUBZone definition to data which is well-known to be vulnerable to change. Therefore, the SBA website will endeavor to provide detailed statistical data to aid concerns in assessing the likelihood of a change in designation in the future.

In the proposed rule, § 126.600 through 126.616 explained the general conditions applicable to HUBZone contracts. Based on the comments received regarding these sections, SBA has revised some of these regulations. Section 126.600 states that HUBZone contracts are contracts awarded to a qualified HUBZone SBC through sole source awards, set-aside awards based on competition restricted to qualified HUBZone SBCs, or awards to qualified HUBZone SBCs through full and open competition after a price evaluation preference in favor of qualified HUBZone SBCs. SBA received no comments on this section; therefore, the section remains as proposed.

Section 126.601 provides the additional requirements that a qualified HUBZone SBC must meet in order to bid on a HUBZone contract. SBA received comments with different views on this section. Two commenters suggested that SBA does not have the authority to require a certification to the contracting officer in order to bid on a HUBZone contract. Additionally, the commenters observed that the certifications required appear contrary to § 4301, "Elimination of Certain Certification Requirements," in the Clinger-Cohen Act of 1996. The HUBZone Act of 1997 gives the Administrator the authority to establish appropriate certification procedures by regulation. Furthermore, the Clinger-Cohen Act of 1996 eliminated certain, but not all, certifications and none of those eliminated relate to small business concerns. Finally, the certifications required by this section are consistent with other SBA programs for federal contracting assistance (8(a), SDB, and WOB).

One commenter was concerned that § 126.601(c) implies that each party to a HUBZone joint venture must itself be a qualified HUBZone SBC. This is not the case. As stated in § 126.616(a), a qualified HUBZone SBC may enter into a joint venture with one or more other qualified HUBZone SBCs, 8(a) participants, or women-owned businesses, for the purpose of performing a specific HUBZone contract. Section 126.601(c) simply requires that each qualified HUBZone SBC that is a party to a joint venture make the applicable certifications separately. The List includes the names of individual concerns that SBA has certified as qualified HUBZone SBCs—not joint ventures. In order for the contracting officer to ensure that each qualified HUBZone SBC that is a party to the joint venture is on the List, each concern must certify under its own name.

Finally, one commenter suggested that manufacturers that will provide a product to non-manufacturers and meet the requirements of § 126.601(d) should be on the List of Qualified HUBZone SBCs. SBA has changed this section to specify that manufacturers must also be qualified HUBZone SBCs. Consequently, such firms are listed.

Section 126.602 clarifies that a qualified HUBZone SBC must "attempt to maintain" the employee residency percentage during performance of any HUBZone contract.

SBA received a comment stating that the limitation originally listed in § 126.602(b) also is listed in § 126.700, but the other subcontracting limitations listed in § 126.700 are not listed here. Additionally, numerous commenters challenged the authority and the ability of contracting officers to effectively monitor and enforce the requirements in proposed § 126.602 (a) and (b). Proposed § 126.602(c) set forth that requirement. Many comments indicated that SBA is in a better position than the contracting officer to monitor and enforce these requirements. Further, requiring the contracting officer to enforce these requirements is inconsistent with other SBA programs (including 8(a) and small business set-asides).

After considering these comments, SBA has revised this section to provide that enforcement of § 126.602 will be the responsibility of SBA and SBA will monitor compliance in accordance with §§ 126.400–126.505 of this title. Violations of § 126.700 may be grounds for termination of the contract at the election of the contracting officer. The contracting officer's responsibility can generally be met by obtaining an appropriate representation from the potential awardee. SBA will propose modifications to the FAR that will add this requirement as a new contract

clause, making it a requirement of contract performance. As revised, this section is consistent with other SBA programs. SBA has further revised this section by eliminating proposed § 126.602(c).

Section 126.603 states that HUBZone certification does not guarantee receipt of HUBZone contracts. SBA received no comments on this section; therefore, it remains as proposed.

Section 126.604 provides that the contracting officer determines whether a HUBZone contract opportunity exists. Two commenters suggested that SBA revise this section to add that the contacting officer will make this decision with the advice and recommendation of the procuring agency's Director, Office of Small and Disadvantaged Business Utilization and either the agency's small business technical advisor or SBA's procurement center representative (PCR). Existing provisions of the FAR already require the contracting officer to work with those individuals, consequently, this section remains as proposed.

One commenter expressed concern that such decisions by the contracting officers should be tracked for the first two years of program implementation. SBA will track the number and dollar amounts of contracts awarded to qualified HUBZone SBCs for the duration of the program. Additionally, as discussed further in connection with § 126.611, if a contracting officer receives a recommendation from SBA's PCR and decides not to make an award to a qualified HUBZone SBC either on a HUBZone sole source or set-aside basis, the contracting officer must notify SBA's PCR or the AA/HUB, and ultimately the Administrator may appeal the contracting officer's decision.

Section 126.605 lists those requirements which are not available as HUBZone contracts. One commenter recommended that SBA amend § 126.605 to exclude all acquisitions at or under the simplified acquisition threshold including all procurements with an estimated value under $2,500 (micro-purchases). SBA does not agree completely with this suggestion. SBA has reconsidered the proposed exclusion as to requirements between $2,500 and $100,000. SBA now believes, after further review, that only contracting actions below the micropurchase threshold should not be available for HUBZone set-aside procedures because to include them would be impractical and would likely cause no meaningful impact in terms of job creation. Moreover, it would discourage the use of purchase cards to make small purchases. This does not mean that HUBZone firms could not provide goods and services at the micropurchase level, only that their HUBZone status would be incidental to the contracting action.

Additionally, SBA has determined that the proposed exclusion of contracts above $2,500 and at or below $100,000 should be changed. SBA believes these contracts represent too significant a block of potential HUBZone contracting actions to exclude them from the program. At the same time, SBA is mindful of the significant benefits of simplified acquisition procedures which also include a reservation for small business. Accordingly, the final rule does not exclude contracts above the micropurchase threshold and below the simplified acquisition threshold, but makes the use of HUBZone contracting optional for such contracts. Revised § 126.608 makes this clear.

Two commenters recommended that small business set-asides be excluded from HUBZone contracts. SBA declines to accept this recommendation since a very significant segment of government contracting requirements would be lost to HUBZones. As indicated, only contracts below the micropurchase threshold have been excluded in the final rule.

Finally, one commenter asked what the effect of the HUBZone program would be on the Small Business Competitiveness Demonstration program. SBA has reviewed this issue and has decided to include requirements which fall within the Small Business Competitiveness Demonstration Program in § 126.605. Exclusion of such procurements from the HUBZone program would result in a significant loss of contract requirements in many labor intensive industries, including construction, refuse collection and non-nuclear ship repair.

SBA has retained § 126.605 (a) and (b) as proposed, amended subsection (c) to exclude contracts below the micropurchase threshold, and deleted § 126.605(d) as no longer necessary in light of the changed definition of contract opportunity in § 126.103.

Section 126.606 states that a contracting officer may request that SBA release an 8(a) requirement for award as a HUBZone contract. SBA will release only where neither the incumbent nor any other 8(a) participant can perform the requirement and where the 8(a) program will not be adversely affected. One commenter suggested that SBA release an 8(a) requirement if a HUBZone SBC can perform the work as an 8(a) participant would. SBA believes such a modification would adversely affect the 8(a) program. Furthermore, the legislative history includes numerous statements of congressional intent indicating that the HUBZone program should not adversely affect the 8(a) program. SBA declines to accept this recommendation and this section is retained as proposed.

Section 126.607 describes when a contracting officer must set aside a requirement for qualified HUBZone SBCs. SBA has changed the heading for § 126.607 to now apply more generally to HUBZone contracting. For the reasons discussed above in connection with the changes to the "contract opportunity" definition, this section now establishes a priority first for qualified HUBZone 8(a) concerns and then other 8(a) concerns. After these preferences, the contracting officer must use a HUBZone set-aside competition when possible. Section 126.607 has been revised to accomplish these changes, while preserving the guidance to contracting officers with respect to consulting SBA's List of Qualified HUBZone SBCs to locate at least two such firms which are likely to compete.

One commenter suggested that SBA add the term "responsible" before "qualified HUBZone SBCs" in subsection (c)(1) (proposed subsection (a)(1)). The comment describes this as a "vital element." The HUBZone Act of 1997 does not include the term "responsible" in the applicable provision. However, SBA agrees that responsibility is a vital element in the contracting officer's decision and has revised the section to include the term.

SBA has eliminated the proposed § 126.608 and has created a new § 126.608 to address commenters' concerns with respect to Simplified Acquisition Threshold procedures. As indicated above, the new § 126.608 clarifies that Simplified Acquisition Threshold procedures can be used for HUBZone contracting. SBA eliminated the proposed § 126.608 because it was merely restating general procurement practices. SBA did not intend to create special rules to be followed in the HUBZone context where a competition results in only one or no acceptable offer received.

Section 126.609 now explains what the contracting officer must do if a contracting opportunity does not exist for competition among qualified HUBZone SBCs. SBA has clarified this section. Section 126.609 now refers specifically to § 126.607, and provides guidance to contracting officers if a contract opportunity does not exist for competition among qualified HUBZone SBCs. SBA received numerous

comments on the issue of order of precedence generally.

Sixteen commenters stated that SBA exceeded its authority in proposed §§ 126.608 and 126.609 by creating an order of precedence among SBA programs *and* directing the contracting officer to make certain types of awards (either sole source or full and open competition). The commenters also stated that the two provisions are "confusing," "contradictory," and "inconsistent." However, many of the commenters stated that SBA has the authority to create an order of precedence within SBA programs, but the implementation of any such order should be left to the FAR. One commenter endorsed the order of precedence as proposed and another commenter suggested a priority for 8(a).

SBA believes that it is within its authority to create an order of precedence among SBA's programs; therefore SBA has made the order of precedence in this rule mandatory. However, SBA agrees that the procurement methods a contracting officer uses in other respects should be left to the contracting officer in accordance with existing procedures set out in the FAR. As indicated, § 126.608 has been eliminated in its proposed form. SBA has revised § 126.609 to be consistent with that approach. SBA has revised § 126.609 to make the order of precedence mandatory. In light of revisions to § 126.607, that section is now simply referred to, and the remaining priorities are identified in § 126.609.

Section 126.610 states that SBA may appeal a contracting officer's decision not to reserve a procurement for award as a HUBZone contract. One commenter recommended that SBA expand this right of appeal to include contracting officer decisions that adversely affect 8(a) participants. However, the right of the Administrator to appeal the contracting officer's decision not to reserve a requirement for award as a HUBZone contract is the only appeal right provided by the HUBZone Act of 1997. Thus, the text remains as proposed.

Section 126.611 describes the process for SBA's appeal of a contracting officer's decision not to reserve a procurement for award as a HUBZone contract. One commenter indicated that this section did not clearly identify when a contracting officer must notify SBA of such a decision. Also, five commenters suggested that requiring the contracting officers to notify SBA every time they decided not to reserve a procurement for award as a HUBZone contract imposes a "significant administrative burden" on the procurement process and on contracting officers. One commenter suggested including the HUBZone notification requirement in the documentation reviewed by SBA's PCR. The commenter felt that if an acquisition is not reviewed by a PCR, a separate HUBZone notification should not be required. Another commenter suggested that the contracting officer should notify the PCR only if she or he decides not to set aside a contract opportunity.

Presently, both the FAR and § 125.2 of this title discuss the process by which the contracting officer notifies SBA of such decisions in other small business set-aside programs. SBA has modified slightly subsection 126.611(a). It now provides that the contracting officer must notify the SBA's PCR of a decision not to reserve a procurement for award as a HUBZone contract when the contracting officer rejects a PCR's recommendation to make a requirement available. As previously proposed, if SBA intends to appeal the decision, SBA must notify the contracting officer within five days of receipt of the notification. SBA expects this notification to be in accordance with the procedures that presently exist in the FAR and 13 CFR 125.2. Sections 126.611(b), (c) and (d) are unchanged.

Section 126.612 states when a contracting officer may award a sole source contract to a qualified HUBZone SBC. One comment suggested that SBA add a new paragraph to this section to provide that where unemployment exceeds 20 percent on an Indian reservation, the anticipated contract award price limits in subsections (b)(1) and (2) do not apply. Three other commenters argued that the limits in subsections (b)(1) and (2) should not apply to Indian reservation-based businesses. The limitations on sole source requirements set out in subsections (b)(1) and (2) of this section are taken directly from section 31(b)(2)(A) of the Small Business Act, as amended by section 602(b)(1) of the HUBZone Act of 1997. The statute did not include any exceptions to these limitations. Consequently, SBA does not have the authority to provide such an exception. Section 126.612 remains essentially as proposed (there are some minor clarifying word changes).

SBA received 18 comments addressing proposed §§ 126.613 and 126.614. The comments focused on two issues: (1) SBA's interpretation of the HUBZone price evaluation preference as flawed, and (2) whether concerns should be allowed to take advantage of "dual status" (HUBZone SBC and SDB).

Proposed § 126.613 explains how the HUBZone price evaluation preference affects the bid of a qualified HUBZone SBC in full and open competition. In a full and open competition, a contracting officer must deem the price offered by a qualified HUBZone SBC to be lower than the price offered by another offeror (other than another small business concern) if the price offered by the qualified HUBZone SBC is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror. This section includes an example of the application of the HUBZone price evaluation preference. The example has been revised to make it more clear that the preference applies to benefit HUBZone SBCs only where the HUBZone SBC would receive the award.

The comments regarding the HUBZone price evaluation preference suggested that according to the HUBZone Act of 1997, the preference should never displace the offer of another small business concern. Commenters suggested that in the example included in this section, the small business concern submitting the $100 offer should receive the award. In other words, the HUBZone price evaluation preference should do no more than eliminate the lowest, responsive, responsible offeror that is a large business, leaving the small business concern as the new lowest, responsive, responsible offeror which would receive the award. One commenter suggested using the term "apparent successful offeror" instead of "lowest, responsive, and responsible offeror." Responsibility is determined later in the acquisition process and not at the time the offers are evaluated. SBA did not change the term. The term "lowest, responsive, and responsible offeror" is taken directly from the statute.

SBA does not interpret section 31(b)(3) of the Small Business Act, as amended by section 602(b) of the HUBZone Act of 1997, in this way. SBA interprets this statutory language to require that the lowest offer from a qualified HUBZone SBC displace the lowest, responsive, responsible offeror that is a large business, and replace that offeror with that HUBZone SBC. This would result in the HUBZone SBC receiving the award, in the example included in this section of the rule.

SBA does not agree that a small business concern that is not a qualified HUBZone SBC can benefit from the HUBZone price evaluation preference. SBA believes that this result is contrary to the intent and goals of the HUBZone program.

Proposed § 126.614 described how a contracting officer must apply both HUBZone and SDB price evaluation preferences in a full and open competition in some detail and with an example. The comments SBA received on this section generally agreed that SBA's "methodology is flawed" and that the proposed application would result in an award to a qualified HUBZone/SDB at a "differential above 20 percent." Two comments suggested that statutory authority does not allow payment of differentials above 20 percent. Commenters also stated that SBA's methodology does not take into account exceptions to the application of the SDB price evaluation preference (e.g., otherwise successful offers of eligible products under the Trade Agreements Act when the acquisition meets or exceeds a certain dollar threshold). The consensus of the commenters concerned with process was that SBA regulations should contain a broad policy statement regarding the HUBZone price evaluation preference and SBA should leave the actual implementation to the FAR.

In addition, SBA also received numerous comments dealing with the substance of the issue and whether dual status should be permitted at all. There were four in favor of allowing dual status and seven against. The comments in favor stated that dual status will encourage more minority-owned concerns to compete for federal contracts in HUBZones and create jobs; will assist SDBs in competing against qualified HUBZone SBCs; and would avoid harm to the SDB program. The opposing comments stated that concerns should be required to select one status or the other at the time they submit their offer on a contract because the application of multiple preferences is too confusing; would not work with negotiated procurements; would make it extremely difficult for a contracting officer to declare a price to be fair and reasonable; and would provide an unfair competitive advantage in favor of the "dual status" concerns.

SBA has considered these comments carefully and has decided not to change its position in the final rule. As a result, SBA has eliminated proposed § 126.614 from the final rule. Nothing in the HUBZone Act requires that the HUBZone program displace a contracting activity's authority or responsibilities regarding any other programs designed to promote the development of small, small disadvantaged, or women-owned small businesses. Therefore, SBA has implemented the HUBZone program in such a way that any preference a concern receives under this program must be added to the preference it may receive pursuant to other statutory or regulatory programs.

However, SBA has decided not to prescribe how a contracting officer must apply the two types of preferences in a full and open competition, leaving the mechanics for implementation in the FAR.

As a result, SBA has revised § 126.614 to merely state the principle that firms which are both qualified HUBZone SBCs and SDBs must receive the benefit of both.

Section 126.615 states that a large business may not participate as a prime contractor on a HUBZone contract but may participate as a subcontractor to an otherwise qualified HUBZone SBC. SBA received no comments on this section and it remains as proposed.

Section 126.616 describes the circumstances in which a contracting officer may award a HUBZone contract to a joint venture. This section also explains that a qualified HUBZone SBC may enter into a joint venture with one or more qualified HUBZone SBCs, 8(a) participants, or WOBs for the purpose of performing a specific HUBZone contract. One commenter argued that SBA should allow qualified HUBZone SBCs to joint venture with large businesses because the ability to joint venture with "big business" will bring jobs to HUBZones more rapidly. SBA declines to accept this recommendation because the HUBZone program is intended to provide contracting assistance to small, not large, business. If qualified HUBZone SBCs joint venture with large businesses, then the benefits of the program would flow to large businesses in addition to small. Additionally, SBA has found that in recent history small businesses create more jobs annually than large businesses. Thus, SBA has not modified this section in the final rule.

In the proposed rule, SBA specifically requested comments on whether HUBZone contract opportunities should be limited to certain types of contracts. For example, should HUBZone contracts only be available for industries that are considered "labor intensive"? Three commenters specifically addressed the issue. One commenter stated that, based on the intention of the program (creating jobs in HUBZones), restricting the types of contracts to labor intensive industries would be reasonable and would ensure that the HUBZone program is targeted at contracts with the greatest potential for creating jobs. However, the other commenters adamantly opposed the idea. These commenters argued that such a limitation would exclude participation by small business concerns that Congress intended to include in the program. Further, the commenters stated that there appears to be no statutory justification for imposing any limit on the types of industries involved in the program. Finally, the commenters noted that the term "labor intensive" is subjective and such a limitation would be problematic both in administration of the program and enforcement. As a result, SBA has not included any such limitation in the final rule.

SBA also asked commenters to discuss whether HUBZone contract opportunities should be limited to those not now awarded to SBCs and to make suggestions for ways in which HUBZone implementation can better help government contracting activities meet their SDB and WOB goals. SBA received no comments specifically addressing these issues.

SBA has retained §§ 126.700 through 127.703, as proposed. SBA received four comments on § 126.700 which addressed the amount of subcontracting that is allowed by general construction and special trade contractors. Specifically, three commenters questioned the provisions in the proposed rule that requires general construction firms to spend at least 15 percent of the cost of contract performance for personnel on the concern's employees or the employees of other qualified HUBZone SBCs. Special trade contractors have the same requirement except that their performance percentage is 25 percent. Although these percentages are less than the standards applied for servicing and manufacturing firms, these standards represent conventional industry practices and, therefore, remain unchanged.

One commenter proposed that large firms be authorized to perform up to 75 percent of manufacturing as a subcontractor on contracts that are performed on Indian reservations. This proposal is inconsistent with the clear language of the HUBZone legislation which states that not less than 50 percent of the cost of manufacturing supplies (not including the cost of materials) will be incurred in connection with the performance of the contract in a HUBZone by one or more HUBZone small business concerns.

Section 126.702 provides a process by which representatives of national trade or industry groups may request a change in subcontracting percentage for specific industry groups (as defined by two-digit major group industry codes). One commenter suggested that SBA revise

§ 126.702 to permit individual businesses to request changes in the subcontracting percentage limitations. SBA declines to accept this recommendation. SBA wants to insure that such requests reflect the views of a large number of businesses before invoking the procedures for changing the percentages. SBA received no comments regarding proposed §§ 126.701 and 126.703; however, as stated above, SBA has eliminated the subcontracting percentage and has modified these sections accordingly.

Section 126.800 addresses protests relating to a small business concern's HUBZone status. This section explains who may file a protest; what the protest must contain; how and where a protest must be filed; who decides the protest; and what appeal rights are available. One commenter recommended that the SDB language in the 8(a) program should be applied to the HUBZone program to forestall frivolous protests under § 126.800. SBA has declined to accept this recommendation as unnecessary. Although the SDB and the HUBZone provisions in this title are organized differently, there is little substantive difference between them. Section 126.800(b) permits any "interested party" to protest a HUBZone SBC's status. As defined in § 126.103, an "interested party" may be any of the same three entities which are listed in § 124.603, the SDB provision. Although expressed differently, the effect of the two provisions is the same. The difference between the SDB and HUBZone procedures lies in the fact that the HUBZone regulations separate out sole source procurements for different treatment. HUBZone regulations permit only the SBA or the contracting officer to file protests in those cases. The SDB protest procedures do not do so because there are no SDB sole source contracts.

Three commenters urged that the protest procedures set forth in § 126.800 should permit any small business that is prevented from competing for a sole source contract to protest the proposed awardee's qualified HUBZone status. (SBA changed "apparent successful offeror" to "proposed awardee" to more accurately reflect the fact that there is no competition in a sole source procurement.) SBA has retained the section as proposed. Third parties may not protest a sole source award because they have no stake in the contract, or "standing." In other types of procurements, a competitor who protests an award may have standing to get the award if its protest is successful. In sole source procurements, however, there are no "competitors" because of the nature of the procurement.

Although other concerns may not "protest" an award, they may notify SBA if they have information that a HUBZone SBC is not qualified for any reason. SBA, in its sole discretion, may pursue a program examination of that concern pursuant to § 126.402. Although that course of action might not halt an award, third parties with pertinent information about a proposed awardee also are encouraged to notify the contracting officer or SBA directly to urge that a formal protest be filed.

Section 126.801 sets forth the procedure for submitting a protest of a HUBZone SBC's status. Three commenters asked whether a protestor may combine concurrent size and status protests in a single letter and rely upon SBA to divide up the protests procedurally. SBA has added a phrase to make clear that existing size regulations require a protestor to file a size protest with the contracting officer. Protestors must direct protests relating to HUBZone status to SBA.

One commenter suggested replacing the phrase "unsuccessful offeror" in § 126.801(c)(1) with the phrase "interested party" to conform to the language used in § 126.800. SBA accepts this recommendation and makes this change. SBA notes that § 126.800(b) authorizes "any interested party" to protest the status of a qualified HUBZone SBC. SBA believes it is internally consistent as well as substantively correct to change "unsuccessful offeror" to "interested party" in § 126.801(c)(1).

Section 126.802 states who decides a HUBZone status protest. SBA received no comments on this section and has decided to keep the section as proposed. SBA received one comment on § 126.803, which explains SBA's processing of protests. The commenter suggested that SBA define "public interest" and that the award decision should be made, or approved, at a higher level than contracting officer. SBA based this section on the FAR (§§ 12.302(h)(1) and 19.505(f)) and it is consistent with the recently proposed SDB protest procedures. As a result, SBA declines to accept this recommendation.

Section 126.804 notes that SBA will decide all protests not otherwise dismissed and § 126.805 sets forth the appeal rights that are available. SBA received no comments on either of these sections and has retained them as proposed.

Section 126.900 prescribes the penalties applicable under the HUBZone program including procurement and non-procurement suspension or debarment, as well as applicable civil and criminal penalties. SBA received one comment which observed that HUBZone SBCs would not be penalized under § 126.900 during the year they are certified. This commenter stated further that SBA appeared to have no ability to halt contract performance by a HUBZone SBC losing its certification during the year. SBA has retained the section as proposed. This section allows the imposition of substantial penalties on a concern at any time that SBA discovers the concern has made misrepresentations about its status as a qualified HUBZone SBC. In addition, SBA has authority to notify a contracting agency that a HUBZone SBC is no longer qualified but SBA does not have authority to require that agency to terminate the contract. Contract termination (whether for convenience or default) is governed by the FAR.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule is a major rule within the meaning of Executive Order 12866, and has a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* SBA submits the following economic analysis prepared pursuant to Executive Order 12866 and Initial Regulatory Flexibility Analysis (IRFA) prepared pursuant to the Regulatory Flexibility Act.

In making its determination that this rule is a major rule and has a significant economic impact on a substantial number of small entities, SBA used the definition of small business set forth in 13 CFR Part 121.

The HUBZone Act of 1997, Title VI of Public Law 105–135, 111 Stat. 2592 (December 2, 1997), creates the HUBZone program and directs the Administrator of SBA to promulgate regulations to implement it. The rule sets forth the program requirements for qualification as a HUBZone SBC, the federal contracting assistance available to qualified HUBZone SBCs, and other aspects of this program.

The HUBZone program will benefit SBCs by increasing the number of federal government contracts awarded to them. There is a statutory requirement that HUBZone SBCs receive three percent of contract dollars. SBA received no additional information from the public during the comment period on the impact of the proposed rule on all small businesses. The

program also will benefit HUBZone communities by providing much needed jobs and investment in those communities.

Prior to submitting an offer on a HUBZone contract, an interested small business must apply to SBA for certification as a qualified HUBZone SBC. The concern must submit information relating to its eligibility for the program, including supporting documentation. Once a concern is certified as a qualified HUBZone SBC, it must self-certify annually to SBA that there has been no material change in its circumstances that would affect eligibility. The information required for certification consists of general information about the business. The Paperwork Reduction Act aspect of this certification is that each concern will be able to complete the certification application in one hour or less.

The HUBZone program is different from existing government contracting programs because it focuses on job creation in high unemployment and poverty-level communities. Commenters requested that SBA discuss the impact of the HUBZone program on other contracting/procurement assistance programs. One commenter specifically raised the issue of the interaction between the HUBZone program and the previously proposed Empowerment Contracting program by the Department of Commerce in May 1997. The Department of Commerce did not and will not publish a final rule which would implement the empowerment contracting program. Two commenters raised the issue of the competition between HUBZone concerns and 8(a) participants owned by Community Development Companies. These 8(a) participants will be treated as any other 8(a) participant.

The small entities affected by this rule are those who fit within the definition of a small business concern as defined by SBA in 13 CFR part 121 and new part 126 and who participate in government contracting. Because the program is new, SBA cannot estimate precisely the number or classes of small entities that this rule will affect. However, as explained below, SBA estimates that more than 30,000 SBCs will apply for certification as qualified HUBZone SBCs.

Based on 1992 census data and making reasonable extrapolations to account for growth in recent years, SBA estimates that there are approximately five million businesses with employees in the United States; of this number, approximately 4.9 million—or 98 percent—are considered small. Clearly, not all of the businesses who are considered small seek to participate in federal government contracting or will seek to participate in the HUBZone program. Currently, there are approximately 170,000 SBCs registered on PRO-Net, SBA's database of SBCs actively seeking federal government contracts. While PRO-Net is not a perfect measure of businesses that may be interested in contracting with the government, it is the most accurate measure currently available to SBA.

The number of entities that seek certification as qualified HUBZone SBCs will depend, first, on the number of businesses located in HUBZones. The potential number of HUBZones is significant. Based on the data available, there are approximately 61,000 census tracts in the United States; of those tracts, about 7,000—or 11 percent—are qualified census tracts for purposes of the HUBZone program. In addition, there are approximately 3,000 non-metropolitan counties in the United States; of those counties, about 900—or 30 percent—are qualified non-metropolitan counties for purposes of the HUBZone program. SBA believes that there are 310 Indian reservations and 217 Alaska Native villages. Based on combining the qualified census tract and qualified non-metropolitan county data, SBA estimates that approximately 12 percent of the census tracts and non-metropolitan counties in the United States will qualify as HUBZones.

If all small businesses interested in Federal procurement were evenly distributed geographically, then approximately 12 percent of the 170,000 SBCs registered on PRO-Net—or 20,000—would be located in HUBZones. However, SBA believes that a much higher number of small business are located in qualified census tracts than in qualified non-metropolitan counties; therefore, SBA adjusts this number upward and estimates that 25,000 SBCs (or 15 percent of all SBCs) will be both interested in Federal procurement and located in HUBZones. However, as stated above, the number of concerns registered on PRO-Net may not reflect the entire universe of small businesses that are interested in contracting with the government.

The incentives available through participation in the program could, moreover, result in additional SBCs relocating to HUBZone areas. SBA is unable to predict the impact of this factor on the total number of qualified HUBZone SBCs, but estimates that roughly 30,000 concerns that are either now HUBZone SBCs or will become HUBZone SBCs as a result of these incentive effects will apply for certification. As discussed above, these 30,000 HUBZone SBCs will be spread over about 7000 census tracts, about 900 non-metropolitan counties, 310 Indian reservations and 217 Alaska Native villages.

Because the HUBZone program is new, SBA also cannot estimate precisely the economic impact the rule may have on the economy. According to the Congressional Budget Office (CBO), in 1996 the federal agencies specified in the HUBZone Act contracted for more than 90 percent of all federal procurement obligations. (143 Cong. Rec. S8976 (daily ed. September 9, 1997)). In FY 1996, the federal government spent $197.6 billion on the procurement of goods and services. The government awarded small businesses $41.1 billion in direct contract actions—21 percent of the total $197.6 billion in federal procurement.

The HUBZone Act of 1997 amends the Small Business Act to increase the Government-wide federal contracting goal for SBCs from 20 percent to 23 percent of all federal prime contracts. In addition, the HUBZone Act sets the government contracting goal for HUBZone SBCs initially at one percent of all federal prime contracts with a gradual increase to three percent by the year 2003. Thus, by 2003, assuming the participating agencies reach the three percent contracting goal, HUBZone SBCs may be awarded approximately $6 billion in federal contract actions (three percent of the approximately $200 billion procurement budget).

Contracts for the purchase of Federal Government goods and services under the HUBZone program would operate in the following three ways: (1) a contract award to a qualified HUBZone small business concern can be made by a procuring agency if a contracting opportunity exists and it determines that two or more qualified HUBZone small business concerns will submit offers for the contract and the award can be made at a fair market price; (2) consistent with other criteria, a contracting officer can award a sole source contract to a qualified HUBZone small business concern if it submits a reasonable and responsive offer and is determined by the appropriate agency contracting officer to be a responsible contractor. Sole-source contracts cannot exceed $5 million for manufacturing contracts and $3 million for all other contract opportunities; and (3) a 10 percent Price Evaluation Preference in full and open competition can be made on behalf of the Qualified HUBZone small business concern if its offer is not more than 10 percent higher than the other offeror, so long as it is not a small business concern.

In addition to the procurement contract awards available to qualified HUBZone concerns, the HUBZone program will have other effects on the economy including the possibility of increased costs to the government. CBO anticipates that implementation of the HUBZone program will increase the incidence of sole source contracting. According to CBO, about 19 percent of federal procurement is awarded through sole source contracts. It is not possible to project any increase in sole source awards at this time, and there might not be any increase in sole source awards at all. Instead, qualified HUBZone SBCs might receive sole source awards that would otherwise go to large businesses or other small businesses.

CBO also estimates that implementing the HUBZone program would significantly increase discretionary spending for the federal agencies affected by the program. According to CBO, "[s]uch costs could total tens of millions of dollars each year, but CBO cannot estimate such costs precisely." (143 Cong. Rec. S8976 (daily ed. September 9, 1997)). CBO anticipated that these additional costs would stem from both additional administrative responsibilities for SBA and other federal agencies, as well as the likely increased use of sole source contracting. SBA is not in a position to shed much additional light on this subject. SBA has received an appropriation of $2 million in FY 1998 to begin implementing the program and has requested $4 million for FY 1999. No other cost information is available at the present time. Assessing whether the government will have a net cost from this program is very subjective. It is at least possible that increased competition from HUBZone SBCs will cause competing concerns to lower prices thereby reducing government procurement costs (perhaps substantially).

While it is at least possible that increased competition from HUBZone SBCs will cause competing concerns, it is useful to perform an informal sensitivity analysis on the possible implications for increased Federal Government contracting costs that derive from the description of contracting procedures under the HUBZone program. Calculations here assume that the program is fully in effect in the year 2003 and that HUBZone contracts are at the level (from above) of $6 billion. If all HUBZone contracts are awarded to qualified HUBZone SBCs in competitions in which two or more qualified HUBZone SBCs submit offers and the award is made at a fair market price, then the additional cost to the Federal Government could be close to zero. But, as noted above, there are expected to be about 30,000 HUBZone SBCs competing for contracts and they are expected to be spread over about 7000 census tracts and about 900 non-metropolitan counties, so the likelihood of this always happening is not large. The second possibility is that all HUBZone contracts would be awarded as sole source contracts to qualified HUBZone SBCs that submit reasonable and responsive offers and are determined by the appropriate contracting officer to be responsible contractors. (The sole-source contracts could not exceed $5 million for manufacturing contracts and $3 million for all other contract opportunities.) The extra costs to the Federal Government in this case would be the additional costs over competitive awards to the Federal Government that are usually associated with sole source contracting. The third possibility is that all HUBZone contracts would be awarded at a 10 percent Price Evaluation Preference in full and open competition. One could assume that the SBC offer is exactly 10 percent higher than other (non SBC) offers. In this unlikely case, the additional cost to the Federal Government is $600 million per year or 10 percent of $6 billion, the amount by which the SBC offer would exceed other non-SBC offers that did not receive preference.

Under all of these circumstances, SBA has determined that this final rule is a major rule within the meaning of E.O. 12866, and has a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this final rule imposes new reporting or recordkeeping requirements on concerns applying to be certified as qualified HUBZone SBCs. The rule requires such concerns to submit evidence that they meet the eligibility requirements set forth in the rule; once certified, in order to remain on the List a concern must self-certify annually to SBA that it remains qualified; and qualified HUBZone SBCs must notify SBA immediately of any material change in circumstances which could affect their eligibility.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that it has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

(Catalog of Federal Domestic Assistance Programs, No. 59.009)

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs-business, Individuals with disabilities, Loan programs-business, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Research, Small businesses, Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons set forth above, SBA amends Title 13, Code of Federal Regulations (CFR), as follows:

PART 121—[AMENDED]

1. The authority citation for 13 CFR part 121 is revised to read as follows:

Authority: Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

§ 121.401 [Amended]

2. Section 121.401 is amended by deleting the word "and" before "Federal Small Disadvantaged Business Programs," adding a comma after "Federal Small Disadvantaged Business Programs," and adding the following language at the end of the sentence: "and SBA's HUBZone program".

3. Section 121.1001 is amended by redesignating paragraph (a)(5) as (a)(6) and by adding the following new paragraph (a)(5) to read as follows:

§ 121.1001 Who may initiate a size protest or a request for formal size determination?

(a) *Size Status Protests.* * * *

(5) For SBA's HUBZone program, the following entities may protest in connection with a particular HUBZone procurement:

(i) Any concern that submits an offer for a specific HUBZone set-aside contract;

(ii) Any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone SBC;

(iii) The contracting officer; and

(iv) The Associate Administrator for Government Contracting, or designee.

* * * * *

4. Section 121.1008 is amended by revising paragraph (a) to read as follows:

§ 121.1008 What happens after SBA receives a size protest or a request for a formal size determination?

(a) When a size protest is received, the SBA Government Contracting Area Director, or designee, will promptly notify the contracting officer, the protested concern, and the protestor that a protest has been received. In the event the size protest pertains to a requirement involving SBA's HUBZone Program, the Government Contracting Area Director will advise the AA/HUB of receipt of the protest. In the event the size protest pertains to a requirement involving SBA's SBIR Program, the Government Contracting Area Director will advise the Assistant Administrator for Technology of the receipt of the protest. SBA will provide a copy of the protest to the protested concern along with a blank SBA Application for Small Business Size Determination (SBA Form 355) by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt. SBA will ask the protested concern to respond to the allegations of the protestor.

* * * * *

PART 125—[AMENDED]

5. The authority section for 13 CFR part 125 is revised to read as follows:

Authority: Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; 15 U.S.C. 634(b)(6), 637, and 644; 31 U.S.C. 9701, 9792.

6. Section 125.2 is amended by revising the second sentence in paragraph (a)(1) to read as follows:

§ 125.2 Prime contracting assistance.

(a) * * *

(1) * * * PCRs review all acquisitions not set aside for small businesses, including HUBZone small business concerns, to determine whether a set-aside would be appropriate. * * *

* * * * *

7. Section 125.3 is amended by revising paragraphs (b) and (c) and by revising the last sentence of paragraph (d) to read as follows:

§ 125.3 Subcontracting assistance.

(a) * * *

(b) Upon determination of the successful subcontract offeror on a subcontract for which a small business, small disadvantaged business, and/or a HUBZone small business received a preference, but prior to award, the prime contractor must inform each unsuccessful offeror in writing of the name and location of the apparent successful offeror and if the successful offeror was a small business, small disadvantaged business, or HUBZone business. This applies to all subcontracts over $10,000.

(c) SBA Commercial Market Representatives (CMRs) facilitate the process of matching large prime contractors with small, small disadvantaged, and HUBZone subcontractors. CMRs identify, develop, and market small businesses to the prime contractors and assist the small concerns in obtaining subcontracts.

(d) * * * Source identification means identifying those small, small disadvantaged, and HUBZone concerns which can fulfill the needs assessed from the opportunity development process.

PART 126—[ADDED]

8. Add a new part 126 to read as follows:

PART 126—HUBZONE PROGRAM

Subpart A—Provisions of General Applicability

Subpart B—Requirements to be a Qualified Hubzone SBC

Subpart C—Certification

Subpart D—Program Examinations

Subpart E—Maintaining Hubzone Status

Subpart F—Contractual Assistance

Authority: Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; 15 U.S.C. 632(a).

Subpart A—Provisions of General Applicability

§ 126.100 What is the purpose of the HUBZone program?

The purpose of the HUBZone program is to provide federal contracting assistance for qualified SBCs located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in such areas.

§ 126.101 Which government departments or agencies are affected directly by the HUBZone program?

(a) Until September 30, 2000, the HUBZone program applies only to procurements by the following departments and agencies:

(1) Department of Agriculture;
(2) Department of Defense;
(3) Department of Energy;
(4) Department of Health and Human Services;
(5) Department of Housing and Urban Development;
(6) Department of Transportation;
(7) Department of Veterans Affairs;
(8) Environmental Protection Agency;
(9) General Services Administration; and
(10) National Aeronautics and Space Administration.

(b) After September 30, 2000, the HUBZone program will apply to all federal departments and agencies which employ one or more contracting officers as defined by 41 U.S.C. 423(f)(5).

§ 126.102 What is the effect of the HUBZone program on the section 8(d) subcontracting program?

The HUBZone Act of 1997 amended the section 8(d) subcontracting program to include qualified HUBZone SBCs in the formal subcontracting plans described in § 125.3 of this title.

§ 126.103 What definitions are important in the HUBZone program?

Administrator means the Administrator of the United States Small Business Administration (SBA).

AA/8(a)BD means SBA's Associate Administrator for 8(a) Business Development.

AA/HUB means SBA's Associate Administrator for the HUBZone Program.

ADA/GC&8(a)BD means SBA's Associate Deputy Administrator for Government Contracting and 8(a) Business Development.

Certify means the process by which SBA determines that a HUBZone SBC is qualified for the HUBZone program and entitled to be included in SBA's "List of Qualified HUBZone SBCs."

Citizen means a person born or naturalized in the United States. SBA does not consider holders of permanent visas and resident aliens to be citizens.

Concern means a firm which satisfies the requirements in §§ 121.105(a) and (b) of this title.

Contract opportunity means a situation in which a requirement for a procurement exists, none of the exclusions from § 126.605 applies, and any applicable conditions in § 126.607 are met.

County means the political subdivisions recognized as a county by a state or commonwealth or which is an equivalent political subdivision such as a parish, borough, independent city, or *municipio*, where such subdivisions are not subdivisions within counties.

County unemployment rate is the rate of unemployment for a county based on the most recent data available from the United States Department of Labor, Bureau of Labor Statistics. The appropriate data may be found in the DOL/BLS publication titled "Supplement 2, Unemployment in States and Local Areas." This publication is available for public inspection at the Department of Labor, Bureau of Labor Statistics, Division of Local Area Unemployment Statistics located at 2 Massachusetts Ave., NE, Room 4675, Washington D.C. 20212. A copy is also available at SBA, Office of AA/HUB, 409 3rd Street, SW, Washington D.C. 20416.

De-certify means the process by which SBA determines that a concern is no longer a qualified HUBZone SBC and removes that concern from its List.

Employee means a person (or persons) employed by a HUBZone SBC on a full-time (or full-time equivalent), permanent basis. Full-time equivalent includes employees who work 30 hours per week or more. Full-time equivalent also includes the aggregate of employees who work less than 30 hours a week, where the work hours of such employees add up to at least a 40 hour work week. The totality of the circumstances, including factors relevant for tax purposes, will determine whether persons are employees of a concern. Temporary employees, independent contractors or leased employees are not employees for these purposes.

Example 1: 4 employees each work 20 hours per week; SBA will regard that circumstance as 2 full-time equivalent employees.

Example 2: 1 employee works 20 hours per week and 1 employee works 15 hours per week; SBA will regard that circumstance as not a full-time equivalent.

Example 3: 1 employee works 15 hours per week, 1 employee works 10 hours per week, and 1 employee works 20 hours per week; SBA will regard that circumstance as 1 full-time equivalent employee.

Example 4: 1 employee works 30 hours per week and 2 employees each work 15 hours per week; SBA will regard that circumstance as 1 full-time equivalent employee.

HUBZone means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified non-metropolitan counties, or lands within the external boundaries of an Indian reservation. See other definitions in this section for further details.

HUBZone small business concern (HUBZone SBC) means a concern that is small as defined by § 126.203, is exclusively owned and controlled by persons who are United States citizens, and has its principal office located in a HUBZone.

HUBZone 8(a) concern means a concern that is certified as an 8(a) program participant and which is also a qualified HUBZone SBC.

Indian reservation has the meaning used by the Bureau of Indian Affairs in 25 CFR 151.2(f). This definition refers

generally to land over which a "tribe" has jurisdiction, and "tribe" includes Alaska Native entities under 25 CFR 81.1(w).

Interested party means any concern that submits an offer for a specific HUBZone sole source or set-aside contract, any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone SBC, the contracting activity's contracting officer, or SBA.

Lands within the external boundaries of an Indian reservation includes all lands within the outside perimeter of an Indian reservation, whether tribally owned and governed or not. For example, land that is individually owned and located within the outside perimeter of an Indian reservation is "lands within the external boundaries of an Indian reservation." By contrast, an Indian-owned parcel of land that is located outside the perimeter of an Indian reservation is not "lands within the external boundaries of an Indian reservation."

List refers to the database of qualified HUBZone SBCs that SBA has certified.

Median household income has the meaning used by the Bureau of the Census, United States Department of Commerce, in its publication titled, "1990 Census of Population, Social and Economic Characteristics," Report Number CP–2, pages B–14 and B–17. This publication is available for inspection at any local Federal Depository Library. For the location of a Federal Depository library, call toll-free (888) 293–6498 or contact the Bureau of the Census, Income Statistics Branch, Housing and Economic Statistics Division, Washington D.C. 20233–8500.

Metropolitan statistical area means an area as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986, (Title 26 of the United States Code).

Non-metropolitan has the meaning used by the Bureau of the Census, United States Department of Commerce, in its publication titled, "1990 Census of Population, Social and Economic Characteristics," Report Number CP–2, page A–9. This publication is available for inspection at any local Federal Depository Library. For the location of a Federal Depository Library, call toll-free (888) 293–6498 or contact the Bureau of the Census, Population Distribution Branch, Population Division, Washington D.C. 20233–8800.

Person means a natural person. Pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1626(e), Alaska Native Corporations and any direct or indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation are deemed to be owned and controlled by Natives, and are thus persons.

Principal office means the location where the greatest number of the concern's employees at any one location perform their work.

Qualified census tract has the meaning given that term in section 42(d)(5)(C)(ii)(I) of the Internal Revenue Code (Title 26 of the United States Code).

Qualified HUBZone SBC means a HUBZone SBC that SBA certifies as qualified for federal contracting assistance under the HUBZone program.

Qualified non-metropolitan county means any county that:

(1) Based on the most recent data available from the Bureau of the Census of the Department of Commerce—

(i) Is not located in a metropolitan statistical area; and

(ii) In which the median household income is less than 80 percent of the non-metropolitan State median household income; or

(2) Based on the most recent data available from the Secretary of Labor, has an unemployment rate that is not less than 140 percent of the statewide average unemployment rate for the State in which the county is located.

Reside means to live in a primary residence at a place for at least 180 days, or as a currently registered voter, and with intent to live there indefinitely.

Small disadvantaged business (SDB) means a concern that is small pursuant to part 121 of this title, and is owned and controlled by socially and economically disadvantaged individuals, tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations.

Statewide average unemployment rate is the rate based on the most recent data available from the Bureau of Labor Statistics, United States Department of Labor, Division of Local Area Unemployment Statistics, 2 Massachusetts Ave., NE., Room 4675, Washington, D.C. 20212. A copy is also available at SBA, Office of AA/HUB, 409 3rd Street, SW., Washington DC 20416.

Women-owned business (WOB) means a concern that is small pursuant to part 121 of this title, and is at least 51 percent owned and controlled by women.

Subpart B—Requirements to be a Qualified HUBZone SBC

§ 126.200 What requirements must a concern meet to receive SBA certification as a qualified HUBZone SBC?

(a) The concern must be a HUBZone SBC as defined in § 126.103; and

(b) At least 35 percent of the concern's employees must reside in a HUBZone, and the HUBZone SBC must certify that it will attempt to maintain this percentage during the performance of any HUBZone contract it receives. When determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction round up to the nearest whole number,

Example 1: A concern has 25 employees, 35 percent or 8.75 employees must reside in a HUBZone. Thus, 9 employees must reside in a HUBZone.

Example 2: A concern has 95 employees, 35 percent or 33.25 employees must reside in a HUBZone. Thus, 34 employees must reside in a HUBZone.

and

(c) The HUBZone SBC must certify that it will ensure that it will comply with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone SBC, as set forth in § 126.700.

§ 126.201 For this purpose, who does SBA consider to own a HUBZone SBC?

An owner of a HUBZone SBC is a person who owns any legal or equitable interest in such HUBZone SBC. More specifically:

(a) *Corporations.* SBA will consider any person who owns stock, whether voting or non-voting, to be an owner. SBA will consider options to purchase stock to have been exercised. SBA will consider the right to convert debentures into voting stock to have been exercised.

(b) *Partnerships.* SBA will consider a partner, whether general or limited, to be an owner if that partner owns an equitable interest in the partnership.

(c) *Sole proprietorships.* The proprietor is the owner.

(d) *Limited liability companies.* SBA will consider each member to be an owner of a limited liability company.

Example 1: All stock of a corporation is owned by U.S. citizens. The president of the corporation, a non-U.S. citizen, owns no stock in the corporation, but owns options to purchase stock in the corporation. SBA will consider the option exercised, and the corporation is not eligible to be a qualified HUBZone SBC.

Example 2: A partnership is owned 99.9 percent by persons who are U.S. citizens, and 0.1 percent by someone who is not. The partnership is not eligible because it is not 100 percent owned by U.S. citizens.

§ 126.202 Who does SBA consider to control a HUBZone SBC?

Control means both the day-to-day management and long-term decisionmaking authority for the HUBZone SBC. Many persons share control of a concern, including each of those occupying the following positions: officer, director, general partner, managing partner, and manager. In addition, key employees who possess critical licenses, expertise or responsibilities related to the concern's primary economic activity may share significant control of the concern. SBA will consider the control potential of such key employees on a case by case basis.

§ 126.203 What size standards apply to HUBZone SBCs?

(a) *At time of application for certification.* A HUBZone SBC must meet SBA's size standards for its primary industry classification as defined in § 121.201 of this title. If SBA is unable to verify that a concern is small, SBA may deny the concern status as a qualified HUBZone SBC, or SBA may request a formal size determination from the responsible Government Contracting Area Director or designee.

(b) *At time of contract offer.* A HUBZone SBC must be small within the size standard corresponding to the SIC code assigned to the contract.

§ 126.204 May a qualified HUBZone SBC have affiliates?

Yes. A qualified HUBZone SBC may have affiliates so long as the affiliates are also qualified HUBZone SBCs, 8(a) participants, or WOBs.

§ 126.205 May WOBs, 8(a) participants or SDBs be qualified HUBZone SBCs?

Yes. WOBs, 8(a) participants, and SDBs can qualify as HUBZone SBCs if they meet the additional requirements in this part.

§ 126.206 May non-manufacturers be qualified HUBZone SBCs?

Yes. Non-manufacturers (referred to in the HUBZone Act of 1997 as "regular dealers") may be certified as qualified HUBZone SBCs if they meet all the requirements set forth in § 126.200 and they can demonstrate that they can provide the product or products manufactured by qualified HUBZone SBCs. "Non-manufacturer" is defined in § 121.406(b)(1) of this title.

§ 126.207 May a qualified HUBZone SBC have offices or facilities in another HUBZone or outside a HUBZone?

Yes. A qualified HUBZone SBC may have offices or facilities in another HUBZone or even outside a HUBZone and still be a qualified HUBZone SBC. However, in order to qualify, the concern's principal office must be located in a HUBZone.

Subpart C—Certification

§ 126.300 How may a concern be certified as a qualified HUBZone SBC?

A concern must apply to SBA for certification. The application must include a representation that it meets the eligibility requirements described in § 126.200 and must submit relevant supporting information. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. SBA, in its sole discretion, may rely solely upon the information submitted to establish eligibility, or may request additional information, or may verify the information before making a determination. If SBA determines that the concern is a qualified HUBZone SBC, it will issue a certification to that effect and add the concern to the List.

§ 126.301 Is there any other way for a concern to obtain certification?

No. SBA certification is the only way to qualify for HUBZone program status.

§ 126.302 When may a concern apply for certification?

A concern may apply to SBA and submit the required information whenever it can represent that it meets the eligibility requirements, subject to § 126.309. All representations and supporting information contained in the application must be complete and accurate as of the date of submission. The application must be signed by an officer of the concern who is authorized to represent the concern.

§ 126.303 Where must a concern file its certification?

The concern must file its certification with the AA/HUB, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

§ 126.304 What must a concern submit to SBA?

(a) To be certified by SBA as a qualified HUBZone SBC, a concern must represent to SBA that under the definitions set forth in § 126.103:

(1) It is a small business concern that is both owned only by United States citizens and controlled only by United States citizens;

(2) Its principal office is located in a HUBZone;

(3) Not less than 35 percent of its employees reside in a HUBZone;

(4) It will use good faith efforts to ensure that a minimum percentage of 35 percent of its employees continue to reside in a HUBZone so long as SBA certifies it as qualified and during the performance of any contract awarded to it on the basis of its status as a qualified HUBZone SBC; and

(5) It will ensure that, where it enters into subcontracts to aid in performance of any prime contracts awarded to it because of its status as a qualified HUBZone SBC, it will incur not less than a certain minimum percentage of certain contract costs as set forth in § 126.700.

(b) If the concern is applying for HUBZone status based on a location within the external boundaries of an Indian reservation, the concern must submit with its application for certification official documentation from the appropriate Bureau of Indian Affairs (BIA) Land Titles and Records Office with jurisdiction over the concern's area, confirming that it is located within the external boundaries of an Indian reservation. BIA lists the Land Titles and Records Offices and their jurisdiction in 25 CFR 150.4 and 150.5. In cases where BIA is unable to verify whether the business is located within the external boundaries of an Indian reservation, applicants should contact the AA/HUB and SBA will assist them.

(c) In addition to these representations, the concern must submit the forms, attachments, and any additional information required by SBA.

§ 126.305 What format must the certification to SBA take?

A concern must submit the required information in either a written or electronic application form provided by SBA. An electronic application must be sufficiently authenticated for enforcement purposes.

§ 126.306 How will SBA process the certification?

(a) The AA/HUB is authorized to approve or decline certifications. SBA will receive and review all certifications, but SBA will not process incomplete packages. SBA will make its determination within 30 calendar days after receipt of a complete package whenever practicable. The decision of the AA/HUB is the final agency decision.

(b) SBA will base its certification on facts existing on the date of submission. SBA, in its sole discretion, may request additional information or clarification of information contained in the submission at any time.

(c) If SBA approves the application, SBA will send a written notice to the

concern and automatically enter it on the List described in § 126.307.

(d) A decision to deny eligibility must be in writing and state the specific reasons for denial.

§ 126.307 Where will SBA maintain the List of qualified HUBZone SBCs?

SBA maintains the List at its Internet website at http://www.sba.gov/HUB. Requesters also may obtain a copy of the List by writing to the AA/HUB at U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416 or via e-mail at aahub@sba.gov.

§ 126.308 What happens if SBA inadvertently omits a qualified HUBZone SBC from the List?

A HUBZone SBC that has received SBA's notice of certification, but is not on the List within 10 business days thereafter should immediately notify the AA/HUB in writing at U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416 or via e-mail at aahub@sba.gov. The concern must appear on the List to be eligible for HUBZone contracts.

§ 126.309 How may a declined or de-certified concern seek certification at a later date?

A concern that SBA has declined or de-certified may seek certification no sooner than one year from the date of decline or de-certification if it believes that it has overcome all reasons for decline through changed circumstances, and is currently eligible.

Subpart D—Program Examinations

§ 126.400 Who will conduct program examinations?

SBA field staff or others designated by the AA/HUB will conduct program examinations.

§ 126.401 What will SBA examine?

(a) *Eligibility.* Examiners will verify that the qualified HUBZone SBC met the requirements set forth in § 126.200 at the time of its application for certification and at the time of examination.

(b) *Scope of review.* Examiners may review any information related to the HUBZone SBC qualifying requirements, including documentation related to the location and ownership of the concern, the employee percentage requirements, and the concern's attempt to maintain this percentage. The qualified HUBZone SBC must document each employee's residence address through employment records. The examiner also may review property tax, public utility or postal records, and other relevant documents. The concern must retain documentation demonstrating satisfaction of the employee residence and other qualifying requirements for 6 years from date of submission to SBA.

§ 126.402 When may SBA conduct program examinations?

SBA may conduct a program examination at the time the concern certifies to SBA that it meets the requirements of the program or at any other time while the concern is on the List or subsequent to receipt of HUBZone contract benefits. For example, SBA may conduct a program examination to verify eligibility upon notification of a material change under § 126.501. Additionally, SBA, in its sole discretion, may perform random program examinations to determine continuing compliance with program requirements, or it may conduct a program examination in response to credible information calling into question the HUBZone status of a small business concern. For protests to the HUBZone status of a small business concern in regard to a particular procurement, see § 126.800.

§ 126.403 May SBA require additional information from a HUBZone SBC?

Yes. At the discretion of the AA/HUB, SBA has the right to require that a HUBZone SBC submit additional information as part of the certification process, or at any time thereafter. If SBA finds a HUBZone SBC is not qualified, SBA will de-certify the concern and delete its name from the List. SBA may choose to pursue penalties against any concern that has made material misrepresentations in its submissions to SBA in accordance with § 126.900.

§ 126.404 What happens if SBA is unable to verify a qualified HUBZone SBC's eligibility?

(a) Authorized SBA headquarters personnel will first notify the concern in writing of the reasons why it is no longer eligible.

(b) The concern will have 10 business days from the date that it receives notification to respond.

(c) The AA/HUB will consider the reasons for proposed de-certification and the concern's response before making a decision whether to de-certify. The AA/HUB's decision is the final agency decision.

§ 126.405 What happens if SBA verifies eligibility?

If SBA verifies that the concern is eligible, it will amend the date of certification on the List to reflect the date of verification.

Subpart E—Maintaining Hubzone Status

§ 126.500 How does a qualified HUBZone SBC maintain HUBZone status?

(a) Any qualified HUBZone SBC wishing to remain on the List must self-certify annually to SBA that it remains a qualified HUBZone SBC.

(b) Concerns wishing to remain in the program without any interruption must self-certify their continued eligibility to SBA within 30 calendar days after each annual anniversary of their date of certification. Failure to do so will result in SBA de-certifying the concern. The concern then would have to submit a new application for certification under §§ 126.300 through 126.306.

(c) The self-certification to SBA must be in writing and must represent that the circumstances relative to eligibility which existed on the date of certification showing on the List have not materially changed.

§ 126.501 What are a qualified HUBZone SBC's ongoing obligations to SBA?

The concern must immediately notify SBA of any material change which could affect its eligibility. The notification must be in writing, and must be sent or delivered to the AA/HUB to comply with this requirement. Failure of a qualified HUBZone SBC to notify SBA of such a material change will result in immediate de-certification and removal from the List, and SBA may seek the imposition of penalties under § 126.900. If the concern later becomes eligible for the program, the concern must apply for certification pursuant to §§ 126.300 through 126.309 and must include with its application for certification a full explanation of why it failed to notify SBA of the material change. If SBA is not satisfied with the explanation provided, SBA may decline to certify the concern pursuant to § 126.306.

§ 126.502 Is there a limit to the length of time a qualified HUBZone SBC may be on the List?

There is no limit to the length of time a qualified HUBZone SBC may remain on the List so long as it continues to follow the provisions of §§ 126.200, 126.500, and 126.501.

§ 126.503 When is a concern removed from the List?

If SBA determines at any time that a HUBZone SBC is not qualified, SBA may de-certify the HUBZone SBC, remove the concern from the List, and seek imposition of penalties pursuant to § 126.900. An adverse finding in the resolution of a protest also may result in de-certification and removal from the

List, and the imposition of penalties pursuant to § 126.900. Failure to notify SBA of a material change which could affect a concern's eligibility will result in immediate de-certification, removal from the List, and SBA may seek the imposition of penalties under § 126.900.

Subpart F—Contractual Assistance

§ 126.600 What are HUBZone contracts?

HUBZone contracts are contracts awarded to a qualified HUBZone SBC through any of the following procurement methods:

(a) Sole source awards to qualified HUBZone SBCs;

(b) Set-aside awards based on competition restricted to qualified HUBZone SBCs; or

(c) Awards to qualified HUBZone SBCs through full and open competition after a price evaluation preference in favor of qualified HUBZone SBCs.

§ 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?

(a) In order to submit an offer on a specific HUBZone contract, a concern must be small under the size standard corresponding to the SIC code assigned to the contract.

(b) At the time a qualified HUBZone SBC submits its offer on a specific contract, it must certify to the contracting officer that

(1) It is a qualified HUBZone SBC which appears on SBA's List;

(2) There has been no material change in its circumstances since the date of certification shown on the List which could affect its HUBZone eligibility; and

(3) It is small under the SIC code assigned to the procurement.

(c) If bidding as a joint venture, each qualified HUBZone SBC must make the certifications in paragraphs (b)(1), (2), and (3) of this section separately under its own name.

(d) A qualified HUBZone SBC which is a non-manufacturer may submit an offer on a contract for supplies if it meets the requirements under the non-manufacturer rule as defined in § 121.406(b) of this title and if the small manufacturer is also a qualified HUBZone SBC.

§ 126.602 Must a qualified HUBZone SBC maintain the employee residency percentage during contract performance?

The qualified HUBZone SBC must attempt to maintain the required percentage of employees who reside in a HUBZone during the performance of any contract awarded to the concern on the basis of HUBZone status. "Attempt to maintain" means making substantive and documented efforts to maintain that percentage such as written offers of employment, published advertisements seeking employees, and attendance at job fairs. HUBZone contracts are described more fully in § 126.600. Enforcement of this paragraph will be the responsibility of SBA, which will monitor the requirement in accordance with §§ 126.400 through 126.405.

§ 126.603 Does HUBZone certification guarantee receipt of HUBZone contracts?

No. Qualified HUBZone SBCs should market their capabilities to appropriate procuring agencies in order to increase their prospects of having a requirement set aside for HUBZone contract award.

§ 126.604 Who decides if a contract opportunity for HUBZone set-aside competition exists?

The contracting officer for the contracting activity makes this decision.

§ 126.605 What requirements are not available for HUBZone contracts?

A contracting activity may not make a requirement available for a HUBZone contract if:

(a) The contracting activity otherwise would fulfill that requirement through award to Federal Prison Industries, Inc. under 18 U.S.C. 4124 or 4125, or to Javits-Wagner-O'Day Act participating non-profit agencies for the blind and severely disabled, under 41 U.S.C. 46 *et seq.*, as amended; or

(b) An 8(a) participant currently is performing that requirement or SBA has accepted that requirement for performance under the authority of the section 8(a) program, unless SBA has consented to release of the requirement from the section 8(a) program; or

(c) The requirement is at or below the micropurchase threshold.

§ 126.606 May a contracting officer request that SBA release an 8(a) requirement for award as a HUBZone contract?

Yes. However, SBA will grant its consent only where neither the incumbent nor any other 8(a) participant(s) can perform the requirement, and where the section 8(a) program will not be adversely affected. The SBA official authorized to grant such consent is the AA/8(a)BD.

§ 126.607 When must a contracting officer set aside a requirement for qualified HUBZone SBCs?

(a) The contracting officer first must review a requirement to determine whether it is excluded from HUBZone contracting pursuant to § 126.605.

(b) The contracting officer must identify qualified HUBZone 8(a) concerns and other 8(a) concerns. The contracting officer must give first priority to qualified HUBZone 8(a) concerns.

(c) After determining that neither paragraph (a) or (b) of this section apply, the contracting officer must set aside the requirement for competition restricted to qualified HUBZone SBCs if the contracting officer:

(1) Has a reasonable expectation, after reviewing SBA's list of qualified HUBZone SBCs that at least two responsible qualified HUBZone SBCs will submit offers; and

(2) Determines that award can be made at fair market price.

§ 126.608 Are there HUBZone contracting opportunities below the simplified acquisition threshold?

Yes. If the requirement is below the simplified acquisition threshold, the contracting officer should set-aside the requirement for consideration among qualified HUBZone SBCs using simplified acquisition procedures.

§ 126.609 What must the contracting officer do if a contracting opportunity does not exist for competition among qualified HUBZone SBCs?

If a contract opportunity for competition among qualified SBCs does not exist under the provisions of § 126.607, the contracting officer must first consider the possibility of making an award to a qualified HUBZone SBC on a sole source basis, and then to a small business under small business set-aside procedures, in that order of precedence. If the criteria are not met for any of these special contracting authorities, then the contracting officer may solicit the procurement through another appropriate contracting method.

§ 126.610 May SBA appeal a contracting officer's decision not to reserve a procurement for award as a HUBZone contract?

The Administrator may appeal a contracting officer's decision not to make a particular requirement available for award as a HUBZone sole source or a HUBZone set-aside contract.

§ 126.611 What is the process for such an appeal?

(a) *Notice of appeal.* When the contracting officer rejects a recommendation by SBA's Procurement Center Representative to make a requirement available for award as a HUBZone contract, he or she must notify the Procurement Center Representative as soon as practicable. If the Administrator intends to appeal the decision, SBA must notify the contracting officer no later than five business days after receiving notice of the contracting officer's decision.

(b) *Suspension of action.* Upon receipt of notice of SBA's intent to appeal, the contracting officer must suspend further action regarding the procurement until the head of the contracting activity issues a written decision on the appeal, unless the head of the contracting activity makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States compel award of the contract.

(c) *Deadline for appeal.* Within 15 business days of SBA's notification to the contracting officer, SBA must file its formal appeal with the head of the contracting activity or that agency may consider the appeal withdrawn.

(d) *Decision.* The contracting activity must specify in writing the reasons for a denial of an appeal brought under this section.

§ 126.612 When may a contracting officer award sole source contracts to a qualified HUBZone SBC?

A contracting officer may award a sole source contract to a qualified HUBZone SBC only when the contracting officer determines that:

(a) None of the provisions of §§ 126.605 or 126.607 apply;

(b) The anticipated award price of the contract, including options, will not exceed:

(1) $5,000,000 for a requirement within the SIC codes for manufacturing; or

(2) $3,000,000 for a requirement within all other SIC codes;

(c) Two or more qualified HUBZone SBCs are not likely to submit offers;

(d) A qualified HUBZone SBC is a responsible contractor able to perform the contract; and

(e) Contract award can be made at a fair and reasonable price.

§ 126.613 How does a price evaluation preference affect the bid of a qualified HUBZone SBC in full and open competition?

Where a contracting officer will award a contract on the basis of full and open competition, the contracting officer must deem the price offered by a qualified HUBZone SBC to be lower than the price offered by another offeror (other than another small business concern) if the price offered by the qualified HUBZone SBC is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.

Example: In a full and open competition, a qualified HUBZone SBC submits an offer of $98; another small business concern submits an offer of $100; and a large business submits an offer of $93. The lowest, responsive, responsible offeror would be the large business. However, the contracting officer must apply the HUBZone price evaluation preference. If the qualified HUBZone SBC's offer is not more than 10 percent higher than the large business's offer, the contracting officer must deem the qualified HUBZone SBC's price as lower than the price of the large business. In this example, the qualified HUBZone SBC's price is not more than 10 percent higher than the large business's price and, consequently, the qualified HUBZone SBC displaces the large business as the lowest, responsive, and responsible offeror. If the HUBZone SBC offer were $101, the award would go to the large business at $93. If the HUBZone SBC will not benefit from the preference, the preference is not applied to change an offer.

§ 126.614 How does a contracting officer treat a concern that is both a qualified HUBZone SBC and an SDB in a full and open competition?

A concern that is both a qualified HUBZone SBC and an SDB must receive the benefit of both the HUBZone price evaluation preference described in § 126.614 and the SDB price evaluation preference described in 10 U.S.C. 2323 and the Federal Acquisition Streamlining Act, section 7102(a)(1)(B), Public Law 103–355, in a full and open competition.

§ 126.615 May a large business participate on a HUBZone contract?

A large business may not participate as a prime contractor on a HUBZone award but may participate as a subcontractor to an otherwise qualified HUBZone SBC, subject to the contract performance requirements set forth in § 126.700.

§ 126.616 What requirements must a joint venture satisfy to bid on a HUBZone contract?

A joint venture may bid on a HUBZone contract if the joint venture meets all of the following requirements:

(a) *HUBZone joint venture.* A qualified HUBZone SBC may enter into a joint venture with one or more other qualified HUBZone SBCs, 8(a) participants, or WOBs for the purpose of performing a specific HUBZone contract.

(b) *Size of concerns.* A joint venture of at least one qualified HUBZone SBC and an 8(a) participant or a woman-owned small business concern may submit an offer for a HUBZone contract so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(1) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the SIC code assigned to the contract; and

(2) For a procurement having an employee-based size standard, the procurement exceeds $10 million.

(c) *Performance of work.* The aggregate of the qualified HUBZone SBCs to the joint venture, not each concern separately, must perform the applicable percentage of work required by § 126.700.

Subpart G—Contract Performance Requirements

§ 126.700 What are the subcontracting percentages requirements under this program?

(a) *Subcontracting percentage requirements.* A qualified HUBZone SBC prime contractor can subcontract part of a HUBZone contract provided:

(1) In the case of a contract for services (except construction), the qualified HUBZone SBC spends at least 50 percent of the cost of the contract performance incurred for personnel on the concern's employees or on the employees of other qualified HUBZone SBCs;

(2) In the case of a contract for general construction, the qualified HUBZone SBC spends at least 15 percent of the cost of contract performance incurred for personnel on the concern's employees or the employees of other qualified HUBZone SBCs;

(3) In the case of a contract for construction by special trade contractors, the qualified HUBZone SBC spends at least 25 percent of the cost of contract performance incurred for personnel on the concerns' employees or the employees of other qualified HUBZone SBCs; and

(4) In the case of a contract for procurement of supplies (other than a procurement from a regular dealer in such supplies) the qualified HUBZone SBC spends at least 50 percent of the manufacturing cost (excluding the cost of materials) on performing the contract in a HUBZone. One or more qualified HUBZone SBCs may combine to meet this subcontracting percentage requirement.

(b) *Definitions.* Many definitions applicable to this section can be found in § 125.6 of this title.

§ 126.701 Can these subcontracting percentages requirements change?

Yes. The Administrator may change the subcontracting percentage requirements if the Administrator determines that such action is necessary to reflect conventional industry practices.

§ 126.702 How can the subcontracting percentage requirements be changed?

Representatives of a national trade or industry group (as defined by two-digit Major Group industry codes) may request a change in subcontracting percentage requirements for that industry. Changes in subcontracting percentage requirements may be requested only for categories defined by two-digit Major Group industry codes in the Standard Industry Classification (SIC) Code system. SBA will not consider requests from anyone other than a representative of a national trade or industry group or requests for changes for four-digit SIC Code categories.

§ 126.703 What are the procedures for requesting changes in subcontracting percentages?

(a) *Format of request.* There is no prescribed format, but the requester should try to demonstrate to the Administrator that a change in percentage is necessary to reflect conventional industry practices, and should support its request with information including, but not limited to:

(1) Information relative to the economic conditions and structure of the entire national industry;

(2) Market data, technical changes in the industry and industry trends;

(3) Specific reasons and justifications for the change in the subcontracting percentage;

(4) The effect such a change would have on the federal procurement process; and

(5) Information demonstrating how the proposed change would promote the purposes of the HUBZone Program.

(b) *Notice to public.* Upon an adequate preliminary showing to SBA, SBA will publish in the **Federal Register** a notice of its receipt of a request that it consider a change in the subcontracting percentage requirements for a particular industry for HUBZone contracts. The notice will identify the group making the request, and give the public an opportunity to submit to the Administrator information and arguments in both support and opposition.

(c) *Comments.* Once SBA has published a notice in the **Federal Register**, it will afford a period of not less than 60 days for public comment.

(d) *Decision.* SBA will render its decision after the close of the comment period. If it decides against a change, it will publish notice of its decision in the **Federal Register**. Concurrent with the notice, SBA will advise the requester of its decision in writing. If it decides in favor of a change, SBA will propose an appropriate change to this part in accordance with proper rulemaking procedures.

Subpart H—Protests

§ 126.800 Who may protest the status of a qualified HUBZone SBC?

(a) *For sole source procurements.* SBA or the contracting officer may protest the proposed awardee's qualified HUBZone SBC status.

(b) *For all other procurements.* Any interested party may protest the apparent successful offeror's qualified HUBZone SBC status.

§ 126.801 How does one file a HUBZone status protest?

(a) *General.* The protest procedures described in this part are separate from those governing size protests and appeals. All protests relating to whether a qualified HUBZone SBC is a "small" business for purposes of any Federal program are subject to part 121 of this title and must be filed in accordance with that part. If a protester protests both the size of the HUBZone SBC and whether the concern meets the HUBZone qualifying requirements set forth in § 126.200, SBA will process each protest concurrently, under the procedures set forth in part 121 of this title and this part.

(b) *Format.* Protests must be in writing and state all specific grounds for the protest. A protest merely asserting that the protested concern is not a qualified HUBZone SBC, without setting forth specific facts or allegations, is insufficient.

(c) *Filing.* (1) An interested party other than a contracting officer or SBA must submit its written protest to the contracting officer.

(2) A contracting officer and SBA must submit their protest to the AA/HUB.

(3) Protestors may deliver their protests in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period).

(d) *Timeliness.* (1) An interested party must submit its protest by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror (in negotiated acquisitions).

(2) Any protest received after the time limits is untimely.

(3) Any protest received prior to bid opening or notification of intended award, whichever applies, is premature.

(e) *Referral to SBA.* The contracting officer must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The contracting officer must send protests to AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

§ 126.802 Who decides a HUBZone status protest?

The AA/HUB or designee will determine whether the concern has qualified HUBZone status.

§ 126.803 How will SBA process a HUBZone status protest?

(a) *Notice of receipt of protest.* (1) SBA immediately will notify the contracting officer and the protestor of the date SBA receives a protest and whether SBA will process the protest or dismiss it in accordance with § 126.804.

(2) If SBA determines the protest is timely and sufficiently specific, SBA will notify the protested HUBZone SBC of the protest and the identity of the protestor. The protested HUBZone SBC may submit information responsive to the protest within 5 business days.

(b) *Time period for determination.* (1) SBA will determine the HUBZone status of the protested HUBZone SBC within 15 business days after receipt of a protest.

(2) If SBA does not contact the contracting officer within 15 business days, the contracting officer may award the contract, unless the contracting officer has granted SBA an extension.

(3) The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

(c) *Notice of determination.* SBA will notify the contracting officer, the protestor, and the protested concern of its determination.

(d) *Effect of determination.* The determination is effective immediately and is final unless overturned on appeal by the ADA/GC&8(a)BD, pursuant to § 126.805. If SBA upholds the protest, SBA will de-certify the concern as a qualified HUBZone SBC. If SBA denies the protest, after considering the merits of the protest, SBA will amend the date of certification on the List to reflect the date of protest decision.

§ 126.804 Will SBA decide all HUBZone status protests?

SBA will decide all protests not dismissed as premature, untimely or non-specific.

§ 126.805 What are the procedures for appeals of HUBZone status determinations?

(a) *Who may appeal.* The protested HUBZone SBC, the protestor, or the contracting officer may file appeals of protest determinations with SBA's ADA/GC&8(a)BD.

(b) *Timeliness of appeal.* SBA's ADA/GC&8(a)BD must receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the five-day period.

(c) *Method of Submission.* The party appealing the decision may deliver its appeal in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period).

(d) *Notice of appeal.* The party bringing an appeal must provide notice of the appeal to the contracting activity contracting officer and either the protested HUBZone SBC or original protestor, as appropriate.

(e) *Grounds for appeal.* (1) SBA will re-examine a protest determination only if there was a clear and significant error in the processing of the protest or if the AA/HUB failed completely to consider a significant fact contained within the information supplied by the protestor or the protested HUBZone SBC.

(2) SBA will not consider additional information or changed circumstances that were not disclosed at the time of the AA/HUB's decision or that are based on disagreement with the findings and conclusions contained in the determination.

(f) *Contents of appeal.* The appeal must be in writing. The appeal must identify the protest determination being appealed and set forth a full and specific statement as to why the decision is erroneous or what significant fact the AA/HUB failed to consider.

(g) *Completion of appeal after award.* An appeal may proceed to completion even after award of the contract that prompted the protest, if so desired by the protested HUBZone SBC, or where SBA determines that a decision on appeal is meaningful.

(h) *Decision.* The ADA/GC&8(a)BD will make its decision within 5 business days of its receipt, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protestor, and the protested HUBZone SBC, consistent with law. The ADA/GC&8(a)BD's decision is the final agency decision.

Subpart I—Penalties

§ 126.900 What penalties may be imposed under this part?

(a) *Suspension or debarment.* The Agency debarring official may suspend or debar a person or concern pursuant to the procedures set forth in part 145 of this title. The contracting agency debarring official may debar or suspend a person or concern under the Federal Acquisition Regulation, 48 CFR Part 9, subpart 9.4.

(b) *Civil penalties.* Persons or concerns are subject to civil remedies under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws.

(c) *Criminal penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the HUBZone status of a small business concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concerns also are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct "continuing representations" that are no longer true.

Dated: June 5, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–15581 Filed 6–10–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–55–AD; Amendment 39–10590; AD 98–13–02]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models 35, A35, B35, and 35R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Raytheon Aircraft Company (Raytheon) Models 35, A35, B35, and 35R airplanes (commonly referred to as Beech Models 35, A35, B35, and 35R airplanes). This AD requires fabricating a placard that restricts the never exceed speed (Vne) to no more than 144 miles per hour (MPH) or 125 knots (KTS) indicated airspeed (IAS), and installing this placard on the instrument panel within the pilot's clear view. This AD also requires marking a red line on the airspeed indicator glass at 144 MPH (125 KTS), marking a white slippage mark on the outside surface of the airspeed indicator between the glass and case, and inserting a copy of this AD into the Limitations Section of the airplane flight manual (AFM). This AD is the result of several occurrences of in-flight vibration on the affected airplanes. The actions specified by this AD are intended to prevent in-flight vibrations caused by the affected airplanes operating at excessive speeds, which could result in airplane damage and possible loss of control of the airplane.

DATES: Effective July 7, 1998.

Comments for inclusion in the Rules Docket must be received on or before August 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Litke, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4127; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has recently received reports of several incidents of in-flight vibrations on Raytheon Models 35, A35, B35, and 35R airplanes (commonly referred to as Beech Models 35, A35, B35, and 35R airplanes).

These incidents are unrelated to AD 94–20–04, Amendment 39–9032 (59 FR 49785, September 30, 1994), which currently requires, among other things, balancing the ruddervators (off the airplane) anytime the ruddervator is repaired or repainted on Raytheon 35 series airplanes. Of the 10 incidents since AD 94–20–04 became effective, 7

of the affected airplanes had ruddervators that were balanced and 3 of the affected airplanes had ruddervators that were out-of-balance.

Post-flight inspections of the airplanes involved in the above-referenced incidents have revealed cracked bulkheads and wrinkled skin in the aft fuselage; and broken spars, broken hinges, and bent skin on the stabilizers and ruddervators.

The Raytheon Models 35, A35, B35, and 35R airplanes are equipped with "V-tails" that have a narrow chord stabilizer without reinforcing cuffs. The FAA's preliminary investigation reveals the possibility of an unstable flutter mode in the 160 to 170 MPH range for the Raytheon Models 35, A35, B35, and 35R airplanes. This unstable mode is not likely to occur on other Raytheon airplane models with "V-tail" configurations.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent in-flight vibrations caused by the affected airplanes operating at excessive speeds, which could result in airplane damage and possible loss of control of the airplane.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Models 35, A35, B35, and 35R airplanes of the same type design, the FAA is issuing an AD. This AD requires:

—Fabricating a placard that restricts the never exceed speed (Vne) to no more than 144 miles MPH or 125 KTS IAS, and installing this placard on the instrument panel within the pilot's clear view;

—Marking a red line on the airspeed indicator glass at 144 MPH (125 KTS);

—Marking a white slippage mark on the outside surface of the airspeed indicator between the glass and case; and

—Inserting a copy of this AD into the Limitations Section of the AFM.

Possible Follow-Up AD Action

Raytheon is also reviewing the information related to the occurrences referenced in this AD and may develop a modification that, when incorporated, would eliminate the need for the speed restrictions required by this AD. The FAA will review any modification that is developed, determine whether it would eliminate the need for the requirements of this action, and then determine whether additional AD action is necessary.

Determination of the Effective Date of the AD

Since a situation exists (possible loss of control of the airplane due to in-flight vibrations) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior 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 immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. 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 No. 98–CE–55–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 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–13–02 Raytheon Aircraft Company (Type Certificate No. A24CE formerly held by the Beech Aircraft Corporation): Amendment 39–10590; Docket No. 98–CE–55–AD.

Applicability: Models 35, A35, B35, and 35R airplanes, all serial numbers, 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 (f) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 10 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent in-flight vibrations caused by the affected airplanes operating at excessive speeds, which could result in airplane damage and possible loss of control of the airplane, accomplish the following:

(a) Fabricate a placard that restricts the never exceed speed (Vne) to no more than 144 miles per hour (MPH) or 125 knots (KTS) indicated airspeed (IAS), and install this placard on the instrument panel within the pilot's clear view. The placard should utilize letters of at least 0.10-inch in height and contain the following words:

"Never exceed speed, Vne, 144 MPH (125 KTS) IAS"

(b) Mark a red line on the airspeed indicator glass at 144 MPH (125 KTS) and mark a white slippage mark on the outside surface of the airspeed indicator between the glass and case.

(c) Insert a copy of this AD into the Limitations Section of the airplane flight manual (AFM).

(d) Fabricating and installing the placard as required by paragraph (a) of this AD and inserting this AD into the Limitations Section of the AFM as required by paragraph (c) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(g) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(h) This amendment becomes effective on July 7, 1998.

Issued in Kansas City, Missouri, on June 2, 1998.

Ronald K. Rathgeber,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15202 Filed 6–10–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 700

[Docket No. 970827205–8126–02]

RIN 0694–AA02

Defense Priorities and Allocations System

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is issuing this rule to amend the Defense Priorities and Allocations System (DPAS) regulation by updating, modifying and clarifying a number of its provisions.

In reviewing the current DPAS and in issuing this rule, the objective has been to improve DPAS administration and implementation and make it more effective and efficient in the post-Cold War era.

EFFECTIVE DATE: This rule is effective July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, DPAS Program Manager, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3634, FAX: (202) 482–5650, and E-Mail: rmeyers@bxa.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 1997, the Department of Commerce published in the **Federal Register** (62 FR 51389) a request for comments on a proposed rule that would amend the Defense Priorities and Allocations System (DPAS) regulation by updating, modifying, and clarifying a number of its provisions.

Interested parties were requested to submit comments on the proposed rule by October 31, 1997. Interested parties were also requested to provide comments on any other provision of the DPAS that may be hindering effective and efficient administration or implementation. Of the seven comments received, only two were from private sector firms. Based on these comments and an editorial review of the proposed rule, several provisions of the proposed rule are further revised and clarified, and various editorial changes are made.

Analysis of Comments

No commenters objected to the proposed rule. Accordingly, the Department is proceeding with publication of this final rule with the changes discussed below.

Public comments were particularly sought concerning the proposed revision of three provisions that directly affect industry operations under the DPAS. These provisions pertain to: (1) the time period within which a supplier must accept or reject a rated order [§ 700.13(d)(1)]; (2) the order of precedence to be given by contractors and suppliers to conflicting rated orders of equal priority status (§ 700.14); and (3) the combining by a contractor of defense rated requirements with commercial (unrated) requirements on one purchase order to a supplier [§ 700.17(d)].

Comments were also sought concerning (1) a proposal to remove the controlled materials provisions from §§ 700.30–700.31 and all other provisions, references, and supporting schedules to the program from throughout the regulation; and (2) proposals to make various other jurisdictional, technical, administrative, and miscellaneous revisions to a number of DPAS provisions. These revisions are needed to address changes to delegated authority, to update and clarify the text, and to improve generally the administration, effectiveness, and efficiency of the DPAS in support of our nation's post-Cold War defense requirements and its ability to respond fully to a national security emergency or domestic emergency preparedness situation.

1. Customer Notification of Acceptance or Rejection of Rated Orders

Industry has complained about the difficulty of complying with the customer notification requirements of § 700.13(d)(1). These rules required a supplier to accept or reject a rated order in writing within ten (10) working days after receipt of a DO rated order and within five (5) working days after receipt of a DX rated order. Accordingly, § 700.13(d)(1) is revised to extend the time within which a person must accept or reject a rated order by five (5) working days to fifteen (15) working days after receipt of a DO rated order, and ten (10) working days after receipt of a DX rated order. No commenter on the proposed rule objected to this change.

Also, because of the increasing use by industry of electronic data interchange to place contracts and purchase orders, § 700.13(d) is revised to reference specifically the electronic placement, acceptance, and rejection of rated orders. However, if the rated order is

rejected, the rule requires that the reasons for rejection be provided in writing (not electronically).

One commenter objected to the requirement that a person must acknowledge acceptance of a rated order. The primary goal of the DPAS is to ensure timely delivery of defense items. Thus, it is most important that customers receive written or electronic proof from their suppliers that their rated orders were accepted for delivery as required by the order. It should be noted that this requirement to acknowledge acceptance of the receipt of a rated order is an obligation placed on the recipient of the order, not on the person placing the order.

2. Precedence of Rated Orders of Equal Priority Status

Many companies have requested clarification of the DPAS rules on the preference to be given to rated orders which have equal priority status (DX or DO) when production, delivery or performance scheduling conflicts or other problems arise following acceptance of the rated orders. Accordingly, § 700.14(c) (Preferential scheduling) is revised to provide that if a person finds that delivery or performance against any accepted rated orders conflicts with the delivery or performance against any other accepted rated orders of equal priority status, preference shall be given to the conflicting rated orders in the sequence in which they are to be delivered or performed (not to the receipt dates). However, if the conflicting rated orders are scheduled to be delivered or performed on the same day, the person shall give preference to those orders which have the earliest receipt dates. If under these rules, the delivery or performance conflicts cannot be resolved, or if the customer objects to the rescheduling of the rated order, special priorities assistance should be requested promptly under §§ 700.50–700.54.

It should be noted that the proposed rule specified the receipt dates of the conflicting rated orders as the criteria for precedence. Because Department of Defense (DOD) and an industry commenter objections, and to emphasize the importance of timely delivery against rated orders, the final rule establishes the delivery or performance schedule as the criteria for precedence.

3. Combining Defense Rated Requirements With Commercial (Unrated) Requirements

The final rule revises § 700.17(d) (Use of rated orders) to eliminate the requirement for a contractor who combines rated and unrated order quantities on a purchase order to a supplier, to attach to the combined order a separate rated order with the rated quantities. Many companies have objected to this separate rated order requirement and the industry commenters on the proposed rule expressed support for its elimination.

The final rule also provides that the rated quantities in the combined purchase order must be clearly and separately identified and that a special statement must be included on the combined purchase order to notify the supplier that the order contains rated quantities certified for national defense use and that the provisions of the DPAS apply only to the rated quantities.

4. National Security Emergency Preparedness and Removal of the Controlled Materials Provisions

No commenter objected to removal from the DPAS of all provisions and references pertaining to the controlled materials program. Therefore, the final rule removes all such provisions and references, including Schedules II, III, and IV to part 700.

The final rule also further revises the text of § 700.30 to clearly state how the DPAS may be expanded in a national security emergency to ensure rapid industrial response and the timely availability of critical industrial items and facilities to meet the urgent national defense or domestic emergency preparedness requirements of approved programs.

5. New Approved Programs

Except as discussed below, no commenter objected to the proposed addition of two new approved programs, "Designated Programs" and "Food Resources (combat rations)", and changing the "N1" Federal Emergency Management Agency program name to "Emergency Preparedness Activities". Accordingly, the final rule revises Schedule 1 to part 700 to title the Schedule "Approved Programs and Delegate Agencies"; assign the "Designated Programs" program to the Department of Commerce as Delegate Agency and identify the program with the "H8" Program Identification Symbol; and assign the "Food Resources (combat rations)" program to the Department of Defense (DOD) as Delegate Agency and identify the program with the "C1" Program Identification Symbol. At the request of DOD, the program name "Designated Programs" is used in this final rule instead of the name "Special Projects" to avoid confusion over use of this term for other purposes.

6. Minimum Rated Order Amount

Under the proposed rule, the minimum rated order amount in § 700.17(f) would have increased from $5000 to $100,000 to conform to the current simplified Federal Acquisition Regulation (FAR) small order threshold of $100,000 (see FAR § 2.101). Although the private sector commenters supported this change, DOD objected on the grounds that too many lower cost critical defense orders, especially at the lower-tier levels of the industrial base, would no longer be priority rated, this impacting DPAS effectiveness.

However, recognizing the need to increase the minimum rated order amount, DOD recommended that this amount be established at $50,000, or one half of the FAR Simplified Acquisition Threshold, which ever amount is larger, provided that delivery can be obtained in a timely fashion without the use of a priority rating. We have decided to adopt the DOD recommendation and increase the minimum rated order amount accordingly. During the next several years, we will review the impact of this revision on the timeliness of defense procurement and public comment is invited. If warranted, a further adjustment of the minimum rated order amount will be proposed.

7. Other Revisions and Non-Substantive and Editorial Changes

Several commenters provided comment on various technical issues such as the correctness of citations and definitions; the use of terms such as "national security emergency", "domestic emergency preparedness", and "requirements contract" and "calls"; and the need for a definition of the term "industrial resources". To further improve the clarity and effectiveness of the DPAS, this rule incorporates these revisions. An editorial review of the proposed rule also suggested the need for further editorial and technical corrections and these revisions are made in this rule.

8. DPAS Schedule I and the Other DPAS Schedules

This rule revises DPAS Schedule 1 to part 700, which lists all Approved Programs for DPAS support. All other DPAS Schedules (II through V), which pertained to the controlled materials program, are removed.

DPAS Schedule 1 is revised by changing the term "Authorized Program" to "Approved Program" wherever it appears in the Schedule and

by making appropriate changes to the first paragraph of the two paragraph explanation of the Schedule. This rule also removes from the Schedule (1) all program identification symbols and associated authorized program names from the Schedule that pertained to the controlled materials program ["C8—Controlled materials for Defense Industrial Supply Center (DISC)", "H2—Controlled materials producers", "H3—Further converters (controlled materials)", and "H4—Distributors of controlled materials"]; and (2) the term "Federal Aviation Administration" from the list of Associated Agencies of the Department of Defense contained in footnote 1.

Added to Schedule 1 by this rule are two new program identification symbols and associated approved program names, as follows: "C1—Food resources (combat rations)" under the "Defense Programs" heading; and "H8—Designated Programs", under the "Other Defense, Energy and Related Programs" heading.

Finally, this rule revises (1) the "Other Energy Programs" heading in Schedule 1 to read: "Domestic Energy Programs"; (2) the "F3" program name "Construction and Maintenance" to read: "Construction, repair, and maintenance"; and (3) the "N1" program name "Approved civil defense programs" to read "Emergency Preparedness Activities".

9. Appendices

There are a number of documents required to support the effective and efficient implementation and administration of the DPAS regulation. These documents include (1) Delegations of Authority from the Department of Commerce to the Departments of Defense and Energy, General Services Administration, and the Federal Emergency Management Agency (Delegate Agencies) who use the DPAS to support their national defense related procurement; (2) Interagency Memoranda of Understanding between the Department of Commerce and Departments of Agriculture, Energy, and the Interior pertaining to resource jurisdiction issues and delegated authority; (3) Form BXA–999 (formerly Form ITA–999), used to request Special Priorities Assistance; (4) Memorandum of Understanding on Priorities and Allocations Support Between the Department of Commerce and the Canadian Public Works and Government Services Canada (formerly the Canadian Department of Supply and Services); and (5) DPAS Emergency Delegation 1. These documents, except for DPAS Emergency Delegation 1, were previously included in the Code of Federal Regulations (CFR) as Appendices I through IV. DPAS Emergency Delegation 1 would be implemented if in a catastrophic national security emergency, communications with Department of Commerce headquarters in Washington, D.C. are severed. All of these documents have been updated and revised.

Because it is used by the public and therefore of significant public interest, Form BXA–999 is redesignated as Appendix I to part 700 and published with this rule. Because they are of limited public interest, the Delegations of Authority, Interagency Memoranda of Understanding, Memorandum of Understanding on Priorities and Allocations Support Between the Department of Commerce and the Canadian Public Works and Government Services Canada, and DPAS Emergency Delegation 1, will not be published with this rule. However, copies of Appendix I and these other DPAS documents, designated as Appendices II through V, respectively, may be obtained by contacting the DPAS Program Manager at the Department of Commerce (see **FOR FURTHER INFORMATION CONTACT** section above). Copies of Appendix I may also be obtained from any Department of Defense, Defense Contract Management Command field office.

Public Rulemaking Docket

The public rulemaking docket concerning this regulation is maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Records in this facility may be inspected and copied in accordance with regulations published in 15 CFR part 4. Information pertaining to the inspection and copying of records may be obtained from Ms. Margaret Cornejo, Freedom of Information Officer, at the Records Inspection Facility, or by calling (202) 482–5653.

Rulemaking Requirements

The Department made certain determinations with respect to the following rulemaking requirements:

1. *Classification under E.O. 12866:* This amendment of the DPAS regulation has been determined to be "not significant" for the purpose of Executive Order 12866.

2. *Regulatory Flexibility Act:* The Assistant General Counsel for Legislation and Regulation certified to the Chief Counsel for Advocacy, Small Business Administration, that this amendment of the DPAS regulation will not have a significant economic impact on a substantial number of small entities. This amendment of the DPAS merely updates, modifies, or clarifies a number of provisions to make the DPAS more effective and efficient in the post Cold War era. Many of the changes are made in response to comments and recommendations received from the business community, thus ensuring that the updated DPAS conforms to current business practices and enabling all business entities subject to its requirements to increase the efficiency of their operations and realize certain cost savings. In addition, some DPAS provisions are revised to conform the regulation to recent statutory and organizational changes while other provisions are deleted because they are obsolete.

Because of the self-administered nature of the DPAS, there is no way to accurately estimate the number of business entities throughout the U.S. industrial base to whom the DPAS is applicable. However, it has been roughly estimated that there are at least 18,000 business entities during any one year that on at least one or more occasions must respond to its requirements. It is also estimated that given the nature of defense production, relatively few of these entities are small entities.

The DPAS regulation has been in effect since 1984 and is the successor to priorities and allocations regulations that were first promulgated in the mid-1950s. Thus, most business entities engaged in defense production under the DPAS, including small entities, can and do respond to applicable DPAS requirements in the ordinary course of their business with very little, if any, economic impact. These DPAS revisions, in and of themselves, impose no economic impact on any business entity, including small entities, and will further reduce whatever minimal economic impact is associated with DPAS compliance.

3. *Paperwork Reduction Act:* The information collection requirements imposed by the DPAS regulation were approved by the Office of Management and Budget (OMB) under the provisions of Section 3507 of the Paperwork Reduction Act of 1980, amended (44 U.S.C. 3501 *et seq.*) (OMB Control Number 0694–0053).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with any DPAS information collection requirements unless the information

collection displays a currently valid OMB Control Number.

The collection of information requirements in the DPAS apply to all persons who receive priority rated orders under the DPAS. These requirements are necessary to support proper administration of the DPAS and ensure its effectiveness and efficiency. The total annual public burden per respondent for this collection of information is estimated at 14,477 hours. This estimate includes (a) 11,667 total extra record keeping hours to create a record of the receipt of a priority rated order (700,000 priority rated orders annually × 1 minute per order); (b) 972 total hours to provide notice of acceptance of a priority rated order (699,650 priority rated orders accepted annually × 5 seconds per order); (c) 88 total hours to provide notice of rejection of a priority rated order (350 priority rated orders rejected annually × 15 minutes per order); and (d) 1,750 total hours to provide notice of delayed delivery against a priority rated order (7000 total priority rated orders annually against which delivery will be delayed × 15 minutes per order).

Send comments regarding this burden estimate or any other aspect of the data requirements, including suggestions for reducing this burden, to Richard V. Meyers at the address given in the **FOR FURTHER INFORMATION CONTACT** section above, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, N.W., Room 10235, Washington, D.C. 20503; Attn.: Desk Officer for the Bureau of Export Administration

4. *E.O. 12612:* This amendment of the DPAS regulation does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

List of Subjects in 15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

For the reasons stated in the preamble, part 700 of Subchapter A, National Security Industrial Base Regulations (15 CFR part 700), is amended as follows:

PART 700—[AMENDED]

1. The authority citation for 15 CFR part 700 is revised to read as follows:

Authority: Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061 *et seq.*), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), and Executive Order 12919, 59 FR 29525, 3 CFR, 1994 Comp., p. 901; Section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, 50 U.S.C. 82, and Executive Order 12742, 56 FR 1079, 3 CFR, 1991 Comp., p. 309; and Executive Order 12656, 53 FR 226, 3 CFR, 1988 Comp., p. 585.

2. Section 700.1 is amended:

a. By revising the phrase "materials and facilities" to read "materials, services, and facilities", and revising the phrase "materials and equipment" to read "materials, equipment, and services", in paragraph (a);

b. By revising paragraph (b);

c. By redesignating paragraph (c) as paragraph (e); and

d. By adding new paragraphs (c) and (d); as follows:

§ 700.1 Purpose of this regulation.

* * * * *

(b) Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468) (Selective Service Act) authorizes the President to place an order with a supplier for any articles or materials required for the exclusive use of the U.S. armed forces whenever the President determines that in the interest of national security, prompt delivery of the articles and materials is required. The supplier must give precedence to the order so as to deliver the articles or materials in a required time period. 10 U.S.C. 2538, and 50 U.S.C. 82, provide similar authority specifically for Department of Defense procurement, but only in time of war or when war is imminent.

(c) Section 602(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(b)) provides that the terms "national defense" and "defense" as used in the Defense Production Act includes "emergency preparedness activities" conducted pursuant to Title VI of the Stafford Act. The definition of "national defense" in Section 702(13) of the Defense Production Act provides that this term includes "emergency preparedness activities" conducted pursuant to Title VI of the Stafford Act.

(d) The Defense Priorities and Allocations System (DPAS) regulation implements the priorities and allocations authority of the Defense Production Act and as this authority pertains to Title VI of the Stafford Act, and the priorities authority of the Selective Service Act and related statutes, all with respect to industrial resources. The DPAS ensures the timely availability of industrial resources for approved programs and provides an operating system to support rapid industrial response to a national emergency.

* * * * *

3. Section 700.2 is amended by revising paragraphs (a) and (b), and by revising the phrase "Appendix I" to read "Appendix II" in paragraph (c); as follows:

§ 700.2 Introduction.

(a) Certain national defense and energy programs (including emergency preparedness activities) are approved for priorities and allocations support. For example, military aircraft production, ammunition, and certain programs which maximize domestic energy supplies are "approved programs." A complete list of currently approved programs is provided at Schedule 1 to this part.

(b) The Department of Commerce administers the DPAS to ensure the timely delivery of industrial items to meet approved program requirements.

* * * * *

§ 700.3 [Amended]

4. Section 700.3(a) is amended by revising the term "authorized program" to read "approved program".

5. Section 700.4 is revised to read as follows:

§ 700.4 Priorities and allocations in a national emergency.

(a) In the event of a national emergency, special rules may be established as needed to supplement this part, thus ensuring rapid industrial response and the timely availability of critical industrial items and facilities to meet the urgent national defense requirements, including domestic emergency preparedness requirements, of approved programs.

(b) The special rules established in response to the emergency may include provisions for the taking of certain emergency official actions and the allocation of critical and scarce materials and facilities.

§ 700.7 [Amended]

6. Section 700.7(a) is amended by adding the phrase "and the Selective Service Act and related statutes" following the phrase "the Defense Production Act".

7. Section 700.8 is amended:

a. By removing the following definitions: "Authorized program", "Controlled materials", "Controlled materials suppliers", "Distributors of controlled materials", "Further conversion", "Lead time", and "Minimum mill quantity";

b. By amending the definition of "Delegate Agency", by revising the term

"authorized programs" to read "approved programs";

c. By amending the definition of "Official action", by adding the phrase ", the Selective Service Act and related statutes," following the phrase "the Defense Production Act";

d. By amending the definition of "Rated order", by revising the term "authorized program" to read "approved program"; and

e. By revising the introductory sentence after the section heading, revising the definition of "person", and adding new definitions of "approved program", "industrial resources", and "Selective Service Act and related statutes" to read as follows:

§ 700.8 Definitions.

In addition to the definitions provided in Section 702 of the Defense Production Act (excepting the definition of "industrial resources") and Section 602(a) of the Stafford Act, the following definitions pertain to all sections of this part:

Approved program—a program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Director, Federal Emergency Management Agency, under the authority of the Defense Production Act, the Stafford Act, and Executive Order 12919, or the Selective Service Act and related statutes and Executive Order 12742.

* * * * *

Industrial resources—all materials, services, and facilities, including construction materials, the authority for which has not been delegated to other agencies under Executive Order 12919. This term also includes the term "item" as defined and used in this part.

* * * * *

Person—any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof; or any authorized State or local government or agency thereof; and for purposes of administration of this part, includes the United States Government and any authorized foreign government or agency thereof, delegated authority as provided in this part.

* * * * *

Selective Service Act and related statutes—Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468), 10 U.S.C. 2538, and 50 U.S.C. 82.

* * * * *

Stafford Act—Title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5195 *et seq.*).

8. Section 700.10 is amended:

a. By revising paragraph (a); and

b. By revising the phrase "Office of Industrial Resource Administration" to read "Office of Strategic Industries and Economic Security", by revising the phrase "authorized programs" to read "approved programs", and by revising the phrase "Appendix I" to read "Appendix II", in paragraph (b); as follows:

§ 700.10 Delegation of authority.

(a) The priorities and allocations authorities of the President under Title I of the Defense Production Act with respect to industrial resources have been delegated to the Secretary of Commerce under Executive Order 12919 of June 3, 1994 (59 FR 29525). The priorities authorities of the President under the Selective Service Act and related statutes with respect to industrial resources have also been delegated to the Secretary of Commerce under Executive Order 12742 of January 8, 1991 (56 FR 1079).

* * * * *

§ 700.11 [Amended]

9. Section 700.11(b) is amended by revising the term "authorized program" to read "approved program", and revising the term "authorized programs" to read "approved programs".

10. Section 700.12 is amended by revising paragraphs (b) and (c) to read as follows:

§ 700.12 Elements of a rated order.

* * * * *

(b) A required delivery date or dates. The words "immediately" or "as soon as possible" do not constitute a delivery date. A "requirements contract", "basic ordering agreement", "prime vendor contract", or similar procurement document bearing a priority rating may contain no specific delivery date or dates and may provide for the furnishing of items from time-to-time or within a stated period against specific purchase orders, such as "calls", "requisitions", and "delivery orders". These purchase orders must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original procurement document;

(c) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order. The signature or use of the name certifies that the rated order is authorized under this part and that the requirements of this part are being followed; and

* * * * *

11. Section 700.13 is amended:

a. By adding a new paragraph (b)(4);

b. By removing paragraphs (c)(5), (c)(6), and (c)(7);

c. By redesignating paragraph (c)(8) as paragraph (c)(5) and amending redesignated paragraph (c)(5) by adding the phrase "or the Selective Service Act and related statutes" following the phrase "the Defense Production Act";

d. By revising paragraph (d); and

e. By adding an OMB control number; as follows:

§ 700.13 Acceptance and rejection of rated orders.

* * * * *

(b) *Mandatory rejection.* * * *

(4) If a person is unable to fill all the rated orders of equal priority status received on the same day, the person must accept, based upon the earliest delivery dates, only those orders which can be filled, and reject the other orders. For example, a person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. However, the person must offer to accept the rejected orders based on the earliest delivery dates otherwise possible.

* * * * *

(d) *Customer notification requirements.* (1) A person must accept or reject a rated order in writing or electronically within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must give reasons in writing (not electronically) for the rejection.

(2) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written or electronic confirmation must be provided within five (5) working days.

(The information collection requirements in paragraphs (d)(1) and (d)(2) are approved by the Office of Management and Budget under OMB control number 0694–0053.)

12. Section 700.14 is amended by revising paragraph (c) to read as follows:

§ 700.14 Preferential scheduling.

* * * * *

(c) *Conflicting rated orders.* (1) If a person finds that delivery or performance against any accepted rated

orders conflicts with the delivery or performance against other accepted rated orders of equal priority status, the person shall give preference to the conflicting orders in the sequence in which they are to be delivered or performed (not to the receipt dates). If the conflicting rated orders are scheduled to be delivered or performed on the same day, the person shall give preference to those orders which have the earliest receipt dates.

(2) If a person is unable to resolve rated order delivery or performance conflicts under this section, the person should promptly seek special priorities assistance as provided in §§ 700.50 through 700.54. If the person's customer objects to the rescheduling of delivery or performance of a rated order, the customer should promptly seek special priorities assistance as provided in §§ 700.50 through 700.54. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in § 700.13(d)(2).

* * * * *

13. Section 700.17 is amended:

a. By removing the parenthetical phrase "(except as provided in § 700.31(d)—Controlled materials program identification symbols)" in paragraph (b)(2);

b. By removing the parenthetical phrase "(not applicable to controlled materials producers)" in paragraph (b)(3);

c. By removing the phrase found at the end of the paragraph, ", except as provided in § 700.31(d) (Controlled materials program identification symbols)", in paragraph (c).

d. By revising paragraph (d)(1);

e. By redesignating paragraph (d)(2) as (d)(3);

f. By adding a new paragraph (d)(2); and

g. By revising paragraph (f); as follows:

§ 700.17 Use of rated orders.

* * * * *

(d) *Combining rated and unrated orders.* (1) A person may combine rated and unrated order quantities on one purchase order provided that:

(i) The rated quantities are separately and clearly identified; and

(ii) The four elements of a rated order, as required by § 700.12, are included on the order with the statement required in § 700.12(d) modified to read in substance:

This purchase order contains rated order quantities certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700) only as it pertains to the rated quantities.

(2) A supplier must accept or reject the rated portion of the purchase order as provided in § 700.13 and give preferential treatment only to the rated quantities as required by this part. This part may not be used to give preferential treatment to the unrated portion of the order.

* * * * *

(f) A person is not required to place a priority rating on an order for less than $50,000, or one half of the Federal Acquisition Regulation (FAR) Simplified Acquisition Threshold (see FAR 2.101), whichever amount is larger, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

14. Section 700.18 is amended:

a. By adding a new paragraph (a)(2)(v);

b. By revising paragraph (b)(1);

c. By revising the phrase "Appendix II" to read "Appendix III" in paragraph (b)(2); and

d. By removing the first item listed, "communication services", and the parenthetical phrase, "(as defined in Schedule III)" which follows the item, "Copper raw materials", in paragraph (b)(3); as follows:

§ 700.18 Limitations on placing rated orders.

(a) * * *

(2) * * *

(v) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense.

(b) *Jurisdictional limitations.* (1) The priorities and allocations authority for certain items has been delegated under Executive Orders 12919 and 12742, other executive order, or Interagency Memoranda of Understanding to other agencies. Unless otherwise agreed to by the concerned agencies, the provisions of this part are not applicable to these items which include:

(i) Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer (Department of Agriculture—see Attachment A to DPAS Delegation 1 in Appendix II to part 700 concerning combat rations);

(ii) All forms of energy, including radioisotopes, stable isotopes, source material, and special nuclear material produced in Government-owned plants or facilities operated by or for the Department of Energy (Department of Energy);

(iii) Health resources (Department of Health and Human Services);

(iv) All forms of civil transportation (Department of Transportation);

(v) Water resources (Department of Defense/U.S. Army Corps of Engineers);

(vi) Communications services (National Communications System under Executive Order 12472 of April 3, 1984); and

(vii) Mineral resources and mineral processing facilities (Department of the Interior/U.S. Geological Survey—see Memorandum of Understanding Between Interior and Commerce in DPAS Appendix III to part 700).

* * * * *

15. Section 700.21 is amended:

a. By revising paragraph (a);

b. By revising the phrases "materials or equipment" and "material or equipment" to read "materials, equipment, or services" in paragraphs (b)(2), (c) introductory text, (c)(1) introductory text, and (d); and

c. By revising the term "authorized programs" to read "approved programs" in paragraph (f); as follows:

§ 700.21 Application for priority rating authority.

(a) For projects believed to maximize domestic energy supplies, a person may request priority rating authority for scarce, critical, and essential supplies of materials, equipment, and services (related to the production of materials or equipment, or the installation, repair, or maintenance of equipment) by submitting DOE Form PR 437 to the Department of Energy. Blank applications and further information may be obtained from the U.S. Department of Energy, Office of Clearance and Support, Field/Headquarters Support Division, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Attn.: PR–132.

* * * * *

16. Subpart F is revisied to read as follows:

Subpart F—National Emergency Preparedness and Critical Items

§ 700.30 Priorities and allocations in a national emergency.

(a) In the event of a national emergency, special rules may be established as needed to supplement this part, thus ensuring rapid industrial response and the timely availability of critical industrial items and facilities to meet the urgent national defense requirements, including domestic emergency preparedness requirements, of approved programs.

(1) *Emergency official actions.* (i) As needed, this part may be supplemented

to include additional definitions to cover civilian emergency preparedness industrial items, support for essential civilian programs, and provisions for the taking of certain emergency official actions under sections §§ 700.60 through 700.63.

(ii) Emergency official actions may include:

(A) Controlling inventories of critical and scarce defense and/or emergency preparedness items;

(B) Restricting the purchase, use, or distribution of critical and scarce defense and/or emergency preparedness items, or the use of production or distribution facilities, for non-essential purposes; and

(C) Converting the production or distribution of non-essential items to the production or distribution of critical and scarce defense and/or emergency preparedness items.

(2) *Allocation of critical and scarce items and facilities.* (i) As needed, this part may be supplemented to establish special rules for the allocation of scarce and critical items and facilities to ensure the timely availability of these items and facilities for approved programs, and to provide for an equitable and orderly distribution of requirements for such items among all suppliers of the items. These rules may provide for the allocation of individual items or they may be broad enough to direct general industrial activity as required in support of emergency requirements.

(ii) Allocation rules (i.e., controlled materials programs) were established in response to previous periods of national security emergency such as World War II and the Korean Conflict. The basic elements of the controlled materials programs were the set-aside (the amount of an item for which a producer or supplier must reserve order book space in anticipation of the receipt of rated orders), the production directive (requires a producer to supply a specific quantity, size, shape, and type of an item within a specific time period), and the allotment (the maximum quantity of an item authorized for use in a specific program or application). These elements can be used to assure the availability of any scarce and critical item for approved programs. Currently, a set-aside applies only to metalworking machines (see § 700.31).

(3) In the event that certain critical items become scarce, and approved program requirements for these items cannot be met without creating a significant dislocation in the civilian market place so as to create appreciable hardship, Commerce may establish special rules under section 101(b) of the Defense Production Act to control the general distribution of such items in the civilian market.

(b) *Regional Emergency Coordinators.* (1) If due to a catastrophic national security emergency event, communications with Commerce headquarters in Washington, D.C. are severed, DPAS Emergency Delegation 1 will provide authority to the Regional Emergency Coordinators (REC) located in the Standard Federal Region Council cities (Boston, New York, Philadelphia, Atlanta, Dallas, Kansas City, Chicago, Denver, San Francisco, and Seattle) to represent the Secretary of Commerce, and as necessary, act for the Secretary to carry out the emergency industrial production and distribution control functions of Commerce as set forth in this part, in any supplement thereto, or other applicable authority. See DPAS Emergency Delegation 1 for further information about the authority and duties of the RECs, and the effective date of the Delegation.

(2) If DPAS Emergency Delegation 1 is implemented due to a catastrophic national security emergency event, requests for special priorities assistance under §§ 700.50 through 700.55 should be filed with the nearest Regional Emergency Coordinator located in one of the Standard Federal Region Council cities as provided in DPAS Delegation 1.

§ 700.41 [Redesignated as § 700.31]

Subpart G—[Removed and Reserved]

17. Section 700.41 is redesignated as § 700.31 in Subpart F; and Subpart G is removed and reserved.

§ 700.50 [Amended]

18. Section 700.50(c) is amended by revising the term "ITA–999" to read "BXA–999" each of the three times it appears in the paragraph; by revising the term "(OMB control number 0625–0015)" to read "(OMB control number 0694–0057)"; by removing the phrase ", any Commerce District Office"; and by revising the phrase "Appendix III" to read "Appendix I".

19. Section 700.54 is amended by revising the section heading and the second sentence of the introductory text, as follows:

§ 700.54 Instances where assistance may not be provided.

* * * * *

Examples where assistance may not be provided include situations when a person is attempting to:

* * * * *

§ 700.55 [Amended]

20. Section 700.55 is amended:

a. By revising the term "authorized programs" to read "approved programs" in paragraph (a);

b. By revising the term "Canadian Department of Supply and Services" to read "Canadian Public Works and Government Services Canada" in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6); and by revising the phrase "The Department of Supply and Services" to "Public Works and Government Services Canada" in paragraph (b)(5).

c. By revising the term "ITA–999" to read "BXA–999" in paragraph (b)(6).

21. The phrase "the Selective Service Act and related statutes," is added following the phrase "the Defense Production Act," wherever it appears in the following places:

Sec.
700.70(a)
700.71(a)
700.71(c)(1)
700.71(c)(2)
700.71(c)(3)
700.72(a)
700.73(a)
700.73(b)
700.75
700.80(a)(2)
700.91(d)

§ 700.72 [Amended]

22. Section 700.72(b) is amended by revising the term "Assistant General Counsel for International Trade" to read "Chief Counsel for Export Administration".

23. Section 700.74 is amended:

a. By revising paragraph (a);

b. By removing paragraph (b);

c. By redesignating paragraph (c) as paragraph (b), and paragraph (d) as paragraph (c); as follows:

§ 700.74 Violations, penalties, and remedies.

(a) Willful violation of the provisions of Title I or Sections 705 or 707 of the Defense Production Act, the priorities provisions of the Selective Service Act and related statutes, this part, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a $10,000 fine, or one year in prison, or both. The maximum penalty provided by the Selective Service Act and related statutes is a $50,000 fine, or three years in prison, or both.

* * * * *

24. The term "Office of Industrial Resource Administration" is revised to read "Office of Strategic Industries and Economic Security" in the following places:

Sec.
700.80(a)
700.80(c)
700.80(d)
700.81(a)
700.81(b)
700.93

25. The phrase "Assistant Secretary for Trade Administration" is revised to read "Assistant Secretary for Export Administration" in the following places:

Sec.
700.80(d)
700.81(a)
700.81(b)
700.81(d)
700.81(e)
700.81(f)
700.81(g)
700.81(h)

§ 700.81 [Amended]

26. Section 700.81(b) is amended by revising the term "International Trade Administration" to read "Bureau of Export Administration".

§ 700.91 [Amended]

27. Section 700.91(a) is amended by revising the term "(OMB control number 0625–0107)" to read "(OMB control number 0694–0053)".

§ 700.93 [Amended]

28. Section 700.93 is amended by revising the phrase "telephone: (202) 377–4506" to read "telephone: (202) 482–3634, or FAX: (202) 482–5650".

29. Schedule 1 to part 700 is revised, as follows:

Defense Priorities and Allocations System

SCHEDULE 1 TO PART 700

Approved Programs and Delegate Agencies

The programs listed in this schedule have been approved for priorities and allocations support under this part. They have equal preferential status. The Department of Commerce has authorized the Delegate Agencies to use this part in support of those programs assigned to them, as indicated below.

Program identification symbol	Approved program	Delegate agency
Defense programs:		
A1	Aircraft	Department of Defense.[1]
A2	Missiles	Do.
A3	Ships	Do.
A4	Tank—Automotive	Do.
A5	Weapons	Do.
A6	Ammunition	Do.
A7	Electronic and communications equipment	Do.
B1	Military building supplies	Do.
B8	Production equipment (for defense contractor's account)	Do.
B9	Production equipment (Government owned)	Do.
C1	Food resources (combat rations)	Do.
C2	Department of Defense construction	Do.
C3	Maintenance, repair, and operating supplies (MRO) for Department of Defense facilities.	Do.
C9	Miscellaneous	Do.
International defense programs:		
Canada:		
D1	Canadian military programs	Department of Commerce.
D2	Canadian production and construction	Do.
D3	Canadian atomic energy program	Do.
Other Foreign Nations:		
G1	Certain munitions items purchased by foreign governments through domestic commercial channels for export.	Department of Commerce.
G2	Certain direct defense needs of foreign governments other than Canada	Do.
G3	Foreign nations (other than Canada) production and construction	Do.
Co-Production:		
J1	F–16 Co-Production Program	Departments of Commerce and Defense.
Atomic energy programs:		
E1	Construction	Department of Energy.
E2	Operations—including maintenance, repair, and operating supplies (MRO)	Do.
E3	Privately owned facilities	Do.
Domestic energy programs:		
F1	Exploration, production, refining, and transportation	Department of Energy.
F2	Conservation	Do.
F3	Construction, repair, and maintenance	Do.
Other defense, energy, and related programs:		
H1	Certain combined orders (see section 700.17(c))	Department of Commerce.
H5	Private domestic production	Do.
H6	Private domestic construction	Do.
H7	Maintenance, repair, and operating supplies (MRO)	Do.
H8	Designated Programs	Do.
K1	Federal supply items	General Services Administration.
N1	Emergency preparedness activities	Federal Emergency Management Agency.

[1] Department of Defense includes: Armed Services—Army, Navy (including Marines and Coast Guard), and Air Force; Component Agencies, including Defense Logistics Agency, National Security Agency, Defense Advanced Research Projects Agency, Defense Information Systems Agency, Defense Nuclear Agency, Defense Mapping Agency, and On-Site Inspection Agency; and Associated Agencies, including Central Intelligence Agency and National Aeronautics and Space Administration.

30. Schedule II to part 700 (Controlled Materials), Schedule III to part 700 (Technical Definitions of Controlled Materials Products), Schedule IV to part 700 (Copper Controlled Materials Producers' Set-aside Base and Percentages), and Schedule V to part 700 (Nickel Alloys Controlled Materials Producers' Set-aside Base and Percentages) are removed.

31. Appendix I to part 700 is revised, as follows:

Defense Priorities and Allocations System

Appendix 1 to Part 700

Form BXA–999—Request for Special Priorities Assistance

BILLING CODE 3510–JT–P

FORM BXA-999 REV. 4-98

U.S. DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION

FOR DOC USE OMB NO. 0694-0057

CASE NO. _____

RECEIVED _____

ASSIGNED TO _____

REQUEST FOR SPECIAL PRIORITIES ASSISTANCE

READ INSTRUCTIONS ON BACK PAGE
TYPE OR PRINT IN INK

Submission of a completed application is required to request Special Priorities Assistance (SPA). See sections 700.50-55 of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR 700). It is a criminal offense under 18 U.S.C. 1001 to make a wilfully false statement or representation to any U.S. Government agency as to any matter within its jurisdiction. All company information furnished related to this application will be deemed BUSINESS CONFIDENTIAL under Sec. 705(d) of the Defense Production Act of 1950 [50 U.S.C. app. 2155(d)] which prohibits publication or disclosure of this information unless the President determines that withholding it is contrary to the interest of the national defense. The Department of Commerce will assert the appropriate Freedom of Information Act (FOIA) exemptions if such information is the subject of FOIA requests. The unauthorized publication or disclosure or such information by Government personnel is prohibited by law. Violators are subject to fine and/or imprisonment.

1. APPLICANT INFORMATION

a. Name and complete address of Applicant (Applicant can be any person needing assistance - government agency, contractor, or supplier. See definition of "Applicant" in Footnotes section on back page of this form).

Contact's name _____

Title _____

Telephone _____

FAX _____

b. If Applicant is not end-user Government agency, give name and complete address of Applicant's customer.

Contact's name _____

Title _____

Telephone _____ FAX _____

Contract/purchase order no. _____

Dated _____ Priority rating _____

2. APPLICANT ITEM(S). If Applicant is not end-user Government agency, describe item(s) to be delivered by Applicant under its customer's contract or purchase order through the use of item(s) listed in Block 3. If known, identify Government program and end-item for which these items are required. If Applicant is end-user Government agency and Block 3 item(s) are not end-items, identify the end-item for which the Block 3 item(s) are required. See definition of "item" in Footnotes section on page 4 of this form.

3. ITEM(S) (including service) FOR WHICH APPLICANT REQUESTS ASSISTANCE

Quantity *Pieces, units*	Description *Include identifying information such as model or part number*	Dollar Value *Each quantity listed*

4. SUPPLIER INFORMATION

a. Name and complete address of Applicant's Supplier.

Contact's name _____

Title _____

Telephone _____ FAX _____

b. Applicant's contract or purchase order to Supplier.

Number _____

Dated _____

Priority rating _____
(If none, so state)

If Supplier is an agent or distributor, give complete producer or lower tier supplier information in Continuation Block on page 3, including purchase order number, date, and priority rating (if none, so state).

5. SHIPMENT SCHEDULE OF ITEM(S) SHOWN IN BLOCK 3

a. Applicant's original shipment/performance requirement	Month Year							Total units
	Number of units							
b. Supplier's original shipment/performance promise	Month Year							Total units
	Number of units							
c. Applicant's current shipment/performance requirement	Month Year							Total units
	Number of units							
d. Supplier's current shipment/performance promise	Month Year							Total units
	Number of units							

6. REASONS GIVEN BY SUPPLIER for inability to meet Applicant's required shipment or performance date(s).

7. BRIEF STATEMENT OF NEED FOR ASSISTANCE. As applicable, explain effect of delay in receipt of Block 3 item(s) on achieving timely shipment of Block 2 item(s) (e.g., production line shutdown), or the impact on program or project schedule. Describe attempts to resolve problems and give specific reasons why assistance is required. If priority rating authority is requested, please so state.

8. CERTIFICATION: I certify that the information contained in Blocks 1 - 7 of this form, and all other information attached, is correct and complete to the best of my knowledge and belief (omit signature if this form is electronically generated and transmitted - use of name is deemed certification).

_____ _____
Signature of Applicant's authorized official Title

_____ _____
Print or type name of authorized official Date

9. U.S. GOVERNMENT AGENCY INFORMATION

a. Name/complete address of cognizant sponsoring service/agency/activity headquarters office. Provide lower level activity, program, project, contract administration, or field office information in Continuation Block below, on duplicate of this page, or on separate sheet of paper.

Contact's name _____

Signature _____ Date ___/___/___

Title _____

Telephone _____ FAX _____

b. Case reference no. _____

c. Government agency program or project to be supported by Block 2 item(s). Identify end-user agency if not sponsoring agency.

d. Statement of urgency of particular program or project and Applicant's part in it. Specify the extent to which failure to obtain requested assistance will adversely affect the program or project.

e. Government agency/activity actions taken to attempt resolution of problem.

f. Recommendation.

10. ENDORSEMENT by authorized Department or Agency headquarters official (omit signature if this form is electronically generated and transmitted - use of name is deemed authorization). This endorsement is required for all Department of Defense and foreign government requests for assistance.

_____ _____
Signature of authorized official Title

_____ _____
Print or type name of authorized official Date

CONTINUATION BLOCK

Identify each statement with appropriate block number

INSTRUCTIONS FOR FILING FORM BXA-999

REQUESTS FOR SPECIAL PRIORITIES ASSISTANCE (SPA) MAY BE FILED for any reason in support of the Defense Priorities and Allocations System (DPAS); e.g.: when its regular provisions are not sufficient to obtain delivery of item(s)[1] in time to meet urgent customer or program/project requirements; for help in locating a supplier or placing a rated order; to ensure that rated orders are receiving necessary preferential treatment by suppliers; to resolve production or delivery conflicts between or among rated orders; to verify the urgency or determine the validity of rated orders; or to request authority to use a priority rating. **Requests for SPA must be sponsored by the cognizant U.S. Government agency responsible for the program or project supported by the Applicant's[2] contract or purchase order.**

REQUESTS FOR SPA SHOULD BE TIMELY AND MUST ESTABLISH:

- The urgent defense (including civil emergency preparedness) or energy program or project related need for the item(s); and that
- The Applicant has made a reasonable effort to resolve the problem.

APPLICANT MUST COMPLETE BLOCKS 1-8. SPONSORING U.S. GOVERNMENT AGENCY/ACTIVITY MUST COMPLETE BLOCKS 9-10. Sponsoring agency, if not the Department of Defense (DOD), must obtain DOD concurrence if the agency is supporting a DOD program or project. This form may be mechanically or electronically prepared and may be mailed, FAXed, or electronically transmitted.

WHERE TO FILE THIS FORM:

- Private sector Applicants should file with their respective customers as follows: **lower-tier suppliers** file with customer/subcontractor for forwarding to subcontractor/prime contractor; **subcontractors/suppliers** file with prime contractor for forwarding to one of the below listed cognizant U.S. Government (DPAS Delegate) agencies; **prime contractors** file directly with one of the below listed cognizant U.S. Government (DPAS Delegate) agencies:
  - **Department of Defense (DOD)** -- File with the local Defense Contract Management Area Office, plant representative or contracting officer, or the appropriate DOD military service, associated agency, program, or project office.
  - **Department of Energy (DOE)** -- File with the appropriate Field Operations Office. Requests for SPA for domestic energy projects should be filed with DOE headquarters in Washington, D.C.
  - **General Services Administration (GSA)** and **Federal Emergency Management Agency (FEMA)** -- File with the contracting officer in the agency's regional office or with its headquarters office in Washington, D.C.
- Applicants who are lower level **contract administration, program, project, or field offices**, or when these activities can not resolve the private sector request for assistance, should forward this form to cognizant sponsoring service/agency/activity headquarters for review, Block 10 endorsement, and forwarding to the U.S. Department of Commerce. **Foreign government or private sector entities** should file directly with the DOD Office of the Secretary of Defense. **Timely review and forwarding is essential to providing timely assistance.**
- If for any reason the Applicant is unable to file this form as specified above, see CONTACTS FOR FURTHER INFORMATION below.

CONTACTS FOR FURTHER INFORMATION:

- For any information related to the production or delivery of items against particular rated contracts or purchase orders, contact the cognizant U.S. Government agency, activity, contract administration, program, project, or field office (see WHERE TO FILE above).
- If for any reason the Applicant is unable to file this form as specified in WHERE TO FILE above, if the cognizant U.S. Government agency for filing this form cannot be determined, or for any other information or problems related to the completion and filing of this form, the operation or administration of the DPAS, or to obtain a copy of the DPAS or any DPAS training materials, contact the **Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230 (Attn.: DPAS); telephone (202) 482-3634, or FAX (202) 482-5650.**

APPLICANTS REQUIRING PRIORITY RATING AUTHORIZATION TO OBTAIN PRODUCTION OR CONSTRUCTION EQUIPMENT for the performance of rated contracts or orders in support of DOD programs or projects must file **DOD Form DD-691, "Application for Priority Rating for Production or Construction Equipment"** in accordance with the instructions on that form. For DOE, GSA, or FEMA programs or projects, Applicants may use this form unless the agency requires its own form.

SPECIAL INSTRUCTIONS:

- If the space in any block is insufficient to provide a clear and complete statement of the information requested, use the **Continuation Block** provided on this form or a separate sheet to be attached to this form.
- Entries in Block 3 should be limited to information from a single contract or purchase order. If SPA is requested for additional contracts or purchase orders placed with a supplier for the same or similar items, information from these contracts or purchase orders may be included in one application. However, each contract or purchase order number must be identified and the quantities, priority rating, delivery requirements, etc., must be shown separately.
- If disclosure of certain information on this form is prohibited by security regulations or other security considerations, enter "classified" in the appropriate block in lieu of the restricted information.

FOOTNOTES:

1. "Item" is defined in the DPAS as any raw, in process or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process or service.
2. "Applicant," as used in this form, refers to any person requiring Special Priorities Assistance, and eligible for such assistance under the DPAS. "Person" is defined in the DPAS to include any individual, corporation, partnership, association, any other organized group of persons, a U.S. Government agency, or any other government.

BURDEN ESTIMATE AND REQUEST FOR COMMENT

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing the form. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Robert Kugelman, Director of Administration, Bureau of Export Administration, Room 3889, U.S. Department of Commerce, Washington, D.C. 20230. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

BILLING CODE 3510-JT-C

32. Appendix II to part 700: Interagency Memoranda of Understanding; Appendix III to part 700: Form ITA-999—Request for

Special Priorities Assistance; and Appendix IV to part 700: Memorandum of Understanding on Priorities and Allocations Support Between the Department of Commerce and the Canadian Department of Supply and Services, are removed.

Issued: June 5, 1998.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 98–15410 Filed 6–10–98; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Gentamicin Sulfate, Betamethasone Valerate, and Clotrimazole Ointment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Med-Pharmex, Inc. The ANADA provides for the use of gentamicin sulfate, betamethasone valerate, and clotrimazole (Tri-Otic ointment) for the treatment of canine acute and chronic otitis externa associated with yeast and/or bacteria susceptible to gentamicin.

EFFECTIVE DATE: June 11, 1998.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767, filed ANADA 200–229 that provides for the use of gentamicin sulfate, betamethasone valerate, and clotrimazole (Tri-Otic ointment) for the treatment of canine acute and chronic otitis externa associated with yeast and/or bacteria susceptible to gentamicin.

The ANADA is approved as a generic copy of Schering Plough Animal Health Corp.'s NADA 140–896 for OTOMAX® (gentamicin sulfate, betamethasone valerate, and clotrimazole). ANADA 200–229 is approved as of April 8, 1998, and the regulations are amended in 21 CFR 524.1044g to reflect the approval. The basis for approval is discussed in the freedom of information summary. In addition, the agency is amending 21 CFR 510.600(c)(1) and (c)(2) to reflect a change of sponsor's name and address.

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

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

List of Subjects

21 CFR Part 510

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

21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

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

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Med-Pharmex, Inc., Biomed Laboratories" and in the table in paragraph (c)(2) in the entry for "051259" by revising the sponsor name and address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * * *
Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861	051259
* * *	* * * *

(2) * * *

Drug labeler code	Firm name and address
* * *	* * * *
051259	Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861
* * *	* * * *

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 524 continues to read as follows:

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

§ 524.1044g [Amended]

4. Section 524.1044g *Gentamicin sulfate, betamethasone valerate, clotrimazole ointment* is amended in paragraph (b) by removing "000061" and adding in its place "000061 and 051259".

Dated: May 27, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–15554 Filed 6–10–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6109–7]

Removal of the Prohibition on the Use of Point of Use Devices for Compliance with National Primary Drinking Water Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action removes the prohibition on point of use (POU) devices as compliance technologies for National Primary Drinking Water Regulations that is set forth in the Code of Federal Regulations in section 141.101. EPA is removing the prohibition on the POU devices because it conflicts with section 1412(b)(4)(E)(ii) of the Safe Drinking Water Act (SDWA) as amended on August 6, 1996. No other part of section 141.101 is affected by today's action.

DATES: This action is effective June 11, 1998.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free (800) 426–4791, or Tara Chhay Cameron; Targeting and Analysis Branch; Office of Ground Water and Drinking Water; EPA (4607), 401 M Street, S.W., Washington, DC 20460; telephone (202) 260–3702.

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Regulated Entities

Entities potentially regulated by this action are those which meet the criteria of the Public Water Systems (PWS) definition. Regulated categories and entities include:

Category	Example of Regulated Entities
Industry	Public Water Systems

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the type of entities that EPA is now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria in §§ 141.2, 142.2, 142.3, and 142.10 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Explanation of Today's Action

On July 8, 1987 (52 FR 25716) EPA promulgated a requirement in section 40 CFR 141.101 that public water systems shall not use POU devices to achieve compliance with a maximum contaminant level (MCL) of a National Primary Drinking Water Regulations.

On August 6, 1996, amendments to the SDWA were enacted into law. Section 1412(b)(4)(E)(ii) of the SDWA, as amended, authorizes the use of POU devices by public water systems to comply with an MCL under certain circumstances. In order to make the regulatory provisions consistent with the new statutory language, with today's action, EPA removes the prohibition on the use of POU devices by public water systems to comply with an MCL. No other provision of section 141.101 is affected by this action.

C. Administrative Requirements

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51,735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(a) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

2. Regulatory Flexibility Act

The Agency has determined that the rule being issued today is not subject to the Regulatory Flexibility Act (RFA), which generally requires an Agency to conduct a regulatory flexibility analysis of any significant impact the rule will have on a substantial number of small entities. By its terms, the RFA applies only to rules subject to notice and comment rulemaking requirements

under the Administrative Procedure Act (APA) or any other statute. Today's rule is not subject to notice and comment requirements under the APA or any other statute because it falls into the interpretative statement exception under APA section 553(b) and because the Agency has found "good cause" to publish without prior notice and comment.

3. Paperwork Reduction Act

There are no information collection requirements in this rule.

4. Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule merely codifies a statutory amendment authorizing the use of certain treatment technology under the SDWA. It thus contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, including tribal governments. Therefore, this action does not require a small government agency plan under UMRA section 203.

Because this rule imposes no intergovernmental mandate, it also is not subject to Executive Order 12875 (Enhancing the Intergovernmental Partnership).

5. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Today's action is not subject to Executive Order 13045 (62 FR 19885 (April 23, 1997)) which requires agencies to identify and assess the environmental health and safety risks of their rules on children. Pursuant to the definitions in section 2–202, Executive Order 13045 only applies to rules that are economically significant as defined under Executive Order 12866 and concern an environmental health or safety risk that may disproportionately affect children. This rule is not economically significant and does not concern a risk disproportionately affecting children.

6. Submission to Congress and the General Accounting Office

The Congressional Review Act, (5 U.S.C. 801 *et seq.*) as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As discussed in section C.8., EPA has made such a good cause finding for this rule, including the reasons therefor, and established an effective date of June 11, 1998. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

7. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards. Because this rule does not involve or require the use of any technical standards, EPA does not believe that this Act is applicable to this rule. Moreover, EPA is unaware of any voluntary consensus standards relevant to this rulemaking. Therefore, even if the Act were applicable to this kind of rulemaking, EPA does not believe that there are any "available or potentially applicable" voluntary consensus standards.

8. Administrative Procedure Act

Because this rule merely codifies and interprets a statute, the amended SDWA, it is an "interpretative rule." As a result, it is exempt from the notice and comment requirements for rulemakings under section 553 of the APA (*See* section 553(b)(3)(A)). In addition, because this rule merely codifies statutory requirements and makes clarifying changes to the rules necessary to implement the amended statute, notice and comment is "unnecessary" and thus the Agency has "good cause" to publish this rule without prior notice and comment (APA section 553(b)(3)(B)). For the same reasons, EPA is making the provisions of this rule effective upon promulgation, as authorized under the APA (*See* sections 553(d)(2) and (3)).

List of Subjects in 40 CFR Part 141

Environmental protection, Water supply.

Dated: June 3, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 40 CFR Part 141 as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. Revise § 141.101 to read as follows:

§ 141.101 Use of bottled water.

Public water systems shall not use bottled water to achieve compliance with an MCL. Bottled water may be used on a temporary basis to avoid unreasonable risk to health.

[FR Doc. 98–15448 Filed 6–10–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–46; FCC 97–130]

Open Video Systems

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final rules which were published in the **Federal Register** of Tuesday, May 13, 1997 (62 FR 26235). These regulations related to the filing requirements for open video system certification applications.

DATES: Effective date is May 13, 1997.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Fleming, 202–418–1026.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections were adopted in *Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems* ("*Fourth Report and Order*"). The *Fourth Report and Order* amended our regulations to reflect the provisions of the Telecommunications Act of 1996 (the "1996 Act") which pertain to the filing requirements for certification applications, comments and oppositions, Notices of Intent and complaints concerning channel carriage.

Need For Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified. Certain language was inadvertently omitted from § 76.1502(d) as published in the rule changes.

List of Subjects in 47 CFR Part 76

Cable television service, Open video systems, Certification.

Accordingly, 47 CFR Part 76 is corrected by making the following correcting amendments:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

§ 76.1502 [Corrected]

2. In 76.1502, paragraph (d) is redesignated as paragraph (d)(2) and a new paragraph (d)(1) is added to read as follows:

* * * * *

(d)(1) On or before the date an FCC Form 1275 is filed with the Commission, the applicant must serve a copy of its filing on all local communities identified pursuant to paragraph (c)(6) of this section and must include a statement informing the local communities of the Commission's requirements in paragraph (e) of this section for filing oppositions and comments. Service by mail is complete upon mailing, but if mailed, the served documents must be postmarked at least three days prior to the filing of the FCC Form 1275 with the Commission.

* * * * *

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 98–15496 Filed 6–10–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 204

[DFARS Case 97–D039]

Defense Federal Acquisition Regulation Supplement; Contract Distribution to Defense Finance and Accounting Service Offices

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update requirements for distribution of contracts to the Defense Finance and Accounting Service and the Defense Contract Audit Agency, and to update references to publications and activity names and addresses.

EFFECTIVE DATE: June 11, 1998.

FOR FURTHER INFORMATION CONTACT: Melissa Rider, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 97–D039.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Subpart 204.2 to add a requirement to distribute copies of contracts and modifications to the cognizant Defense Finance and Accounting Service (DFAS) accounting station, in addition to the DFAS funding office; to add an Internet address for obtaining the Directory of Defense Contract Audit Agency Offices; to clarify the types of fixed-price contracts that must be distributed to the Defense Contract Audit Agency; to reflect the change in name of the "Defense Subsistence Region, Europe" to the "Defense Supply Center Philadelphia European Region" and to remove an obsolete reference to a directory of contract administration services.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97–D039.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 204

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 204 is amended as follows:

1. Authority citation for 48 CFR Part 204 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.201 is amended by adding paragraph (c) after paragraph 2, and by revising paragraph (e)(i) introductory text and paragraph (e)(i)(D) to read as follows:

§ 204.201 Procedures.

* * * * *

(c) Distribute one copy to each Defense Finance and Accounting Service (DFAS) accounting station cited in the contract, in addition to the copy provided to each DFAS funding office.

(e)(i) Distribute one copy of each of the following types of contracts or modifications to the appropriate Defense Contract Audit Agency (DCAA) field audit office (listed in DCAAP 5100.1, Directory of DCAA Offices, available on the World Wide Web, Internet address http://www.deskbook.osd.mil, under reference library documents)—

* * * * *

(D) Fixed-price contracts with provisions for redetermination, cost incentives, economic price adjustment based on cost, or cost allowability; and

* * * * *

3. Section 204.202 is amended by revising paragraphs (1)(ii)(B) and (1)(iv) to read as follows:

204.202 Agency distribution requirements.

(1) * * *

(ii) * * *

(B) The Defense Logistics Agency is authorized to prescribe alternate procedures for distribution of contract documents in Defense Supply Center Philadelphia European Region;

* * * * *

(iv) One copy to the contract administration office (CAO) automatic data processing point, except when the DoDAAD code is the same as that of either the CAO or payment office; and

* * * * *

[FR Doc. 98–15433 Filed 6–10–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 222 and 252

[DFARS Case 97–D318]

Defense Federal Acquisition Regulation Supplement; Contractor Use of Nonimmigrant Aliens—Guam

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 390 of the National Defense Authorization Act for Fiscal Year 1998. Section 390 requires that each DoD contract for base operations support to be performed on Guam prohibit performance of work under the contract by any alien who is issued a visa or otherwise provided nonimmigrant status under the Immigration and Nationality Act.

DATES: *Effective date:* June 11, 1998.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 10, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Michael Pelkey, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 97–D318 in all correspondence related to this issue. E-mail comments should cite DFARS Case 97–D318 in the subject line.

FOR FURTHER INFORMATION CONTACT: Michael Pelkey, telephone (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds a new DFARS Subpart 222.73 and a new contract clause at DFARS 252.222–7005 to implement Section 390 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85). Section 390 provides that each DoD contract for base operations support to be performed on Guam shall contain a condition that work under the contract may not be performed by any alien who is issued a visa or otherwise provided nonimmigrant status under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)).

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because application of the rule is limited to contracts for base operations support to be performed on Guam. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D318 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This interim rule implements Section 390 of the National Defense Authorization Act for Fiscal Year 1998, which requires that each DoD contract for base operations support to be performed on Guam prohibit performance of work under the contract by any alien worker who is issued a visa or otherwise provided nonimmigrant status under the Immigration and Nationality Act. Immediate implementation is necessary to preclude violation of Section 390, which was effective upon enactment on November 18, 1997. Comments received in response to the publication of this interim rule will be considered in the formulation of the final rule.

List of Subjects in 48 CFR Parts 222 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 222 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 222 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Subpart 222.73 is added to read as follows:

Subpart 222.73—Base Operations Support for Military Installations on Guam

Sec.
222.7300 Scope of subpart.
222.7301 General.
222.7302 Contract clause.

222.7300 Scope of subpart.

(a) This subpart implements Section 390 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85).

(b) This subpart applies to base operations support contracts that—

(1) Are to be performed on Guam; and

(2) Are entered into or modified on or after November 18, 1997.

222.7301 General.

Work under a contract for base operations support on Guam may not be performed by any alien who is issued a visa or otherwise provided nonimmigrant status under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)).

222.7302 Contract clause.

Use the clause at 252.222–7005, Prohibition on Use of Nonimmigrant Aliens—Guam, in all solicitations and contracts subject to this subpart.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.222–7005 is added to read as follows:

252.222–7005 Prohibition on Use of Nonimmigrant Aliens—Guam.

As prescribed in 222.7302, use the following clause:

Prohibition on Use of Nonimmigrant Aliens—Guam (Jun 1998)

The work required by this contract shall not be performed by any alien who is issued a visa or otherwise provided nonimmigrant status under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)).

(End of clause)

[FR Doc. 98–15432 Filed 6–10–98; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 96–D016]

Defense Federal Acquisition Regulation Supplement; Antiterrorism Training

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add guidance pertaining to DoD antiterrorism/force protection policy. The rule requires DoD contractors and their subcontractors to take appropriate security precautions when performing or traveling outside the United States.

DATES: Effective date: June 11, 1998.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 10, 1998 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Melissa Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 96–D016 in all correspondence related to this issue. E-mail comments should cite DFARS Case 96–D016 in the subject line.

FOR FURTHER INFORMATION CONTACT: Melissa Rider, telephone (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds a new DFARS Subpart 225.74 and a new contract clause at DFARS 252.225–7043 pertaining to antiterrorism/force protection policy for DoD contracts that require performance or travel outside the United States.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to contracts that require performance or travel outside the United States, and any costs related to compliance with the rule will be included in the contract price. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D016 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This DFARS rule implements interim policy issued by the Deputy Secretary of Defense on January 28, 1998, pertaining to antiterrorism/force protection for defense contractors overseas. The interim policy requires that defense contractors and subcontractors that perform or travel outside the United States under defense contracts affiliate with the Overseas Security Council; ensure that their employees who are U.S. nationals register with the U.S. Embassy and that their employees who are third country nationals comply with the requirements of the Embassy of their nationality; provide antiterrorism/force protection awareness training to their employees similar to that provided the military, DoD civilians, and their families, before the employees travel overseas; and receive the most current antiterrorism/force protection guidance for personnel and comply with the DoD Foreign Clearance Guide, as appropriate. This interim DFARS rule is necessary to provide prompt implementation of the Deputy Secretary of Defense interim policy and to ensure that employees of DoD contractors and subcontractors performing or traveling outside the United States receive timely and up-to-date security information that will help to ensure their physical safety. Comments received in response to the publication of this interim rule will be considered in the formulation of the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Subpart 225.74 is added to read as follows:

Subpart 225.74—Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States

Sec.
225.7400 Scope of subpart.
225.7401 General.
225.7402 Contract clause.

225.7400 Scope of subpart.

This subpart pertains to antiterrorism/force protection policy for contracts that require performance or travel outside the United States.

225.7401 General.

Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from the following offices:

(a) For Navy contracts: Naval Criminal Investigative Service (NCIS), Code 24; telephone, DSN 228–9113 or commercial (202) 433–9113.

(b) For Army contracts: HQDA (DAMO–ODL)/ODCSOP; telephone, DSN 225–8491 or commercial (703) 695–8491.

(c) For Marine Corps contracts: CMC Code POS–10; telephone, DSN 224–4177 or commercial (703) 614–4177.

(d) For Air Force contracts: HQ AFSFC/SFPT; telephone, DSN 473–0927/0928 or commercial (210) 671–0927/0928.

(e) For Combatant Command contracts: The appropriate Antiterrorism Force Protection Office at the Command Headquarters.

(f) For Defense Agencies: The appropriate agency security office.

(g) For additional information: Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, ASD (SOLIC); telephone, DSN 255–0044 or commercial (703) 695–0044.

225.7402 Contract clause.

Use the clause at 252.225–7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts that require performance or travel outside the United States, except for contracts with—

(a) Foreign governments;

(b) Representatives of foreign governments; or

(c) Foreign corporations wholly owned by foreign governments.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225–7043 is added to read as follows:

252.225–7043 Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States.

As prescribed in 225.7402, use the following clause:

ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (JUN 1998)

(a) Except as provided in paragraph (b) of this clause, the Contractor and its subcontractors, if performing or traveling outside the United States under this contract, shall—

(1) Affiliate with the Overseas Security Advisory Council, if the Contractor or subcontractor is a U.S. entity;

(2) Ensure that Contractor and subcontractor personnel who are U.S. nationals and are in-country on a non-transitory basis, register with the U.S. Embassy, and that Contractor and subcontractor personnel who are third country nationals comply with any security related requirements of the Embassy of their nationality;

(3) Provide, to Contractor and subcontractor personnel, antiterrorism/force protection awareness information commensurate with that which the Department of Defense (DoD) provides to its military and civilian personnel and their families, to the extent such information can be made available prior to travel outside the United States; and

(4) Obtain and comply with the most current antiterrorism/force protection guidance for Contractor and subcontractor personnel.

(b) The requirements of this clause do not apply to any subcontractor that is—

(1) A foreign government;

(2) A representative of a foreign government; or

(3) A foreign corporation wholly owned by a foreign government.

(c) Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from [*Contracting Officer to insert applicable information cited in 225.7401*].

(End of clause)

[FR Doc. 98–15431 Filed 6–10–98; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 245

[DFARS Case 98–D004]

Defense Federal Acquisition Regulation Supplement; Use of Auctions, Spot Bids, or Retail Sales of Surplus Contractor Inventory by the Contractor

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to lower the level at which the Government must approve the use of auctions, spot bids, or retail sales, when a contractor is disposing of surplus inventory on the Government's behalf. This change is expected to expedite the disposal process.

EFFECTIVE DATE: June 11, 1998.

FOR FURTHER INFORMATION CONTACT: Rick Layser, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D004.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Subpart 245.73 contains procedures for the sale of surplus Government property that is in the possession of a contractor. This final rule amends DFARS 245.7301 to lower, from the headquarters of the contract administration activity, to the commander of the contract administration office, the level at which the Government must approve the use of auctions, spot bids, or retail sales to dispose of such property.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D004.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 245

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 245 is amended as follows:

1. The authority citation for 48 CFR Part 245 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 245—GOVERNMENT PROPERTY

2. Section 245.7301 is amended by revising paragraph (c) to read as follows:

245.7301 Policy.

* * * * *

(c) The commander of the contract administration office must approve the use of auctions, spot bids, or retail sales.

[FR Doc. 98–15429 Filed 6–10–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 980225048–8059–02; I.D. 030698A]

RIN 0648–AK58

Pacific Halibut Fisheries; Fishing Periods; Correction

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

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule pertaining to Pacific Halibut Fisheries published in the **Federal Register** on March 17, 1998.

DATES: This action becomes effective June 11, 1998.

FOR FURTHER INFORMATION CONTACT: Bill Robinson, 206–526–6142.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the **Federal Register** on March 17, 1998, announcing the annual management measures for Pacific halibut fisheries and approval of catch sharing plans (63 FR 13000). That document contained one typographical error that misstated a date established by the International Pacific Halibut Commission.

Correction

As published, an incorrect date was listed in the March 17, 1998, edition of the **Federal Register**. On page 13004 in the second column, paragraph (2) of section 8, the dates for the fishing periods currently read as follows: "July 22, August 19, August 26, September 9,* * *." The "August 19" date is incorrect and should read "August 12." NMFS is correcting this error and is making no substantive change to the document in this action.

Dated: June 5, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–15592 Filed 6–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 060598A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to fully utilize the second seasonal apportionment of pollock total allowable catch (TAC) in this area.

DATES: DATES: Effective 1200 hrs, Alaska local time, June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of pollock TAC in Statistical Area 610 was established by the Final 1998 Harvest Specifications (63 FR 12027, March 12, 1998) as 7,978 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii). The Administrator, Alaska Region, NMFS (Regional Administrator), established a directed fishing allowance of 7,478 mt and set aside the remaining 500 mt as bycatch in support of other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator found that the directed fishing allowance would soon be reached and NMFS closed the directed fishery for pollock in Statistical Area 610 of the GOA on June 3, 1998 (63 FR 30644, June 5, 1998).

As of June 4, 1998, NMFS has determined that 3,000 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for pollock in Statistical Area 610 of the GOA effective 1200 hrs, A.l.t., June 8, 1998.

All other closures remain in full force and effect.

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to fully utilize the second seasonal apportionment of pollock TAC in Statistical Area 610 of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in underharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: June 8, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–15591 Filed 6–8–98; 4:50 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980331079–8144–09; I.D. 031198D]

RIN 0648–AK71

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Seasonal Apportionments of Pollock

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to change the seasonal apportionment of the pollock total allowable catch amount (TAC) in the combined Western and Central (W/C) Regulatory Areas of the Gulf of Alaska (GOA) by moving 10 percent of the TAC from the third fishing season, which starts on September 1, to the second fishing season, which starts on June 1. This seasonal TAC shift is a precautionary measure intended to reduce the potential impacts on Steller sea lions of pollock fishing under an increased 1998 TAC by reducing the percentage of the pollock TAC that is available to the commercial fishery during the fall and winter months, a period that is critical to Steller sea lions. This action is intended to promote the conservation and management objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective June 10, 1998.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from the Sustainable Fisheries Division, NMFS-Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228 or kent.lind@noaa.gov

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

Current groundfish regulations apportion the pollock TAC in the W/C Regulatory Areas among three statistical areas—610 (Shumagin), 620 (Chirikof), and 630 (Kodiak)—and divide the TAC apportioned to each statistical area into three seasonal allowances of 25 percent, 25 percent, and 50 percent of the TAC, which become available on January 1, June 1, and September 1, respectively. This final rule shifts 10 percent of the TAC from the third to the second season, resulting in seasonal allowances of 25 percent, 35 percent, and 40 percent, respectively.

The proposed rule for this action was published in the **Federal Register** on April 30, 1998 (63 FR 23712). The proposed rule described the Council's decision making process in recommending a 60-percent increase in the 1998 pollock TAC for the W/C Regulatory Areas, the current status of Steller sea lions in the W/C Regulatory Areas, previous management actions taken to protect Steller sea lions in the W/C Regulatory Areas, and current concerns related to the potential for increased pollock fishing in the third season to impact Steller sea lions. Additional information on this action is contained in the preamble to the proposed rule (63 FR 23712, April 30, 1998) and in the EA/RIR (see **ADDRESSES**).

Comments and Responses

Comments on the proposed rule were invited through May 15, 1998. Two letters of comment were received on the proposed rule by the end of the comment period and are summarized and responded to in the 5 comments below. No changes were made from the proposed rule in response to comments.

Comment 1: NMFS failed to follow the precautionary principle by allowing the Council to increase the 1998 pollock TAC by 60 percent. The precautionary principle should clearly direct managers to minimize human exploitation of the Steller sea lion's prey base. Instead, the Council has substantially increased the allowable exploitation level of a major component of the Steller sea lion's prey base and NMFS has apparently offered no opposition to this decision. This is unacceptable.

Response: Estimated pollock biomass is one of the principal factors used to set the TAC for pollock in the W/C Regulatory Areas. As biomass changes, either up or down, so changes the TAC. In 1998, the estimated biomass of pollock in the W/C Regulatory Areas was bolstered considerably by a very strong 1994 year class. The Council recommended a TAC increase from the previous year to allow an increase in fishing consistent with the estimated biomass. NMFS approved the 1998 pollock TAC for the W/C Regulatory Areas as part of the final 1998 specifications for groundfish of the GOA (63 FR 12027, March 12, 1998). The 1998 TAC will result in increased removal of pollock from the W/C Regulatory Areas but is based on the fact that the biomass of pollock in those areas has also increased. The information available indicates that the unfished pollock biomass will be greater in 1998 than in 1997 despite the higher TAC.

This final rule reapportions 10 percent of the TAC from the third to the second fishing season to reduce the percentage of pollock TAC that is available to the commercial fishery during the fall and winter months, a period that is critical to Steller sea lions. NMFS believes the 1998 pollock fishery in the W/C Regulatory Areas will be managed in a manner that will not jeopardize the continued existence of Steller sea lions.

Comment 2: NMFS should reconsider its conclusions from its Section 7 consultation on the 1998 TAC. NMFS should insist that the Council reduce the approved TAC increase (or eliminate it altogether) due to the many potential adverse consequences it could have on the endangered Steller sea lion population. NMFS should continue to oppose TAC increases for pollock into the foreseeable future, at least until the western population of Steller sea lions shows some sign of recovery.

Response: NMFS stands by the conclusions of the Section 7 consultation made on the 1998 pollock TAC specified for the W/C Regulatory Areas. As noted above, the 1998 TAC increase was supported by increased biomass estimates. Even with an increase in fishery removals, the unfished pollock biomass available to Steller sea lions will be greater in 1998 than in 1997.

Comment 3: We (a marine mammal research consortium) conduct research on Steller sea lions and were surprised to learn that the leading hypothesis explaining their decline is "lack of available prey." This implies that Steller sea lions are starving to death; a statement not supported by field observations. The hypothesis that most researchers are working with is that a high mortality of young is occurring, but the possible causes are not known. The problem does not appear to be a lack of "available" prey, but rather, a lack of "appropriate" prey. "Appropriate" prey include small schooling fish, such as herring, which are higher in energy content. The prey that sea lions are consuming in areas of sharp population decline are poor in energy or nutritional

content. For example, pollock has about half the energy content of herring. Studies with captive sea lions at the Vancouver Aquarium have demonstrated that the difference in usable energy (due to various costs of digestion) is even greater. From an energetic viewpoint, sea lions can survive on a pollock only diet. However, the level of prey intake would have to be increased, perhaps to a level—surpassing physiological and ecological limitations. Sea lions in the areas of stable populations incorporate a higher proportion of small schooling fish (such as herring) in their diet while sea lions from declining populations rely heavily upon pollock as their primary prey item.

Response: Although pollock generally have lower mean energy levels than some small forage fishes, the range of energy levels does overlap. In addition, during January through March, pollock are in breeding condition and are likely to contain greater energy content at that time. Nevertheless, if other forage fish species were available in sufficient abundance, then it is likely that sea lions would prey on them to a greater extent. Indeed, NMFS recently issued a final rule to prohibit directed fishing on all forage fish species in Federal waters off Alaska, in part, to protect the availability of these prey species for Steller sea lions (63 FR 13009, March 17, 1998). However, sea lions are limited to available prey, regardless of whether that prey is appropriate, and simply put, they consume pollock. If pollock has less energy and nutrient content, then sea lions would have to increase the amount of pollock taken to satisfy their nutritional needs. The hypothesis of lack of available prey is supported by size differences observed in sea lions in the 1970s and 1980s, by evidence of lower productivity, and by evidence of decreased juvenile survival.

Comment 4: Decreasing total prey biomass by increasing pollock catches has the potential to negatively impact Steller sea lion populations, but it also has the potential to positively impact Steller sea lions. Unfortunately, despite NMFS assertions, the effects of increased pollock catches on overall prey abundance and diversity are not known. Shifting the biomass of pollock from older to younger age classes should result in more prey for Steller sea lions, not less. Steller sea lions tend to feed on small pollock while the commercial fishery targets older and larger fish. Similarly, an increase in the catch of adult pollock might increase juvenile pollock abundance (the preferred prey size for Steller sea lions) by reducing cannibalism; or more ideally for Steller sea lions, reducing pollock biomass might increase the abundance of other prey types, particularly small schooling fish. Unfortunately, we do not know the outcome of fishing down pollock is not known, and the scientific ability to make such predictions does not exist.

Response: NMFS shares the commenter's concern regarding the hypothesis that increased fishing could result in a shift in prey composition. If the composition of prey can be shifted by increased fishing, then it is also possible that the current prey composition, which is dominated by pollock, reflects the effects of past fishing. If that is the case, then the suggestion that increased fishing of pollock would return ecosystem composition to something more favorable to Steller sea lions implies a reversal of effect, which is possible but questionable. As the comment notes, we do not know the outcome of fishing down pollock and do not yet have the scientific ability to make such predictions. From a precautionary perspective, it seems prudent to minimize the degree to which commonly used prey species, such as pollock, are locally depleted. Depletion can be minimized by dispersing fishing effort more evenly over time.

Comment 5: Moving part of the pollock fishery to summer may result in greater hardship to lactating females that leave their pups to search for food.

Response: The current 25/25/50 apportionment of pollock TAC among the three fishing seasons has the greatest potential effect on the fall months, when data indicate that pups are beginning to wean. Shifting 10 percent of the TAC to the summer season increases the catch during the summer period when females are still nursing and decreases the TAC during the period when females are either still nursing or weaning has begun and pups are attempting to forage for themselves. To date, no evidence suggests that females and pups are compromised during the summer breeding season. One study indicates that pups in the western population, where the greatest decline has occurred, are even larger during the breeding season than pups in the eastern population. This indicates that nutritional stress occurs late in the fall and winter months when pups are learning to forage on their own.

The shift of 10 percent of the TAC was a precautionary measure to ensure that pups learning to forage were not compromised by the relatively larger catch in the fall/winter period. For pups and adult females, winter months are considered the most difficult months due to harsher environmental conditions, greater prey dispersal, and increased metabolic and energetic requirements.

Amendment to Final 1998 Pollock TAC Specifications for the W/C Regulatory Areas

To implement the final rule in 1998, this action also amends Table 3 of the 1998 final harvest specifications for groundfish of the GOA (63 FR 12027, March 12, 1998). Table 3 of the 1998 specifications is revised as follows:

TABLE 3.—DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND SEASONAL ALLOWANCES. ABC FOR THE W/C GOA IS 119,150 METRIC TONS (MT). BIOMASS DISTRIBUTION IS BASED ON 1996 SURVEY DATA. TACS ARE EQUAL TO ABC. INSHORE AND OFFSHORE ALLOCATIONS OF POLLOCK ARE NOT SHOWN. ABCS AND TACS ARE ROUNDED TO THE NEAREST 5 MT.

Statistical area	Biomass percent	1998 ABC = TAC	Seasonal allowances		
			First	Second	Third
	.....	metric ton			
Shumagin (610)	25	29,790	7,450	10,430	11,910
Chirikof (620)	42	50,045	12,510	17,515	20,020
Kodiak (630)	33	39,315	9,830	13,760	15,725
Total	100	119,150	29,790	41,705	47,655

Classification

This action amends final 1998 harvest specifications for the W/C Regulatory Areas by shifting 10 percent of the TAC from the third fishing season beginning September 1 to the second fishing season beginning June 1. A 30-day delayed effectiveness period for this action would result in unnecessary closures and disruption within the fishing industry because the second pollock season in the W/C Regulatory Areas would be opened and closed on the old TACs and then would have to be reopened again once this action becomes effective and the additional 10 percent TAC amount becomes available. Such a closure and reopening of the fishery would impose unnecessary costs on industry because fishing vessels and processors would be forced to stop and restart their operations and would incur the costs of maintaining crews during the down time. Waiver of the 30-day delayed effectiveness for this action would allow the second season pollock fisheries to continue uninterrupted. In addition, this action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. For these reasons, the immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources and to give the fishing industry the earliest possible opportunity to plan its fishing operations. Accordingly, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), finds that good cause exists to waive the 30-day delayed effectiveness period for this action under 5 U.S.C. 553(d)(3).

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

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

A formal section 7 consultation under the Endangered Species Act was initiated for the 1998 final specifications for groundfish of the GOA. In a Biological Opinion dated March 2, 1998, NMFS described the effects of this action as follows:

> The proposed action is to conduct the Gulf of Alaska pollock fishery in 1998 with a 119,150 mt TAC divided among three seasons starting January 20, June 1, and September 1. Final specifications for the fishery will indicate a 25 percent, 25 percent, 50 percent TAC distribution for the three seasons, but the June 1 and September 1 TAC levels will be revised through rulemaking to a distribution of 35 percent and 40 percent for the last two seasons. This reapportionment will reduce the catch in the season beginning September 1 and shorten the duration of this season's pollock fishery. This measure will, therefore, minimize potential adverse effects of the fishery on Steller sea lions during the winter months, when weaned pups are learning to forage and adult females may be both pregnant and lactating.

In the Biological Opinion, the Assistant Administrator determined that fishing activities conducted under this final rule are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 5, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.20, paragraph (a)(5)(ii)(B) is revised to read as follows:

§ 679.20 General limitations.

(a) * * *

(5) * * *

(ii) * * *

(B) *Seasonal allowances.* Each apportionment will be divided into three seasonal allowances of 25 percent, 35 percent, and 40 percent of the apportionment, respectively, corresponding to the three fishing seasons defined at § 679.23(d)(2).

* * * * *

[FR Doc. 98–15594 Filed 6–10–98; 8:45 am]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 63, No. 112
Thursday, June 11, 1998

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–98–004]

Pork Promotion, Research, and Consumer Information Order—Decrease in Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this proposed rule would decrease by one-hundredth of a cent per pound the amount of the assessment per pound due on imported pork and pork products to reflect a decrease in the 1997 five-market average price for domestic barrows and gilts. This proposed action would bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. These proposed changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products.

DATES: Comments must be received by July 13, 1998.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch, STOP 0251; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA, 1400 Independence Ave., SW; Washington, D.C. 20250–0251. Comments will be available for public inspection during regular business hours at the above office in Room 2606 South Building; 14th and Independence Avenue, SW., Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

This proposed rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with the law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The effect of the Order upon small entities initially was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898). It was determined at that time that the Order would not have a significant effect upon a substantial number of small entities. Many of the estimated 1,000 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.601).

This proposed rule would decrease the amount of assessments on imported pork and pork products subject to assessment by one-hundredth of a cent per pound, or as expressed in cents per kilogram, two-hundredths of a cent per kilogram. This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1997. The average annual market price decreased from $52.77 in 1996 to $51.30 in 1997, a decrease of about 3 percent. Adjusting the assessments on imported pork and pork products would result in an estimated decrease in assessments of $48,000 over a 12-month period. Assessments collected for 1997 were $3,369,587. Accordingly, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995 (60 FR 29963). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29963, 61 FR 29002, and 62 FR 26205) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.45 percent of the animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.45 percent of the market value of the live porcine animals from which such pork and pork products were produced. This proposed rule would decrease the assessments on all of the imported pork

and pork products subject to assessment as published in the **Federal Register** as a final rule May 13, 1997, and effective on June 12, 1997; (62 FR 26205). This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1997 as reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This decrease in assessments would make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.45 percent of the market value.

The methodology for determining the per pound amounts for imported pork and pork products was described in the Supplementary Information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the Department's Statistical Bulletin No. 697 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as reported by USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.45 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent per pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

The average annual market price decreased from $52.77 in 1996 to $51.30 in 1997, a decrease of about 3 percent. This decrease would result in a corresponding decrease in assessments for all HTS numbers listed in the table in § 1230.110, 62 FR 26205; May 13, 1997, of an amount equal to one-hundredth of a cent per pound, or as expressed in cents per kilogram, two-hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1997, through September 30, 1997, the proposed decrease in assessment amounts would result in an estimated $48,000 decrease in assessments over a 12-month period.

This proposed rule provides for a 30-day comment period. This comment period is appropriate because the proposed rule simply provides for an adjustment in the per pound assessment levels on imported pork and pork products to reflect changes in live hog prices which occurred from 1996 to 1997. These live hog prices form the basis for the assessments. This adjustment, if adopted, should be made effective as soon as possible to promote optimum equity.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 be amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B—[Amended]

2. Section 1230.110 is revised to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

(a) The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000	[1] 0.45
0103.91.0000	[1] 0.45
0103.92.0000	[1] 0.45

[1] Percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.0000	.33	.727518
0203.12.1010	.33	.727518
0203.12.1020	.33	.727518
0203.12.9010	.33	.727518
0203.12.9020	.33	.727518
0203.19.2010	.38	.837748
0203.19.2090	.38	.837748
0203.19.4010	.33	.727518
0203.19.4090	.33	.727518
0203.21.0000	.33	.727518
0203.22.1000	.33	.727518
0203.22.9000	.33	.727518
0203.29.2000	.38	.837748
0203.29.4000	.33	.727518
0206.30.0000	.33	.727518
0206.41.0000	.33	.727518
0206.49.0000	.33	.727518
0210.11.0010	.33	.727518
0210.11.0020	.33	.727518
0210.12.0020	.33	.727518
0210.12.0040	.33	.727518
0210.19.0010	.38	.837748
0210.19.0090	.38	.837748
1601.00.2010	.46	1.014116
1601.00.2090	.46	1.014116
1602.41.2020	.50	1.102300
1602.41.2040	.50	1.102300
1602.41.9000	.33	.727518
1602.42.2020	.50	1.102300
1602.42.2040	.50	1.102300
1602.42.4000	.33	.727518
1602.49.2000	.46	1.014116
1602.49.4000	.38	.837748

Dated: June 8, 1998.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 98–15578 Filed 6–10–98; 8:45 am]

BILLING CODE 3410–02–P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1301, 1304 and 1306

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Proposed rule.

SUMMARY: The Northeast Dairy Compact Commission proposes to amend the current Compact Over-order Price Regulation to exclude milk from the pool which is either diverted or

transferred, in bulk, out of the Compact regulated area. The proposal will limit the payment of the compact over-order producer price to milk disposed of within the Compact regulated area.

The Compact Commission also proposes a new rule to establish a reserve fund for reimbursement to school food authorities. The proposed reserve fund is required to implement the previously issued regulation exempting certain milk sold by school food authorities from the Over-order Price Regulation.

DATES: Written comments and exhibits may be submitted until 5:00 PM, July 15, 1998. A public hearing to take testimony and receive documentary evidence relevant to the proposed rules will be held on July 1, 1998 at 9:00 am.

ADDRESSES: Send comments to Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, Vermont 05601.

The hearing will be held at the Capitol Center for the Arts, Governor's Hall, 44 South Main Street, Concord, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

Background

The Northeast Dairy Compact Commission (the "Commission") was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 89–95, as amended, Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR ACT), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Pursuant to its authority under Article V, Section 11 of the Compact, the Commission conducted an informal rulemaking proceeding to adopt a Compact Over-order Price Regulation. See, 62 FR 29626 (May 30, 1997). The Commission amended and extended the Compact Over-order Price Regulation on October 23, 1997. See 62 FR 62810 (November 25, 1997). The Commission further amended the Over-order Price Regulation relative to certain milk sold by school food authorities in New England. See 63 FR 10104 (February 27, 1998).

Pursuant to its authority under Article V, Section 11 of the Compact, the Commission is proposing to amend the current Compact Over-order Price Regulation to exclude milk from the pool which is either diverted or transferred, in bulk, out of the Compact regulated area and to establish a reserve fund to implement the Commission's regulation relative to certain milk sold by school food authorities. The current Compact Over-order Price Regulation is codified at 7 CFR 1300 through 1308.

Diverted or Transferred Milk

The current Compact Over-order Price Regulation permits certain milk to be qualified for payment of the compact over-order producer price which is not disposed of in the compact regulated area. In the exercise of its administrative discretion, as a matter of policy, the Compact Commission proposes to amend the rules governing the definitions of "producer milk" and "diverted milk," as well as the rule governing the classification of transfers and diversions to exclude milk, which is transferred or diverted, in bulk, from a pool plant to a plant located outside of the regulated area, from the pool and disqualify it from the compact over-order producer payment. The proposed amendments do not affect milk diverted or transferred to a partially regulated plant having Class 1 disposition in the regulated area.

Producer milk is currently defined to mean milk that the handler has received from producers. The proposed amendment would add to this definition the requirement that such milk is physically moved to a pool plant in the regulated area or is diverted pursuant to § 1301.23(c).

The proposed regulation amends the definition of *diverted milk*, at § 1301.23(c), to exclude that volume of milk from the definition of *producer milk* that is moved from a dairy farmer's farm to a plant located outside of the regulated area, except a partially regulated plant having Class I disposition in the regulated area.

The proposed amendment also adds a provision regarding the classification of transfers and diversions of milk. This proposed amendment excludes from the definition of *producer milk* that volume of fluid milk (not including bulk transfers of skimmed milk and condensed milk) that is transferred or diverted, in bulk, from a pool plant to a plant located outside of the regulated area, except a partially regulated plant having Class 1 disposition in the regulated area. The proposed amendment further requires that all milk excluded under this provision shall be prorated to all sources of milk received at this plant.

Reserve Fund for School Milk Program

The Compact Commission proposes to establish a reserve fund in order to implement the Commission's regulation at § 1301.13(e). Pursuant to that regulation, the Commission has entered into a Memorandum of Understanding with each of the six New England states regarding the school milk reimbursement program. Through the Memorandum of Understanding, the Commission has created a school milk reimbursement program for the 1998–1999 school year which will permit the Commission to reimburse school food authorities, as defined by 7 CFR 210.2, to the extent that the school food authorities can demonstrate and document that the costs of eight-ounce cartons of milk have been increased by operation of the Compact Over-order Price Regulation. The proposed regulation authorizes the Commission to establish the reserve fund necessary to process any qualified reimbursement claims that are submitted by school food authorities.

Date, Time and Location of the Public Hearing

The Northeast Dairy Compact Commission will hold a public hearing at 9:00 AM on July 1, 1998 at the Capitol Center for the Arts, Governor's Hall, 44 South Main Street, Concord, New Hampshire.

Request for Written Comments

Pursuant to Article VI(D) of the Commission's Bylaws, any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments and exhibits to the Commission. Comments and exhibits may be submitted at any time before 5:00 PM on July 15, 1998. Comments and exhibits will be made part of the record of the rulemaking proceeding only if they identify the author's name, address and occupation, and if they include a sworn notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 PM deadline but the original must then be sent by ordinary mail.

Comments and exhibits should be sent to: Northeast Dairy Compact

Commission, 43 State Street, P.O. Box 1058, Montpelier, Vermont 05601, (802) 229–2028 (fax).

For more information contact the Compact Commission offices.

List of Subjects in 7 CFR Parts 1301, 1304 and 1306

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission proposes to amend 7 CFR Chapter XIII as follows:

PART 1301—DEFINITIONS

1. The authority citation for part 1301 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1301.12 is revised to read as follows:

§ 1301.12 Producer milk.

Producer milk means milk that the handler has received from producers and is physically moved to a pool plant in the regulated area or is diverted pursuant to § 1301.23(c) . The quantity of milk received by a handler from producers shall include any milk of a producer that was not received at any plant but which the handler or an agent of the handler has accepted, measured, sampled, and transferred from the producer's farm tank into a tank truck during the month. Such milk shall be considered as having been received at the pool plant at which other milk from the same farm of that producer is received by the handler during the month, except that in the case of a cooperative association in its capacity as a handler under § 1301.9(d), the milk shall be considered as having been received at a plant in the zone location of the pool plant, or pool plants within the same zone, to which the greatest aggregate quantity of the milk of the cooperative association in such capacity was moved during the current month or the most recent month.

3. In § 1301.23, paragraph (c) is revised to read as follows:

§ 1301.23 Diverted milk.

* * * * *

(c) Milk moved, as described in paragraphs (a) and (b) of this section, from dairy farmers' farms to partially regulated plants having Class I distribution in the regulated area in excess of 35 percent in the months of September through November and 45 percent in other months, of the total quantity of producer milk received (including diversions) by the handler during the month shall not be diverted milk. Such milk, and any other milk reported as diverted milk that fails to meet the requirements set forth in this section, shall be considered as having been moved directly from the dairy farmers' farms to the plant of physical receipt, and if that plant is a nonpool plant the milk shall be excluded from producer milk. Milk moved, as described in paragraph (a) and (b) of this section, from a dairy farmer's farm to a plant located outside of the regulated area, except a partially regulated plant having Class I disposition in the regulated area, that volume of milk shall be excluded from producer milk.

PART 1304—CLASSIFICATION OF MILK

1. The authority citation of part 1304 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1304.2 is amended by adding paragraph (c) to read as follows:

§ 1304.2 Classification of transfers and diversions.

* * * * *

(c) Fluid milk products (not including bulk transfers of skimmed milk and condensed milk) transferred or diverted in bulk from a pool plant to a plant located outside of the regulated area, except a partially regulated plant having Class I disposition in the regulated area, that volume shall be excluded from producer milk. The milk excluded pursuant to this paragraph shall be prorated to all sources of milk received at this plant.

PART 1306—COMPACT OVER-ORDER PRODUCER PRICE

1. The authority for part 1306 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. In § 1306.3 redesignate paragraphs (d) through (f) as paragraphs (e) through (g) and add new paragraph (d) to read as follows:

§ 1306.3 Computation of basic over-order producer price

* * * * *

(d) Beginning with the August 1998 pool, subtract from the total value computed pursuant to paragraph (a) of this section, an amount estimated by the Commission for the purpose of retaining a reserve for payment of obligations pursuant to § 1301.13(e) of this chapter. Surplus funds from this reserve shall be returned to the producer-settlement fund.

* * * * *

Dated: June 5, 1998.

Kenneth M. Becker,

Executive Director.

[FR Doc. 98–15547 Filed 6–10–98; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 208

[INS Order No. 1865–97; AG Order No. 2164–98]

RIN 1115–AE93

Executive Office for Immigration Review; New Rules Regarding Procedures for Asylum and Withholding of Removal

AGENCY: Immigration and Naturalization Service; Executive Office for Immigration Review, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Department regulations that govern asylum and withholding of removal. The amendments focus on portions of the regulations that deal with cases where an applicant has established past persecution or where the applicant may be able to avoid persecution in his or her home country by relocating to another area of that country. In the current regulation, these portions set out restrictive guidelines about how the Attorney General's discretion should be exercised in cases where past persecution is established and about what kind of relevant evidence can be considered in determining whether an applicant has a well-founded fear of future persecution. This rule is intended to establish new guidelines about these issues. The rule continues to provide that, in cases where the applicant has established past persecution, the Attorney General may deny asylum in the exercise of discretion if it is established by a preponderance of the evidence that the applicant does not face a reasonable possibility of future persecution in the applicant's country of nationality or, if stateless, the applicant's country of last habitual residence. In this regard, however, the rule has been changed to make clear that the asylum officer or immigration judge may rely on any evidence relating to the likelihood of future persecution. The rule makes similar changes to regulations regarding withholding of deportation. The rule also identifies new factors that may be considered in the exercise of discretion in asylum cases where the alien has established past persecution but may not have a

well-founded fear of future persecution. The rule further provides that the asylum and withholding standards require a showing that a risk of harm exists throughout the country in question.

DATES: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Please submit written comments in triplicate to Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, N.W., Room 5307, Washington, D.C. 20536. To ensure proper handling, please reference INS No. 1865–97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Christine Davidson, Senior Policy Analyst, Asylum Division, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536, Attn: ULLICO Bldg., 3rd Floor, (202) 305–2663; Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, (703) 305–0470.

SUPPLEMENTARY INFORMATION: Section 208 of the Immigration and Nationality Act (Act) provides that an alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A) of the Act. Under this section, a refugee is defined as:

> [A]ny person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion
> * * *

Although this provision is based on the refugee definition found in the 1951 Convention Relating to the Status of Refugees (as modified by the 1967 Protocol Relating to the Status of Refugees), it differs slightly from the international definition by providing that a person may qualify as a refugee on the basis of past persecution alone, without having a well-founded fear of future persecution. Nevertheless, the fact that a person is a refugee does not automatically entitle the person to asylum. The Attorney General must determine whether the person warrants a grant of asylum in the exercise of discretion. *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 428 n.5 (1987); 8 CFR 208.14 (a) and (b).

Consistent with the statute, the current regulations provide that an applicant who establishes that he or she has suffered past persecution qualifies as a refugee. 8 CFR 208.13(b)(1). The regulations go on to describe how the Attorney General will exercise discretion with respect to a person who qualifies as a refugee on the basis of past persecution. The regulations first provide that such person shall be presumed to have a well-founded fear of future persecution unless a preponderance of the evidence establishes that, since the time of the persecution, conditions in the applicant's country of origin have changed to such an extent that the applicant no longer has a well-founded fear of persecution. 8 CFR 208.13(b)(1)(i). The regulations further provide that an applicant who has established past persecution, but does not have a well-founded fear of future persecution, will be denied asylum unless the applicant demonstrates compelling reasons for being unwilling to return to his or her country of origin arising out of the severity of the past persecution the applicant has suffered. 8 CFR 208.13(b)(1)(ii).

Since the promulgation of these regulations in 1990, important questions have arisen about the meaning of 8 CFR 208.13(b)(1)(i) and (ii). For example, some have questioned the relevance of paragraph (b)(1)(i) regarding the presumption of a well-founded fear of future persecution to be accorded an applicant who has suffered past persecution if such applicant already qualifies as a refugee. Others have expressed confusion about which party bears the burden of proof in showing whether the presumption identified in paragraph (b)(1)(i) has been overcome. Others have interpreted this paragraph to preclude consideration of evidence other than changes in country conditions in cases where the applicant has established past persecution. Paragraph (b)(1)(ii) also created ambiguity as to whether an applicant who has established past persecution also bears the burden of establishing a well-founded fear of future persecution in order to be granted asylum. Recent decisions by the Board of Immigration Appeals (BIA or Board) and by the Federal courts have interpreted these regulatory provisions and highlighted the need to change them.

This rule leaves intact the important principle that an applicant who has established past persecution on account of one of the five grounds is a refugee. It also continues to provide that a person who has established past persecution on account of race, religion, nationality, membership in a particular social group, or political opinion shall be presumed to have a well-founded fear of future persecution on account of these same grounds. This presumption is relevant to whether the applicant warrants a grant of asylum in the exercise of discretion. The rule then makes clear that, in cases where the applicant has established past persecution, the application shall be referred or denied if it is established by a preponderance of the evidence that there is not a reasonable possibility of future persecution against the applicant on account of one of the five grounds, unless paragraph (b)(1)(iii) applies. This approach is consistent with longstanding principles articulated in case law. *See Matter of Chen*, 20 I&N 16 (BIA 1989).

In cases involving past persecution, we propose to maintain the use of a presumption and, for cases in immigration proceedings, the shifting to the Government of the burden of proof for rebutting the presumption. This burden-shifting fits well within the context of immigration court proceedings, with separate litigants appearing before an independent decisionmaker. Where an applicant establishes past persecution before an asylum officer during a non-adversarial asylum interview, it will be incumbent on the officer to elicit from the applicant or otherwise gather evidence bearing on future persecution and to evaluate whether a preponderance of the evidence indicates that the applicant no longer faces a reasonable possibility of persecution.

This rule also makes clear that, in determining whether there is a reasonable possibility of future persecution, the asylum officer or immigration judge may rely on any evidence relating to the possibility of future persecution against the applicant. This is an important change in light of the recent Board decision in *Matter of C–Y–Z*, Intertim Decision #3319 (BIA 1997), which raises questions about how the existing regulation should be interpreted. In that decision, the Board addressed the case of an applicant who had suffered past persecution and was therefore entitled under the existing regulation to the presumption of a well-founded fear of future persecution. the Board interpreted 8 CFR 208.13(b)(1)(i) to preclude the consideration of any factors other than changed country conditions in determining whether the presumption of a well-founded fear was rebutted. In *Matter of Chen*, however,

which the existing regulatory provisions were intended to codify, the Board stated that, in cases where an applicant establishes past persecution, asylum may be denied as a matter of discretion if there is little likelihood of future persecution. To avoid any uncertainty about whether there is tension among the existing regulation, *Matter of Chen*, and *Matter of C–Y–Z*, we are changing the regulation so that it clearly allows consideration of any evidence, or lack thereof, bearing on future persecution in such cases. Administrative determinations under this rule, of course, remain subject to review by the Board of Immigration Appeals under current regulatory and statutory provisions.

We have also used the phrase "no reasonable possibility of future persecution" in lieu of the phrase "little likelihood of present persecution" used by the BIA in *Matter of Chen* in defining the standard of proof that the Government must meet to deny asylum in such cases. The "reasonable possibility" language is consistent with the Supreme Court's and the Department's regulatory interpretation of the well-founded fear standard. *See INS* v. *Cardoza-Fonseca*, 480 U.S. at 440; 8 CFR § 208.13(b)(2). We believe it is appropriate, therefore, to restate the reasonable possibility standard as the one that the Government must apply to determine whether a favorable exercise of discretion may be unwarranted in cases where applicants have established past persecution.

The rule also amends 8 CFR 208.13(b)(1)(ii) regarding discretionary grants of asylum in circumstances where a victim of past persecution no longer has a well-founded fear of persecution. The existing regulation allows that an applicant who has suffered past persecution, but who has no well-founded fear of future persecution, may be granted asylum in the exercise of discretion only if the applicant demonstrates compelling reasons for being unwilling to return to his or her country "arising out of the severity of the past persecution" for such a grant. In *Matter of H-*, Interim Decision #3276 (BIA 1996), the Board specifically addressed the exercise of discretion in cases where an applicant has established past persecution but has no well-founded fear of future persecution. The Board noted earlier decisions indicating that general humanitarian factors, unrelated to the circumstances that led to refugee status, such as age, health, or family ties, should also be considered in the exercise of discretion. One possible interpretation of this portion of the Board's decision is that it authorizes the granting of asylum based on factors other than "compelling reasons arising out of the severity of the past persecution" to an applicant who has established past persecution but who has no well-founded fear of future persecution. In order to avoid any possible tension between this reading and the current regulation, which allows a grant of asylum only when there are compelling reasons related to the severity of the past persecution, we are amending the regulation.

The Department recognizes, however, that the existing regulation may represent an overly restrictive approach to the exercise of discretion in cases involving past persecution, but no well-founded fear of future persecution. The Department believes it is appropriate to broaden the standards for the exercise of discretion in such cases. For example, there may be cases where it is appropriate to offer protection to applicants who have suffered persecution in the past and who are at risk of future harm that is not related to a protected ground. Therefore, the rule includes, as a factor relevant to the exercise of discretion, whether the applicant may face a reasonable possibility of "other serious harm" upon return to the country of origin or last habitual residence. *See Matter of B-*, Int. Dec. #3251 (BIA 1995) (citing both the current civil strife in Afghanistan and the severity of the past persecution suffered by the applicant as grounds for a discretionary grant of asylum, despite of conclusion that the applicant no longer has a well-founded fear of persecution in that country). As with any other element of an asylum claim, the burden is on the applicant to establish that such grounds exist and warrant a humanitarian grant of asylum based on past persecution alone.

By "other serious harm," we mean harm that may not be inflicted on account of race, religion, nationality, membership in a particular social group, or political opinion, but such harm would have to be so "serious" as to equal the severity of persecution. We would not expect, for example, that mere economic disadvantage or the inability to practice one's chosen profession would qualify as "other serious harm." We believe that this emphasis on the applicant's risk of future harm is consistent with the protection function of the 1951 Convention Relating to the Status of Refugees, which governs the international legal obligations implemented through the domestic asylum and withholding laws.

The proposed rule would also amend 8 CFR 208.13(b)(2) to provide that, to meet the well-founded fear standard, the applicant must establish a reasonable possibility of harm *throughout* the applicant's country of nationality or last habitual residence. The Board and the Federal courts have long acknowledged the requirement of countrywide persecution as an integral component of the refugee definition, which cannot be met if the applicant reasonably could be expected to seek protection by relocating to another part of the country in question. *See Matter of Acosta*, 19 I&N Dec. 211,235 (BIA 1985), modified on other grounds, *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987); *Etugh* v. *INS*, 921 F.2d 36, 39 (3d Cir. 1990); *Quintanilla-Ticas* v. *INS*, 783 F.2d 955,957 (9th Cir. 1986). In the context of a case involving only a fear of future persecution, it is important to note that the requirement of a reasonable possibility of harm throughout the country in question relates to the applicant's eligibility as a refugee, and is not merely a factor to be considered in the exercise of discretion.

This proposed rule emphasizes, however, that an applicant should not be denied asylum based on the fact that he or she could avoid future persecution be relocating within the country in question unless it would be reasonable to expect him or her do so. This approach is consistent with the position taken by the United Nations High Commissioner for Refugees that "[t]he fear of being persecuted need not always extend to the whole territory of the refugee's country of nationality * * *. [A] person will not be excluded from refugee status merely because he [or she] could have sought refuge in another part of the same country [] if[,] under all the circumstances, it would not have been reasonable to expect him [or her] to do so." United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status* ¶ 91 (1992).

The proposed rule provides that internal relocation will not be considered reasonable if there is a reasonable possibility that the applicant would face other serious harm in the place of potential relocation. We intend that this "other serious harm" standard for determining when internal relocation is not reasonable refers to the same type of "other serious harm" that may warrant a humanitarian grant of asylum to an applicant who shows past persecution but who has no well-founded fear of future persecution. In cases where the applicant has established past persecution, the Service would bear the burden of showing that

internal relocation is reasonable. In cases where the applicant has not established past persecution, it would be the applicant's burden to show that he or she is at risk of persecution in the country in question and that internal relocation is not reasonable in order to establish a well-founded fear of persecution. Regardless of who bears the burden of proof on the issue of internal relocation, such burden requires supporting such claims by documentary evidence, if available, including evidence on economic and regional conditions that would provide an objective context for the claim that relocation is, or is not, possible.

As with other aspects of the refugee definition, we expect that the Board and the federal courts, as they interpret this regulation in individual cases, will provide guidance on the question of when internal relocation is reasonable. We would expect, however, that the difficulties associated with an internal relocation option would have to be substantial to render relocation unreasonable. Underlying our approach to this issue is a recognition that the principle of internal relocation is intended to apply to cases where the applicant does not need protection abroad.

This proposed rule would also amend 8 CFR 208.16, governing entitlement to withholding of removal, to be consistent with amendments relating to asylum eligibility. First, the rule would provide that an applicant is eligible for withholding of removal only if the applicant establishes that it is more likely than not that he or she would be persecuted in the country of proposed removal and that internal relocation is not reasonable. Thus, as in the asylum context, the rule requires that the applicant must show that the threat of harm exists countrywide to be eligible for withholding, and further makes clear that a withholding applicant must seek protection through internal relocation only if it is reasonable to expect him or her to do so.

Second, as is currently the case, the rule affords the applicant a presumption of a future threat to life or freedom on account of race, religion, nationality, membership in a particular social group, or political opinion if the applicant establishes that he or she has suffered persecution in the past on account of these same grounds. This rule also provides an opportunity to rebut such a presumption if it can be established that the applicant no longer would face a threat to life or freedom. The rule makes an important change by indicating that evidence other than changed conditions in the country of proposed removal can be taken into consideration in determining whether the applicant continues to face a threat to his or her life or freedom in that country. This is significant because, unlike asylum determinations, where the Attorney General has discretion to grant or deny asylum to a person who qualifies as a refugee, the Attorney General is required to grant withholding of removal to a person who establishes that his or her life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. The current language in 8 CFR 208.16(b)(2) appears to mandate a grant of withholding of removal where an applicant establishes that he or she has suffered persecution in the past unless there have been "changes in conditions" in the proposed country of removal. Significantly, this language appears to preclude consideration of other relevant types of evidence, including whether the applicant might safely relocate to a different part of the same country, and has been so construed by the courts. *See Singh* v. *Ilchert*, 63 F.3d 1501, 1510–11 (9th Cir. 1995). We believe that this result in *Singh* v. *Ilchert*, and in other decisions interpreting this regulatory provision, imposes unwarranted restrictions on the Attorney General's ability to consider relevant evidence. Under both domestic and international law, the requirement of a countrywide risk of persecution is an accepted element of refugee protection standards. Imposition of a regulatory restriction that precludes consideration of internal relocation options is inconsistent with a basic principle of international refugee protection: if an applicant is able to avail himself or herself of protection in any part of his or her country of origin, such applicant should not ordinarily need, or be entitled to, protection from another country. This rule changes the current regulation so that it clearly authorizes consideration of internal relocation options, as well as of any other evidence relevant to the possibility that an applicant would be at risk of future persecution, in determining whether an applicant has shown a likelihood of persecution or whether a presumption of a likelihood of persecution is rebutted.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant impact on a substantial number of small entities for the following reason: this rule clarifies certain legal standards involved in the adjudication of applications for asylum and withholding of removal; this clarification will not affect small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements

Accordingly, part 208 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

2. In § 208.13, paragraph (b) is revised to read as follows:

§ 208.13 Establishing asylum eligibility.

* * * * *

(b) * * *

(1) *Past persecution.* An applicant shall be found to be a refugee on the basis of past persecution if the applicant can establish that he or she has suffered persecution in the past in the applicant's country of nationality or, if stateless, his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion and is unable or unwilling to return to or avail himself or herself of the protection of that country owing to such persecution. An applicant who has been found to have established past persecution shall also be presumed to have a well-founded fear of persecution in the future on account of one of the five grounds mentioned above. This presumption may be rebutted if an asylum officer or immigration judge makes one of the findings described in paragraph (b)(1)(i) of this section.

(i) *Discretionary referral or denial.* Except as provided in (b)(1)(iii) of this section, the asylum application of an alien found to be a refugee on the basis of past persecution shall be, in the exercise of discretion, referred or denied by an asylum officer or denied by an immigration judge if it is found by a preponderance of the evidence that:

(A) the applicant does not face a reasonable possibility of future persecution in the applicant's country of nationality or, if stateless, the applicant's country of last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion; or

(B) the applicant could reasonably avoid future persecution by relocating to another part of the applicant's country of nationality or, if stateless, the applicant's country of last habitual residence.

(ii) *Burden of proof.* In cases where an applicant has demonstrated past persecution under paragraph (b)(1) of this section before an immigration judge, the Service shall bear the burden of establishing the requirements of paragraphs (b)(1)(i) (A) or (B) of this section.

(iii) *Discretionary grant.* An applicant who has suffered past persecution and who does not face a reasonable possibility of future persecution or who could reasonably avoid future persecution by relocating within his or her country of nationality or, if stateless, his or her country of last habitual residence, may be granted asylum in the exercise of discretion if:

(A) the applicant has demonstrated compelling reasons for being unwilling or unable to return to that country arising out of the severity of the past persecution; or

(B) the applicant has established that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country, unless such a grant of asylum is barred under paragraph (c) of this section.

(2) *Well-founded fear of future persecution.*

(i) An applicant has a well-founded fear of persecution if:

(A) the applicant has a fear of persecution in his or her country of nationality or, if stateless, his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion;

(B) there is a reasonable possibility of suffering such persecution if he or she were to return to that country; and

(C) he or she is unable or unwilling to return to or avail himself or herself of the protection of that country because of such fear.

(ii) An applicant does not have a well-founded fear of persecution if the applicant could reasonably avoid persecution by relocating to another part of the applicant's country of nationality or, if stateless, the applicant's country of last habitual residence.

(iii) In evaluating whether the applicant has sustained the burden of proving that he or she has a well-founded fear of persecution, the asylum officer or immigration judge shall not require the applicant to provide evidence that there is a reasonable possibility he or she would be singled out individually for persecution if:

(A) The applicant establishes that there is a pattern or practice in his or her country of nationality or, if stateless, his or her country of last habitual residence, of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(B) The applicant establishes his or her own inclusion in and identification with such group of persons such that his or her fear of persecution upon return is reasonable.

(3) *Reasonableness of internal relocation.* For purposes of determinations under paragraphs (b)(1)(i) and (ii), and (b)(2) of this section, it would not be reasonable to expect an applicant to relocate within his or her country of nationality or, if stateless, his or her country of last habitual residence, to avoid persecution if the asylum officer or immigration judge finds that there is a reasonable possibility that the applicant would face other serious harm in the place of potential relocation. In cases where the persecutor is a national government, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes that it would be reasonable for the applicant to relocate. In cases where the applicant has established past persecution before an immigration judge, the Service shall bear the burden of establishing that it would be reasonable for the applicant to relocate. In cases where the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate.

* * * * *

3. In § 208.16, paragraphs (b)(1), (b)(2), and (b)(3) are revised to read as follows:

§ 208.16 Withholding of removal.

* * * * *

(b) * * *

(1) *Past threat to life or freedom.* (i) If the applicant is determined to have suffered past persecution in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that the applicant's life or freedom would be threatened for the same reasons if removed to that country. This presumption may be rebutted if an asylum officer or immigration judge finds by a preponderance of the evidence that:

(A) The applicant's life or freedom would not be threatened on account of any of the five above-mentioned grounds upon the applicant's removal to that country; or

(B) The applicant could reasonably avoid a future threat to his or her life or

freedom by relocating to another part of the proposed country of removal.

(ii) In cases where the applicant has established past persecution before an immigration judge, the Service shall bear the burden of establishing the requirements of paragraphs (b)(1)(i)(A) or (B) of this section.

(2) *Future threat to life or freedom.* An applicant who has not suffered past persecution may demonstrate that his or her life or freedom would be threatened in the future in a country if he or she can establish that it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country. Such an applicant cannot demonstrate that his or her life or freedom would be threatened if the asylum officer or immigration judge finds that the applicant could reasonably avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal. In evaluating whether it is more likely than not that the applicant's life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the asylum officer or immigration judge shall not require the applicant to provide evidence that he or she would be singled out individually for persecution if:

(i) The applicant establishes that in that country there is a pattern or practice of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) The applicant establishes his or her own inclusion in and identification with such group of persons such that it is more likely than not that his or her life or freedom would be threatened upon return to that country.

(3) *Reasonableness of internal relocation.* For purposes of determinations under paragraphs (b)(1) and (b)(2) of this section, it would not be reasonable to expect an applicant to relocate within a country to avoid persecution if the asylum officer or immigration judge finds that there is a reasonable possibility that the applicant would face other serious harm in the place of potential relocation. In cases where the persecutor is a national government, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes that it would be reasonable for the applicant to relocate. In cases where the applicant has established past persecution before an immigration judge, the Service shall bear the burden of establishing that it would be reasonable for the applicant to relocate. In cases where the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate.

* * * * *

Dated: June 5, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–15590 Filed 6–10–98; 8:45 am]

BILLING CODE 4410–10–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1616

Proposed Technical Changes; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed technical changes; correction.

SUMMARY: This document corrects a table in a proposed rule published in the Federal Register of May 21, 1998, regarding technical changes to the flammability standard for children's sleepwear. The table showing the distance from the shoulder for upper arm measurement for sizes 7 through 14 inadvertently omitted some fractions. This correction provides the complete and correct table. Due to the minor nature of this correction the Commission does not intend to extend the comment period for the proposed rule. However, if a commenter believes that additional time is necessary to comment due to the error, he/she may request an extension.

FOR FURTHER INFORMATION CONTACT: Margaret Neily, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0508, extension 1293.

Correction

In proposed rule FR Doc. 98–13026, beginning on page 27877 in the issue of May 21, 1998, make the following correction. On page 27884, correct the table that follows Diagram 1 to read as follows:

Distance from shoulder (G) to (H) for Upper Arm Measurement for Sizes 7 through 14

7	8	9	10	11	12	13	14
11.4 cm 4½"	11.7 cm 4⅝"	11.9 cm 4¾"	12.5 cm 4⅞"	12.8 cm 5"	13.1cm 5⅛"	13.7cm 5⅜"	14.2cm 5⅝"

Dated: June 4, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–15492 Filed 6–10–98; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–98–3644]

RIN 2125–AE38

Revision of the Manual on Uniform Traffic Control Devices; Part II—Signs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR

1134. Due to the voluminous amount of text, the revision is being undertaken in phases. This notice of proposed amendment represents the third phase of the MUTCD rewrite effort and includes changes proposed to the following sections of the MUTCD:

1. 2A—General Provisions and Standards
2. 2D—Guide Signs—Conventional Roads
3. 2E—Guide Signs—Freeways and Expressways
4. 2F—Specific Service Signs
5. 2I—Signing for Civil Defense

The purpose of this effort is to rewrite and reformat the text for clarity and consistency of intended meanings; to include metric dimensions and values for the design and installation of traffic control devices; to improve the overall organization and discussion of the contents in the MUTCD; and to propose changes to the MUTCD that will enhance the mobility of all road users, promote uniformity, improve traffic safety by reducing the potential for run-off-road incidents, and incorporate technology advances in traffic control device application.

DATES: Submit comments on or before March 11, 1999.

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 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding the notice of proposed amendments contact Ms. Linda Brown, Office of Highway Safety, Room 3414, (202) 366–2192, or Mr. Raymond Cuprill, Office of the Chief Counsel, Room 4217, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL):http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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

The proposed text for Chapters 2A, 2D, 2E, 2F, and 2I of the MUTCD is available from the FHWA, Office of Highway Safety (HHS–10). It is also available on the FHWA home page at the following URL: http://www.ohs.fhwa.dot.gov/devices/mutcd.html.

Background

The 1988 MUTCD (which includes Part 6, Revision 3, dated September 1993) is available for inspection and copying as prescribed in 49 CFR Part 7. It may be purchased for $57 (Domestic) or $71.25 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This notice is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments submitted and upon its own experience, the FHWA will issue a final rule concerning the proposed changes included in this notice.

The National Committee on Uniform Traffic Control Devices (NCUTCD) is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices. The NCUTCD voluntarily assumed the arduous task of rewriting and reformatting the MUTCD and submitted a request for changes to the FHWA. The NCUTCD proposal is available from the U.S. DOT Docket (see address above). Pursuant to 23 CFR Part 655, the FHWA is responsible for approval of changes to the MUTCD.

Although the MUTCD will be revised in its entirety, it will be done in phases due to the voluminous amount of text. The FHWA has reviewed the NCUTCD's recommendations for MUTCD Part III—Markings, Part IV—Signals, and Part VIII—Traffic Control for Roadway-Rail Intersections. The proposed text for Parts III, IV, and VIII was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment, dated January 6, 1997, at 62 FR 691. The FHWA also has reviewed the NCUTCD's recommendations for MUTCD Part I—General Provisions and Part VII—Traffic Controls for School Areas. The proposed text for Parts I and VII were published as Phase 2 of the MUTCD rewrite effort in a notice of proposed amendment dated December 5, 1997, at 62 FR 64324.

This notice of proposed amendment is for Phase 3 of the MUTCD rewrite effort and includes the proposed text for: MUTCD Chapter 2A—General Provisions and Standards; Chapter 2D—Guide Signs—Conventional Roads; Chapter 2E—Guide Signs—Expressways and Freeways; Chapter 2F—Specific Service Signs; and Chapter 2I—Signing for Civil Defense. In order to achieve consistency, this notice also embraces revisions proposed in Phase 1 or 2 of this process that affect chapters in Part II. The public will have an opportunity to review and comment on the remaining parts of the MUTCD in a future notice of proposed amendment. The FHWA invites comments on the proposed text for the above listed chapters of Part II. A summary of the significant changes contained in these chapters is provided in this notice of proposed amendment.

As indicated in previous notices, the proposed new style of the MUTCD would be a 3-ring binder with 8½ × 11 inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing "shall" conditions; (2) Guidance—representing "should" conditions; (3) Options—representing "may" conditions; and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance, and optional conditions for the design, placement, and application of traffic control devices. For review purposes during this rewrite effort, dimensions will be shown in both metric and English units. This will make it easier to compare text shown in the 1988 Edition with the proposed new edition. The adopted final version of the new MUTCD, however, will be solely in metric units.

This effort to rewrite and reformat the MUTCD will be an ongoing activity over the next two years. Some of the other issues which will be addressed in a future notice of proposed amendment are: Minimum retroreflectivity standards for signs and pavement markings; signing for low-volume rural

roads; and traffic control for light-rail grade crossings. These proposed changes to the MUTCD are intended to enhance the mobility of all road users, promote uniformity, improve traffic safety for pedestrians and bicyclists, reduce the potential for run-off-road incidents, and incorporate technology advances in traffic control device application.

Discussion of Proposed Amendments to Chapter 2A—General Provisions and Standards

The FHWA proposes to change the chapter title to "General Provisions and Standards."

In Section 2A.1, paragraph 5, the FHWA proposes changing the first sentence so that the design and application standards for "all" signs (not just "guide" signs) are dependent on the particular class of highway on which they are used. The FHWA also proposes adding "Special Purpose Road" to the list of highway classification definitions.

In Section 2A.3, the FHWA proposes to add a sentence to inform readers that in some cases engineering studies may show that signs are not necessary at certain locations. The general public is familiar with the concept of conducting an engineering study to determine if signs *are* necessary at a certain location. It is important to point out, however, that the reverse of this concept is also possible.

In Section 2A.7, the FHWA proposes changing the title from "variable message signs" to "changeable message signs." For consistency of terminology, the FHWA proposes the term "changeable message signs" since it is more commonly used within the transportation field and it is used throughout the text in MUTCD Part 6F.2, Revision 3. Also in paragraph 3, the FHWA proposes adding a sentence to refer readers to Section 6F.2 which provides additional discussion on changeable message signs used in temporary traffic control zones. FHWA recognizes the expanded and increased use of changeable message signs particularly in the area of intelligent traffic control. We are interested in receiving comments and guidance on your experiences with designing, installing, and maintaining changeable message signs.

The FHWA proposes to combine Sections 2A–16, 17, and 18 of the 1988 MUTCD into proposed new Section 2A.8, Illumination and Retroreflectivity. The FHWA also proposes to include two new tables to help clarify the discussion contained in the text for Section 2A.8 (Table 2A.2 and Table 2A.3).

In Section 2A.8, paragraph 2, the FHWA proposes to extend the general requirements of sign retroreflectivity or illumination to "all" signs, not just regulatory and warning signs. This requirement would apply to all signs unless specifically stated otherwise in the MUTCD text for a particular sign or group of signs. The FHWA believes this will improve safety and visibility during adverse ambient conditions. After the FHWA has developed minimum retroreflectivity levels, the FHWA would include this information as GUIDANCE in the proposed new Section 2A.9.

In Section 2A.10, the FHWA proposes to include the discussion of shapes in a table format for clarity and ease of reading. The FHWA also proposes to expand the number of shapes for exclusive use. In Section 2A–10 of the 1988 MUTCD, the STOP and YIELD signs were the only signs with an exclusive shape. The FHWA proposes to include the Pennant, Crossbuck, and Trapezoid as exclusive shapes.

In Section 2A.11, the FHWA proposes to include the discussion on colors in a table format for clarity and ease of reading. Also in Section 2A.11, the FHWA proposes to include a statement that the color coordinates and values shall conform to those shown in the color specifications described on page 6–39 of the "Standard Highway Signs" (SHS) Book.[1] The FHWA believes that including this statement will help promote uniformity of colors where traffic control signs are designed and installed by providing the reader with a specific reference source for determining the proper color coordinates and values.

In Section 2A.13, paragraph 2, the FHWA proposes to add a sentence to explain that new symbol signs shall be adopted by FHWA based on research evaluation studies to determine the road users comprehension and recognition of the sign. The FHWA is also proposing to add an option that State and/or local highway agencies may conduct this research.

In Section 2A.14, paragraph 2, the FHWA proposes adding GUIDANCE for determining sign letter heights. Sign letter heights should be determined based on 1 inch per 40 feet of legibility distance. The FHWA believes this would improve safety for all road users and especially for older road users whose vision may be diminished.

In Section 2A–15 of the 1988 MUTCD, only destination guide signs could combine the use of upper-case and lower-case letters. The FHWA proposes in Section 2A.14 to include an OPTION that allows the use of upper-case and lower-case letters on street name signs in addition to destination signs. This is consistent with the language in the final rule dated January 9, 1997, which discusses increased letter sizes on street name signs. The FHWA also proposes deleting the restriction of using series B alphabets only on street name signs. Other standard series alphabets could be used as appropriate.

In the last paragraph of Section 2A.17 in the proposed new text, the FHWA has moved the discussion on bridge sign supports currently in Section 2A–28 to this section on Overhead Sign Installations. The 1988 MUTCD states that "on *urban* freeways and expressways . . . signs may be placed on bridges." In the proposed new edition of the MUTCD, the FHWA proposes to delete the word "urban" so that this sign application is not limited to urban freeways and expressways. In addition, the FHWA proposes to reduce this information from GUIDANCE to an OPTION condition in order to allow the traffic engineer more flexibility.

In Section 2A.18, the FHWA proposes to change the minimum mounting height for all signs to 2.1 m (7 feet). This would include signs in rural districts. In the 1988 MUTCD, the mounting height was 7 feet for signs only in urban districts, in work zones, or in areas where parking or pedestrian movement occurs. The proposed change is recommended based on research studies that show safety benefits can be derived from moving the sign panel out of the danger zone where the sign may become a projectile and result in road user injuries if struck by an errant vehicle. In addition, the FHWA proposes to indicate a STANDARD minimum mounting height for supplemental plaques of 1.2 m (4 feet), rather than referring to a variable height measured in terms of the main sign.

In paragraph 6 of Section 2A.18, the FHWA proposes including an OPTION that allows flexibility in the mounting height of signs installed on steep backslopes. In the last paragraph of Section 2A.18, the FHWA proposes adding a SUPPORT discussion on the term "clear zone" as defined in the AASHTO "Roadside Design Guide."[2]

[1] "Standard Highway Signs," FHWA, 1979 Edition (Metric) is included by reference in the 1988 MUTCD. It is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division and Region Offices as prescribed at 49 CFR part 7.

[2] The "Roadside Design Guide," 1989, is available for purchase from the American Association of State Highway and Transportation Officials (AASHTO), 444 North Capitol Street, NW., Washington, DC 20001. It is available for inspection from the FHWA Washington Headquarters and all

Section 2A.19 discusses the minimum lateral offset outside the roadway for freeway and expressway signs. The FHWA proposes to add a STANDARD to the first paragraph that requires sign supports within the clear zone to be breakaway or shielded for the safety of the road user particularly in run-off-road incidents.

In paragraph 2 of Section 2A.23, the FHWA proposes to include day and night inspections as a part of sign maintenance. Although this is general practice among many engineering and transportation officials, we believe it is a practice worth reiterating in the MUTCD.

Discussion of Proposed Amendments to Chapter 2D—Guide Signs—Conventional Roads

Throughout Chapter 2D, the FHWA proposes to replace the word "marker" with the word "sign," since these route and auxiliary markers are generally considered signs. The sign numbers will continue to carry the "M" designation (example: M1–4). Also throughout Chapter 2D it is important for the reader to remember to refer to Chapter 2A for placement, location, and other general criteria for signs, since this information is not repeated in every section.

In Section 2D.3, paragraph 3, the FHWA proposes to extend the general requirement for retroreflectivity to all guide sign messages and legends unless specific exceptions are provided. This is consistent with the proposed text in Section 2A.8 which requires retroreflectivity of all signs.

In Section 2D.9, paragraph 5 discusses route system signing and the order of preference for the priority legend. The FHWA proposes to include a STANDARD sentence stating that the highest priority legend shall be placed on the top or to the left of the sign panel. This would help the road user better identify the class of roadway (example: Interstate vs. County roadway).

In Section 2D.11, paragraph 6, the FHWA proposes to include a sentence that allows the OPTION of placing a white panel behind the Off-Interstate Business Route signs when they are installed on a green guide sign. This would help road users by improving the sign's contrast and conspicuity.

In Section 2D.15, paragraph 2, the FHWA proposes to re-emphasize the 10 percent increase in size for the first letter of cardinal direction messages. Although this change was adopted in a previous final rule, we are reiterating our intent to strongly encourage States and local transportation departments to implement this change during their normal sign replacement and maintenance schedules. Increasing the first letter of cardinal directions, such as EAST and WEST, helps the road user in the navigation task by providing a clearer distinction between the similar appearance of these two messages. The same principle is true for the NORTH and SOUTH cardinal directions.

In Section 2D.33, paragraph 3, the FHWA proposes to add an option that allows the route sign and the cardinal direction to be included within the destination sign panel. We are also proposing to include guidance on the minimum sizes for these signs to ensure that they are readable by the road user.

Paragraph 5 of Section 2D–35 in the 1988 Edition of the MUTCD required that destination signs with four destinations shall be shown on two separate sign panels. In Section 2D.34, paragraph 9 of the proposed text, the FHWA proposes to change this requirement from a "shall" to a "should" condition. We propose this change since the MUTCD currently allows the option of placing all four destinations on a single panel in situations where spacing is critical. Based on this, it seems reasonable to "recommend" rather than to "require" the use of two sign panels.

In paragraph 2 of Section 2D–38 in the 1988 Edition of the MUTCD, distance signs were required to be placed approximately 500 feet outside the municipal limits or at the edge of the built-up district. In the proposed text for new Section 2D.37, the FHWA proposes to delete this specific distance requirement and allow the State and local transportation departments the flexibility to determine the appropriate sign location.

In paragraph 9, Section 2D–45 in the 1988 Edition of the MUTCD, general service signs and accompanying supplemental plaques could have either a retroreflective or an opaque blue background. Since the FHWA proposes to require all guide signs to be retroreflective (see Section 2D.3), opaque backgrounds would be no longer allowed. This change is reflected in the proposed text for new section 2D.44, paragraph 15.

Discussion of Proposed Amendments to Chapter 2E—Guide Signs—Expressways and Freeways

The FHWA proposes to combine Chapters 2E (Guide Signs—Expressway) and 2F (Guide Signs—Freeway) in the 1988 Edition of the MUTCD into a new Chapter 2E— Freeway and Expressway Guide Signs.

In Section 2E.5, paragraph 1, the FHWA proposes to require that signs must be either retroreflectorized or independently illuminated. The 1988 MUTCD classified this provision as a GUIDANCE condition. The proposed new text would classify it as a STANDARD condition. The FHWA also proposes to use the term "independent illumination" since it may include, but is not limited to, "internal illumination."

In Section 2E.5, paragraph 2, the FHWA proposes to recommend that all overhead sign installations should be illuminated if an engineering study shows that retroreflection alone will not perform effectively. This proposed change would improve the visibility of overhead signs, particularly at night.

In Section 2E.6, paragraph 1, the FHWA proposes to add visual clutter from roadside development to the list of features which characterize urban conditions. Growth in business development and environmental changes make this an appropriate item to consider when installing signs since excessive signs may create information overload for some road users and may complicate the navigation task.

In Section 2E.6, paragraph 2, the FHWA lists special sign treatments for improving travel on urban freeways and expressways. The FHWA proposes to add the following to this list: "Frequent use of street names as the principal message in guide signs." This would improve the guidance information provided to road users.

In Section 2E.8, paragraph 1, the FHWA proposes to expand the GUIDANCE for certain classes of highways that should not be signed as memorial highways. Instead of just applying to Interstate routes, the FHWA proposes to expand the GUIDANCE to include all freeways and expressways.

In Section 2E.9, paragraph 1, the FHWA proposes to clarify the GUIDANCE in the 1988 MUTCD which addresses the appropriate amount of legend on guide signs. Instead of the words "Not more than two destination names * * * on any single major guide sign," the FHWA proposes to change the wording to "on any Advance Guide or Exit Direction sign." The FHWA proposes to indicate these specific types of major guide signs instead of guide signs in general.

In Section 2E.12, paragraph 4, the FHWA proposes to add language to highlight the fact that States are responsible for the selection of control cities shown on guide signs.

In Section 2E.16, paragraph 2, the FHWA proposes to add an OPTION that clarifies the proper use of periods on

FHWA Division and Region Offices as prescribed at 49 CFR part 7.

guide signs. Periods may be used, but only when abbreviating a cardinal direction as part of a destination name. Although this is an implied practice, the FHWA believes it should be specifically stated in the MUTCD.

In Section 2E.17, paragraph 1, the FHWA proposes to require that symbol designs be essentially like those shown in the MUTCD. In the 1988 MUTCD this was recommended practice instead of required practice.

In Section 2E.19, paragraph 2, the FHWA proposes to require the practice of showing only one destination for each directional arrowhead on diagrammatic signs. In the 1988 MUTCD this was an OPTION rather than STANDARD practice. This proposed change would make it clearer for the road users to select the proper lane for their destinations.

In Section 2E.20, paragraph 1, the FHWA proposes to add a new STANDARD which would prohibit the use of the EXIT ONLY panel on diagrammatic signs at any major bifurcation or split. This proposed change is aimed at eliminating potentially confusing situations for the road users.

In Section 2E.21, paragraph 3, the FHWA proposes to include a larger letter height of 450 mm (18 inches) for changeable message signs. The FHWA also proposes to include additional criteria for the use of changeable message signs based on the text in Part VI of the 1988 MUTCD. This proposed change would improve the visibility of signs for the road user.

In Section 2E.24, paragraph 1, the FHWA has proposed to include reference to the importance of the clear zones and breakaway supports when determining the horizontal clearance distance for sign installation. These principles are important considerations for reducing the potential for run-off-road incidents.

In Section 2E.29, paragraph 2, the FHWA proposes to increase the vertical dimension of the exit number sign panel which includes the word EXIT, the appropriate exit number, and the suffix letter A or B (on multi-exit interchanges). The proposed change would increase the vertical dimension from 600 mm (24 inches) to 750 mm (30 inches). This change would improve the visibility of signs for the road user.

In Section 2E.31, paragraph 2, the FHWA proposes to change the GUIDANCE for placement of Advance Guide signs in advance of the exit gore from: "400m to 1 km" (¼ to ½ miles) to: "1 to 2 km" (½ to 1 mile).

In Section 2E.31, paragraph 3, the FHWA proposes to require that the word EXIT be omitted from the bottom line of Advance Guide sign text where interchange exit numbers are used. The FHWA proposes to change this from an OPTION to STANDARD practice.

In Section 2E.33, paragraph 2, the FHWA proposes to recommend that only one supplemental guide sign should be used on each interchange approach. The FHWA proposes to change this from optional to recommended practice.

In Section 2E.34, paragraph 2, the FHWA proposes to add a STANDARD that population figures or other similar information shall not be used on Exit Direction signs.

In Section 2E.34, paragraph 7, the FHWA proposes to highlight the GUIDANCE which is in the 1988 MUTCD concerning the proper placement of the exit number panels. The placement of the exit number panel on the proper side of the sign would help the road users select the appropriate exit lane.

In Section 2E.34, the last sentence of paragraph 10, the FHWA proposes to allow the States more flexibility to use any type of overhead support for installing the Exit Direction sign. Presently cantilevered supports are specified.

In Section 2E.41, paragraph 3, the FHWA proposes to include GUIDANCE that the signing layout should be similar for interchanges which have only one exit ramp in the direction of travel. This proposed change is intended to promote uniformity.

In Section 2E.42, paragraph 4, the FHWA proposes to add an OPTION for installing overhead guide signs at freeway to freeway interchanges at the 1 km (½ mile) point in advance of the theoretical gore of each connecting ramp.

The following changes are proposed in Section 2E.52:

1. In paragraph 2, the FHWA proposes to add a new option that an action message, such as NEXT RIGHT, may be used on general road user service signs which do not have exit numbers included on the sign. A new figure (2E–38) has also been added.

2. In paragraph 4, the FHWA proposes to provide specific guidance for General Service signs that include distances. Distances to services should be shown when the service is more than 2 km (1 mile) from the interchange.

3. In paragraph 4b, the FHWA proposes to add "modern sanitary facilities" as a criteria for food establishments since most restaurants have restroom facilities. Also in paragraph 4b, the FHWA proposes modifying the recommended number of days that a food service displayed on a service sign is open. The FHWA proposes to modify the text from "7" days a week to "6 or 7" days a week. The current guidance in the MUTCD already permits a State to develop a specific service sign policy with a "less than 7 days a week" criteria. However, this proposed change would provide a clearer example of the possible alternative criteria that States may use to provide the road user more information about desired service. The proposed changes would not impose additional requirements or costs on State or local highway agencies.

4. In paragraph 5, the FHWA proposes a new STANDARD which would require that General Road Service signs that are operated on a seasonal basis shall be removed or covered during periods when the service is not available. This reduces the chance of road users mistakenly leaving their routes only to find that the particular service is closed.

In Section 2E.57, paragraph 1, the FHWA proposes to add an OPTION which allows Radio-Traffic Information signs (D12–4) to be used in conjunction with traffic management systems. The D12–4 is a proposed new word message sign.

In Section 2E.57, paragraph 2, the FHWA proposes to reduce the maximum number of frequencies shown on the Radio Information signs from 4 to 3. In addition, the FHWA proposes to include a new figure which illustrates this concept and to change the text from an OPTION condition to a STANDARD condition.

Discussion of Proposed Amendments to Chapter 2F—Specific Service Signs

Due to the proposed consolidation of Chapters 2E (Expressway Guide Signs) and 2F (Freeway Guide Signs) of the 1988 MUTCD Edition into a combined Chapter 2E, the FHWA proposes to move the discussion in 2G (Specific Service Signs) to a new Chapter 2F.

Throughout Chapter 2F the following terms are used consistently with the following specific meaning: logo sign panel, sign, and sign assembly. The term "logo sign panel" is a smaller separate sign panel which would be placed on a specific service sign and onto which a logo is placed. The term "sign" means a larger sign panel with white legend, white border and blue background onto which the logo sign panels are placed. A "sign assembly" consists of more than one sign.

In Section 2F.1, paragraph 4, the FHWA proposes to classify the equal opportunity criteria (Title VI of the Civil Rights Act of 1964) as a STANDARD,

since most Federal programs require compliance with Title VI regulations.

In Section 2F.1, paragraphs 5 and 12, the FHWA proposes to add an ATTRACTIONS category to the types of Specific Service signs. The FHWA proposes to add the ATTRACTIONS category to the four service categories which are currently contained in the MUTCD (gas, food, lodging, and camping). This change was requested by the Kentucky Department of Transportation and is numbered and titled Request II–264(C), "Specific Service Logo for Tourist Attraction Signs." Specific Service signs for this type of service are being installed and studied with FHWA experimental approval on a limited basis in Alabama, Colorado, Iowa, Kentucky, Massachusetts, Missouri, Nevada, New York, Oregon, and Pennsylvania under experimental requests II–227(Ex), II–232(Ex), and II–260(Ex). These experiments are due for completion between 1999 and 2001 and contain sign criteria similar to the criteria proposed for the MUTCD. Interim study reports from Kentucky and the New York State Thruway indicate that programs with these signs are successfully assisting road user, increasing business, and reducing billboard demand regarding tourism and attractions, with no impact on highway safety and operations. Other States are expressing similar interests and FHWA anticipates additional positive results from the experimentations.

In Section 2F.1, paragraph 8, the FHWA proposes guidance that allows for alternative fuels on specific Service sign logos. Also, in Section 2F.3, paragraph 4, the FHWA proposes an option which allows for alternative fuel legends on the bottom of logo panels. These proposed changes are consistent with the scope of use for alternative fuels on general service signs which was published as a final rule in the **Federal Register** dated January 9, 1997. The request number for this change was II–226(C)—General Motorist Service Signing for Alternative Fuels.

In Section 2F.1, paragraph 9, the FHWA proposes modifying the recommended number of days that a food service is open from "7" days a week to "6 or 7" days a week. The FHWA also proposes to add an option in Section 2F.3, paragraph 4, which would allow food service facilities that are open only 6 days a week to display the day that the facility is closed at the bottom of the logo panel. The current guidance in MUTCD Section 2G–5.7 permits a State to develop a Specific Service sign policy with a less than 7 days a week criteria. However, these proposed changes provide a clearer example of possible alternative criteria that States may use to provide the road user more information about desired service. The proposed changes would not impose additional requirements or costs on State or local highway agencies.

In Section 2F.2, paragraph 2, the FHWA proposes to allow the maximum of two service types to be placed on any specific service sign at any interchange or intersection. Based on this proposed change, the FHWA also proposes to eliminate the requirement in Section 2G–5.5 of the 1988 MUTCD for a separate sign at freeway and expressway interchanges for each service type. Also, the related "remote rural" exception criteria for these signs for both interchanges and intersections would be deleted. These proposed changes would allow for additional sign designs and would not impose any additional costs to the States.

In Section 2G–5.5 of the MUTCD 1988 Edition, the recommended maximum number of logos for a Specific Service sign (or sign assembly) is six for the GAS services and four logos for food, lodging, and camping services. In the proposed new Section 2F.4, paragraph 2, the FHWA proposes to recommend a maximum of six logos for a sign in any of the service categories. This request for change was submitted by the NCUTCD. It was originally designated as part of request number II–161(C) and is also being considered as a part of request number II–193(C). The FHWA is aware that some States commonly allow 6 logos on the signs for any of the four types of services and for the experimental attraction service signs. The States have not reported any negative impacts. Based on the proposed six logo maximum for each sign, the FHWA also proposes to require a maximum of three logo panels for each of the two allowable service types contained on any sign or sign assembly instead of the two logo panels maximum for each service type as currently required in Sections 2G–5.5 and 2G–5.6. The FHWA believes that few highway jurisdictions allow and few sign installations currently contain more than the proposed maximum number of logos. Since the State and local highway jurisdictions have the option to use less than the maximum six logos, the proposed changes would not impose any significant additional costs.

In Section 2F.4, paragraph 3, the FHWA proposes to allow for any expressway intersection the maximum logo panel size of 1500 mm (60 inches) by 900 mm (36 inches). In Section 2G–5.3, Table II–4 of the 1988 MUTCD, the maximum size for expressway intersections is 900 mm (36 inches) by 600 mm (24 inches). This change would give the States and local transportation departments greater latitude in the selection of sign sizes and would not impose any additional costs.

In Section 2F.5, paragraph 1, the FHWA proposes to eliminate the two intersection categories as shown in Section 2G–5.4, Table II–5, of the 1988 MUTCD and to establish a minimum letter height of 250 mm (10 inches) for all service signs on freeways and expressways. The FHWA also proposes to increase the minimum letter height for service signs on ramps and conventional highways from 100 mm (4 inches) to 150 mm (6 inches). The compliance date is proposed to be 10 years after the effective date of the final rule or as signs are replaced within the 10 year period. This would allow for replacement after the normal service life of the signs.

In Section 2F.6, paragraph 1, the FHWA proposes to eliminate the requirement of a separate sign panel for each specific service sign category displayed. Also in paragraph 1, the FHWA proposes to allow a maximum of two service categories to be displayed on any specific service sign panel at any expressway interchange or intersection. The limitation to "remote rural" interchanges and intersections has been deleted.

In Section 2F.6, paragraph 2, and as noted on Figure 2F–2, the FHWA proposes adding guidance that specific service ramp signs should be spaced at least 30 m (100 ft) from the exit gore sign, from each other, and from the ramp terminal. This proposed GUIDANCE was recommended by the NCUTCD based on a survey which they conducted of the practices of 18 State transportation departments.

In Section 2F.7, paragraph 4, the FHWA proposes adding an option to allow the exit number panel on the top of Specific Service signs on the freeway or expressway for the single-exit interchanges. Also, in Section 2F.9, paragraph 5, the FHWA proposes adding an option to allow for the NEXT RIGHT (LEFT) and other directional legends to be placed below the logos on the signs for intersections as is shown in figure 2–47 of the 1988 MUTCD. Currently, these legends are required to be located on the same line above the logos as the service type word message. The proposed changes would allow the Specific Service signs to be consistent with other guide sign designs.

In Section 2F.9, paragraph 3, the FHWA proposes to allow the State and local transportation departments to determine acceptable visibility limits.

Section 2G–5.6 of the 1988 MUTCD recommends that logos should not be displayed for services and qualified facilities which are visible within 90 m (300 feet) of the intersection.

Discussion of Proposed Amendments to Chapter 2I—Signing for Civil Defense

Based on the changes in section numbering for Part II, the FHWA proposes to number the Signing for Civil Defense as Chapter 2I instead of 2J. The only other proposed change to this chapter is to reformat the text so that Standards, Guidance, Option, and Support conditions are clearly indicated.

Discussion of Adopted Amendments to Part II of the 1988 MUTCD

The following adopted changes were published in a previous Federal Register final rule dated January 9, 1997 and are highlighted in this discussion of proposed changes for purpose of consistency:

1. In Section 2D.38 of the proposed text, the FHWA has added language for the increased minimum letter size of street name signs. In the Federal Register final rule dated January 9, 1997, the minimum letter size was increased from 4 inches to 6 inches for streets with speeds greater than 25 miles per hour.
2. In Section 2D.44, the FHWA has added language for the Alternative Fuel, Truck Parking, and Cellular Phone Emergency Signs.
3. In Section 2D.47, the FHWA has added language for the Non-Carrier Airport, Adopt-A-Highway, and Recycling Collection Center signs.
4. In Section 2E.52, paragraph 4a, the FHWA has included language for the Compressed Natural Gas, Electric Vehicle Charging, and other alternative fuel signs.
5. In Section 2E.52, paragraph 14, the FHWA has added language on Truck Parking signs which is consistent with what was adopted by the final rule referenced above.
6. In Section 2E.58, paragraph 2, the FHWA has added language which increases the maximum vertical size of a symbol or logo Carpool Information sign to 900 mm (36 inches).
7. In section 2F.3, paragraph 1, the FHWA has included the standard definition for logo for specific service signs.

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 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 determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to enhance traffic operations, improve roadway safety, expand guidance and navigation information provided to road users, and clarify traffic control device application and practices. As noted previously, expenses to implement or comply with the proposed changes would be minimal, if any. Therefore, the FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

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

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

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

National Environmental Policy Act

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

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained

in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—Transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32; 49 CFR 1.48)

Issued on: June 4, 1998.

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 98–15607 Filed 6–10–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–98–3643]

Revision of the Manual on Uniform Traffic Control Devices: Request for Comments on the MUTCD Outreach Effort

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Request for comments on the MUTCD Outreach Effort.

SUMMARY: The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134. The FHWA plans to publish and distribute a new edition of the MUTCD in the year 2000. The purpose of this request for comment is to: identify the role of the MUTCD in our customer and partner organizations and develop a comprehensive outreach strategy to ensure that information within the revised MUTCD reaches the appropriate audiences in the most efficient and cost-effective manner.

DATES: Submit comments on or before September 9, 1998.

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 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Brown, Office of Highway Safety, Room 3414, (202) 366–2192, or Mr. Raymond Cuprill, Office of the Chief Counsel, Room 4217, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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

The proposed text for the MUTCD 2000 is available from the FHWA, Office of Highway Safety (HHS–10). It is also available on the FHWA home page at the following URL: http://www.ohs.fhwa.dot.gov/devices/mutcd.html.

Background

The current 1988 MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, appendix D. It may be purchased for $44 (Domestic) or $55 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This request for comment is being issued to provide an opportunity for public comment on the best manner in which to disseminate information contained in the next edition of the MUTCD.

The Manual On Uniform Traffic Control Devices (MUTCD) is approved by the Federal Highway Administrator as the standard for design, application, and placement of traffic control devices used on all roads open to public travel. The MUTCD contains principles for the design and installation of signs, signals, pavement markings and other traffic control devices. Roadway safety is one of FHWA's primary focus areas. Single-vehicle run-off-road crashes account for about one-third of all highway fatalities annually and motor vehicle crashes involving pedestrians and bicyclists account for another 15 percent of all highway fatalities annually. To make an impact on our strategic safety objective of reducing the number of highway-related fatalities and injuries, the FHWA is focusing resources in these areas that have the most significant impact in achieving roadway safety. Providing all users of the highway system with better guidance tools is a critical element in addressing run-off-road, pedestrian, and bicyclist traffic crashes. Traffic control devices (TCDs) are the roadway guidance tools that ensure safety by providing for the orderly and predictable movement of all traffic throughout the Nation's transportation system. TCDs such as pavement markings, signs, and signals are the language with which we communicate to the road users.

With the Interstate highway system near completion and the growth in roadway traffic volumes and congestion increasing, our Nation is at the crossroads of its transportation development. The FHWA recognizes the need to infuse new ideas and technology into the highway program—ideas that will help us solve our current and future highway safety challenges. We also recognize that the policies and technologies that we implement today will have a strong impact on our citizens and industries well into the 21st century. The FHWA is in the process of publishing a new MUTCD for the next millennium. The Agency's goal for the "MUTCD 2000" is to enhance the mobility of all road users, promote uniformity, improve traffic safety of pedestrians and bicyclists, reduce the potential for run-off-road incidents, and incorporate technology advances in traffic control device application.

Marketing and public outreach are recognized as important elements in this effort. In this new era of transportation, we realize that marketing and public outreach are very necessary components of developing, promoting, and implementing effective programs. As the FHWA began to identify our outreach audience, it became apparent that: (1) the MUTCD affects a large and varied audience, and (2) many of our partners and customers are relatively uninformed about principles and techniques for the proper design and application of traffic control devices. Additionally, the general public has little understanding of the respective roles of the Federal, State, and local transportation agencies

in operating and maintaining transportation facilities and services. The daily interaction of the general public with the physical components of our transportation system, particularly the installation of proper and effective traffic control devices, provides an ideal opportunity for creating public awareness and understanding of the safety benefits inherent in our transportation system. Outreach and interaction have the following benefits:

1. Encourages commitment to and compliance with the established goals and methods of managing and improving our transportation system;
2. Provides a rich amount of information about ways to improve the transportation system and make it safer for travel; and
3. Provides an opportunity to measure the quality of service we deliver.

As part of the "MUTCD 2000", the FHWA envisions a comprehensive outreach effort to the widest possible audience. Our goal is to expand our traditional network of customers and partners and provide information contained in the MUTCD to other groups, such as State departments of motor vehicles, drivers' education classes, law enforcement personnel, governors' highway safety representatives, emergency response providers, state and local officials, and community civic leaders.

Our Agency customers and partners are often in the best position to provide information to transportation users and providers because they routinely interact with city, county, and local officials. The Agency's commitment to marketing and outreach provides a unique opportunity to work cooperatively to identify methods of disseminating information to businesses, organizations, public agencies, and others that may be affected by the proposed changes to the MUTCD.

The FHWA plans to provide the MUTCD 2000 in a variety of formats: a hard copy manual, a CD–ROM version, and a version available through the Internet. In addition, both internal and external customers have suggested that the Agency consider the following as part of the MUTCD 2000 release: video presentations to highlight the changes; training course and materials; exhibit booth graphics and kiosks; brochures and other promotional materials.

The purpose of this request for comments is to identify what role the MUTCD plays in your organization and specifically seek your ideas on ways to effectively disseminate the MUTCD 2000, as well as receive your comments on ways to expand the Agency's target audience. To stimulate an exchange of ideas, the following questions have been developed:

1. What is your primary interest in the MUTCD?
2. How do you currently use the MUTCD?
3. How would you envision utilizing the information in the MUTCD in the future?
4. How often do you receive inquiries regarding the MUTCD and what is the nature of these inquiries?
5. Whom would you identify as the audience for the MUTCD?
6. Are there missing pieces of information the MUTCD should cover?
7. Does your organization have a knowledge gap the MUTCD can fill?
8. Does your organization wish to partner with FHWA by publishing/printing the MUTCD after the final text has been approved by the FHWA?

(a) Do you wish to provide this service alone or with other organizations?

(b) How much would your organization contribute to the initial printing setup cost?

(c) Are there any conditions or requirements your organization has for this service?

(d) Are there any conditions or requirements your organization has for its logo, title, credits, etc. to be placed in the MUTCD 2000?

9. Does your organization wish to partner with FHWA by developing training videos for traffic engineers, technicians, drivers (drivers' education), pedestrians, bicyclists, elder citizens and/or children in the MUTCD 2000?
10. Does your organization wish to partner with FHWA by developing public information press releases, printed articles, radio announcements, or videos on "What's new in the MUTCD 2000"?
11. Does your organization wish to partner with FHWA by developing other training courses and materials for the MUTCD?
12. Do you have other suggestions to include in the MUTCD 2000 outreach effort?
13. Does your organization have access to the Internet and/or facilities for using a CD–ROM version of the MUTCD?
14. What trade publications or journals do you commonly receive and what trade conferences do you attend?
15. What are your professional and civic affiliations?

The FHWA welcomes input and encourages responders to expand on these questions with other suggestions.

List of Subjects in 23 CFR Part 655

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

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

Issued on: June 5, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 98–15598 Filed 6–10–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 27

[CG 97–064]

RIN 2115–AF–53

Towing Vessel Safety

AGENCY: Coast Guard, DOT.

ACTION: Correction to notice of proposed rulemaking; request for comments.

SUMMARY: This document contains a correction to the notice of proposed rulemaking (CGD 97–064) which was published Friday, October 6, 1997, [62 FR 52057]. The rules are intended to improve the safety of towing vessels and tank barges.

DATES: Comments must reach the Coast Guard on or before August 10, 1998.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CG–97–064), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Project Manager (Fire Protection) 202–267–1076; or Mr. Allen Penn, Project Manager (Emergency Control Systems) 202–267–2997, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. You should include your names and addresses, identify this rulemaking (CGD 97–064) and the specific section of this document that the comment applies, and give a reason for the comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want us to acknowledge receiving your comments, please include a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposed rule in view of the comments.

Background

The notice of proposed rulemaking (NPRM) would establish rules requiring training, drills, and the installation of equipment to suppress fires on towing vessels, and to enhance existing standards for anchoring or retrieving a drifting tank barge. The NPRM stated that the rules concerning drifting barges would apply to tank barges and vessels towing them on the high seas, territorial sea, and the Great Lakes.

Need for Correction

For the purposes of this NPRM, the Coast Guard treated the statutory language "open ocean [and] coastal waters" as equivalent to the regulatory language "high seas and territorial sea." The territorial-sea baseline generally follows the coastline of the United States. However, it does not follow the coastlines of Connecticut or New York inside Long Island. There, it follows the seaward side of the island. Consequently, the NPRM inadvertently excluded Long Island Sound from the waters on which the proposed rules would apply to tank barges and vessels towing them.

Correction of Publication

Accordingly, the publication on October 6, 1997, of the proposed rule (CGD 97–064), which is the subject of FR Doc. 97–26304, is corrected as follows:

1. Paragraph (a) of § 155.230 is corrected to read as follows:

§ 155.230 Emergency control systems for tank barges.

(a) *Application.* This section applies to tank barges and vessels towing them—

(1) On the territorial seas;

(2) On the high seas;

(3) On Long Island Sound; or

(4) In Great Lakes service.

* * * * *

Dated: June 4, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–15428 Filed 6–10–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF DEFENSE

48 CFR Parts 216, 245, and 252

[DFARS Case 97–D027]

Defense Federal Acquisition Regulation Supplement; Title to Government Property

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; withdrawal.

SUMMARY: The Director of Defense Procurement is withdrawing a proposed rule published in the **Federal Register** on October 17, 1997 (62 FR 54008), under DFARS Case 97–D027, Title to Government Property. The rule proposed amendments to the Defense Federal Acquisition Regulation Supplement to reduce the amount of Government-owned special tooling and test equipment in the possession of DoD contractors. After considering public comments, the Director of Defense Procurement has decided to withdraw the proposed rule.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy by phone at (703) 695–1097/8, by fax at (703) 695–7569, or by E-mail (Internet) at Moyac@acq.osd.mil. Please cite DFARS Case 97–D027.

List of Subjects in 48 CFR Parts 216, 245, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulation Council.

[FR Doc. 98–15430 Filed 6–10–98; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register
Vol. 63, No. 112
Thursday, June 11, 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 Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that Federally owned inventions U.S. Serial No. 08/974,938, filed November 11, 1997, entitled "Biocontrol agents for Take-All" and its continuation-in-part U.S. Serial No. 08/994,035, filed December 18, 1997, entitled, "Transgenic Strains for Biocontrol of Plant Root Diseases" are available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Eco Soil Systems, Inc., of San Diego, California, an exclusive license to Serial No. 08/974,938 and Serial No. 08/994,035.

DATES: Comments must be received on or before September 9, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Eco Soil Systems, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–15579 Filed 6–10–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Annual Trade Report.

Form Number(s): B–450, B–451.

Agency Approval Number: 0607–0195.

Type of Request: Revision of a currently approved collection.

Burden: 2,221 hours.

Number of Respondents: 5,750.

Avg Hours Per Response: 23 minutes.

Needs and Uses: The Bureau of the Census conducts the Annual Trade Survey to collect annual sales, purchases, year-end inventory, inventory valuation methods, legal form of organization, cost of goods sold, and gross margin data from a sample of wholesalers who are contained in the Census Bureau's Standard Statistical Establishment List (SSEL). We tabulate the annual wholesale trade data to benchmark data from our Monthly Wholesale Trade Survey. The Bureau of Economic Analysis incorporates the wholesale trade data in its calculations of the gross domestic product. Other government agencies and businesses use the published estimates to gauge the current trends of the economy. We are submitting this request as a revision because of a change in our sample strategy. We have selected a new slightly larger sample in order to maintain high quality in the tabulated results.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, USC, Sections 182, 224, and 225.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 8, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–15606 Filed 6–10–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Boundary and Annexation Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 10, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Nancy Goodman, Geography Division, Bureau of the Census, WP 1, Room 326, Washington, DC 20233, or call (301) 457–1099.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the Boundary and Annexation Survey (BAS) to collect and maintain information about the inventory, the legal boundaries, and the legal actions affecting the boundaries for counties and equivalent areas, incorporated municipalities, minor civil divisions, and federally recognized American Indian and Alaska Native areas. In addition, the BAS requests a review and update of the road and other map information within each government and address information along the governmental boundary. This information provides the Census Bureau with an accurate identification of geographic areas for the decennial and economic censuses, other statistical programs of the Census Bureau, and legislative programs of the Federal Government. Respondents are county or equivalent area, minor civil division, incorporated municipality, American Indian, and Alaska Native officials.

The survey universe and mailing materials vary depending upon the needs of the Census Bureau in fulfilling its censuses and surveys. In the years ending in 8, 9, and 0, the survey includes all governmental counties and equivalent areas, incorporated municipalities, all governmental minor civil divisions, and federally recognized American Indian and Alaska Native areas. Each governmental entity surveyed receives a full set of maps covering its jurisdiction and one or more forms. These three years coincide with the Census Bureau preparation for the decennial census.

In the years ending with 2 and 7, the survey includes all governmental counties and their statistical equivalents, minor civil divisions in Connecticut and Rhode Island, with a population of 10,000 or greater, in the remaining Northeastern states, Michigan, Minnesota, and Wisconsin, minor civil divisions and those incorporated municipalities with a population of 2,500 or greater.

The remaining years of the decade-years ending in 1, 3, 4, 5, and 6—the survey includes all governmental counties and their statistical equivalents, minor civil divisions in Connecticut and Rhode Island and selected areas of Massachusetts, and the population threshold for incorporated municipalities is increased to 5,000.

To ensure the correct allocation of population and housing units for Census 2000, the Census Bureau will request information on the relationship of addresses to the legal boundary. The survey asks the respondent to review and/or update the address that exists on either side of their legal boundaries where the boundaries intersect streets. This information assists the Census Bureau in correctly tabulating the data for each governmental unit.

Through the BAS, the Census Bureau asks the respondent to review the forms and maps and to certify their correctness. They are asked to update the maps to reflect current boundaries, supply legal boundary change data, provide changes in the inventory of governments and also are instructed to add or change map information-street network, address information-as applicable.

No other federal agency collects these data nor is there a standard collection of this information at the state level. The Census Bureau's BAS is a unique survey providing a standard result for use by Federal, state, local, and tribal governments and by commercial, private, and public concerns.

II. Method of Collection

Each respondent is mailed a BAS package, which includes the following items:

1. An introductory letter from the Director of the Census Bureau.
2. The appropriate BAS Survey Form(s):

BAS–1 and BAS–1A—Incorporated Municipalities
BAS 2 and BAS–2A—Counties, Parishes, Boroughs, Census Areas
BAS–3 and BAS–3A—Minor Civil Divisions
BAS–4—Newly Incorporated Municipalities or Newly Activated Municipalities
BAS–5 and BAS–5A—American Indian or Alaska Native Areas

3. A BAS Guide for Annotating the Maps.
4. Special inserts, if applicable, for the entity.
5. A set of maps, showing the current boundaries.
6. A return envelope.

The respondent is asked to verify the legal boundaries and update the maps, showing the feature, address, and legal boundary changes. They are then asked to certify the maps and verify the forms and return the information to the Census Bureau.

The Census Bureau inserts the geographic, address, and feature changes into the TIGER system—the Census Bureau's geographic data base and associated data files.

III. Data

OMB Number: 0607–0151.

Form Numbers: BAS–1, BAS–1A, BAS–2, BAS–2A, BAS–3, BAS–3A, BAS–4, BAS–5, and BAS–5A.

Our letters and inserts are being developed to reflect our request for address updates. A final list of inserts and letters will be included in the package submitted to the OMB for final approval.

Type of Review: Regular.

Affected Public: Local and Tribal Governments.

Estimated Number of Respondents: 39,347.

Estimated Time Per Response: 3 hours.

Estimated Total Annual Burden Hours: 118,041.

Estimated Total Annual Cost: $1,682,084. We based our estimate on the information from the Annual Survey of State and Local Government Employment. Using employment and payroll in the category "financial administration," the main cost for local government employees is $14.25 per hour. The cost multiplied by the estimated burden hours yields the estimated annual cost borne by local governments.

Respondent's Obligation: Voluntary.

Legal Authority: Section 6 under Title 13.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 8, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–15604 Filed 6–10–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Trade Fair Certification Program: Application; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 10, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: John Klingelhut, U.S. & Foreign Commercial Service, Export Promotion Services, Room 2810, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–4403, and fax number: (202) 482–0872.

SUPPLEMENTARY INFORMATION:

I. Abstract

Certified Trade Missions are overseas events that are planned, organized and led by both Federal and non-Federal government export promotion agencies such as industry trade associations, agencies of State and local governments, chambers of commerce, regional groups and other export-oriented groups. The Trade Fair Certification Program Application form is the vehicle by which individual firms apply, and if accepted agree, to participate in the Department of Commerce's (DOC) trade promotion events program, identify the products or services they intend to sell or promote, and record their required participation fees. The collection of information is required for DOC to properly assess the credentials of the shows and applicants.

II. Method of Collection

Form ITA 4100P is sent by request to U.S. firms. Applicant firms complete the form and return it to the Department of Commerce.

III. Data

OMB Number: 0625–0130.

Form Number: ITA–4100P.

Type of Review: Revision-Regular Submission.

Affected Public: Companies applying to participate in Department of Commerce trade fair events.

Estimated Number of Respondents: 70.

Estimated Time Per Response: 10 hours.

Estimated Total Annual Burden Hours: 700 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $31,500.00 ($24,500.00 for respondents and $7,000.00 for federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) 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 forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 8, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–15605 Filed 6–10–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 11, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Kris Campbell, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–0650 and 482–3813, respectively.

SUMMARY: The Department of Commerce is extending the time limit of the final results of the administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. The period of review is May 1, 1996 through April 30, 1997. The extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

SUPPLEMENTARY INFORMATION:

Postponement of Final Results

On February 6, 1998, the Department of Commerce (the Department) published the preliminary results in this review (63 FR 6155). Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) requires the Department to complete an administrative review within 120 days after publication of the preliminary results. However, if it is not practicable to complete the review within the statutory time limit, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for completion of an administrative review. Because we have determined that it is not practicable to complete this review within the statutory time limit, we are extending the deadline for completion of the final results of this review to 180 days after the date on which the notice of the preliminary results was published. The extended deadline for completion of the final results is August 5, 1998.

Dated: June 5, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–15603 Filed 6–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052998B]

Endangered and Threatened Species; Notice of Availability of a Draft Environmental Assessment for Review and Comment

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

ACTION: Notice of availability.

SUMMARY: NMFS has prepared a draft Environmental Assessment (EA) for the

proposed definition of "harm" as used in the Endangered Species Act (ESA). NMFS seeks public comment.

DATES: Comments on the draft EA must be received by July 13, 1998, if they are to be considered during preparation of a final EA.

ADDRESSES: Requests for a copy of the draft EA should be addressed to National Marine Fisheries Service, 1315 East West Highway, Room 13604, Silver Spring, MD 20910; telephone: 301–713–1401, or it can be obtained from the National Marine Fisheries Service Office of Protected Resources Web Page (www.nmfs.gov/tmcintyr). Written comments and materials regarding the draft EA should be directed to the same address. Comments will not be accepted via e-mail or the world wide web.

FOR FURTHER INFORMATION CONTACT: Joe Blum, National Marine Fisheries Service, Office of Protected Resources, 1315 East West Highway, Silver Spring, MD, 20910.

SUPPLEMENTARY INFORMATION:

Background

This draft EA examines the environmental impact of defining the term "harm" as used in the definition of "take" in the Endangered Species Act (ESA). Section 9 of the ESA makes it illegal to "take" an endangered species of fish or wildlife. The definition of "take" in the ESA is: "to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532(19)). The U.S. Fish and Wildlife Service (FWS) issued a regulation defining further the term "harm" to eliminate confusion concerning its meaning (40 FR 44412, September 26, 1975; 46 FR 54748, November 4, 1981). The FWS' definition of "harm" has been upheld by the Supreme Court as a reasonable interpretation and supported by the purpose of the ESA to conserve endangered and threatened species (See *Babbitt* v. *Sweet Home Chapter of Communities for a Greater Oregon*, 115 S. Ct. 2407, (1995)). NMFS does not have a definition in its ESA regulations. With the recent listings of Pacific salmon and steelhead stocks, interested parties have inquired whether the NMFS interprets harm in the same manner as FWS and includes habitat destruction as "harm" to a listed species. The proposed action is to adopt a rule that clarifies NMFS' interpretation of harm that is consistent with that of FWS.

The NMFS has no definition comparable to FWS' definition of "harm" in its ESA regulations; therefore, enforcement actions must rely solely on the statutory language of the ESA. While NMFS may prevail in court based on "harm" precedents and definitions established by the FWS, a formal interpretation by NMFS improves notice to the public of NMFS' views and provides the administrative foundation for enforcement of the ESA.

The proposed rule does not constitute a change in the existing law. It is a clarification to ensure consistency between NMFS and FWS.

Public Comments Solicited

NMFS intends that the final EA will take advantage of information and recommendations from all interested parties. Therefore, comments and suggestions are hereby solicited from the public, other concerned governmental agencies, the scientific community, industry, and any other person concerned with this draft EA.

Dated: June 5, 1998.

Patricia Montantio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–15593 Filed 6–10–98; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Call for Public Input Regarding Internet Access for AmeriCorps Members

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (Corporation) seeks input from the public as to how best to facilitate, without expending Federal funds, free internet access for AmeriCorps members serving in national service programs across the country.

DATES: The Corporation seeks public input until July 13, 1998.

ADDRESSES: Responses may be mailed to the Corporation at the following address: Corporation for National Service, Attn: Erik Schmidt, 1201 New York Avenue NW., Washington, DC 20525 or by sending electronic mail to: eschmidt@cns.gov.

FOR FURTHER INFORMATION CONTACT: Erik Schmidt, (202) 606–5000, ext. 305. The Corporation's T.D.D. number is (202) 565–2799.

SUPPLEMENTARY INFORMATION: The Corporation is the Federal agency that oversees national and community service programs throughout the country. Its mission is to provide opportunities for Americans of all ages and backgrounds to engage in service that addresses the nation's educational, public safety, environmental, and other human needs to achieve direct and demonstrable results and to encourage all Americans to engage in such service. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

AmeriCorps is the national service program that engages thousands of adult Americans, age 17 and over, in community service and provides education awards in exchange for that service. As President Clinton has said, "The success of AmeriCorps shows that service can help to meet out most pressing needs, from renewing our cities to protecting our environment, to immunizing poor children, to giving them mentors and someone to look up to." In the 1998–1999 program year, the Corporation expects that more than 50,000 individuals will serve as AmeriCorps members in partnership with hundreds of local, state, and national organizations. In return for performing at least 1,700 hours of service in a year, each full-time AmeriCorps member receives a modest living allowance and earns a post-service education award of $4,725 to repay student loans or to pay for the cost of attendance at an institution of higher education. For more information about AmeriCorps, including its three divisions AmeriCorps*State/National, AmeriCorps*VISTA, and AmeriCorps*National Civilian Community Corps, visit the Corporation's home page at *http://www.nationalservice.org*.

The Corporation seeks to facilitate the provision of free internet access to AmeriCorps members during their term of service. Through this Notice, the Corporation invites comments and suggestions from internet service providers, AmeriCorps members, organizations through which AmeriCorps members serve, and other members of the public. Based on the comments and suggestions received, the Corporation anticipates publishing an invitation to internet service providers and others to provide free internet access to all AmeriCorps members during their term of service.

Dated: June 5, 1998.

Kenneth L. Klothen,

General Counsel, Corporation for National and Community Service.

[FR Doc. 98–15497 Filed 6–10–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing, and Related Clause at DFARS 252.232–7007, Limitation of Government's Obligation; OMB Number 0704–0359.

Type of Request: Extension.

Number of Respondents: 800.

Responses per Respondent: 1.

Annual Responses: 800.

Average Burden per Response: 1 hour.

Annual Burden Hours: 800.

Needs and Uses: This requirement provides for the collection of information from contractors that are awarded incrementally funded, fixed-price DoD contracts. The information collection requires these contractors to notify the Government when the work under the contract will, within 90 days, reach the point at which the amount payable by the Government (including any termination costs) approximates 85 percent of the funds currently allotted to the contract.

This information will be used to determine what course of action the Government will take (e.g., allot additional funds for continued performance, terminate the contract, or terminate certain contract line items).

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 4, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–15490 Filed 6–10–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0045]

Proposed Collection; Comment Request Entitled Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0045).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protections. The clearance currently expires on September 30, 1998.

DATES: Comments may be submitted on or before August 10, 1998.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA, (202) 501–3856.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

These regulations implement the statutory requirements of the Miller Act (40 U.S.C. 270a–270e), which requires performance and payment bonds for any construction contract exceeding $100,000, unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. In addition, the regulations implement the note to 40 U.S.C. 270a, entitled "Alternatives to Payment Bonds Provided by the Federal Acquisition Regulation," which requires alternative payment protection for construction contracts that exceed $25,000 but do not exceed $100,000. Although not required by statute, under certain circumstances the FAR permits the Government to require bonds on other than construction contracts.

This information collection extension will also incorporate information collection requirements currently approved under 9000–0119.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.42* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *11,304;* responses per respondent, *5;* total annual responses, *56,520;* preparation hours per response, *.42;* and total response burden hours, *23,738.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0045, Bid, Performance, and Payment Bonds, in all correspondence.

Dated: June 5, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–15573 Filed 6–10–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 200. This bulletin lists revisions in the per diem rates prescribed for U.S. Government

employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 200 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 1, 1998.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 199. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: June 5, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:						
ANCHORAGE [INCL NAV RES]						
05/01 -- 09/30	151		62		213	06/01/98
10/01 -- 04/30	86		56		142	03/01/98
BARROW	110		70		180	06/01/98
BETHEL	103		65		168	03/01/98
CORDOVA	85		62		147	03/01/98
CRAIG						
05/01 -- 08/31	95		66		161	05/01/97
09/01 -- 04/30	79		64		143	05/01/97
DENALI NATIONAL PARK						
06/01 -- 08/31	115		52		167	03/01/98
09/01 -- 05/31	90		50		140	03/01/98
DUTCH HARBOR-UNALASKA	110		69		179	03/01/98
EARECKSON AIR STATION	72		55		127	03/01/98
EIELSON AFB						
05/15 -- 09/15	121		60		181	03/01/98
09/16 -- 05/14	75		56		131	03/01/98
ELMENDORF AFB						
05/01 -- 09/30	151		62		213	06/01/98
10/01 -- 04/30	86		56		142	03/01/98
FAIRBANKS						
05/15 -- 09/15	121		60		181	03/01/98
09/16 -- 05/14	75		56		131	03/01/98
FT. RICHARDSON						
05/01 -- 09/30	151		62		213	06/01/98
10/01 -- 04/30	86		56		142	03/01/98
FT. WAINWRIGHT						
05/15 -- 09/15	121		60		181	03/01/98
09/16 -- 05/14	75		56		131	03/01/98
GLENNALLEN	86		53		139	08/01/97
HEALY						
06/01 -- 08/31	115		52		167	03/01/98
09/01 -- 05/31	90		50		140	03/01/98
HOMER						
05/01 -- 09/30	116		66		182	03/01/98
10/01 -- 04/30	87		64		151	03/01/98
JUNEAU	89		72		161	03/01/98
KENAI-SOLDOTNA						
04/01 -- 09/30	109		61		170	03/01/98
10/01 -- 03/31	74		59		133	03/01/98

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KENNICOTT	149	84	233	08/01/97
KETCHIKAN				
05/01 -- 09/30	100	74	174	03/01/98
10/01 -- 04/30	85	73	158	03/01/98
KLAWOCK				
05/01 -- 08/31	95	66	161	05/01/97
09/01 -- 04/30	79	64	143	05/01/97
KODIAK				
04/16 -- 09/30	98	69	167	03/01/98
10/01 -- 04/15	88	68	156	03/01/98
KOTZEBUE				
05/16 -- 09/15	101	81	182	04/01/97
09/16 -- 05/15	90	80	170	04/01/97
KULIS AGS				
05/01 -- 09/30	151	62	213	06/01/98
10/01 -- 04/30	86	56	142	03/01/98
MCCARTHY	149	84	233	08/01/97
MURPHY DOME				
05/15 -- 09/15	121	60	181	03/01/98
09/16 -- 05/14	75	56	131	03/01/98
NOME	83	63	146	03/01/98
PETERSBURG	76	62	138	03/01/98
SEWARD				
05/01 -- 09/15	114	62	176	03/01/98
09/16 -- 04/30	78	59	137	03/01/98
SITKA-MT. EDGECOMBE				
04/01 -- 09/04	101	60	161	03/01/98
09/05 -- 03/31	83	59	142	03/01/98
SKAGWAY				
05/01 -- 09/30	100	74	174	03/01/98
10/01 -- 04/30	85	73	158	03/01/98
SPRUCE CAPE				
04/16 -- 09/30	98	69	167	03/01/98
10/01 -- 04/15	88	68	156	03/01/98
TANANA	83	63	146	03/01/98
UMIAT	125	107	232	08/01/97
VALDEZ				
05/15 -- 09/15	105	65	170	03/01/98
09/16 -- 05/14	84	62	146	03/01/98
WASILLA	79	72	151	03/01/98
WRANGELL				
05/01 -- 09/30	100	74	174	03/01/98
10/01 -- 04/30	85	73	158	03/01/98

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
[OTHER]	72	55	127	03/01/98
AMERICAN SAMOA:				
AMERICAN SAMOA	73	53	126	03/01/97
GUAM:				
GUAM (INCL ALL MIL INSTAL)	150	79	229	05/01/98
HAWAII:				
CAMP H M SMITH	110	61	171	07/01/97
EASTPAC NAVAL COMP TELE AREA	110	61	171	07/01/97
FT. DERUSSEY	110	61	171	07/01/97
FT. SHAFTER	110	61	171	07/01/97
HICKAM AFB	110	61	171	07/01/97
HONOLULU NAVAL & MC RES CTR	110	61	171	07/01/97
ISLE OF HAWAII: HILO	80	52	132	06/01/98
ISLE OF HAWAII: OTHER	100	54	154	06/01/98
ISLE OF KAUAI				
05/01 -- 11/30	115	62	177	06/01/98
12/01 -- 04/30	136	64	200	06/01/98
ISLE OF KURE	60	41	101	07/01/97
ISLE OF MAUI	112	64	176	06/01/98
ISLE OF OAHU	110	61	171	07/01/97
KANEOHE BAY MC BASE	110	61	171	07/01/97
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 -- 11/30	115	62	177	06/01/98
12/01 -- 04/30	136	64	200	06/01/98
KILAUEA MILITARY CAMP	80	52	132	06/01/98
LULUALEI NAVAL MAGAZINE	110	61	171	07/01/97
NAS BARBERS POINT	110	61	171	07/01/97
PEARL HARBOR [INCL ALL MILITARY]	110	61	171	07/01/97
SCHOFIELD BARRACKS	110	61	171	07/01/97
WHEELER ARMY AIRFIELD	110	61	171	07/01/97
[OTHER]	79	62	141	06/01/93
JOHNSTON ATOLL:				
JOHNSTON ATOLL	13	9	22	07/01/97
MIDWAY ISLANDS:				
MIDWAY ISLANDS [INCL ALL MIL]	60	41	101	07/01/97
NORTHERN MARIANA ISLANDS:				
ROTA	105	71	176	05/01/97
SAIPAN	170	78	248	05/01/97
[OTHER]	61	53	114	05/01/97

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO:				
BAYAMON				
05/01 -- 11/28	108	66	174	06/01/98
11/29 -- 04/30	136	69	205	06/01/98
CAROLINA				
05/01 -- 11/28	108	66	174	06/01/98
11/29 -- 04/30	136	69	205	06/01/98
DORADO	189	76	265	06/01/98
FAJARDO [INCL CEIBA, LUQUILLO & HUMACAO]	82	60	142	03/01/98
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]				
05/01 -- 11/28	108	66	174	06/01/98
11/29 -- 04/30	136	69	205	06/01/98
LUIS MUNOZ MARIN IAP AGS				
05/01 -- 11/28	108	66	174	06/01/98
11/29 -- 04/30	136	69	205	06/01/98
MAYAGUEZ	94	60	154	06/01/98
PONCE	96	67	163	06/01/98
ROOSEVELT ROADS & NAV STA	82	60	142	03/01/98
SABANA SECA [INCL ALL MILITARY]				
05/01 -- 11/28	108	66	174	06/01/98
11/29 -- 04/30	136	69	205	06/01/98
SAN JUAN & NAV RES STA				
05/01 -- 11/28	108	66	174	06/01/98
11/29 -- 04/30	136	69	205	06/01/98
[OTHER]	66	54	120	06/01/98
VIRGIN ISLANDS (U.S.):				
ST. CROIX				
04/15 -- 12/14	109	80	189	07/01/97
12/15 -- 04/14	129	82	211	07/01/97
ST. JOHN				
06/01 -- 12/15	228	79	307	07/01/97
12/16 -- 05/31	344	91	435	07/01/97
ST. THOMAS				
04/15 -- 12/18	215	76	291	07/01/97
12/19 -- 04/14	322	87	409	07/01/97
WAKE ISLAND:				
WAKE ISLAND	40	35	75	10/01/96

[FR Doc. 98–15491 Filed 6–1–98; 8:45 am]
BILLING CODE 500–04–C

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 August 10, 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.

Dated: June 5, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: International Association for the Evaluation of Educational Achievement (IEA) Civics Education Project.

Frequency: One time.

Affected Public: State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 580.

Burden Hours: 927.

Abstract: The Civics Education Project is a multi-national project coordinated by the IEA. Through this project, a student assessment will be administered to 14 year olds to assess their civics knowledge, skills, attitudes and actions.

[FR Doc. 98–15536 Filed 6–10–98; 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 July 13, 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.

Dated: June 5, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Federal Register Notice Inviting Applications for the Participation in the Quality Assurance (QA) Program.

Frequency: One time.

Affected Public: Not-for-profit institutions; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 125.

Burden Hours: 125.

Abstract: Financial Aid Administrators in a letter of application to the Department of Education will describe their institutions commitment to quality assurance and to the reduction of error in the processing and awarding of student aid dollars.

[FR Doc. 98–15537 Filed 6–10–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education, ED.

ACTION: Notice of Open Meeting on the Reauthorization of Title IX.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. The purpose of this meeting is to receive comments regarding the reauthorization of programs under the Elementary and Secondary Education Act of 1965 (ESEA), of which the Title IX Indian Education Program is included. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES AND TIMES: June 26, 1998, 10:00 a.m. to 5:00 p.m. and June 27, 1998, 9:00 a.m. to 5:00 p.m.

ADDRESSES: Holiday Inn-St. Paul East, I–94 at McKnight Road, 2201 Burns Ave., St. Paul, MN 55119. Telephone (612) 731–2220.

FOR FURTHER INFORMATION CONTACT: Dr. David Beaulieu, Director, Office of Indian Education, 600 Independence Avenue, SW., Portals 4300, Washington, DC 20202. Telephone: (202) 260–3774. Fax: (202) 205–0643.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is a presidential appointed advisory council on Indian education established under Section 9151 of Title IX of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7871). The Council is established to advise the Secretary of Education and the Congress on funding and administration of programs with respect to which the Secretary has jurisdiction and that includes Indian children or adults as participants or that may benefit Indian children or adults. The Council also makes recommendations to the Secretary for filing the position of Director of Indian Education whenever a vacancy occurs.

This meeting of the Council is open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Council for its consideration. Written statements should be submitted to the address listed above.

A summary of the proceedings and related matters which are informative to the public and consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting, and are available for public inspection from the hours of 8:30 a.m. to 5:00 p.m. at the Office of Elementary and Secondary Education, U.S. Department of Education 600 Independence Avenue, SW., Washington, DC 20202.

Gerald N. Tirozzi,

Assistant Secretary, Office of Elementary and Secondary Education.

Meeting Agenda

Friday, June 26, 1998

10:00 a.m.
Call to Order
Roll Call of the Membership.
- Introductions.
- Review and Approval of Minutes.
- Executive Order on Indian Education.

12:00 noon—Lunch
1:00 p.m.—Reauthorization Discussion
5:00 p.m.—Adjournment

Saturday, June 27, 1998

9:00 a.m.—Reauthorization Discussion
12:00 noon—Lunch
1:00 p.m.—Review of Hearings
5:00 p.m.—Adjournment

[FR Doc. 98–15726 Filed 6–10–98; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, July 1, 1998, 6:00 p.m.–9:30 p.m.

ADDRESS: Comfort Inn, 433 S. Rutger Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Department of Energy, Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–0314.

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: Board members who attended the Intersite Discussion Workshops will provide a presentation. A regular business meeting will follow.

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 Marianne Heiskell 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 near the beginning of the meeting.

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 at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Marianne Heiskell, Department of Energy, Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–0314.

Issued at Washington, DC on June 5, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–15572 Filed 6–10–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–30–000]

Barbara J. Wilson, inc., et al.; Notice of Petition for Dispute Resolution

June 5, 1998.

Take notice that, on June 2, 1998, Barbara J. Wilson, Inc., the Estate of Barbara J. Wilson, Rings of Saturn, Inc., and Joyce A. Mims (collectively: Applicants) filed a petition requesting the Commission to resolve any potential dispute they have with Northern Natural Gas Company (Northern) as to whether Applicants owe Northern any Kansas ad valorem tax refunds. Applicants request that the Commission find that they have no Kansas ad valorem tax refund liability to Northern for the period from 1983 to 1988, based on a March 27, 1990 Settlement Agreement between Applicants and Northern (1990 Settlement). Applicants' petition is on file with the Commission and open to public inspection.

The Commission, by order issued September 10, 1997, in Docket No. RP97–369–000 *et al*,[1] on remand from the D.C. Circuit Court of Appeals,[2] required first sellers to refund the Kansas ad valorem tax reimbursements to the pipelines, with interest, for the period from 1983 to 1988. In its January 28, 1998 Order Clarifying Procedures [82 FERC ¶ 61,059 (1998)], the Commission stated that producers (i.e., first sellers) could file dispute resolution requests with the Commission, asking the Commission to resolve the dispute with the pipeline over the amount of Kansas ad valorem tax refunds owed.

Applicants state that Northern has attempted to collect Kansas ad valorem tax refunds from them for the period from 1983 to 1988. Applicants contend that these efforts are a breach of their 1990 Settlement with Northern, because the 1990 Settlement released Applicants and Northern from all claims against each other relating to Applicants' gas purchase contract with Northern. Applicants also state that they have placed the principal and interest involved into an escrow account, and request that, if necessary, the Commission authorize Applicants to place these sums into the escrow account, pending resolution of their dispute with Northern. If the Commission does not issue a summary ruling in Applicants' favor, Applicants alternatively request permission to file briefs to fully advise the Commission of their position.

Any person desiring to comment on or make any protest with respect to the above-referenced petition should, on or before June 26, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15518 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–52–005]

Columbia Gulf Transmission Company; Notice of Compliance Filing

June 5, 1998.

Take notice that on June 3, 1998, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of June 1, 1998:

Nineteenth Revised Sheet No. 018
Ninth Revised Sheet No. 018A
Twentieth Revised Sheet No. 019

On March 3, 1998, Columbia Gulf filed with the Federal Energy Regulatory Commission (Commission) a comprehensive settlement in the subject docket. The settlement was certified to the Commission as uncontested on March 25, 1998. The Commission issued its order accepting the settlement on April 29, 1998. Pursuant to its provisions, the settlement became effective on June 1, 1998. The instant filing sets forth rate tariff sheets that implement the Period II settlement rates effective June 1, 1998. Columbia Gulf requests a waiver of Section 154.7(a)(9) of the Commission's regulations to accept the tariff sheets at the requested effective date.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, affected state commissions and parties on the official service list in this proceeding.

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. 98–15527 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN98–3–000]

Consumers Energy Company; Notice of Informal Settlement Conference

June 5, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, June 16, 1998 at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket. If necessary, the conference will continue to Wednesday, June 17, 1998.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Gerald L. Richman at (202) 208–2036.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15521 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–239–000]

Destin Pipeline Company, L.L.C.; Notice of Tariff Filing

June 5, 1998.

Take notice that on June 1, 1998, Destin Pipeline Company, L.L.C. (Destin) tendered for filing certain modifications to its FERC Gas Tariff, Original Volume No. 1, to become effective on July 1, 1998.

Destin states that the purpose of the filing is to incorporate modifications and clarifications resulting from negotiations with shippers seeking transportation services on the Destin Pipeline, as more particularly described in Destin's June 1, 1998 filing and Appendix B thereto. Destin requests that its proposed Tariff changes be made effective July 1, 1998, which is Destin's projected in-service date for the part of its pipeline system extending from the Main Pass 260 Platform to Destin's interconnection with Florida Gas Transmission Corp.

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 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. 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. 98–15533 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–018]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1998.

Take notice that on June 1, 1998, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet to become effective June 1, 1998:

Sixteenth Revised Sheet No. 30

El Paso states that the above tariff sheet is being filed to implement two negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

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. 98–15530 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–310–005]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1998.

Take notice that on June 2, 1998, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 136 proposed to be effective June 30, 1998.

GBGP states the purpose of the filing is to implement the GISB standards for EDI and EDM requirements.

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. 98–15531 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–155–002 and TM98–3–4–001]

Granite State Gas Transmission, Inc.; Notice of Reconsideration

June 5, 1998.

Take notice that on June 4, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing a motion for reconsideration of the Commission's order issued April 1, 1998 in the above referenced proceeding.

Granite State states that this filing is being made to show that the settlement of its rate case in Docket No. RP97–8–000 should be construed to allow recovery of certain electric power costs, incurred prior to April 1, 1997, in its approved tracking mechanism.

Granite State states it has served copies of the filing to its firm transportation customers, to the regulatory agencies of the States of Maine, Massachusetts and New Hampshire and to the parties appearing on the official service list maintained by the Secretary in Docket No. RP97–8–000.

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 no later than June 11, 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. 98–15511 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–574–000]

Iroquois Gas Transmission System L.P.; Notice of Request Under Blanket Authorization

June 5, 1998.

Take notice that on May 29, 1998, Iroquois Gas Transmission System L.P. (Iroquois) One Corporate Drive, Suite 600, Shelton, Connecticut 06484, filed in Docket No. CP98–574–000 a request for authorization pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211(b)) for authorization to construct a new sales tap on its system on behalf of Athens Generating Company, L.P. (Athens) under Iroquois' blanket certificate issued in Docket No. CP89–34–000 [1] pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Iroquois proposes to construct a side tap tee and valve assembly at the request of Athens, a wholly owned indirect subsidiary of U.S. Generating Company, LLC, which is developing a 1080 megawatt gas-fired electric power plant in Athens, New York. Iroquois states that the proposed in service date of this power plant is mid-to-late 2001. Iroquois notes that Athens has not yet contracted for service on Iroquois and explains that the pre-application report which Athens filed with the New York State Department of Public Service indicates that they expect to receive gas supply through Iroquois' facilities. Iroquois claims that because no such agreement for service has been executed, Iroquois is unable to specify with precision all of the elements of the arrangement. Iroquois asserts, however, that it expects that service will be provided under Iroquois' existing RTS and/or ITS Rate Schedules.

Iroquois states that the proposed sales tap is to be installed at a point immediately upstream of the new mainline valve, which is to be installed in connection with the proposed Athens Compressor Station.[2] Iroquois indicates that while the annual volume of gas to be delivered through the proposed sales tap has not yet been conclusively determined, Iroquois and Athens estimate that the proposed electric power plant will have the ability to consume up to 170,000 dt per day of natural gas. Iroquois reports that Athens will reimburse Iroquois for the costs of constructing the sales tap, up to $37,000 and notes that while Athens has agreed to bear the costs of constructing the sales taps as those costs are incurred, Iroquois will refund these costs to Athens when service is actually provided through the tap.

Iroquois also requests a waiver of section 157.206(f) of the Commission's Regulations (18 CFR 206(f)), which requires that any construction authorized under Section 157.205 be completed and in actual operation within one year of the date of authorization. Iroquois asserts that this waiver is necessary to allow Iroquois to construct the sales tap during the construction of its proposed Athens Compressor Station authorized in Docket No. CP96–687.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15516 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See Opinion No. 357 issued November 14, 1990, (53 FERC ¶ 61,194 (1990)).

[2] Iroquois notes that it will make any future filings which may be necessary to operate the proposed sales tap at the appropriate time.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–152–000, et al.]

Kansas Pipeline Company; Notice of Technical Conference

June 5, 1998.

Take notice that on June 18, 1998, from 9:00 a.m. to 4:00 p.m., the Commission Staff will convene a technical conference in the above captioned docket at the offices of the Federal Energy Regulatory Commission, 888 1st Street NE, Washington, DC 20426. Any party, as defined in 18 CFR 385.102(c), and any participant, as defined in 18 CFR 385.102(b), is invited to attend.

The purpose of the conference is to discuss the Service Agreements between Kansas Pipeline Company and its customers, Missouri Gas Energy and Kansas Gas Service Company.

For further information, contact Sharon Dameron (202) 208–2017, Office of the General Counsel.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15514 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–575–000]

Koch Gateway Pipeline Company; Notice of Application

June 5, 1998.

Take notice that on May 29, 1998, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–575–000, an application pursuant to Section 7(b) of the Natural Gas Act for authorization and approval to abandon a pipeline segment by sale in place to Mid Louisiana Gas Company (MidLouisiana). Koch Gateway makes such request, all as more fully set forth in the request on file with the Commission and open to public inspection.

Koch Gateway proposes to abandon 271 feet of an 8-inch pipeline segment which it designates as Index 270–80–1, in East Baton Rouge Parish, Louisiana. It is stated that upon successful abandonment in place, Koch Gateway would sell the 8-inch pipeline segment to MidLouisiana, who would use the segment to augment its natural gas transmission system.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 26, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Koch Gateway to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15517 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–46–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1998.

Take notice that on June 2, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective July 1, 1998:

Fourth Revised Sheet No. 1401
Third Revised Sheet No. 4100
Fourth Revised Sheet No. 4200
Third Revised Sheet No. 4300
Third Revised Sheet No. 4400
Third Revised Sheet No. 4500
Fourth Revised Sheet No. 4600
Second Revised Sheet No. 4700
Second Revised Sheet No. 4803
Third Revised Sheet No. 4804
Fifth Revised Sheet No. 4900
Second Revised Sheet No. 4901
First Revised Sheet No. 4902
Third Revised Sheet No. 5000
Eight Revised Sheet No. 5200

Koch states that it is revising the above tariff sheets to reflect a change in the phone numbers of its Customer Service Department, effective July 1, 1998.

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, N.E., Washington, D.C. 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 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. 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. 98–15520 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–240–000]

Koch Gateway Pipeline Company; Notice of Filing

June 5, 1998.

Take notice that on June 2, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing its report of the net revenues attributable to the operation of its cash-in/cash-out program.

Koch states that this filing is reflective of its annual report of the net revenues attributable to the operation of its cash-in/cash-out for the annual period, beginning April 1, 1997 to March 31, 1998. The report showed a negative cumulative position that will continue to be carried forward and applied to the next cash-in/cash-out reporting period as provided in Koch's tariff, Section 20.1(D) of the General Terms and Conditions.

Koch states that copies of the filing has been served upon each affected customer, state commission and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 12, 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. 98–15534 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–35–000]

Ethel Huffman McKee, Paul R. Gougelman III, Grace & Franklin Bernsen Foundation, and Craig Henderson; Notice of Petition for Dispute Resolution

June 5, 1998.

Take notice that, on June 2, 1998, Ethel Huffman McKee, Paul R. Gougelman III, Grace & Franklin Bernsen Foundation, and Craig Henderson (collectively: Applicants) filed a petition requesting the Commission to resolve any potential dispute they have with Panhandle Eastern Pipe Line Company (Panhandle) as to whether Applicants owe Panhandle any Kansas ad valorem tax refunds. Applicants request that the Commission find that they have no Kansas ad valorem tax refund liability to Panhandle for the period from 1983 to 1988, based on a July 23, 1990 Settlement Agreement between Applicants and Panhandle (1990 Settlement). Applicants' petition is on

file with the Commission and open to public inspection.

The Commission, by order issued September 19, 1997, in Docket No. RP97–369–000 *et al*,[1] on remand from the D.C. Circuit Court of Appeals,[2] required first sellers to refund the Kansas ad valorem tax reimbursements to the pipelines, with interest, for the period from 1983 to 1988. In its January 28, 1998 Order Clarifying Procedures [82 FERC ¶ 61,059 (1998)], the Commission stated that producers (i.e., first sellers) could file dispute resolution requests with the Commission, asking the Commission to resolve the dispute with the pipeline over the amount of Kansas ad valorem tax refunds owed.

Applicants state that Panhandle has attempted to collect Kansas ad valorem tax refunds from them for the period from 1983 to 1988. Applicants contend that these efforts are a breach of their 1990 Settlement with Panhandle, because the 1990 Settlement released Applicants and Panhandle from all claims against each other relating to Applicants' gas purchase contract with Panhandle. Applicants also state that they have placed the principal and interest involved into an escrow account, and request that, if necessary, the Commission authorize Applicants to place these sums into the escrow account, pending resolution of their dispute with Panhandle. Applicants also request that the Commission establish a briefing schedule so that Applicants can fully advise the Commission of their position.

Any person desiring to comment on or make any protest with respect to the above-referenced petition should, on or before June 26, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15519 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–1–001]

National Fuel Gas Supply Corporation; Notice of Filing

June 5, 1998.

Take notice that on May 29, 1998, National Fuel Gas Supply Corporation (National Fuel) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566, *et seq.*[2]

National Fuel states that copies of its filing have been mailed to all jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 22, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15512 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1998), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–446–002]

Nautilus Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1998.

Take notice that on June 3, 1998, Nautilus Pipeline Company, LLC (Nautilus) tendered for filing as part of its FERC GAs Tariff, Original Volume No. 1, first Revised Sheet No. 216 in compliance with the Commission's Order in Docket No. RP97–446–000 issued September 24, 1997.

Nautilus states the purpose of this filing is to incorporate by reference the EDI and EDM Gas Industry Standards Board (GISB) standards that were previously granted interim waivers in Docket No. RP97–446–000.

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. 98–15532 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–573–000]

NorAm Gas Transmission Company; Notice of Application

June 5, 1998.

Take notice that on May 29, 1998, NorAm Gas Transmission Company (NGT), 525 Milam, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP98–573–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon two existing exchange agreements with Arkansas Western Gas Company (AWG) and the lease by NGT of 13.49 miles of 8-inch pipeline owned by AWG, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NGT proposes to abandon exchange transactions dated October 25, 1951 (1951 Exchange) and December 10, 1964 (1964 Exchange) with AWG. NGT states that the 1951 Exchange involved the receipt of gas by NGT at 67 receipt points in Sebastian and Franklin Counties, Arkansas. NGT declares they redelivered the gas to AWG's intrastate pipeline facilities in the Clarksville Field in Johnson County, and at various other delivery points on NGT's facilities in Johnson, Logan, and Franklin Counties, Arkansas.

NGT states the 1964 Exchange involved the receipt of gas by NGT at 76 points of receipt in Franklin, Logan, Crawford, Sebastian, and Pope Counties, Arkansas. NGT declares that they redelivered the gas to AWG at 33 points in Franklin, Johnson, Logan, and Crawford Counties, Arkansas.

In addition to the abandonment of its exchange transactions with AWG, NGT also proposes to abandon its operational lease of 13.49 miles of 8-inch pipeline located in Northwest Arkansas (designated by NGT as Line BM–15–EXT). NGT declares that there is no longer a need for these transactions and they have been terminated by the written consent of both parties. NGT states that although an outstanding imbalance remains under these transactions, the parties have reduced the exchange imbalance significantly since April 1, 1997, and have agreed on a schedule for repayment by in-kind deliveries to resolve the remaining imbalance.

NGT states that the requested abandonment will not affect NGT's ability to continue to render certificated transportation service to its customers. NGT declares that although one active receipt point is currently located along the leased line, NGT has no current firm service obligations with respect to use of this facility.

Any person desiring to be heard or to make any protest with reference to said Application should on or before June 26, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15515 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–138–006]

Shell Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1998.

Take notice that on June 2, 1997, Shell Gas Pipeline Company (SGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 137, in compliance with the Commission's Orders in Docket Nos. RP97–138–000 & RP97–138–001 and RP97–264–000 issued March 6, 1997 and April 30, 1997 respectively.

SGPC states the purpose of the filing is to incorporate by reference the GISB standards related to the EDI and EDM requirements.

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. 98–15529 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1862–017]

City of Tacoma, Washington; Notice of Technical Conference

June 5, 1998.

Take notice that on Tuesday, June 30, 1998, at 9:00 a.m., the Commission Staff will convene a technical conference in the above captioned docket at the offices of Tacoma Public Utilities, Tacoma City Light Division, Auditorium Conference Room, Ground Floor, located at 3628 South 35th Street, Tacoma, Washington. Any party, as defined in 18 CFR 385.102(c) and any participant, as defined in 18 CFR 385.102(b) is invited to attend.

The purpose of the conference is to discuss issues raised on rehearing by the City of Tacoma and the Nisqually Indian Tribe including, but not limited to, license articles designed to enhance fish habitat in the bypassed channel below LaGrande dam.

For further information, contact John B. Smith (202) 219–2460 or Keith M. Brooks (202) 208–1229.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15524 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–241–000]

Tuscarora Gas Transmission Company; Notice of Filing

June 5, 1998.

Take notice that on June 2, 1998, Tuscarora Gas Transmission Company (Tuscarora) submitted a filing justifying its existing rates.

Tuscarora states that this filing is in satisfaction of a condition imposed on Tuscarora in the original certificate order issued on May 31, 1995, in Docket No. CP93–685–000. The certificate order required that Tuscarora submit a filing either justifying its existing rates or proposing alternative rates to take effect no later than the third anniversary of the in-service date. The third anniversary of Tuscarora's in-service date will be December 1, 1998.

Although Tuscarora's revenue requirement supports a firm transportation rate that is higher than Tuscarora's current rate, the company proposes to retain its existing rates for firm and interruptible transportation service. Tuscarora states that its filing will not result in a change in rates for any class of service or customer.

Tuscarora states that copies of its letter of transmittal, including the statement of nature, reasons and basis, and a summary of the cost of service and rate base filing were mailed to all customers and the state commissions of California, Oregon and Nevada.

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 June 12, 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. 98–15535 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–11–000]

Western Gas Interstate Co.; Notice of Filing

June 5, 1998.

Take notice that on June 1, 1998, Western Gas Interstate Company (Western) filed standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2]

Western states that it served copies of the filing on its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 22, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15522 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994; Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT98–12–000]

Western Gas Interstate; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1998.

Take notice that on June 1, 1998, Western Gas Interstate (WGI) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to be effective July 1, 1998:

First Revised Sheet No. 114
First Revised Sheet No. 159
First Revised Sheet No. 237
First Revised Sheet No. 240
First Revised Sheet No. 241
First Revised Sheet No. 242
First Revised Sheet No. 294
First Revised Sheet No. 343
First Revised Sheet No. 365

WGI states that the revised tariff sheets reflect changes in (1) the company's address, and (2) the marketing affiliate information in compliance with Order No. 497.

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 as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15523 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–63–000, et al.]

Bridgeport Energy LLC, et al., Electric Rate and Corporate Regulation Filings

June 2, 1998.

Take notice that the following filings have been made with the Commission:

1. Bridgeport Energy LLC

[Docket No. EG98–63–000]

Take notice that on May 27, 1998, Bridgeport Energy LLC (Bridgeport Energy or the Applicant), c/o Duke Energy Power Services, 5400 Westheimer Court, Mail Code 4H20, Houston, Texas 77056–5310, filed with the Federal Energy Regulatory Commission an amendment to an application for determination of exempt wholesale generator status that was filed on April 6, 1998, pursuant to Part 365 of the Commission's Regulations.

Bridgeport Energy files this Amendment at the request of Commission staff to clarify Bridgeport Energy's associate and affiliate relationships with certain electric utility company owners and to reflect the change of address of one of the contact persons for communication purposes for Bridgeport Energy.

Comment date: June 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Midlands Hydrocarbons (Bangladesh) Limited

[Docket No. EG98–82–000]

Take notice that on May 26, 1998, Midlands Hydrocarbons (Bangladesh) Limited, a company formed under the law of England and Wales with a registered office at Mucklow Hill, Halesowen, West Midlands B62 8BP, United Kingdom (Applicant), and an indirect wholly-owned subsidiary of Cinergy Corp. (Cinergy), a Delaware corporation and registered holding company under Public Utility Holding Company Act of 1935 as amended, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant represents that it is engaged directly, or indirectly through one or more affiliates (as defined in Section 2(a)(11)(B) of PUHCA), and exclusively in the business of owning and/or operating all or part of one or more eligible facilities and selling electric energy at wholesale; provided, however, that any such eligible facilities may also be used to make sales of electric energy at retail solely to customers located outside the United States.

Applicant states that its current activities are limited to project development activities associated with the potential acquisition, directly or indirectly through one or more affiliates (as defined in Section 2(a)(11)(B) of PUHCA), of ownership and/or operating interests in one or more not-yet-constructed, gas-fired eligible facilities that would be built and located in the People's Republic of Bangladesh (each a Bangladesh Facility). Applicant describes project development activities as all preliminary activities relating to potential acquisitions of ownership and/or operating interests in Bangladesh Facilities by Applicant or its affiliates, and whether on a sole basis or jointly with others, including but not limited to due diligence, preparation and submission of bid proposals, site investigations, feasibility studies, preliminary design and engineering, construction, licensing and permitting, and negotiation and/or preparation of project commitments, agreements and other documents (including without limitation power sales contracts, fuel supply and transportation contracts, gas field production sharing and joint operating agreements, plant operating contracts, financing commitments and agreements with lenders, shareholder and ownership agreements, agreements with governmental authorities, and the like). Applicant further states that as part of its project development activities, to ensure commercially viable quantities of available fuel for any Bangladesh Facility, it has acquired contract rights in a joint venture formed to explore and develop certain Bangladesh gas fields. Applicant represents that within 60 days of acquiring any ownership and/or operating interests in any specific Bangladesh Facilities (whether directly or through any of its affiliates), or in the event it abandons its project development activities without concluding any such acquisition (or otherwise no longer seeks to maintain EWG status), Applicant will apply for a new determination of EWG status (a Subsequent Application) or provide the notice contemplated in 18 CFR 365.8. Applicant states that each Subsequent Application will contain all requisite information showing that the Bangladesh Facility or Facilities described therein meets the criteria of an eligible facility.

Applicant states that The Cincinnati Gas & Electric Company, PSI Energy, Inc., The Union Light, Heat and Power Company, The West Harrison Gas and Electric Company and Miami Power Corporation, all of which are electric utility companies (as defined in Section 2(a)(3) of PUHCA) and direct or indirect wholly-owned subsidiaries of Cinergy, are associate companies (as defined in Section 2(a)(10) of PUHCA) of Applicant. Applicant represents that no electric utility company will be an affiliate (as defined in Section 2(a)(11) of PUHCA) of Applicant.

Applicant further represents that no rate or charge for, or in connection with, the construction of any Bangladesh Facility or for electric energy produced by any Bangladesh Facility was in effect under the laws of any State as of October 24, 1992.

Comment date: June 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Central Maine Power Company

[Docket No. ER95–288–001]

Take notice that on May 1, 1998, Central Maine Power Company tendered for filing its compliance report in the above-referenced docket.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. PEC Energy Marketing, Inc. DePere Energy Marketing, Inc.

Docket No. ER97–1431–002 and ER97–1432–002

Take notice that on May 26, 1998, PEC Energy Marketing, Inc., and DePere Energy Marketing, Inc., submitted diskettes for their May 6, 1998, filings in the above referenced dockets.

5. PEC Energy Marketing, Inc.

[Docket No. ER97–1431–002]

Take notice that on May 6, 1998, PEC Energy Marketing, Inc. (PEC), tendered for filing, pursuant to Rule 205, 18 CFR 385.205, a notice of change of circumstances with respect to its original petition for waivers and blanket approvals under various regulations of the Commission and for its order accepting its FERC Electric Rate Schedule No. 1, previously issued by the Commission.

PEC intends to engage in electric power and energy transactions at retail in Maine and in the NEPOOL region. In transactions where PEC sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party and pursuant to the orders and regulations of applicable state public service commissions. As further outlined in the Notice, PEC reports that it is no longer an affiliate of GPU, Inc.,

a public utility holding company and the parent company of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company. GPU, Inc., no longer has any ownership interest in PEC.

Comment date: June 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. DePere Energy Marketing, Inc.

[Docket No. ER97–1432–002]

Take notice that on May 6, 1998, DePere Energy Marketing, Inc. (DePere), tendered for filing, pursuant to Rule 205, 18 CFR 385.205, a notice of change of circumstances with respect to its original petition for waivers and blanket approvals under various regulations of the Commission and for its order accepting its FERC Electric Rate Schedule No. 1, previously issued by the Commission.

DePere reports that it is no longer an affiliate of GPU, Inc., a public utility holding company and the parent company of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company. GPU, Inc., no longer has any ownership interest in DePere.

Comment date: June 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER98–2028–000]

Take notice that on May 29, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., (EAI) (formerly Arkansas Power & Light Company), tendered for filing an amendment in the above-referenced docket.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Delmarva Power & Light Company

[Docket No. ER98–2267–001]

Take notice that on May 29, 1998, Delmarva Power & Light Company (Delmarva), tendered for filing a revised Form of Service Agreement in compliance with the Commission's order issued on March 14, 1998, 83 FERC ¶ 61,157 (1998).

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service Corporation

[Docket No. ER98–2329–001]

Take notice that on May 29, 1998, Central Vermont Public Service Corporation (Central Vermont), tendered for filing its compliance filing in the above-referenced docket.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Company

[Docket No. ER98–2698–000]

Take notice that on April 27, 1998, the Virginia Electric and Power Company tendered for filing its quarterly report for the period January 1, 1998 through March 31, 1998.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Cleveland Electric Illuminating Company

[Docket No. ER98–2710–000]

Take notice that on April 27, 1998, the Cleveland Electric Illuminating Company tendered for filing its quarterly report for the period January 1, 1998 through March 31, 1998.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Toledo Edison Company

[Docket No. ER98–2711–000]

Take notice that on April 27, 1998, the Toledo Edison Company tendered for filing its quarterly report for the period January 1, 1998 through March 31, 1998.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Alliant Services, Inc.

[Docket No. ER98–3147–000]

Take notice that on May 29, 1998, Alliant Services, Inc., tendered for filing an executed Service Agreement for Network Integration Transmission Service and an executed Network Operating Agreement, establishing Rushford Electric Utility as a Network Customer under the terms of the Alliant Services, Inc., transmission tariff.

Alliant Services, Inc., requests an effective date of May 1, 1998, for Network Load of this Network Customer. Alliant Services, Inc., accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Western Resources, Inc.

[Docket No. ER98–3148–000]

Take notice that on May 29, 1998, Western Resources, Inc., (Western Resources), tendered for filing a Short-Term Firm Transmission Agreement between Western Resources, and Tenaska Power Services Co.—a Nebraska Corporation. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective May 14, 1998.

Copies of the filing were served upon Tenaska Power Services Co., and the Kansas Corporation Commission.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Alliant Services, Inc.

[Docket No. ER98–3149–000]

Take notice that on May 29, 1998, Alliant Services, Inc., tendered for filing an executed Service Agreement for Network Integration Transmission Service and an executed Network Operating Agreement, establishing St. Charles Light and Water Department as a Network Customer under the terms of the Alliant Services, Inc., transmission tariff.

Alliant Services, Inc., requests an effective date of May 1, 1998, for Network Load of this Network Customer. Alliant Services, Inc., accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: June 18, 1998. in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Pool

[Docket No. ER98–3150–000]

Take notice that on May 29, 1998, the New England Power Pool Executive Committee filed for acceptance four signature pages to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by CinCap IV, LLC (CinCap IV); Consolidated Edison Company of NewYork, Inc. (ConEd); Enserch Energy Services, Inc. (Enserch); H.Q. Energy Services (U.S.) Inc. (H.Q. (U.S.)). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of the signature pages of CinCap IV, ConEd, Enserch and H.Q. (U.S.) would permit NEPOOL to expand its membership to include CinCap IV, ConEd, Enserch and H.Q. (U.S.). NEPOOL further states that

the filed signature pages do not change the NEPOOL Agreement in any manner, other than to make CinCap IV, ConEd, Enserch and H.Q. (U.S.) members in NEPOOL. NEPOOL requests an effective date of June 1, 1998, for commencement of participation in NEPOOL by CinCap IV, ConEd, Enserch and H.Q. (U.S.).

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. New York State Electric & Gas Corporation

[Docket No. ER98–3151–000]

Take notice that on May 29, 1998 New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a request for approval of the Form of Service Agreements under NYSEG's Open Access Transmission Tariff (OATT) and other revisions to the OATT applicable to all NYSEG customers who take service under its retail access program. NYSEG also requested an order granting any necessary waivers.

The OATT modifications detailed in the filing for which NYSEG seeks approval are as follows: Waiver of the requirement in the OATT that a deposit accompany an application for transmission service, revisions to the energy imbalance provisions of the OATT, revisions to OATT billing provisions relating to billing procedures and permitting NYSEG to assess retail customers a single bill reflecting OATT and state-jurisdictional charges and specification that OATT service for which customers are eligible pursuant to the state's retail access program may be used solely in connection with NYSEG's retail markets identified in the application for service.

NYSEG requests an effective date of August 1, 1998, for the modifications to the OATT described above. That date will coincide with the date contemplated by the New York Public Service Commission (NYPSC), for the implementation of NYSEG's retail access program. NYSEG has served copies of the filing on the NYPSC and customers taking service under the OATT.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Energy Corporation

[Docket No. ER98–3152–000]

Take notice that on May 29, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Market Rate Service Agreement (the MRSA), between Duke and The Detroit Edison Company, dated as of May 17, 1998. The parties have not engaged in any transactions under the MRSA as of the date of filing. Duke requests that the MRSA be made effective as of May 17, 1998.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Nevada Power Company

[Docket No. ER98–3153–000]

Take notice that on May 29, 1998, Nevada Power Company (Nevada Power), tendered for filing a proposed Amendment No. 3 and revised price sheet to the Purchased Power Agreement Between the Colorado River Commission (CRC) and Nevada Power Company (Exhibit A), having a proposed effective date of June 1, 1998.

Exhibit A provides for an increase in rates to the CRC for the period June 1, 1998 to May 31, 1999.

Copies of this filing have been served on the CRC and the Nevada Public Service Commission.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Minnesota Power, Inc.

[Docket No. ER98–3154–000]

Take notice that on May 29, 1998, Minnesota Power, Inc., filed with the Federal Energy Regulatory Commission a notice of name change and adoption and ratification of all filed rate schedules and supplements thereto under its former name of Minnesota Power & Light Company, in accordance with 18 CFR 35.16, effective May 27, 1998.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Portland General Electric Company

[Docket No. ER98–3155–000]

Take notice that on May 29, 1998, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Non-Firm Point-to-Point Transmission Service with Engage Energy US, L.P.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreements to become effective May 1, 1998.

A copy of this filing was caused to be served upon Engage Energy US, L.P., as noted in the filing letter.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Ogden Haverhill Associates

[Docket No. ER98–3156–000]

Take notice that on May 29, 1998, Ogden Haverhill Associates (OHA), tendered for filing with the Federal Energy Regulatory Commission (Commission), an Amendment to its Rate Schedule FERC No. 1, accepted by the Commission on April 28, 1987 in Docket No. ER87–76–001. The changes made to the rates pursuant to that Amendment result no change to the overall rate paid by New England Power Company (NEP) for energy. OHA requests a waiver of the 60-day notice period so that the Amendment may be accepted effective June 1, 1998. OHA also requests that the Commission expeditiously review and issue an order in this proceeding.

Copies of this filing have been served on NEP and the Massachusetts Department of Telecommunications and Energy.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Duquesne Light Company

[Docket No. ER98–3157–000]

Take notice that May 29, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated May 22, 1998, with Eastern Power Distribution, Inc., under DLC's Open Access Transmission Tariff. The Service Agreement adds Eastern Power Distribution, Inc., as a customer under the Tariff.

DLC requests an effective date of May 22, 1998, for the Service Agreement.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Southwest Power Pool

[Docket No. ER98–3158–000]

Take notice that on May 29, 1998, Southwest Power Pool (SPP), tendered for filing a request for waiver until August 1, 1998, of certain provisions of the Preamble and Section 25 of its Open Access Transmission Tariff.

Specifically, SPP states that it is requesting waiver of the provisions that require SPP members who are also members of the Mid-Continent Area Power (MAPP) and who are required to take service under the MAPP transmission tariff to compensate other SPP members for the megawatt-mile impact of such transactions. SPP states

that the waiver is needed because of difficulties encountered in implementing the administrative processes needed to track such transactions.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Bangor Hydro-Electric Company

[Docket No. ER98–3159–000]

Take notice that on May 29, 1998, Bangor Hydro-Electric Company filed an Executed Service Agreement for non-firm point-to-point transmission service with Worcester Energy.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Southwest Power Pool

[Docket No. ER98–3160–000]

Take notice that on May 29, 1998, Southwest Power Pool (SPP), tendered for filing 55 Executed Service Agreements for short-term firm point-to-point firm transmission service and non-firm point-to-point firm transmission service under the SPP Open Access Transmission Tariff.

Copies of this filing were served upon each of the parties to these agreements.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Public Service Company of New Mexico

[Docket No. ER98–3161–000]

Take notice that on June 1, 1998, Public Service Company of New Mexico (PNM), submitted for filing an update to its May 29, 1998, filing submittal of an executed service agreement, for non-firm point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Texas-New Mexico Power Company. PNM requests that the effective date of the service agreement be changed from May 2, 1998 (originally requested effective date), to May 1, 1998. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Central Vermont Public Service Corporation

[Docket No. ER98–3162–000]

Take notice that on May 29, 1998, Central Vermont Public Service Corporation (Central Vermont), requested an extension of a previously-filed supplement to its FERC Rate Schedule No. 135 in order to allow for uninterrupted participation in a retail electric competition pilot program (the Pilot Program) established by the New Hampshire Public Utilities Commission (NHPUC). In Order No. 22,945, issued May 20, 1998, the NHPUC extended the Pilot Program until such time as the NHPUC orders otherwise.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15510 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–917–000, et al.]

Southwest Reserve Sharing Group, et al.; Electric Rate and Corporate Regulation Filings

June 3, 1998.

Take notice that the following filings have been made with the Commission:

1. Southwest Reserve Sharing Group

[Docket No. ER98–917–000]

Take notice that on May 8, 1998, the Southwest Reserve Sharing Group tendered for filing an amendment in the above-referenced docket.

Comment date: June 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Granite State Hydropower Ass. and Certain Listed Projects

[Docket Nos. EL98–50–000, QF85–230–002, QF86–713–001, QF85–659–001, QF85–619–001 and QF85–620–001]

Take notice that on May 28, 1998, Granite State Hydropower Associates and Certain Listed Projects filed a Petition for Declaratory Order or, in the Alternative, Waiver of Ownership Standard and Request for Expedition.[1]

Comment date: June 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Central and South West Services, Inc., as agent for Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and CSW Energy Services, Inc.

[Docket Nos. ER98–542–003 and ER98–2075–001]

Take notice that on June 1, 1998, Central and South West Services, Inc. (CSW Services), as agent for Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company, and CSW Energy Services, Inc. (ESI), submitted for filing revised codes of conduct in compliance with the Federal Energy Regulatory Commission's May 1, 1998, order in the above captioned proceedings.

CSW Services and ESI state that a copy of the filing has been served on all parties to the above captioned proceedings.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–2159–001]

Take notice that on June 1, 1998, Consolidated Edison Company of New York, Inc. (CECONY), tendered for filing a revised tariff sheet in compliance with the letter order which issued on April 30, 1998 in this proceeding. The April 30, order accepted for filing a pro forma agreement authorizing sales of capacity and energy by CECONY to its corporate affiliates pursuant to CECONY's Electric Rate Schedule No. 2. The revised tariff sheet reflects the deletion from a pro forma service agreement of a provision relating to customer-supplied generation fuel.

Con Edison states that a copy of this filing has been served by mail upon the New York State Public Service Commission (PSCNY) and the parties to this proceeding.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

[1] Briar Hydro Associates (Penacook Upper Falls Project and Briar Project), Errol Hydroelectric Limited Partnership, Gregg Falls Hydroelectric Associates and Pembroke Hydro Associates.

5. Northern States Power Company (Minnesota)

[Docket No. ER98–2749–000]

Take notice that on May 28, 1998, Northern States Power Company (Minnesota), tendered for filing a letter requesting that the filing filed in the above-referenced docket on April 30, 1998, be withdrawn.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Rainbow Power USA LLC

[Docket No. ER98–3012–000]

Take notice that on May 28, 1998, Rainbow Power USA LLC (Rainbow), amended its petition dated May 12, 1998, to the Commission for acceptance of Rainbow Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates and the waiver of certain Commission Regulations.

Rainbow intends to engage in wholesale and retail electric power and energy transactions as a power marketer. Rainbow is not in the business of generating or transmitting electric power. Rainbow is not a subsidiary of any other organization, nor does it have any affiliates.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Gas Company

[Docket No. ER98–3029–000]

Take notice that on May 15, 1998, the New York State Electric & Gas Company tendered for filing its Quarterly Activity Report for the calendar year ending March 31, 1998.

Comment date: June 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER98–3132–000]

Take notice that on June 1, 1998, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company (MPCO), and Savannah Electric and Power Company (collectively referred to as Southern Company) filed a service agreement for network integration transmission service between SCS, as agent for Southern Company, and Southern Wholesale Energy, a Department of SCS, as agent for MPCO; three (3) umbrella service agreements for short-term firm point-to-point transmission service between SCS, as agent for Southern Company, and i) PP&L, Inc.; ii) Electric Clearinghouse, Inc., and iii) Koch Energy Trading; and two (2) service agreements for non-firm point-to-point transmission service executed between SCS, as agent for Southern Company, and i) Tractebel Energy Marketing, Inc., and ii) Amoco Energy Trading Corporation under the Open Access Transmission Tariff of Southern Company.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER98–3161–000]

Take notice that on June 1, 1998, Public Service Company of New Mexico (PNM), submitted for filing an update to its May 29, 1998, filing submittal of an executed service agreement, for non-firm point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Texas-New Mexico Power Company. PNM requests that the effective date of the service agreement be changed from May 2, 1998 (originally requested effective date), to May 1, 1998. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. AIE Energy, Inc.

[Docket No. ER98–3164–000]

Take notice that on June 1, 1998, AIE Energy, Inc. (AIE), petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of AIE's FERC Electric Rate Schedule No.1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

AIE intends to engage in transactions in which AIE will sell electricity at wholesale, at rates and on terms and conditions that are negotiated with the purchasing party. AIE may engage in reassignment of transmission capacity. AIE is not in the business of generating or transmitting electric power.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER98–3166–000]

Take notice that on June 1, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after May 1, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. The Washington Water Power

[Docket No. ER98–3167–000]

Take notice that on June 1, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8, with American Electric Power Service Corporation, Arizona Public Service Company, and Morgan Stanley Capitol Group, Inc.. WWP requests the Service Agreements be given respective effective date of May 1, 1998, May 21, 1998, and May 11, 1998.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3168–000]

Take notice that on June 1, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3169–000]

Take notice that on June 1, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), filed its proposed Market Power Mitigation Measures. Con Edison states that these Mitigation Measures will facilitate its proposed divestiture of fossil fuel electric generating capacity located in New York City. Con Edison requests that the Commission approve the

Mitigation Measures by September 15, 1998.

A copy of this filing has been served on the New York Public Service Commission.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. American Electric Power Service Corporation

[Docket No. ER98–3170–000]

Take notice that on June 1, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Wholesale Market Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for British Columbia Power Exchange Corporation on April 1, 1998; FirstEnergy Trading & Power Marketing, Inc., on April 1, 1998; Idaho Power Company on April 1, 1998; Merchant Energy of the Americas, Inc., on May 8, 1998; Potomac Electric Power Company on April 2, 1998; Snohomish Public Utility District on May 2, 1998; and Washington Water & Power on April 13, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Electrion, Incorporated

[Docket No. ER98–3171–000]

Take notice that on June 1, 1998, Electrion, Incorporated (ELECTRION), petitioned the Commission for acceptance of ELECTRION Rate Schedule FERC No.1; the granting of certain blanket approvals, including the authority to sell electricity at market-based prices; and the waiver of certain Commission Regulations.

ELECTRION intends to engage in wholesale electric power and energy purchases and sales as a marketer. ELECTRION is not in the business of generating or transmitting electric power. ELECTRION is a new corporation which is affiliated with Telecom Network, Inc., of Deerfield Beach, Florida.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3172–000]

Take notice that on June 1, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. New England Power Company

[Docket No. ER98–3173–000]

Take notice that on June 1, 1998, New England Power Company (NEP), tendered replacement tariff sheets for its FERC Electric Tariff, Original Volume No. 1, to implement a rate freeze commitment. NEP requests an effective date for the revised tariff sheets of the later of August 1, 1998, and the first day of the calender month in which the closing of the sale of certain NEP assets to USGen New England, Inc., takes place.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Southwest Power Pool

[Docket No. ER98–3174–000]

Take notice that on June 1, 1998, Southwest Power Pool (SPP), tendered for filing 17 executed service agreements for short-term firm point-to-point transmission service and non-firm point-to-point firm transmission service under the SPP Open Access Transmission Tariff.

Copies of this filing were served upon each of the parties to these agreements.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Co.

[Docket No. ER98–3175–000]

Take notice that on June 1, 1998, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies), tendered for filing a service agreement establishing Equitable Power Services Company (Equitable) as a customer under the CSW Operating Companies' market based rate power sales tariff. The CSW Operating Companies request an effective date of May 1, 1998, for the service agreement and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on Equitable.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. The United Illuminating Company

[Docket No. ER98–3176–000]

Take notice that on June 1, 1998, The United Illuminating Company (UI), tendered for filing for informational purposes all individual Purchase Agreements and Supplements to Purchase Agreements executed under UI's Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2, as amended, during the six-month period November 1, 1997 through April 30, 1997.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Southwestern Electric Power Company

[Docket No. ER98–3177–000]

Take notice that on June 1, 1998, Southwestern Electric Power Company (SWEPCO), tendered for filing a proposed fixed return on common equity to be used in establishing estimated and final redetermined formula rates for wholesale service in Contract Year 1999 (and Contract Years thereafter until changed by Commission order) to Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, the City of Hope, Arkansas, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc., and East Texas Electric Cooperative, Inc. SWEPCO currently provides service to these Customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity which SWEPCO proposes to replace with a fixed return on common equity. SWEPCO proposes no other changes to the formula rates.

Copies of the filing were served on the affected wholesale Customers, the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3178–000]

Take notice that on June 1, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. New York State Electric & Gas Corporation

[Docket No. ER98–3179–000]

Take notice that on June 1, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing an Agreement with Delaware County Electric Cooperative, Inc., of New York (Delaware), for facilities Agreement.

NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. New York State Electric & Gas Corporation

[Docket No. ER98–3180–000]

Take notice that on June 1, 1998, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and Tractebel Energy Marketing, Inc., (Customer). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on June 11, 1997, in Docket No. OA97–571–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of June 1, 1998, for the Tractebel Energy Marketing, Inc., Service Agreements.

NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. New York State Electric & Gas Corporation

[Docket No. ER98–3181–000]

Take notice that on June 1, 1998, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and Vitol Gas & Electric (Customer). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on June 11, 1997, in Docket No. OA97–571–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of June 1, 1998, for the Vitol Gas & Electric Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3182–000]

Take notice that on June 1, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to Con Edison Rate Schedule FERC No. 112 for transmission service for New York State Electric & Gas Corporation (NYSEG). Con Edison has requested a waiver so that the supplement can be effective as of April 1, 1998, consistent with the terms of Rate Schedule 112.

Con Edison states that a copy of this filing has been served by mail upon NYSEG.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. The Washington Water Power Company

[Docket No. ER98–3183–000]

Take notice that on June 1, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission and unsigned Service Agreement for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with PacifiCorp. WWP requests the Service Agreement be given an effective date of May 1, 1998.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. TransAlta Energy Marketing (US), Inc.

[Docket No. ER98–3184–000]

Take notice that on June 1, 1998, TransAlta Energy Marketing (US) Inc. (TEMUS), tendered for filing an application for an order accepting its FERC Electric Rate Schedule No. 1, which will permit TEMUS to make wholesale sales of electric power to eligible customers at market-based rates.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. UtiliCorp United Inc.

[Docket No. ER98–3185–000]

Take notice that on June 1, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with Kansas Municipal Energy Agency. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Kansas Municipal Energy Agency pursuant to the tariff, and for the sale of capacity and energy by Kansas Municipal Energy Agency to Missouri Public Service.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. UtiliCorp United Inc.

[Docket No. ER98–3186–000]

Take notice that on June 1, 1998, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with Kansas Municipal Energy Agency. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to Kansas Municipal Energy Agency pursuant to the tariff, and for the sale of capacity and energy by Kansas Municipal Energy Agency to WestPlains Energy-Colorado.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. UtiliCorp United Inc.

[Docket No. ER98–3187–000]

Take notice that on June 1, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with Kansas Municipal Energy Agency. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Kansas Municipal Energy Agency pursuant to the tariff, and for the sale of

capacity and energy by Kansas Municipal Energy Agency to Missouri Public Service.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Alliant Services Inc.

[Docket No. ER98–3188–000]

Take notice that on June 1, 1998, Alliant Services, Inc., on behalf of IES Utilities Inc. (IES), Interstate Power Company (IPC) and Wisconsin Power and Light Company (WPL), tendered for filing three executed Service Agreements for long-term firm point-to-point transmission service between Wisconsin Power and Light Company, an Alliant Utility, and Alliant Services, Inc.

Alliant Services, Inc., requests an effective date of May 1, 1998, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: June 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. MDU Resources Group, Inc.

[Docket No. ES98–33–000]

Take notice that on May 19, 1998, MDU Resources Group, Inc., filed an Application under Section 204 of the Federal Power Act, seeking authorization to issue additional shares of Common Stock, par value $3.33, in connection with a three-for-two Common Stock split to be effected in the form of a fifty percent (50%) stock dividend. It is proposed that the stock split will become effective July 13, 1998, and stock certificates for the additional shares resulting from the split would be mailed on or about July 13, 1998.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Big Rivers Electric Corporation

[Docket No. NJ98–5–000]

Take notice that on May 29, 1998, Big Rivers Electric Corporation (Big Rivers), submitted for filing an Open Access Transmission Services Tariff and a request for a declaratory order which would find that Big Rivers' Transmission Tariff meets the Federal Energy Regulatory Commission's comparability standards and is therefore an acceptable reciprocity tariff pursuant to the provisions of Order No. 888 and 888–A, B & C. Big Rivers is currently in bankruptcy, but has received bankruptcy court approval of a Plan of Reorganization. Elements of this Plan of Reorganization have been approved by the Kentucky Public Service Commission (KPSC), to enable Big Rivers emerge from bankruptcy. The Open Access Transmission Tariff for which approval is requested will not become effective until the closing date of the Bankruptcy Plan's contemplated two-phased lease agreement between Big Rivers, LG&E Energy Corp. (LEC), and certain subsidiaries of LEC, including Western Kentucky Energy Corp. (WKEC) and LG&E Energy Marketing, Inc. (LEM), (collectively the LG&E Parties). Due to a number of closing conditions therein, Big Rivers cannot predict with any certainty when this closing date will occur and when the requested Open Access Transmission Tariff will need to go into effect, although Big Rivers expects other conditions to closing to be satisfied by July 1, 1998. Thus, Big Rivers requests that it be allowed to file this tariff for expedited review with the effective date to be established as the closing date of the proposed transaction.

Comment date: June 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15565 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3267–010]

Bellows-Tower Hydro, Inc.; Notice of Availability of Environmental Assessment

June 5, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has prepared an environmental assessment (EA) for an application to amend the license to delete an old, unused powerhouse from the project. This is required by the Commission to reflect the as-built condition of the project. The license must be amended because the installed capacity and number of turbine generator units are less than authorized in the license. In the EA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment. The Ballard-Mill Project is located on the Salmon River in Franklin County, New York.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2–A, 888 First Street, NW., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15526 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–49–000 and CP98–49–001]

K N Wattenberg Transmission Limited Liability Company; Notice of Availability of the Environmental Assessment for the Proposed Front Runner Pipeline System

June 5, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by K N Wattenberg Transmission

Limited Liability Company (KNW) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of KNW's proposal to construct, acquire, and operate new and existing pipeline facilities along the Front Range of the Rocky Mountains in north central Colorado, including:

- About 44.9 miles of new 24-inch-diameter pipeline extending from near Rockport (in northern Weld County) south to northern Johnstown;
- About 10.6 miles of new 16-inch-diameter pipeline extending from the Pan Energy-Mark Mewbourne Gas Processing Plant westward towards an area northwest of Platteville;
- About 19.3 miles of new 6- and 12-inch-diameter pipeline extending eastward from the Erie area in southern Weld County;
- About 9.5 miles of 16-inch-diameter existing unprocessed gas pipeline extending from northern Johnstown to an area northwest of Platteville; and
- About 24 miles of existing 12-, 10-, and 8-inch-, diameter processed gas pipeline extending south from the Amoco gas processing plant near Platteville to an area southeast of Brighton in northern Adams County. (This segment is essentially 21 miles of 12-inch-diameter mainline with three short, small-diameter laterals extending to nearby customers.)

The purpose of the proposed facilities would be to establish new natural gas transportation system between the Colorado-Wyoming border and the northern suburbs of Denver. The new system would have the capacity to provide users at the southern end with 250 million cubic feet (MMcf) of natural gas per day, and gas producers at the southern end with the ability to transport 80 MMcf per day to new markets accessible via several existing interstate carriers whose facilities converge near Rockport.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room, 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1
- Reference Docket No. CP98–49–000; and
- Mail your comments so that they will be received in Washington, DC on or before July 6, 1998.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15513 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 9648–011, 9649–011 and 9650–020]

Westinghouse Electric Corporation, Lovejoy Tool Company and Factory Falls, Inc.; Notice of Availability of Final Multi-Project Environmental Assessment

June 5, 1998.

A final multi-project environmental assessment (FMEA) is available for public review. The FMEA examines downstream Atlantic salmon fish passage at the Fellows Dam Project (No. 9648), Lovejoy Dam Project (No. 9649), and Gilman Dam Project (No. 9650), all located on the Black River, Vermont. The FMEA finds that approval of the licensee's fish passage plans, with enhancements, and with monitoring conducted at the Gilman Project, would allow downstream passage of Atlantic salmon, and would not constitute a major federal action significantly affecting the quality of the human environment.

The FMEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FMEA can be viewed at the Commission's Reference and Information Center, 888 First Street, NE, Washington, DC 20426. Copies can also be obtained by calling the project manager, Pete Yarrington, at (202) 219–2939.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15528 Filed 6–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

June 5, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License (Tendering Notice).

b. *Project No.:* 2651–006.

c. *Date filed:* May 19, 1998.

d. *Applicant:* Indiana Michigan Power Company.

e. *Name of Project:* Elkhart Hydroelectric Project.

f. *Location:* In the City of Elkhart, Concord Township, Elkhart County, Indiana, on the St. Joseph River 77 miles upstream from confluence with Lake Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* J.R. Jones, Senior Vice President, Fossil & Hydro Production, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223–1801.

i. *FERC Contact:* Edward R. Meyer, (202) 208–7998.

j. *Brief Description of Project:* The proposed project would consist of: (1) a 300-foot-long by 14-foot-high concrete spillway, the crest of which bears 11, 25-foot-wide by 10.5-foot-high Tainter gates separated by 2.5-foot-wide piers;

(2) an approximately 100-foot-long by 80-foot-wide brick powerhouse attached to the spillway on the south bank of the St. Joseph River having 3 horizontal shaft 4-Francis turbines (2 camelback pairs\) with a 3.44 megawatts installed capacity; (3) 6, 9-foot six-inch diameter concrete draft tube tunnels transitioning to 10-foot-high 6-foot-wide openings; and (4) other appurtenances.

k. With this notice, we are initiating consultation with the Indiana State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. Under Section 4.32(b)(7) of the Commission's regulations (18 CFR 4.32(b)(7)), if any resource agency, SHPO, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15525 Filed 6–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of February 2 Through February 6, 1998

During the week of February 2 through February 6, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: June 2, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 71, Week of February 2 Through February 6, 1998

Appeals

Hanford Education Action League, 2/2/98, VFA–0217

Hanford Education Action League appealed a denial by the Richland Operations Office of a request for information that it filed under the Freedom of Information Act (FOIA). Because the withheld information was identified as classified under the Atomic Energy Act, the DOE withheld it under Exemption 3. The DOE determined on appeal that the information was no longer classified and released an unredacted version. Accordingly, the Appeal was granted.

The Oregonian, 2/3/98, VFA–0368

The Department of Energy granted a Freedom of Information Act (FOIA) Appeal filed by the Oregonian of a determination issued by the Bonneville Power Administration (BPA) that documents relating to litigation expenses were exempt from mandatory disclosure pursuant to the attorney work product and attorney-client privileges encompassed by Exemption 5. The DOE found that the documents contained some information that was properly withheld, but that information relating to travel, copying, courier and shipping expenses was improperly withheld. The DOE remanded this matter to the BPA for further review and for the segregation and release of non-exempt material.

Personnel Security Hearing

Personnel Security Hearing, 2/6/98, VSO–0181

A Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain access authorization. The Hearing Officer found that the individual had been appropriately diagnosed with a mental illness affecting his judgment and reliability and was habitually using alcohol to excess. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Refund Application

Primerica Corporation, 2/6/98, RR272–00300, RR272–00301, RF265–02888

The DOE denied reconsideration of *Primerica Corp.*, 26 DOE ¶ 85,050 (1997), which determined that Primerica was not entitled to a refund for the American Can Company business or for American Can's interest in Chemplex. In considering Primerica's request for reconsideration, the DOE determined that American Can (i) transferred the can business assets, including the right to the refund, to a third party, and (ii) did not retain the right to the refund for Chemplex when it sold to a third party the stock of the American Can subsidiary which owned Chemplex. Finally, the DOE determined a refund granted to Primerica in the Getty Oil Company refund proceeding should be rescinded.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

ALABAMA HIDE TALLOW CO. ET AL	RF272–94128	2/6/98
ATLANTIC RICHFIELD CO./JOPPA FOOD STORE ET AL	RF304–14124	2/6/98
CRUDE OIL SUPPLE REF DIST	RB272–00132	2/2/98
GULF OIL CORPORATION/G.J. FOOD CENTER INC	RF300–13634	2/3/98
JOHN DEHNER, INC ET AL	RK272–03539	2/6/98
WARREN LYONS ET AL	RK272–1980	2/6/98

Dismissals

The following submissions were dismissed.

Name	Case No.
BUCKNELL UNIVERSITY	RF272–95320
HOWARD TRUCKING CO., INC	RF272–95284

Name	Case No.
LINDEMANN PRODUCE, INC	RK272–04643

[FR Doc. 98–15568 Filed 6–10–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of February 9 Through February 13, 1998

During the week of February 9 through February 13, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

. Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: June 2, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 72 Week of February 9 Through February 13, 1998

Appeal

Marjorie A. Jillson, 2/11/98, VFA–0366

Marjorie A. Jillson appealed a determination issued to her by the Freedom of Information and Privacy Act Division (FOIA Division) of the Department of Energy concerning a request for information she filed pursuant to the Privacy Act. The FOIA Division found no records responsive to Ms. Jillson's request. In considering her Appeal, the DOE found that the FOIA Division had adequately searched all the systems of records under its control that might reasonably be expected to contain the material sought by Ms. Jillson. Accordingly, the Appeal was denied.

Personnel Security Hearing

Personnel Security Hearing, 2/9/98, VSO–0178

A Hearing Officer found that the individual (1) had made false statements to the DOE and the OPM, (2) had been appropriately diagnosed as alcohol dependent, and (3) suffered from alcohol dependence which affected his judgment and reliability. The individual failed to prove rehabilitation. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

BREWER PRODUCTS, INC.	RF272–93953	2/11/98
DONALD R. CLAUNCH	RG272–00766	2/11/98
DONALD R. CLAUNCH	RG272–00767	
DR. PEPPER, 7-UP, ROYAL CROWN BOTT. CO	RK272–04734	2/11/98
JOANNE MCCARTY ET AL	RK272–04698	2/11/98

Dismissals

The following submissions were dismissed.

Name	Case No.
WAVECREST MANAGEMENT	RF272–97795

[FR Doc. 98–15569 Filed 6–10–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of May 4 Through May 8, 1998

During the week of May 4 through May 8, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: June 2, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 84 Week of May 4 Through May 8, 1998

Appeals

Air-Con, Inc., 5/4/98, VFA–0403

Air-Con, Inc. appealed a determination issued to it by the Idaho Operations Office (Idaho) of the Department of Energy in which it asserted that Idaho failed to conduct an adequate search for various contract settlement documents requested pursuant to the FOIA. The DOE

determined that Idaho had performed an adequate search and that documents possessed by a subcontractor would not be subject to the FOIA. Consequently, the Appeal was denied.

Francis M. Kovac, 5/8/98, VFA–0404

Francis M. Kovac appealed a determination issued to him by the Oak Ridge Operations Office of the Department of Energy in response to a Request for Information submitted under the Freedom of Information Act (FOIA). Mr. Kovac sought records of reimbursements to seven specified persons, and the Oak Ridge Operations Office's search of its computerized database of disbursements found no payments to the listed persons. In considering the Appeal, the DOE determined that the search performed was adequate. Accordingly, the Appeal was denied.

Personnel Security Hearings

Personnel Security Hearing, 5/6/98, VSO–0185

A Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain an access authorization. The Hearing Officer agreed with the allegations by the DOE Personnel Security Division that the individual (1) deliberately falsified information during two personnel security interviews and in written and oral statements made during an official investigation, and (2) engaged in unusual conduct that showed the individual is not honest, reliable, or trustworthy. Accordingly, the Hearing Officer recommended that DOE not restore the individual's access authorization.

Personnel Security Hearing, 5/7/98, VSO–0189

A Hearing Officer recommended that access authorization not be restored to an individual who had tested positive for marijuana. The individual attempted to respond to security concerns raised by his use of marijuana by showing that his use was a one-time occurrence, and that he had received adequate rehabilitation. The individual's drug counselor testified that he had told her of an earlier use of marijuana, and that he would require at least an additional year and a half of treatment before he could be considered reformed from patterns of behavior that led to his use of marijuana. Accordingly, the Hearing Officer came to the opinion that the individual's access authorization should not be restored.

Personnel Security Hearing, 5/7/98, VSO–0192

A Hearing Officer issued an opinion concerning an individual whose access authorization was suspended because she used marijuana in spite of her awareness of the DOE's drug policy prohibiting such use. The individual maintained that there are mitigating factors that alleviate the agency's security concerns and justify the restoration of her security clearance. The individual testified that her use of marijuana was an isolated occurrence. She offered her assurance that she will never again be involved with drugs. In addition, her Employee Assistance Program counselor, as well as family and friends supported her assurance of reformation. The Hearing Officer found that the individual presented sufficient mitigating circumstances to overcome DOE's legitimate security concerns. Accordingly, the Hearing Officer recommended that the individual's access authorization be restored.

Refund Application

Getty Oil Company/S.O.S. Oil Corporation, 5/4/98, RR265–4

S.O.S. Oil Corporation sought an above volumetric refund in the Getty refund proceeding based upon a claim of disproportionate overcharge that it alleged resulted from Getty placing its retail outlets in an incorrect class of purchaser. After the DOE denied the disproportionate overcharge claim, the firm appealed to the U.S. District Court, which remanded the matter to the DOE for consideration of Ruling 1975–2 to the class of purchaser allegation. Upon remand, the DOE found that S.O.S. had not sustained its burden of demonstrating that Getty had placed its retail outlets in an incorrect class of purchaser. In addition, the DOE noted that S.O.S. had previously raised these same issues in a private action and was fully compensated for the alleged violations in the settlement of that action. Accordingly, the DOE affirmed its prior determination.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

ATLANTIC RICHFIELD CO./SOUTHERN RAILWAY CO	RF304–4106	5/8/98
BASS ENTERPRISES PROD. CO. ET AL	RF272–95301	5/7/98
COCA-COLA BOTTLING CO. OF N.Y	RF272–98935	5/6/98
DENTON DEVELOPMENT CO., INC. ET AL	RK272–04708	5/8/98

Dismissals

The following submissions were dismissed.

Name	Case No.
CRESENT COOPERATIVE ASSN	RF272–98916
FAST FREIGHT, INC	RF272–95264
JOHNSTON PUBLIC SCHOOLS	RF272–98992
LISBON CONTRACTORS, INC	RF272–98903
ROBERT JORDAN & ASSOCIATES	VFA–0407

[FR Doc. 98–15570 Filed 6–10–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of March 16 Through March 20, 1998

During the week of March 16 through March 20, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: June 2, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 77 Week of March 16 Through March 20, 1998

Refund Applications

Gulf Oil Corp./F.O. Fletcher, Inc., 3/20/98, RF300–6619

F.O. Fletcher, Inc., sought an above volumetric refund in the Gulf Oil Corporation Refund proceeding. The DOE found that as an indirect purchaser of Gulf motor gasoline through Tesoro Oil Company, Fletcher was overcharged by greater than the volumetric level. However, the DOE also concluded that the firm had not shown injury at that level. Accordingly, the firm's refund was limited to the maximum mid-range presumption of $50,000, plus interest.

Merichem Company, 3/20/98, RG272–00529

DOE denied an application filed by Merichem Company for a crude oil refund based on purchases of sodium cresylate and sodium sulfide. DOE found that neither product was eligible for a refund because they were not produced by a refinery.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

GULF OIL CORPORATION/AMERIGAS PROPANE, INC	RF300–18151	3/20/98
UTILITY PROPANE CO	RF300–18293	
UNIROYAL CHEMICAL CO., INC	RF272–18699	3/20/98
UNIROYAL CHEMICAL CO., INC	RD272–18699	

Dismissals

The following submissions were dismissed.

Name	Case No.
PERSONNEL SECURITY HEARING	VSO–0190
PERSONNEL SECURITY HEARING	VSO–0193

[FR Doc. 98–15571 Filed 6–10–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6110–4]

Ambient Air Monitoring Reference and Equivalent Methods; Designation of Two Reference Methods and Two Equivalent Methods

AGENCY: Environmental Protection Agency.

ACTION: Notice of designation.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, two new reference methods for the measurement of $PM_{2.5}$ concentrations in the ambient air and two new equivalent methods for the measurement of sulfur dioxide and ozone (respectively) in the ambient air.

FOR FURTHER INFORMATION CONTACT: Frank F. McElroy, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–2622, email: mcelroy.frank@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA announces the designation of two new reference methods for measuring mass concentrations of particulate matter as $PM_{2.5}$ in the ambient air and two new equivalent methods, for monitoring concentrations of sulfur dioxide (SO_2) and ozone (O_3), respectively, in the ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

Each of the new reference methods is a manual monitoring method based on a particular $PM_{2.5}$ sampler, one being a single-filter sampler and the other capable of automatically collecting multiple (sequential) samples. The first equivalent method is an automated method (analyzer) for SO_2 that utilizes a measurement principle based on ultraviolet fluorescence. The other equivalent method is an automated method (analyzer) for O_3 that utilizes a measurement principle based on absorption of ultraviolet radiation at a wavelength of 254 nm. The new methods are identified as follows:

RFPS–0598–119, "Graseby Andersen Model RAAS2.5–100 $PM_{2.5}$ Ambient Air Sampler," operated with software version 4B configured for "Single 2.5" operation, for 24-hour continuous sample periods at a flow rate of 16.67 liters/minute, and in accordance with the Model RAAS2.5–100 Operator's Manual and with the requirements and sample collection filters specified in 40 CFR Part 50, Appendix L.

RFPS–0598–120, "Graseby Andersen Model RAAS2.5–300 $PM_{2.5}$ Sequential Ambient Air Sampler," operated with software version 4B configured for "Multi 2.5" operation, for 24-hour continuous sample periods at a flow rate of 16.67 liters/minute, and in accordance with the Model RAAS2.5–300 Operator's Manual and with the requirements and sample collection filters specified in 40 CFR Part 50, Appendix L.

EQSA–0197–114, "Horiba Instruments Model APSA–360 or APSA–360ACE Ambient Sulfur Dioxide Monitor," operated at any temperature in the range of 5 °C to 40 °C; Model APSA–360: operated with a full scale range of 0–0.5 ppm, with a Line Setting of "MEASURE", and an Analog Output of "MOMENTARY VALUE", and with or without either of the following options: 1) Rack Mounting Plate and Side Rails; 2) RS–232 Communications Port; Model APSA–360ACE: operated on any of the following ranges: 0–0.05 ppm or 0–0.1 ppm or 0–0.2 ppm or 0–0.5 ppm or 0–1.0 ppm, with any selectable time constant from 10 to 300 seconds.

EQOA–0992–087, "Advanced Pollution Instrumentation, Inc. Model 400 or 400A Ozone Analyzer," operated on any full scale range between 0–100 ppb and 0–1000 ppb, with any range mode (Single, Dual, or AutoRange), at any ambient temperature in the range of 5 °C to 40 °C, with the dynamic zero and span adjustment feature (some Model 400 units only) set to OFF, with a 5-micron TFE filter element installed in the rear-panel filter assembly, and with or without any of the following options: Zero/Span Valve option, Internal Zero/Span (IZS) option, IZS ozone generator reference feedback option, standard serial port or Multi-drop RS–232, digital status outputs, analog outputs: 100 mV, 1 V, 5 V, 10 V, 4–20 mA current loop, optional metal wool ozone scrubber, optional external sample pump, optional 47 mm diameter filter, optical bench heater, rack mount with slides.

An application for reference method determinations for the Graseby Andersen $PM_{2.5}$ methods was received by the EPA on January 8, 1998, and a notice of the receipt of this application was published in the **Federal Register** on February 10, 1998. The methods are available commercially from the applicant, Graseby Andersen, 500 Technology Court, Smyrna, GA 30082.

An application for an equivalent method determination for the Horiba Model APSA–360ACE SO_2 method was received by EPA on March 26, 1998 (publication of notice of receipt in the **Federal Register** is currently pending). The Horiba Model APSA–360 was previously designated as an equivalent method (62 FR 6968) and continues to be designated, although it will be commercially superseded by the Model APSA–360ACE. These analyzers are available from the applicant, Horiba Instruments, Incorporated, 17671 Armstrong Avenue, Irvine, CA 92714.

An application for an equivalent method determination for the Advanced Pollution Instrumentation, Inc. (API) Model 400A O_3 method was received by EPA on February 24, 1998 (publication of notice of receipt in the **Federal Register** is currently pending). The API Model 400 was previously designated as an equivalent method (57 FR 44565) and continues to be designated, although it will be commercially superseded by the Model 400A. These analyzers are available from the applicant, Advanced Pollution Instrumentation, Incorporated, 6565 Nancy Ridge Drive, San Diego, CA 92121.

Test samplers or analyzers representative of each of these methods have been tested by the respective applicants in accordance with the test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicants, EPA has determined, in accordance with part 53, that these methods should be designated as reference or equivalent methods, as appropriate. The information submitted by the applicants will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, each of these methods is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method, the specifications and limitations (e.g., sample period or operating temperature range) specified in the applicable designation method description (see identification of the methods above), and (for $PM_{2.5}$ reference methods) the specifications and requirements set forth in Appendix L to 40 CFR part 50. Use of the method should also be in general accordance with the guidance and recommendations of Quality Assurance Guidance Document 2.12 (for $PM_{2.5}$ reference methods) or other applicable section of the Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II (EPA/600/R–94/038b). Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 of Appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the designation application. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and show its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR part 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as

modified) as part of a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the sampler or analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR part 53.14(c) that the original designation or a new designation applies to the method as modified, or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

(h) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to maintain the manufacturing facility in which the sampler is manufactured as an ISO 9001-registered facility.

(i) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to submit annually a properly completed Product Manufacturing Checklist, as specified in part 53.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, National Exposure Research Laboratory, Human Exposure and Atmospheric Sciences Division (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under part 58. Questions concerning the commercial availability or technical aspects of any of these methods should be directed to the appropriate applicant.

In a notice in the April 16, 1998 issue of the **Federal Register** (63 FR 18911), the EPA announced that a method for monitoring $PM_{2.5}$ in the ambient air identified as "RFPS–0498–116, BGI Incorporated Model PQ200 $PM_{2.5}$ Ambient Find Particle Sampler" was "conditionally" designated as a reference method under § 53.51(b)(2) pending ISO 9001 certification of the BGI manufacturing facility. That certification is now complete, and the designation of the $PM_{2.5}$ reference method based on the BGI Model PQ200 sampler (BGI, Incorporated, 58 Guinan Street, Waltham, MA 02154) is no longer conditional.

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 98–15587 Filed 6–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6110–1]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed de minimis administrative settlement and opportunity for public comment—Woodward Metal Processing site.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into a de minimis 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 48 de minimis 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 by July 13, 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 De Minimis Settlement, U.S. EPA Index No. II–CERCLA–98–0101.

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) 637–3139, 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 de minimis settlement concerning the Woodward Metal Processing Superfund Site located in Jersey City, New Jersey. Section 122(g) of CERCLA provides EPA with authority to settle certain claims for costs incurred by the United States when, as in this case, the settlement involves only a minor portion of the response costs at the Site, the amount of hazardous substances contributed by each settling party is minimal compared with the other hazardous substances at the Site and the contributed hazardous substances are not more toxic than the other substances at the site.

De minimis parties will pay a total of $167,345.28 under the terms of the settlement to reimburse EPA for response costs incurred at the Woodward Metal Processing Superfund site.

Dated: March 20, 1998.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 98–15586 Filed 6–10–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, June 16, 1998 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, June 18, 1998 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Audit: 1996 Democratic National Convention Committee, Inc.

Audit: Chicago's Committee for '96.

Soft Money: Revised Draft Notice of Proposed Rulemaking.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Signed:

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–15702 Filed 6–9–98; 11:36 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Advisory Committee for the National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463,5 U.S.C. App.), announcement is made of the following committee meeting:

Name: Advisory Committee for the National Urban Search and Rescue Response System.

Date of Meeting: June 12–13, 1998.

Place: Orleans Hotel, 4500 West Tropicana, Las Vegas, NV 89103.

Time: June 12, 1998: 9:00 a.m.–5:00 p.m.; June 13, 1998: 9:00 a.m.–5:00 p.m.

Proposed Agenda: The committee will be provided with a program update that will address the status of program reviews and ongoing projects, functional training and program support efforts, and budgets for the Urban Search and Rescue Program. The committee will review and discuss Working Group functions. Other items for discussion may include documentation, Task Force spending, functional training methodologies, and program strategic planning and budgeting.

The meeting will be open to the public, with approximately 20 seats available on a first-come, first-served basis. All members of the public interested in attending should contact Mark R. Russo, at 202–646–2701.

Minutes of the meeting will be prepared and will be available for public viewing at the Federal Emergency Management Agency, Operations and Planning Division, Response and Recovery Directorate, 500 C Street, SW, Washington DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Lacy E. Suiter,

Executive Associate Director, Response & Recovery Directorate.

[FR Doc. 98–15574 Filed 6–10–98; 8:45 am]

BILLING CODE 6718–02–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 June 25, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Frank P. Giltner III, Phoenix, Arizona; to acquire voting shares of The Avoca Company, Avoca, Nebraska, and thereby indirectly acquire voting shares of Farmers State Bank of Nebraska, Bennet, Nebraska.

Board of Governors of the Federal Reserve System, June 5, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–15501 Filed 6–10–98; 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 July 6, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Service Bancorp, Medway, Massachusetts; to acquire more than 51 percent of the voting shares of Summit Bancorp, Inc., Medway, Massachusetts. Summit Bancorp, Inc., has applied to become a bank holding company by acquiring Summit Bank, Medway, Massachusetts, which currently is a subsidiary of Service Bancorp.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. The Banc Corporation (formerly known as Emerald Coast Bancorp), Panama City Beach, Florida; to merge with City National Corporation, Sylacauga, Alabama, and thereby indirectly acquire City National Bank of Sylacauga, Sylacauga, Alabama.

2. The Banc Corporation (formerly known as Emerald Coast Bancorp), Panama City Beach, Florida; to merge with First Citizens Bancorp, Inc., Monroeville, Alabama, and thereby indirectly acquire First Citizens Bank of Monroe County, Monroeville, Alabama.

3. The Banc Corporation (formerly known as Emerald Coast Bancorp), Panama City Beach, Florida; to merge with Commercial Bancshares of Roanoke, Inc., Roanoke, Alabama, and thereby indirectly acquire Commerical Bank of Roanoke, Roanoke, Alabama.

4. The Banc Corporation (formerly known as Emerald Coast Bancorp), Panama City Beach, Florida; to merge with Warrior Capital Corporation, Birmingham, Alabama, and thereby indirectly acquire The Bank, Birmingham, Alabama (formley known as Warrior Savings Bank, Warrior, Alabama.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. CGB&L Financial Group, Inc., Cerro Gordo, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Cerro Gordo Building and Loan, s.b., Cerro Gordo, Illinois.

In connection with this application, Applicant also has applied to engage *de novo* in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, June 5, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–15502 Filed 6–10–98; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

System Requirements Checklists

AGENCY: General Accounting Office.

ACTION: Notice of document availability.

SUMMARY: The General Accounting Office (GAO) is concurrently issuing three checklists to be used as tools to help agencies review their financial management systems and assist auditors with their responsibilities under the Federal Financial Management Improvement Act (FFMIA) of 1996. The first checklist, the *Framework For Federal Financial Management System Checklist* (GAO/AIMD–98–21.2.1), is based on the Joint Financial Management Improvement Program (JFMIP) framework document and is primarily a reference source rather than a standard-setting document. The other two documents reflect the system requirements defined by JFMIP and are the: *Core Financial System Checklist* (GAO/AIMD–98–21.2.2), and *Inventory System Checklist* (GAO/AIMD–98–21.2.4). Although these checklists are not required to be used by agencies, this notice indicates that the checklists are available from GAO for immediate use.

DATES: June 5, 1998.

ADDRESSES: Copies of the system requirement checklists are available by (1) pick-up at Document Distribution, U.S. General Accounting Office, Room 1100, 700 4th Street, NW. (corner of 4th and G Streets, NW.), Washington, DC; (2) mail from U.S. General Accounting Office, P.O. Box 37050, Washington, DC 20013; (3) phone at 202–512–6000 or FAX 202–512–6061 or TDD 202–512–2537; or (4) on GAO's home page (http://www.gao.gov) on the Internet.

FOR FURTHER INFORMATION CONTACT: Robert W. Gramling, 202–512–9406.

SUPPLEMENTARY INFORMATION: The FFMIA requires, among other things, that agencies implement and maintain financial management systems that substantially comply with federal financial management systems requirements. These system requirements are detailed in the Financial Management Systems Requirements series issued by JFMIP and Office of Management and Budget (OMB) Circular A–127, *Financial Management Systems.*

The JFMIP requirements documents identify: (1) a framework for financial management systems, (2) core financial systems requirements, and (3) 16 other systems that support agency operations. To date, JFMIP has issued the framework and core documents, and 7 of the 16 systems (inventory, seized/forfeited asset, direct loan, guaranteed loan, travel, personnel-payroll, and managerial cost accounting). GAO plans to issue a checklist for each of the JFMIP systems requirements documents. The three checklists being issued in final were initially issued as exposure drafts. Comments received were analyzed and considered.

OMB Circular A–127 and OMB's *Implementation Guidance for the Federal Financial Management Improvement Act (FFMIA) of 1996,* issued September 9, 1997, provide the basis for assessing compliance with the FFMIA requirement of agencies to implement and maintain financial management systems that comply substantially with federal requirements. OMB's guidance provides indicators for chief financial officers and inspectors general to assist them in determining whether the agency's financial management systems substantially comply with federal financial management systems requirements. The annual assurance statement required pursuant to section 4 of the Federal Managers' Financial Integrity Act is one of those indicators. Agencies can use GAO's checklists to help determine annual compliance with section 4 of the Integrity Act.

Jeffrey C. Steinhoff,

Director of Planning and Reporting, Accounting and Information Management Division.

[FR Doc. 98–15557 Filed 6–10–98; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 98051]

Cooperative Agreements for Enhanced State-Based Birth Defect Surveillance and Use of Surveillance Data To Guide Prevention and Intervention Programs

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement program for developing and improving birth defect surveillance; and using surveillance data to develop birth defect prevention programs and activities to improve the access of children born with birth defects to health services and early intervention programs. This program addresses the "Healthy People 2000" priority areas of Substance Abuse, Alcohol and Other Drugs, Environmental Health, Maternal and Infant Health, and Surveillance and Data Systems.

The purpose of the program is to support the development, implementation, expansion, and evaluation of State-based birth defect surveillance systems; the development and implementation of State-based programs to prevent birth defects; and the development and implementation of activities to improve the access of children with birth defects to health services and early intervention programs. More specifically, the purpose of this program is to assist States:

a. To improve the timeliness of neural tube defect (NTD) surveillance in order to prevent the recurrence of NTD-affected pregnancies among women who have had NTD-affected pregnancies, and to improve the completeness of NTD surveillance in selected areas in order to evaluate progress made in the prevention of occurrent NTDs in the population;

b. To develop and implement methodologies and approaches which will improve or expand the State's capacity to ascertain cases and generate timely population-based data of major birth defects; and

c. To use surveillance data to design, implement and evaluate programs to prevent birth defects and improve the access of children with birth defects to comprehensive, community-based, family-centered care.

B. Eligible Applicants

Assistance will be provided only to State and local public health agencies that are officially recognized as such, including State, local, county, city-county, district, and territorial health departments. Also, universities with formal agreements for working with State or local health departments for carrying out the State's surveillance and surveillance-based research are eligible to apply.

C. Availability of Funds

Approximately $1,500,000 is available in FY 1998 to fund approximately 10 to 16 awards. It is expected that awards will be made to 3 to 5 States with no birth defect surveillance systems; 3 to 5 States with newly implemented surveillance systems or systems which are only partially operational; and 3 to 5 States with ongoing, operational birth defect surveillance systems. It is expected that awards will range from $50,000 to $150,000. It is expected that the awards will begin on or about September 30, 1998, and will be made for a 12-month budget period within a

project period of up to 3 years. Funding estimates may vary and are subject to change.

These awards may be used for personnel services, equipment, travel, and other costs related to project activities. Project funds may not be used to supplant State funds available for birth defect surveillance, prevention, or health care services.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and other communication with CDC staff, and the availability of funds.

D. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. Recipient activities for States with no birth defect surveillance systems; B. Recipient activities for States with newly implemented surveillance systems or systems which are only partially operational; or C. Recipient activities for States with ongoing, operational birth defect surveillance systems; and CDC will be responsible for the activities listed under D. CDC Activities. A list of States and their designated category (A, B or C) has been prepared based on information CDC currently has on each State program. This list is available with the application materials. If States disagree with their designated category, they may provide written justification along with the application as to which category of recipient activities (A, B, or C) the State should be placed in.

A. Recipient activities for States with no birth defect surveillance systems:

1. Develop and implement an approach to prevent the recurrence of NTDs in the State including: (1) timely ascertainment of new NTD cases in the population (prenatally diagnosed cases may be ascertained but are not required to be ascertained); and (2) referral of affected families for sensitive and appropriate education/counseling interventions to prevent the recurrence of NTDs;

2. With the goal of generating data to guide prevention and intervention programs, develop and begin implementation of a State-based surveillance system to ascertain cases and generate timely population-based data of major birth defects occurring in the State. Analyze the surveillance data generated by the system in a timely fashion (including rates and trends of major birth defects) and share that data with appropriate organizations within the State and with other States;

3. Working with the appropriate partners in the State, (1) develop a plan for a birth defect prevention program (e.g., NTD occurrence prevention) and/or, (2) develop a plan for activities to improve the access of children with birth defects to comprehensive, community-based, family-centered care.

B. Recipient activities for States with newly implemented surveillance systems or systems which are only partially operational:

1. Develop and implement an approach to prevent the recurrence of NTDs in the State including: (1) timely ascertainment of new NTD cases in the population (prenatally diagnosed cases may be ascertained but are not required to be ascertained); and (2) referral of affected families for sensitive and appropriate education/counseling interventions to prevent the recurrence of NTDs;

2. With the goal of generating data to guide prevention and intervention programs, develop and implement methodologies and approaches which will improve, sustain, and expand the capacity of the existing State-based surveillance system to ascertain cases and generate timely population-based data of major birth defects occurring in the State. Analyze the data generated by the surveillance system in a timely fashion (including rates and trends of major birth defects) and share that data with appropriate organizations within the State and with other States; and

3. Working with the appropriate partners in the State, (1) develop and begin implementation of a birth defects prevention program (e.g., NTD occurrence prevention) AND/OR, (2) develop and begin implementation of activities to improve the access of children with birth defects to comprehensive, community-based, family-centered care.

C. Recipient activities for States with ongoing, operational birth defect surveillance systems:

1. Develop, implement, and evaluate surveillance methodologies and approaches to ascertain new cases of NTDs (including those prenatally diagnosed, if possible) in a more timely manner, and use the data to: (1) develop and implement an approach to prevent the recurrence of NTDs in the State including the referral of affected families for sensitive and appropriate education/counseling interventions to prevent the recurrence of NTDs, and (2) evaluate progress made in the prevention of occurrent NTDs in the population;

2. Evaluate current methodologies used to ascertain cases and generate timely population-based data of major birth defects occurring in the State, and develop and implement methodologies and approaches which will improve or expand the capacity of the existing State-based surveillance system. Analyze the data generated by the surveillance system in a timely fashion (including rates and trends of major birth defects) and share that data with appropriate organizations within the State and with other States;

3. Working with the appropriate partners in the State, (1) develop and implement a birth defect prevention program (e.g., NTD occurrence prevention) and monitor changes in the prevalence of the birth defects being targeted AND/OR, (2) develop and implement activities to improve the access of children with birth defects to comprehensive, community-based, family-centered care; and

4. Prepare a document describing the surveillance methodologies used to generate timely NTD data and how the data was used to monitor progress made in the prevention of NTDs; and describe the use of your surveillance data for developing and implementing programs to prevent birth defects or activities to improve access to health services and early intervention programs. This document will be a resource to be shared with other States.

D. CDC activities:

1. Provide technical assistance.

2. Assist recipients in designing, developing, and evaluating methodologies and approaches used for State-based birth defect surveillance.

3. Assist recipients in analyzing surveillance data related to birth defects.

4. Assist recipients in designing plans for prevention programs and plans to improve the access of children with birth defects to health services and intervention programs.

5. Assist recipients in developing methods to: ascertain NTDs in a timely manner, prevent recurrence of NTDs in families, and evaluate progress made in the prevention of occurrent NTDs.

6. Provide a reference point for sharing regional and national data and information pertinent to the surveillance and prevention of birth defects.

E. Application Content

Use the information in the COOPERATIVE ACTIVITIES, OTHER REQUIREMENTS, and EVALUATION CRITERIA sections to develop the application content. Applications will be evaluated on the criteria listed, so it is important to follow them in describing the program plan.

Applications must be developed in accordance with PHS Form 5161–1 (Revised 7/92, OMB Control number 0937–0189), information contained in the program announcement and the instructions and format provided below:

1. Abstract

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director and telephone number. The abstract should briefly summarize the program for which funds are requested, the activities to be undertaken, and the applicant's organization and composition. The abstract should follow "the printed forms" and precede the Program Narrative.

2. Program Narrative

The Program Narrative should specifically address item A, B, or C in the "COOPERATIVE ACTIVITIES." All items of the Program Narrative (i.e., Project Description, Results or Benefits Expected, Approach, Evaluation, Geographic Location, Additional Information) should begin on a new page. If the proposed program is a multiple-year project, the applicant should provide detailed description of first year activities, and briefly describe future year objectives and activities. The "EVALUATION CRITERIA" will serve as the basis for evaluating the application, therefore, the narrative of the application should address:

1. Applicant's understanding of the problem;
2. Impact on timely ascertainment of new NTD cases and use of the data for NTD recurrence prevention;
3. Impact on State-based birth defects surveillance;
4. Use of the surveillance data for prevention and intervention;
5. Organizational and program personnel capability;
6. Matching funds;
7. Budget justification and adequacy of facilities; and
8. Human subjects review.

The Program Narrative section should not exceed 40 pages, excluding attachments (e.g., resumes, appendices, etc.). Do not include a detailed budget nor detailed budget justification as part of the Program Narrative.

If the applicant is a university, evidence of an existing formal agreement with the State or local health departments for carrying out the State's surveillance activities must be included.

Applicant's are required to submit an original application and 2 copies. The original and each copy of the application must be submitted unstapled and unbound. All material must be typewritten, double-spaced, with un-reduced type on 8½" by 11" paper, with at least 1" margins, headers and footers, and printed on one side only.

All graphics, maps, overlays, etc., should be in black and white and meet the above criteria.

F. Application Submission and Deadline

Application

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control number 0937–0189) must be submitted on or before July 27, 1998 to: David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305–2209.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date; or

B. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.A. or 1.B., above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC as they relate to the applicant's response to either A, B, or C in the "COOPERATIVE ACTIVITIES."

1. Applicant's understanding of the problem (10 percent). The extent to which the applicant has a clear, concise understanding of the requirements, objectives, and purpose of the cooperative agreement. The extent to which the application reflects an understanding of the complexities of birth defects surveillance.

2. Impact on timely ascertainment of new NTD cases and use of the data for NTD recurrence prevention (20 percent).

The extent to which the applicant describes the proposed methods for the timely ascertainment of new NTD cases occurring in the population, and plans for referral of women who have had an NTD-affected pregnancy for education/counseling about the importance of folic acid. Specific criteria include:

a. Plan for ascertainment of NTD cases;

b. Timeliness of NTD case ascertainment; and

c. Plan for referral of families for education/counseling.

3. Impact on State-based birth defects surveillance (30 percent).

The extent to which the applicant describes the anticipated level of impact this cooperative agreement will have on birth defect surveillance activities in the State. The current and proposed activities evaluated in this criteria are specific for the three different recipient categories (A, B, or C) as outlined in the COOPERATIVE ACTIVITIES:

A. Evaluation criteria for category A (States with no birth defect surveillance systems):

a. Plans for developing State-based birth defects surveillance;

b. Methods of case ascertainment;

c. Timeliness of case ascertainment;

d. Level of coverage of the population;

e. Specific birth defects ascertained; and

f. Plans for analyzing and reporting surveillance data.

B. Evaluation criteria for category B (States with newly implemented birth defect surveillance systems or systems which are only partially operational):

a. Plans for improving/expanding State-based birth defects surveillance;

b. Methods of case ascertainment;

c. Timeliness of case ascertainment;

d. Level of coverage of the population;

e. Specific birth defects ascertained; and

f. Plans for analyzing and reporting surveillance data.

C. Evaluation criteria for category C (States with ongoing, operational birth defect surveillance systems):

a. Methods for evaluating current State birth defect surveillance system;

b. Plans for improving/expanding State-based birth defects surveillance;

c. Methods of case ascertainment;

d. Timeliness of case ascertainment;

e. Level of coverage of the population;

f. Specific birth defects ascertained;

g. Plans for analyzing and reporting surveillance data; and

h. Plan to evaluate progress made in the prevention of occurrent NTDs in the population (including ascertainment of prenatally diagnosed NTDs, if possible).

4. Use of the surveillance data for prevention and intervention (20 percent)

The extent to which the applicant describes the plans for using surveillance data to develop and implement programs to prevent birth defects and/or activities to improve the access of children with birth defects to health services and early interventions. Specific criteria include:

a. Plan for working with appropriate partners in the State; and

b. Plan for using the surveillance data to develop prevention or intervention programs.

5. Organizational and program personnel capability (15 percent)

The extent to which the applicant has the experience, skills, and ability to develop and improve birth defects surveillance and use surveillance data to develop prevention or intervention programs. The adequacy of the present staff and capability to assemble competent staff to implement a birth defects surveillance system and develop programs for prevention or intervention. The applicant shall identify, to the extent possible, all current and potential personnel who will work on this cooperative agreement, including qualifications and specific experience as it relates to the requirements set forth in this request.

6. Matching funds (5 percent)

The extent to which the applicant proposes matching funds. Matching funds may be contributions by the recipient of at least five percent of Federal funds awarded under this program. The applicant should identify and describe:

a. The amount expended during the preceding year for birth defects surveillance activities and birth defects prevention and intervention activities. These amounts will be used to establish a baseline for current and future match amounts; and

b. Sources of matching funds for the project and the estimated amounts from each.

7. Budget justification and adequacy of facilities (not scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds. The applicant shall describe and indicate the availability of facilities and equipment necessary to carry out this project. Proposed matching funds must be detailed in the budget.

8. Human subject review (not scored)

The applicant must clearly state whether or not human subjects will be used in research and ensure that adequate human subjects protections will be implemented.

H. Other Requirements

An original and two copies of semi-annual progress reports are required of all grantees. Due dates for the semi-annual reports will be established at the time of award. Final financial status and performance reports are required no later than 90 days after the end of the project period.

Send all reports to: David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305–2209.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of the application kit.

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–7 Executive Order 12372 Review
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 311 and 317C of the Public Health Service Act [42 U.S.C. 241(a), 243, and 247b–4], as amended. The Catalog of Federal Domestic Assistance number is 93.238.

J. Where to Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from David C. Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6630.

Programmatic technical assistance may be obtained from Larry D. Edmonds or Paula W. Yoon, State Services, Birth Defects and Genetic Diseases Branch, Division of Birth Defects and Developmental Disabilities, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Mailstop F–45, Atlanta, Georgia 30341–3724, telephone (404) 488–7170.

Please refer to Announcement Number 98051 when requesting information and submitting an application.

Dated: June 5, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–15543 Filed 6–10–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 98065]

Grant to Study a Healthy Home/Healthy Community Intervention Notice of Availability of Funds for Fiscal Year 1998

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for a grant to evaluate the effectiveness of a Healthy Homes/Healthy Community intervention to improve children's health by addressing environmental hazards in deteriorating communities and inadequate housing. This program addresses the Healthy People 2000 priority areas of Environmental Health, Educational and Community-Based Programs, and Maternal and Infant Health.

The purpose of this program is the implementation and evaluation of an intervention strategy in a target neighborhood to prevent childhood disease caused by health hazards in the residential environment. This intervention will be to bring to bear private- and public-sector financing to reduce multiple environmental hazards and associated childhood morbidities at the level of both individual home and surrounding neighborhood.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agent.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that

engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $100,000 is available in FY 1998 to fund 1 award. It is expected that the award will begin on or about September 30, 1998, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Use of Funds

- Applicants may enter into contracts and consortia agreements and understandings as necessary to meet the requirements of the program and strengthen the overall application.
- Grants funds may not be expended for medical care and treatment or for environmental remediation.

D. Cooperative Activities

The following are applicant requirements:

1. A director with specific authority and responsibility to carry out the requirements of the project and has demonstrated experience in conducting relevant epidemiologic studies, including publication of original research in peer-reviewed journals.
2. Design, implement and evaluate a single strategy intervention which may be based on the Community Reinvestment Act (CRA), a Federal law requiring federally insured deposit facilities (e.g. banks and thrift-deposit agencies) to respond to identified credit needs in low-income communities that they serve. (To obtain information on CRA see WHERE TO OBTAIN ADDITIONAL INFORMATION.)
3. Evaluate and interpret the outcome of the intervention, including, collecting and analyzing data necessary to enable measurement of these outcomes.
4. Disseminate research findings.

E. Application Content

Use the information in the COOPERATIVE ACTIVITIES, OTHER REQUIREMENTS, and EVALUATION CRITERIA sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

Please prepare your application following the instructions in the PHS Form 398. The following are requirements:

1. Research and intervention plan including: The proposed activities should be clearly described in terms of need, scientific basis, target neighborhood, financial institution participation, expected interactions, and anticipated outcomes.
2. A research plan (design and methods) including hypothesis and expected outcome, value to field, and specific, measurable, and time-framed objectives consistent with the proposed intervention strategy. The applicant must demonstrate that they have met the CDC/ATSDR policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed projects. This includes:
   a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation;
   b. The proposed justification when representation is limited or absent;
   c. A statement as to whether the design of the study is adequate to measure differences when warranted; and
   d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

   Human Subjects: If the proposed research involves obtaining data through intervention or interaction with an individual(s) or identifiable private information, then the applicant must provide background information on the precautions that will be put in place to protect human subjects.
3. Plans to collect baseline and post-intervention measures of environmental hazards, for example, the number of residential units in a defined neighborhood with specified hazards.
4. Plans to collect baseline and post-intervention measures of specified health effects among children (e.g., hospital admissions for asthma or specified injuries, reports of rat bites, elevated blood lead levels, pesticide or other household poisonings).
5. Evidence of effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed study.
6. Evidence of access to a laboratory with necessary proficiency in performing environmental and biologic laboratory measurements as required by the proposed study protocol.
7. Plans to ensure that children identified with health conditions associated with environmental hazards are referred for appropriate medical and environmental management. If the applicant does not have direct responsibility for such activities, a letter of support from the organization with that responsibility is required.
8. Evidence of ability to identify and gain access to a neighborhood with demonstrated environmental hazards and associated childhood morbidities among residents, and to collect appropriate environmental and biologic data.
9. Evidence that a deposit facility (bank or thrift) that is subject to the provisions of the Community Reinvestment Act has agreed to participate in the intervention strategy.

F. Application Submission and Deadline

Submit the original and five copies of PHS Form 398 (Revised 5/95, OMB Control Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS Form 398). Forms are in the application kit. On or before August 10, 1998, submit the application to: Lisa T. Garbarino, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement Number 98065, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305–2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., a legibly dated receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Research and Intervention Plan (50 Points)

a. Description of the intervention strategy and how it will be implemented that is sufficient to enable replication of the intervention.

b. Evaluation plans; scientific soundness (including description of both hazard and health-effect outcomes to be measured, adequate sample size with power calculations), quality, feasibility, consistency with the project goals.

c. Access to suitable target neighborhood and cooperation of a financial institution.

2. Environmental, Educational, and Medical Intervention (15 Points)

Ability to provide appropriate referral for children identified as having the

environmental exposures specified in the intervention.

3. Project Personnel (15 Points)

The qualifications, experience, (including experience in conducting relevant studies) and time commitment of the staff needed to ensure implementation of the project.

4. Laboratory Capacity (10 Points)

Documented availability of a laboratory with demonstrated proficiency in performing laboratory measurements as indicated in applicant's proposed study.

5. Performance Measurement (10 Points)

Schedule for implementing and monitoring the project. The extent to which the application documents specific, attainable, and realistic goals and clearly indicates the performance measures that will be monitored, how they will be monitored, and with what frequency.

6. Budget and Justification (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

7. Human Subjects (Not Scored)

If human subjects will be involved, how will they be protected, i.e., describe the review process which will govern their participation. The applicant must demonstrate that they have met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation;

b. The proposed justification when representation is limited or absent;

c. A statement as to whether the design of the study is adequate to measure differences when warranted; and

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

H. Other Requirements

Technical Reporting Requirements Provide CDC with the original plus two copies of

1. Annual progress reports including the following for each goal or activity involved in the study:

a. a comparison of actual accomplishments to the goals established for the period;

b. the reasons for slippage if established goals were not met; and

c. other pertinent information and data essential to evaluating progress.

2. Financial status report, no more than 90 days after the end of the budget period, and

3. Final financial report and performance report no more than 90 days after the end of the project period.

Send all reports to: Lisa T. Garbarino, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305–2209.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum 1 (included in the application kit).

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Section 301(a) [42 U.S.C. section 241(a)], as amended. The Catalog of Federal Domestic Assistance number is 93.197.

J. Where To Obtain Additional Information

To receive additional written information call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name, organization, address, and phone number and will need Announcement Number 98065. All application procedures and guidelines are contained within that package or can be found on the CDC Home Page. The address for the CDC Home Page is [http://www.cdc.gov].

Business management technical assistance, contact: Lisa T. Garbarino, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement Number 98065, Centers for Disease Control and Prevention, (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305–2209, Telephone: (404) 842–6796, E-mail address: lgt1@cdc.gov.

For program technical assistance, contact: Nancy Tips, National Center for Environmental Health, Division of Environmental Hazards and Health Effects, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Room 1320, Mailstop F–42, Atlanta, Georgia 30341, Telephone: (770) 488–7277, E-mail address: nmt1@cdc.gov.

To receive the document Innovative Financing Sources for Lead Hazard Control published by the Alliance to End Childhood Lead Poisoning, or the booklet on Community Reinvestment Act (CRA), contact Nancy Tips. (Address and number above.)

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–15540 Filed 6–10–98; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health

[Announcement 98050]

A Young Worker Community-Based Health Education Project Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC), the nation's prevention agency, announces the availability of funds for fiscal year (FY) 1998 for a cooperative agreement program which would consider and utilize existing health education materials and methods that address young worker health issues. Community-based education intervention and its evaluation are the core activities to be accomplished. This project is related to the priority areas of Special Populations and Intervention Effectiveness Research in the National Occupational Research Agenda.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000,

see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

CDC, NIOSH is committed to the program priorities developed by the National Occupational Research Agenda (NORA). (For ordering a copy of the NORA, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under the Public Health Service Act, as amended, Section 301(a) [(42 U.S.C. 241(a)]; the Occupational Safety and Health Act of 1970, Section 20(a) [(29 U.S.C. 669(a))]. The applicable program regulation is 42 CFR Part 52.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or woman-owned businesses are eligible to apply.

Note: Public Law 104–65, dated December 19, 1995, prohibits an organization described in section 501(c)(4) of the IRS Code of 1986, that engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, contract, loan, or any other form of funding.

Availability of Funds

Approximately $100,000 is available in FY 1998 to fund one award to support the operation of an Adolescent Worker Injury Outreach Group (AWIOG).

The amount of funding available may vary and is subject to change. This award is expected to begin on or about September 30, 1998. The award will be made for a 12-month budget period within a project period not to exceed three years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Pub. L. 105–78) states in Section 503 (a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, or any State legislature, except in presentation to the Congress or any State legislative body itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Purpose

The purpose of this program is to support the operation of an Adolescent Worker Injury Outreach Group (AWIOG). Its purpose is to:

1. Foster an awareness of the young worker injury issue among employers, educators, parents, health professionals, mass media and other opinion leaders within communities in a specified State or region.

2. Initiate community-based health education interventions in a population not to exceed 10 million using high school teachers, health educators, community health workers, and/or teenaged peer educators.

3. Test the effectiveness of existing curricula and information materials for young workers in multiple communities within a specific State or region.

4. With community input, establish performance criteria and measurement methods to evaluate both the materials and the overall project.

5. Use the performance criteria and measurement methods to measure the progress of the project toward achieving community-defined goals.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. The Adolescent Worker Injury Outreach Group shall use appropriate community intervention models such as the Community Health Improvement Process (CHIP; IOM, 1997) or Bracht's community organization model (Bracht & Kingsbury, 1990) to develop the project plan and design.

2. The recipient will bring the issue of young worker injuries to the attention of important stakeholder groups in the selected population.

3. Develop collaborations with, and among, community groups. For example, a local business might team with a local school to propose to provide occupational safety and health training to all students from the school who go to work for the employer. Or, a local health department might team with a media outlet to conduct a media campaign on young worker issues.

4. As necessary, the recipient's project staff will provide technical assistance to assist community groups in conducting community activities for periods of three months to one year. For example, a recipient young worker health educator may help with assessing community needs, adapting existing curricula to a new situation, maintaining a consistent level of intervention for a period of time that will increase the chance of finding an effect, or outcome evaluation effort.

5. Conduct evaluation of the effectiveness of both process and outcome for every intervention attempted. The chief benefit of this approach is that it lets the community decide what the appropriate activities and outcomes are. Hence, expectations remain realistic and better appreciated when fulfilled. Recipients should publish results of project as appropriate.

B. CDC/NIOSH Activities

1. Provide technical assistance to the recipient.
2. As requested by the recipient, facilitate linkages with researchers and public and private sector agencies and organizations.
3. As requested by the recipient, collaborate on joint safety and health communication and dissemination efforts of prevention information.
4. As requested by the recipient, provide consultation on developing data collection instruments and procedures.
5. As requested by the recipient, provide consultation in establishing standardized reporting mechanisms to monitor program activities.
6. Provide up-to-date scientific and programmatic information about adolescent worker injury epidemiological evidence.
7. As requested by the recipient, provide assistance in interpretation of the results and cooperate in preparation and publication of the written reports.
8. Collaborate in compiling and disseminating results from the project evaluation.

Technical Reporting Requirements

An original and two copies of semi-annual progress reports are required. Timelines for the semi-annual reports will be established at the time of award. Final financial status and performance reports are required no later than 90 days after the end of the project period.

Semi-annual progress reports should include:

A. A brief program description.

B. A listing of program goals and objectives accompanied by a comparison of the actual accomplishments related to the goals and objectives established for the period.

C. If established goals and objectives to be accomplished were delayed, describe both the reason for the deviation and anticipated corrective action or deletion of the activity from the project.

D. Other pertinent information, including the status of completeness, timeliness and quality of data.

Application Content

The entire application, including appendices, should not exceed 50 pages and the Proposal Narrative section contained therein should not exceed 30 pages. Pages should be clearly numbered and a complete index to the application and any appendices included. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 12 point) on 8½" by 11" paper, with at least 1" margins, headers, and footers, and printed on one side only. Do not include any spiral or bound materials or pamphlets.

A. Title Page

The heading should include the project title, organization, name and address, project director's name, address, and telephone number.

B. Abstract

A one page, single-spaced, typed abstract must be submitted with the application. The heading should include the project title, organization, name and address, project director and telephone number. This abstract should include a work plan identifying activities to be developed, activities to be completed, and a time-line for completion of these activities.

C. Proposal Narrative

The narrative of each application must:

1. Briefly state the applicant's understanding of the need or problem to be addressed, the purpose, and goals over the three-year period of the cooperative agreement.
2. Describe in detail the objectives and the methods to be used to achieve the objectives of the project. The objectives should be specific, time-phrased, measurable, and achievable during each budget period. The objectives should directly relate to the program goals. Identify the steps to be taken in planning and implementing the objectives and the responsibilities of the applicant for carrying out the steps.
3. Provide the name, qualifications, and proposed time allocation of the Project Director who will be responsible for administering the project. Describe staff, experience, facilities, equipment available for performance of this project, and other resources that define the applicant's capacity or potential to accomplish the requirements stated above. List the names (if known), qualifications, and time allocations of the existing professional staff to be assigned to (or recruited for) this project, the support staff available for performance of this project, and the available facilities including space.
4. Document the applicant's expertise, and extent of involvement in health education and awareness activities concerning occupational illness and injury for workers under the age of 18.
5. Provide letters of support or other documentation demonstrating collaboration of the applicant's ability to work with diverse groups, establish linkages, and facilitate awareness information.
6. Human Subjects: State whether or not Humans are subjects in this proposal. (See *Human Subjects* in the Evaluation Criteria and Other Requirements sections.)
7. Inclusion of women, ethnic, and racial groups: Describe how the CDC policy requirements will be met regarding the inclusion of women, ethnic, and racial groups in the proposed research. (See *Women, Racial and Ethnic Minorities*) in the Evaluation Criteria and Other Requirements sections.)

D. Budget

Provide a detailed budget which indicates anticipated costs for personnel, equipment, travel, communications, supplies, postage, and the sources of funds to meet these needs. The applicant should be precise about the program purpose of each budget item. For contracts described within the application budget, applicants should name the contractor, if known; describe the services to be performed; and provide an itemized breakdown and justification for the estimated costs of the contract; the kinds of organizations or parties to be selected; the period of performance; and the method of selection. Place the budget narrative pages showing, in detail, how funds in each object class will be spent, directly behind form 424A (for the 398—use * * * directly behind the PHS 398, form page 6). Do not put these pages in the body of the application. CDC may not approve or fund all proposed activities.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

A. Background and Need (5%)

Briefly state the applicant's understanding of the need or problem to be addressed and the purpose of this project. Prepare a draft protocol for the study.

B. Experience (35%)

The extent to which the applicant's prior work and experience in young worker health education issues is documented, including length of time committed to young worker health education and public information activities; linkages developed; collaboration with other individuals or groups; strength of leadership.

C. Goals, Objectives and Methods (Total 20%)

1. The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable. The extent to which the methods are sufficiently detailed to allow assessment of whether the objectives can be achieved for the budget period. Clearly state the evaluation method for evaluating the accomplishments. The extent to which a qualified plan is proposed that will help achieve the goals stated in the proposal. (10%)

2. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure difference when warranted; and (d) A statement as to whether the plan for recruitment and outreach for study participants includes the process of establishing partnerships with community(ies) and recognition of mutual benefits. (10%)

D. Facilities and Resources (5%)

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project.

E. Project Management and Staffing Plan (5%)

The extent to which the management staff and their working partners are clearly described, approximately assigned, and have pertinent skills and experiences. The extent to which the applicant proposes to involve appropriate personnel who have the needed qualifications to implement the proposed plan. The extent to which the applicant has the capacity to design, implement, and evaluate the proposed intervention program.

F. Evaluation (25%)

The extent to which goals and objectives encompass both process and outcome evaluation for the activities listed. The extent to which an evaluation plan describes the method and design for evaluating the program's effectiveness. Evaluation should include progress in meeting the objectives and conducting activities during the project and budget periods, and the impact of the activities implemented on childhood injury.

G. Collaboration (5%)

The extent to which all partners are clearly described and their qualifications and the extent to which their intentions to participate are explicitly stated. The extent to which the applicant provides proof of support (e.g., letters of support and/or memoranda of understanding) for proposed activities. Evidence or a statement should be provided that these funds do not duplicate already funded components of ongoing projects.

H. Human Subjects (Not Scored)

Whether or not exempt from the Department of Health and Human Services (DHHS) regulations, are procedures adequate for the protection of human subjects? Recommendations on the adequacy of protections include: (1) protections appear adequate, and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group has concerns related to human subjects or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

I. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should send them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13 Atlanta, GA 30305, no later than 60 days after the application deadline. The Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" the State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate State and/or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following information must be provided:

A. A copy of the face page of the application (SF424).

B. A summary of the project that should be titled "Public Health System Impact Statement" (PHSIS), not to exceed one page, and include the following:

1. A description of the population to be served;

2. A summary of the services to be provided; and

3. A description of the coordination plans with the appropriate State and/or local health agencies.

If the State and/or local health official should desire a copy of the entire application, it may be obtained from the State Single Point of Contact (SPOC) or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by this cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the DHHS Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to

demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any Native American community is involved, its tribal government must also approve that portion of the project applicable to it.

Confidentiality

1. All personal identifying information obtained in connection with the delivery of services provided to any person in any program carried out under this cooperative agreement cannot be disclosed unless required by a law of a state or political subdivision or unless such a person provides written, voluntary informed consent.

2. Nonpersonal identifying, unlinked information, which preserves the individual's anonymity, derived from any such program may be disclosed without consent:

1. In summary, statistical, or other similar form, or

2. For clinical or research purposes.

3. Personal identifying information: Recipients of CDC funds who must obtain and retain personal identifying information as part of their CDC-approved work plan must:

1. Maintain the physical security of such records and information at all times;

2. Have procedures in place and staff trained to prevent unauthorized disclosure of client-identifying information;

3. Obtain informed client consent by explaining the risks of disclosure and the recipient's policies and procedures for preventing unauthorized disclosure;

4. Provide written assurance to this effect including copies of relevant policies; and

5. Obtain assurances of confidentiality by agencies to which referrals are made.

Assurance of compliance with these and other processes to protect the confidentiality of information will be required of all recipients. A DHHS certificate of confidentiality may be required for some projects.

Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationales exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

Application Submission and Deadlines

A. Preapplication Letter of Intent

A non-binding letter of intent-to-apply should be submitted by potential applicants. An original and two copies of the letter should be submitted to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305.

It should be postmarked no later than July 6, 1998. The letter should identify the Announcement number 98050, name of principal investigator, and specify the activity(ies) to be addressed by the proposed project. The letter of intent does not influence review or funding decisions and is not required in order to submit an application, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Application

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) (for research use PHS 398) (Revised 5/95, OMB Number 0925–0001 [original+5 copies]) must be submitted to David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305, on or before August 3, 1998.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. Late Applicants. Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicants.

Where To Obtain Additional Information

To receive additional written information call 1–888–GRANTS4. You will be asked to leave your name, address, and phone number and will need to refer to NIOSH Announcement 98050. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail. PLEASE REFER TO NIOSH ANNOUNCEMENT NUMBER 98050 WHEN REQUESTING INFORMATION AND SUBMITTING AN APPLICATION.

If you have questions after receiving the contents of all the documents, business management technical assistance may be obtained from David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, Room 321, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, telephone (404) 842–6804, Internet : dce1@cdc.gov.

Programmatic technical assistance may be obtained from Raymond C. Sinclair, Education and Information Division, National Institute for Occupational Safety and Health, Center for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mail stop C–3, Cincinnati, OH 45226, telephone 513–533–8172 fax 513–533–8121, or Internet address: rcs1@cdc.gov.

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC homepage is: http://www.cdc.gov.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report,

Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

NORA

THE NATIONAL OCCUPATIONAL RESEARCH AGENDA: copies of this publication may be obtained from The National Institute of Occupational Safety and Health, Publications Office, 4676 Columbia Parkway, Cincinnati, OH 45226–1998 or phone 1–800–356–4674, and is available through the NIOSH Homepage; http:/www.cdc.gov/niosh/nora.html.

Useful References

The following documents may also provide useful information:

Bracht N., Kingsbury, L. (1990) Community organization principles in health promotion: A five-state model. In Bracht N. (ed.), *Health Promotion at the Community Level.* (Newbury Park, CA, Sage), pp. 66–90.

Institute of Medicine (1997) *Improving Health in the Community: A Role for Performance Monitoring.* (Washington, DC, National Academy Press).

Layne LA, Castillo DN, Stout N, Cutlip P (1994). Adolescent occupational injuries requiring hospital emergency department treatment: A nationally representative sample. *American Journal of Public Health, 84(4)*: 657–660.

Dated June 5, 1998.

Diane D. Porter,

Acting Director, National Institute For Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–15548 Filed 6–10–98; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health

[Announcement 98053]

Deep-South Center for Agricultural Disease and Injury Research, Education, and Prevention; Notice of Availability of Funds for Fiscal Year 1998

Purpose

The Centers for Disease Control and Prevention (CDC), the nation's prevention agency, announces the availability of funds for fiscal year (FY) 1998 for a cooperative agreement to establish an Agricultural Safety and Health Center, The Deep-South Center for Agricultural Disease and Injury Research, Education, and Prevention.

This announcement is related to the priority area of Occupational Safety and Health. The National Institute for Occupational Safety and Health (NIOSH) has created a National Occupational Research Agenda (NORA). NORA is a vision of the Institute to conduct occupational safety and health research to adequately serve the needs of workers in the United States.

In 1990, Congress established a National Program for Occupational Safety and Health in Agriculture (Ag) within NIOSH to lead a national effort in surveillance, research, and intervention. This program has had a "significant and measurable impact" on reducing adverse health effects among agricultural workers. Since 1990, eight Ag Centers have been established nationally. The Ag Centers were established to conduct research, education, and prevention projects to address the nation's pressing agricultural safety and health problems. Geographically, the Ag Centers are distributed throughout the nation to be responsive to the agricultural safety and health issues unique to the different regions. Through these efforts, the Ag Centers help to ensure that actions to prevent disease and injury in agriculture are taken based upon scientific findings.

The purpose of this Agricultural Center will be to conduct research, education, and prevention programs addressing agricultural safety and health problems in the geographic region served. A special focus of this Deep-South Center will address safety and health problems of special agricultural populations in the region including minority, migrant, and low-income farmers and farm workers.

Eligible Applicants

Eligible applicants are limited to organizations that serve the target populations of Alabama, Florida and Mississippi. The successful applicant would have a primary focus in any or all of the target States. Therefore eligible applicants include State and private universities and university-affiliated, nonprofit and for-profit medical centers.

These States have been determined to be the most appropriate target populations for the following reason:

1. The sociocultural and demographic aspects of southern agricultural populations are unique relative to other regions of the country. Most notable are the racial diversity, poverty, and illiteracy unique to this region. Southern farmers and migrant worker populations include African-Americans, Jamaicans, Haitians, Laotians, Thais, and other racial and ethnic minorities. Several studies suggest that African-American workers in agricultural production and services have higher fatality rates as compared to other racial or ethnic groups nationally.

2. There was no downward trend in fatality rates for the 10-year period, 1980–1989, for African-Americans as had been experienced by Caucasians and Hispanics in the South. (American Journal of Industrial Medicine, 1991)

3. In 1995, the *Kennedy SM et al* published the conclusions of an external review of funded NIOSH agricultural projects. The review panel recommended an expansion of the program to include other regions with a high degree of agricultural activity not adequately served under the current program. Specifically mentioned were major deep-south agricultural areas. This announcement for these specific States will allow this program to be implemented.

Availability of Funds

Approximately $350,000 is available in FY 1998 to fund one Agricultural Center. The amount of funding available may vary and is subject to change. This award is expected to begin on or about September 30, 1998. The award will be made for a 12-month budget period within a project period not to exceed three years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop and conduct research related to the prevention of occupational disease and injury of agricultural workers and their families, with an emphasis on multi-disciplinary research and the development and evaluation of control technologies.

2. Develop a research protocol(s) for agricultural disease and injury research, education, and prevention which would include collaboration with regional stakeholders as appropriate.

3. Develop, implement and evaluate model educational, outreach, and intervention programs promoting health and safety for the targeted populations.

4. Develop, implement and evaluate model programs including control technologies for the prevention of illness and injury among agricultural workers and their families.

5. Provide assistance and direction to community-based groups in the area for the development and implementation of community projects including intervention research and prevention demonstration projects for preventing work related injuries and illness among farm workers and their families.

6. Serve as a center for consultation and/or training for agricultural safety and health professionals.

7. Develop linkages and communication with other governmental and non-governmental bodies involved in agricultural health and safety.

8. Disseminate research results and relevant health and safety education and training information.

9. Collaborate with other CDC/NIOSH Agricultural Centers, to develop and utilize a uniform evaluation scheme for Agricultural Center research, education/training, and outreach/intervention activities.

B. CDC/NIOSH Activities

1. Provide technical assistance through site visits and correspondence in the areas of program development, implementation, maintenance, and priority setting related to the cooperative agreement.

2. Provide scientific collaboration where needed.

3. Assist in the reporting and dissemination of research results and relevant health and safety education and training information to appropriate Federal, State, and local agencies, health-care providers, the scientific community, agricultural workers and their families, management and union representatives, and other CDC/NIOSH Centers for agricultural disease and injury research, education, and prevention.

Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria section to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The entire application, including appendices, should not exceed 100 pages and the Proposal Narrative section contained therein should not exceed 50 pages. Pages should be clearly numbered and a complete index to the application and any appendices included. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 12 point) on 8½" by 11" paper, with at least 1" margins, headers, and footers, and printed on one side only. Do not include any spiral or bound materials or pamphlets.

A. Title Page

The heading should include the title of grant program, project title, organization, name and address, project director's name address and telephone number.

B. Abstract

A one page, singled-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director and telephone number. This abstract should include a work plan identifying activities to be developed, activities to be completed, and a time-line for completion of these activities.

C. Proposal Narrative

The narrative of each application must:

1. Briefly state the applicant's understanding of the need or problem to be addressed, the purpose, and goals over the 3 year period of the cooperative agreement.

2. Describe in detail the objectives and the methods to be used to achieve the objectives of the project. The objectives should be specific, time-phased, measurable, and achievable during each budget period. The objectives should directly relate to the program goals. Identify the steps to be taken in planning and implementing the objectives and the responsibilities of the applicant for carrying out the steps.

3. Provide the name, qualifications, and proposed time allocation of the Project Director who will be responsible for administering the project. Describe staff, experience, facilities, equipment available for performance of this project, and other resources that define the applicant's capacity or potential to accomplish the requirements stated above. List the names (if known), qualifications, and time allocations of the existing professional staff to be assigned to (or recruited for) this project, the support staff available for performance of this project, and the available facilities including space.

4. Document the applicant's expertise, and extent of involvement in the area of safety and health.

5. Provide letters of support or other documentation demonstrating collaboration of the applicant's ability to work with diverse groups, establish linkages, and facilitate awareness information.

6. Human Subjects: State whether or not Humans are subjects in this proposal. (See *Human Subjects* in the Evaluation Criteria and Other Requirements sections).

7. Inclusion of women, ethnic, and racial groups: Describe how the CDC policy requirements will be met regarding the inclusion of women, ethnic, and racial groups in the proposed research. (See *Women, Racial and Ethnic Minorities* in the Evaluation Criteria and Other Requirements sections).

D. Budget

Provide a detailed budget which indicates anticipated costs for personnel, equipment, travel, communications, supplies, postage, and the sources of funds to meet these needs. The applicant should be precise about the program purpose of each budget item. For contracts described within the application budget, applicants should name the contractor, if known; describe the services to be performed; and provide an itemized breakdown and justification for the estimated costs of the contract; the kinds of organizations or parties to be selected; the period of performance; and the method of selection. Place the budget narrative pages showing, in detail, how funds in each object class will be spent, directly behind form 424A. Do not put these pages in the body of the application. CDC may not approve or fund all proposed activities.

Submission and Deadline

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. It should be postmarked no later than June 24, 1998. The letter should identify program announcement number 98053, and name of the principal investigator. The letter of intent will enable CDC to plan the review more efficiently. The letter should be submitted to: Victoria F. Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305–2209.

B. Application

Submit an original and two copies of the application PHS 5161–1 (Revised 5/96, OMB Number 0937–0189). Forms are in the application kit.

On or before July 24, 1998, submit to Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98053, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305–2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks will not be acceptable as proof of timely mailing).

Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Applicants will be evaluated according to the following criteria:

A. Responsiveness to the objectives of the cooperative agreement program, including the applicant's understanding of the objectives of the proposed cooperative agreement and the relevance of the proposal to the objectives. (20 percent)

B. Feasibility of meeting the proposed goals of the cooperative agreement program including the proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement and the proposed method for evaluating the accomplishments. (20 percent)

C. 1. Strength of the program design in addressing the distinct characteristics, specific populations, and needs in agricultural research and education for the region. This included a balanced program to address agricultural safety and health problems in the three States included in this area. This also includes program responsiveness to address the safety and health needs of special populations in this area including minority, migrant, and low-income agricultural populations, women, and children.

2. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; b. The proposed justification when representation is limited or absent; c. A statement as to whether the design of the study is adequate to measure differences when warranted; and d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented. (Total 20 percent for C1 & C2)

D. Training and experience of proposed Program Director, staff, and organization. This includes: (1) a Program Director who is a distinguished scientist and technical expert and staff with training or experience sufficient to accomplish proposed program, and (2) a director, staff, and organization with proven accomplishments in the field of agricultural safety and health and the infrastructure necessary to access the agricultural populations in the regions served by the Agricultural Center. (20 percent)

E. Strength of the proposed program for agricultural safety and health in the areas of prevention, research, education, and multi-disciplinary approach. (10 percent)

F. Efficiency of resources and novelty of program. This includes the efficient use of existing and proposed personnel with assurances of a major time commitment of the Project Director to the program and the novelty of program approach. (5 percent)

G. The strength of program plans for development and implementation of a uniform evaluation scheme for Agricultural Center research, education/training, and outreach/intervention activities. (5 percent)

H. Human Subjects (Not Scored)

Whether or not exempt from the DHHS regulations, are procedures adequate for protection of human subjects. Recommendations on the adequacy of protections include: (1) protections appear adequate, and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

I. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

A. Annual progress report which includes:

(1) a comparison of actual accomplishment to the goals established for the period; (2) the reasons for lack of success if established goals were not met; and (3) other pertinent information including, when appropriate, analysis and explanation of unexpectedly high costs for performance no more than 30 days after the end of the budget period.

B. Financial status report, no more than 90 days after the end of the budget period.

C. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305–2209.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum 1 in the application kit.

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions

Authority and Catalog of Federal Domestic Assistance Number

This program announcement is authorized under the Public Health Service Act, as amended, Section 301(a) [42 U.S.C. 241(a)]; and the Occupational Safety and Health Act of 1970, Sections 20(a) and 22 (29 U.S.C. 669(a) and 671). The applicable program regulation is 42 CFR Part 52. The Catalog of Federal Domestic Assistance number is 93.283.

Where To Obtain Additional Information

To receive additional written information call 1–888–GRANTS4. You will be asked to leave your name, address, and phone number and will need to refer to NIOSH Announcement 98053. You will receive a complete program description, information on

application procedures, and application forms. CDC will not send application kits by facsimile or express mail.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305–2209, telephone (404) 842–6804, Internet: vxw1@cdc.gov.

Programmatic technical assistance may be obtained from:

Greg Kullman, Ph.D., CIH, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), 1095 Willowdale Rd., Mailstop P–04/18, Morgantown, WV 26505, telephone (304) 285–5711, Internet: gjk1@cdc.gov,

OR

Vincent R. Nathan, Ph.D., M.P.H., National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd., NE., Mailstop D–40, Atlanta, GA 30333, telephone (404) 639–1493, Internet: van3@cdc.gov.

This and other CDC announcements are available through the CDC Homepage on the Internet. The address for the CDC Homepage is: http://www.cdc.gov.

Copies of the publication, The National Occupational Research Agenda (NORA) may be obtained from The National Institute of Occupational Safety and Health, Publications Office, 4676 Columbia Parkway, Cincinnati, OH 45226–1998 or telephone 1–800–356–4674, and is available through the NIOSH Homepage: "http://www.cdc.gov/niosh/nora.html".

Dated: June 5, 1998.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–15549 Filed 6–10–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98071]

Demonstration of School-Based Violence Prevention

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement program for the Demonstration of School-Based Violence Prevention. This program addresses the "Healthy People 2000" priority area of Violent and Abusive Behavior.

The purpose of the program is to support quality implementation of violence prevention programs that will serve as demonstration sites for school-based violence prevention programs. Applications will be considered in the area of implementing proven school-based violence prevention programs that target youth (aged 5–19, not necessarily inclusive of all ages) who are in elementary, middle, and high-schools.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Public and private elementary, middle, and high schools, and school districts are also encouraged to apply.

Note: Effective January 1, 1996, Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

C. Availability of Funds

Approximately $1,100,000 is available in FY 1998 to fund up to four projects to implement, and monitor programs designed to prevent violence among school aged youth. Awards are expected to range from $250,000 to $300,000 with an average of $275,000 for each 12-month budget period.

It is expected that the new awards will begin on or about September 30, 1998. Awards will be made for a 12-month budget period within a 4-year project period. Funding estimates may vary and are subject to change.

Continuation awards within the project periods will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

In making awards, priority consideration will be given to ensuring a geographic balance, a representative mixture of target groups, and a diversity of program strategies.

D. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop and implement an intervention protocol (include a minimum of two different strategies).

b. Develop and pilot test data collection instruments.

c. Analyze data & interpret findings.

d. Establish an advisory committee that will address issues related to violence to ensure community engagement.

e. Develop collaborative relationships with voluntary, community-based public and private organizations and agencies already involved in preventing violence.

f. Compile and disseminate the results from the project.

2. CDC Activities

a. Collaborate on the development of the intervention protocol.

b. Provide technical assistance on the development and evaluation of the data collection instruments.

c. Provide up-to-date scientific information about youth violence prevention.

d. Assist in the transfer of information and methods developed in these projects to other prevention programs.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should be unbound and no more than 30 double-spaced pages, printed on one side, with one inch margins, and unreduced font (no smaller than 12 cpi).

1. Applications must be organized as follows:

a. *Abstract and Table of Contents:* A one page summary of the application outlining the (1) student population characteristics and, (2) the proposed violence prevention program. A table of contents that provides page numbers for each of the following sections (all pages must be numbered).

b. *Student population:* Describe the population to which the program will be directed. Describe the impact of behaviors, injuries and deaths resulting from violence on persons who would be directly or indirectly affected by the program. Demonstrate that persons who would be affected by the interventions have a high incidence or risk of violence and injury from such violence. Demonstrate that participation by the target group in the program will be adequate; describe the method by which persons are selected to participate. Women, Racial and Ethnic Minorities. A description of the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

c. *Proposed Goals and Objectives:* Describe project goals and include process and outcome objectives for pertinent health, behavioral, psycho social, and structural/environmental activities. Specify both short term (within 1 year) and long term (after one year) objectives.

d. *Program Description:* Provide a detailed description of the violence prevention program to be implemented. All proposed programs must incorporate at least two different specific intervention strategies. Proposed programmatic strategies must include those that have been previously implemented and demonstrated to reduce violent and/or aggressive behavior in school-aged populations. Applicants should consider proposing curriculum-based (social-cognitive), parental engagement, and mentoring among other intervention strategies. The frequency, intensity, and duration of programmatic activities of each proposed strategy should be specified. All necessary programmatic and training materials must be described in detail and copies of existing materials must be included in the appendix. If any strategy or training material is not extant, provide a justification for not having the materials and describe methods and time frames for their development. Necessary collaborating parties should be identified and evidence of their ability and intention to participate should be supplied.

e. *Program Monitoring Plans:* Provide a detailed description of the proposed plan to monitor program implementation and effectiveness. List the major steps needed to implement the proposed plan for program monitoring and provide a concise timetable for those steps.

f. *Data Collection and Analysis:* Provide a description of plans for collecting information consistent with efforts to assess program delivery. An information reduction plan should be described with particular attention to how process information will be collected, processed, and maintained for analysis. An appropriate analytical plan should be presented and defended.

g. *Project Management and Staffing Plan:* Provide a demonstration of the availability of staff and facilities to carry out the described program and monitoring plan. Demonstrate the organization's experience or capacity in the area of youth violence prevention, management of school-based violence prevention programs, experience or the experience of a full working partner in evaluation methods, and ability or the ability of a full working partner to collect, manage, and analyze both quantitative and qualitative data. Describe in detail each existing or proposed position for this project by job title, function, general duties, and activities for which that position will be involved. Include the level of effort and allocation of time for each project activity by staff position. If the identity of any key individual who will fill a position is known, his/her name and curriculum vitae should be attached. Experience and training related to the proposed project should be noted. Management operation principles, structure, and organization should be described.

h. *Collaboration:* Describe current and proposed collaborations with appropriate government, health, youth agencies, community-based organizations, minority organizations, and other persons working with the specified target population. Include letters of support and memoranda of understanding which specify precisely the nature of past, present, and proposed collaborations, and the products/services or other activities that will be provided by and to the applicant through the collaboration on the proposal. Demonstrate an ability to work with the designated populations and provide letters of recommendation or support from government or non-government agencies or leaders with whom they have worked. Describe current or past funding that has been received for similar projects and the outcomes of these projects. Provide evidence that these funds do not duplicate already funded components of ongoing projects.

i. *Project Budget:* Provide a detailed budget for each priority activity to be undertaken, with accompanying justification of all operating expenses that is consistent with the stated objectives and planned activities of the project. CDC may not approve or fund all proposed activities. Applicant should be precise about the program purpose of each budget item and should itemize calculations wherever appropriate. Budgets should include costs for travel for two project staff to attend two meetings per year in Atlanta with CDC staff.

j. *Human Subjects:* Describe the degree to which human subjects may be at risk and the assurance that the project will be subject to initial and continuing review by the appropriate institutional review committees.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit.

On or before August 11, 1998, submit to Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98071, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305–2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Applicants will be evaluated according to the following criteria (Maximum of 100 total points):

1. Program Plan (40 Points)

a. Target Groups

The extent to which the target group(s) is (are) described and access to the target population is demonstrated. The extent to which the target group has a high incidence or prevalence of the risk factors to be influenced by the proposed intervention and the extent to which appropriate demographic and morbidity data are described. The extent to which youth, who are the direct or indirect target group, have a high

incidence of interpersonal violence and violence-related injuries, disabilities, and deaths. The extent to which the applicant demonstrates a capability to achieve a sufficient level of participation by the target group.

In addition, the degree to which the applicant has met the CDC/ATSDR policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes:

i. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

ii. The proposed justification when representation is limited or absent.

iii. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with the community(ies) and recognition of mutual benefits.

b. Program Description

The extent to which the potential effectiveness of the selected program is theoretically justified and supported by epidemiologic, or social and behavioral research. The extent to which the program is feasible and can be expected to produce the expected results in the target group of interest. The extent to which the program, its implementation, the development of all necessary materials, and all necessary training are clearly described. The status of all necessary measurement instruments or training materials must be described; if any of this material is not extant, methods and time frames for their development must be described. Necessary collaborators must be identified, and evidence of their ability and intention to participate must be supplied. The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable.

2. Program Monitoring (25 Points)

The extent to which the design to monitor program implementation (including a data analysis plan) are clearly described and are appropriate for the target group, program, data collection opportunities, and proposed project period. The extent to which data collection, data processing, and management activities are clearly described. The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable.

3. Project Management and Staffing Plan (25 Points)

The extent to which project management staff and their working partners are clearly described, appropriately assigned, and possess pertinent skills and experiences to conduct the project successfully to completion. The extent to which the applicant has arranged to involve appropriate researchers and other personnel who reflect the racial/ethnic composition of the target group. The extent to which the applicant or a full working partner demonstrates the capacity and facilities to design, implement, and monitor the proposed program.

4. Collaboration (10 Points)

The extent to which the necessary partners are clearly described and their qualifications and intentions to participate explicitly stated. The extent to which the applicant provides proof of support (e.g., letters of support and/or memoranda of understanding) for proposed activities. Evidence must be provided that these funds do not duplicate already funded components of ongoing projects.

5. Proposed Budget (Not Scored)

The extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, and consistent with the intended use of the cooperative agreement funds.

6. Human Subjects: (Not Scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46).

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, M/S E–13, Atlanta, GA 30305–2209.

Confidentiality of Records

All identifying information obtained in connection with the provision of services to any person in any program that is being carried out with a cooperative agreement made under this announcement shall not be disclosed unless required by a law of a State or political subdivision or unless written, voluntary informed consent is provided by persons who received services.

1. Nonpersonal identifying, unlinked information, which preserves the individual's anonymity, derived from any such program may be disclosed without consent:

a. In summary, statistical, or other similar form, or

b. For clinical or research purposes.

2. Personal identifying information: Recipients of CDC funds who must obtain and retain personal identifying information as part of their CDC-approved work plan must:

a. Maintain the physical security of such records and information at all times;

b. Have procedures in place and staff trained to prevent unauthorized disclosure of client-identifying information;

c. Obtain informed client consent by explaining the risks of disclosure and the recipient's policies and procedures for preventing unauthorized disclosure;

d. Provide written assurance to this effect including copies of relevant policies; and

e. Obtain assurances of confidentiality by agencies to which referrals are made.

Assurance of compliance with these and other processes to protect the confidentiality of information will be required of all recipients. A Department of Health and Human Services (DHHS) certificate of confidentiality may be required for some projects.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I (included in the application kit).

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–7 Executive Order 12372 Review
AR98–8 Public Health System Reporting Requirements
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions
AR98–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

I. Authority and Catalog of Federal Domestic Assistance Number

This program announcement is authorized under Sections 391, 392, 393, and 394 [42 U.S.C. 280b, 280b–1, 280b–1a, and 280b–2] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

The program announcement and application forms may be downloaded from the Internet: www.cdc.gov (look under funding). You may also receive a complete application kit by calling 1–888–GRANTS4. You will be asked to identify the program announcement number and provide your name and mailing address. A complete announcement kit will be mailed to you.

Please refer to Program Announcement 98071 when you request information.

If you have questions after reviewing the forms, for business management technical assistance, contact: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98071, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305–2209, telephone (404) 842–6535, E-mail address jcw6@cdc.gov.

For program technical assistance, contact Wendy Watkins, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–60, Atlanta, Georgia 30341–3724, telephone (770) 488–4646, E-mail address dmw7@cdc.gov.

Dated: June 5, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–15545 Filed 6–10–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98072]

The Evaluation of Interventions to Prevent Suicide

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement program for the Evaluation of Interventions to Prevent Suicide. This program addresses the "Healthy People 2000" priority area Violent and Abusive Behavior.

The purpose of this cooperative agreement is to evaluate specific interventions that may influence one or more of the factors that lead to suicidal behavior among high-risk populations (see Addendum II—Background for additional information included in the application kit).

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

C. Availability of Funds

Approximately $400,000 is available in fiscal year 1998 to fund up to two awards. It is expected that projects completed in three years will have an average award of $200,000 and ranging from $175,000 to $225,000 per year. Awards will be made for a 12 month budget period within a three year project period.

Non-competing continuation awards for new budget periods within an approved project period are made on the basis of satisfactory performance and availability of funds.

Funding Preferences

In making awards, priority consideration will be given to ensuring a balance among types of interventions (e.g., peer support, gatekeeper training) and programs that target different high-risk populations (e.g., age groups, sex, race/ethnicity).

D. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under 1., below, and CDC shall be responsible for the activities under 2., below:

1. Recipient Activities:

a. Develop a protocol for evaluating the specific intervention.

b. Develop procedures for collecting and compiling information relevant to the proposed project.

c. Develop and pilot test instruments for data collection.

d. Establish goals and realistic, measurable, time-oriented objectives.

e. Develop, implement, and evaluate the selected intervention.

f. Compile and disseminate the results from the project.

2. CDC Activities:

a. Provide technical assistance in defining the target population.

b. Collaborate in the design of all phases of the evaluation.

c. Provide technical assistance in sharing information among the various evaluation projects awarded.

d. Provide up-to-date scientific information about suicidal behavior prevention.

e. Assist in the transfer of information and methods developed in these projects to other prevention programs.

E. Application Content

Use the information in the Cooperative Activities, Other Requirements, Evaluation Criteria sections and the Errata Sheet (Addendum III), included in the application package to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should be no more than 30 double-spaced pages, printed on one side, with one inch margins, and unreduced font (no smaller than 10 cpi).

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction Sheet for PHS 398. Forms are in the application kit.

On or before August 4, 1998, submit to: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98072, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305–2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following

criteria by an independent review group appointed by CDC.

Applicants will be evaluated according to the following criteria (Maximum of 100 total points):

1. Intervention Plan (35 Points)

a. Target Group

The extent to which the target group is described and access to the target population is demonstrated. The extent to which the target group has a high incidence or prevalence of the risk factors to be influenced by the proposed intervention and the extent to which appropriate demographic and morbidity data are described. The extent to which youth, who are the direct or indirect target group, have a high incidence of interpersonal violence and violence-related injuries, disabilities, and deaths. The extent to which the applicant demonstrates a capability to achieve a sufficient level of participation by the target group in order to evaluate the intervention in an unbiased fashion. In addition, the degree to which the applicant has met the CDC/ATSDR policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes:

i. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

ii. The proposed justification when representation is limited or absent.

iii. A statement as to whether the design of the evaluation is adequate to measure differences when warranted.

iv. A statement as to whether the plans for recruitment and outreach for intervention participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

b. Intervention Description

The extent to which the potential effectiveness of the intervention is theoretically justified and supported by epidemiologic, or social and behavioral research. The extent to which the intervention is feasible and can be expected to produce the expected results in the target group of interest. The extent to which the intervention, its implementation, the development of all necessary materials, and all necessary training are clearly described. The extent to which the desired outcomes are specified and definitions of measurable endpoints are provided (e.g., behavioral change, injury, disability, or death). The extent to which the setting in which the intervention is to be implemented is clearly described and shown to be adequate for reaching the target group and achieving the desired objectives. The status of all necessary measurement instruments or training materials must be described; if any of this material is not extant, methods and time frames for their development must be described. Necessary collaborators must be identified, and evidence of their ability and intention to participate must be supplied. The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable.

2. Evaluation Design and Analysis (35 Points)

The extent to which the evaluation design and the data analysis plan are clearly described and are appropriate for the target group, intervention, data collection opportunities, and proposed project period. The extent to which the various threats to the validity of the evaluation are recognized and addressed. The extent to which the sampling methods, sample size estimates, power estimates, and attrition of the participating population are clarified. The extent to which data collection, data processing, and management activities are clearly described. The extent to which the major phases of the project are clearly presented and logically and realistically sequenced. The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable.

3. Project Management and Staffing Plan (10 Points)

The extent to which project management staff and their working partners are clearly described, appropriately assigned, and possess pertinent skills and experiences to conduct the project successfully to completion. The extent to which the applicant has arranged to involve appropriate researchers and other personnel who reflect the racial/ethnic composition of the target group. The extent to which the applicant or a full working partner demonstrates the capacity and facilities to design, implement, and evaluate the proposed intervention.

4. Collaboration (20 Points)

The extent to which the necessary partners are clearly described and their qualifications and intentions to participate explicitly stated. The extent to which the applicant provides proof of support (e.g., letters of support and/or memoranda of understanding) for proposed activities. The extent to which a full working partnership between a community-based organization, a university or other academic institution, and a State or local health department has been established for applicants seeking funds for a three year project period. Evidence must be provided that these funds do not duplicate already funded components of ongoing projects.

5. Human Subjects (Not Scored)

If human subjects will be involved, how they will be protected, i.e., describe the review process which will govern their participation.

6. Proposed Budget (Not Scored)

The extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, and consistent with the intended use of the cooperative agreement funds. Budgets should include costs for travel for two project staff to attend two meetings per year in Atlanta with CDC staff.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Confidentiality of Records

All identifying information obtained in connection with the provision of services to any person in any program that is being carried out with a cooperative agreement made under this announcement shall not be disclosed unless required by a law of a State or political subdivision unless written, voluntary informed consent is provided by persons who received services.

1. Nonpersonal identifying, unlinked information, which preserves the individual's anonymity, derived from any such program may be disclosed without consent:

a. In summary, statistical, or other similar form, or

b. For clinical or research purposes.

2. Personal identifying information: Recipients of CDC funds who must obtain and retain personal identifying information as part of their CDC-approved work plan must:

a. Maintain the physical security of such records and information at all times;

b. Have procedures in place and staff trained to prevent unauthorized disclosure of client-identifying information;

c. Obtain informed client consent by explaining the risks of disclosure and the recipient's policies and procedures for preventing unauthorized disclosure;

d. Provide written assurance to this effect including copies of relevant policies; and

e. Obtain assurances of confidentiality by agencies to which referrals are made.

Assurance of compliance with these and other processes to protect the confidentiality of information will be required of all recipients. A Department of Health and Human Services (DHHS) certificate of confidentiality may be required for some projects.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I (included in the application kit).

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions
AR98–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

Send all reports to: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305–2209.

I. Authority and Catalog of Federal Domestic Assistance Number

This program announcement is authorized under Sections 391, 392, 393, and 394 [42 U.S.C. 280b, 280b–1, 280b–1a, and 280b–2] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where to Obtain Additional Information

The program announcement and application forms may be downloaded from the Internet: www.cdc.gov (look under funding). You may also receive a complete application kit by calling 1–888–GRANTS4. You will be asked to identify the program announcement number and provide your name and mailing address. A complete announcement kit will be mailed to you.

Please refer to Program Announcement 98072 when you request information.

If you have questions after reviewing the forms, for business management technical assistance, contact: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98072, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305–2209, telephone (404) 842–6796, E-mail address jcw6@cdc.gov.

For program technical assistance, contact Tim Thornton, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–60, Atlanta, GA 30341–3724, telephone, (770) 488–4646, E-mail address, tnt1@cdc.gov.

Dated: June 5, 1998.

John L. Williams,

Director, Procurement and Grants Office Centers, for Disease Control and Prevention (CDC)

[FR Doc. 98–15541 Filed 6–10–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0003]

Dulal C. Chatterji; Grant of Special Termination; Final Order Terminating Debarment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) granting special termination of the debarment of Dr. Dulal C. Chatterji, 308 Dalton Dr., Raleigh, NC 27615. FDA bases this order on a finding that Dr. Chatterji provided substantial assistance in the investigations or prosecutions of offenses relating to a matter under FDA's jurisdiction, and that special termination of Dr. Chatterji's debarment serves the interest of justice and does not threaten the integrity of the drug approval process.

EFFECTIVE DATE: JUNE 11, 1998.

ADDRESSES: Comments should reference Docket No. 96N–0003 and be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

In a **Federal Register** notice dated January 22, 1997 (62 FR 3297), Dr. Dulal C. Chatterji, cofounder, part owner, vice-president for scientific affairs, and head of the research and development (R&D) division at the generic drug manufacturer Quad Pharmaceuticals, Inc. (Quad), was permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 306(c)(1)(B) and (c)(2)(A)(ii)) and 201(dd) of the act (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 321(dd)). The effective date of the debarment was November 1, 1995, based on Dr. Chatterji's acquiescence to debarment. The debarment was based on FDA's finding that Dr. Chatterji was convicted of a felony under Federal law for conduct relating to the development or approval of any drug product, or otherwise relating to the regulation of a drug product under section 306 of the act. On April 7, 1997, Dr. Chatterji applied for special termination of debarment under section 306(d)(4) of the act, as amended by the Generic Drug Enforcement Act.

Under section 306(d)(4)(C) and (d)(4)(D) of the act, FDA may limit the period of debarment of a permanently debarred individual if the agency finds that the debarred individual has provided substantial assistance in the investigation or prosecution of offenses described in paragraph (a) or (b) of section 306 of the act or relating to a matter under FDA's jurisdiction. If substantial assistance is found, the extent to which debarment may be terminated will depend upon the agency's assessment of whether termination will serve the interest of justice and not threaten the integrity of the drug approval process. Special termination of debarment is discretionary with FDA.

FDA considers a determination by the Department of Justice that an individual provided substantial assistance conclusive in most cases. Dr. Chatterji fully cooperated with the Department of Justice investigations and prosecutions of others within Quad for offenses related to matters under FDA jurisdiction, as substantiated by two letters received by FDA from the U.S. Attorney's Office for the District of Maryland. Accordingly, FDA finds that Dr. Chatterji provided substantial assistance as described under section 306(d)(4)(C) of the act.

In determining whether termination of debarment serves the interest of justice and poses no threat to the integrity of the drug approval process, the agency weighs the significance of all favorable and unfavorable factors in light of the remedial, public health-related purposes underlying debarment. Termination of debarment will not be granted unless, weighing all favorable and unfavorable information, there is a high level of assurance that the conduct that formed the basis for the debarment has not recurred and will not recur, and that the individual will not otherwise pose a threat to the integrity of the drug approval process.

The evidence presented to FDA in support of termination shows that, despite the seriousness of the offense for which Dr. Chatterji was debarred, his conduct may have been an aberration, his character and scientific ability remain highly regarded by his professional peers, and that he may serve as a strong advocate for compliance with current good manufacturing practice regulations. For these reasons, the agency finds that termination of Dr. Chatterji's debarment serves the interest of justice and will not pose a threat to the integrity of the drug approval process.

Under section 306(d)(4)(D) of the act, the period of debarment of an individual who qualifies for special termination may be limited to less than permanent but to no less than 1 year. Dr. Chatterji's period of debarment has lasted more than 1 year.

Accordingly, the Deputy Commissioner for Operations, under section 306(d)(4) of the act and under authority delegated to him (21 CFR 5.20), finds that Dr. Dulal C. Chatterji's application for special termination of debarment should be granted, and that the period of debarment should terminate immediately, thereby allowing him to provide services in any capacity to a person with an approved or pending drug product application. The Deputy Commissioner for Operations further finds that because the agency is granting Dr. Chatterji's application, an informal hearing under section 306(d)(4)(C) of the act is unnecessary.

As a result of the foregoing findings, Dr. Dulal C. Chatterji's debarment is terminated effective June 11, 1998 (section 306(d)(4)(C) and (d)(4)(D) of the act).

Dated: June 5, 1998.

Michael A. Friedman,

Acting Commissioner of Food and Drugs.

[FR Doc. 98–15555 Filed 6–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 29 and 30, 1998, 8 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: John E. Stuhlmuller, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243, ext. 157, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 29, 1998, the committee will discuss, make recommendations, and vote on a premarket approval application for an external compression device used in cardiopulmonary resuscitation. On June 30, 1998, the committee will discuss and make recommendations on permanent cardiovascular implants such as heart valves and vascular grafts.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 18, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m. on June 29 and 30, 1998. Near the end of committee deliberations on both days, a 30-minute open public session will be conducted to address issues specific to the submission or topic before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 18, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 4, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–15556 Filed 6–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0489]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "(Petition for) Administrative Reconsideration of Action" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 26, 1998 (63 FR 14717), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0192. The approval expires on May 31, 2001.

Dated: June 5, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–15602 Filed 6–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1104–N]

RIN 0938–AI26

Medicare Program; Notice for the Solicitation for Proposals for a Case Management Demonstration Project Focused on Congestive Heart Failure or Diabetes Mellitus

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces HCFA's solicitation for proposals for a demonstration project that will use existing, innovative case management interventions to improve clinical outcomes and quality of life for beneficiaries with congestive heart failure or diabetes mellitus who are in the Medicare fee-for-service program under Parts A and B, and that will provide for Medicare program savings through efficient provision and utilization of services and the prevention of avoidable, costly medical complications (or consequences) that may require hospitalizations. HCFA requires that the proposed savings, at a minimum, be sufficient to cover the payments made for the case management services. This notice contains critical information for interested applicants, including the instructions for timely submission of the required letter of intent and the proposal. Interested applicants may propose projects focusing on case management of congestive heart failure, diabetes mellitus, or both.

HCFA intends to select a maximum of two proposed projects for this demonstration. The selected proposals will be those that best meet the evaluation criteria. HCFA intends to operate the demonstration project(s) for three years from implementation.

DATES: Letters of intent must be received by the HCFA project officer on or before July 13, 1998.

Proposals (original and 10 copies), each with a copy of the timely letter of intent, must be received by the HCFA project officer on or before September 9, 1998.

ADDRESSES: Mail letters of intent and proposals to: Department of Health and Human Services, Health Care Financing Administration, Attention: Catherine Jansto, Project Officer, Center for Health Plans and Providers, Mail Stop: C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Letters of intent may also be submitted electronically to the following E-mail address: HCFA1104N@hcfa.gov. Electronically submitted letters of intent must be submitted to the referenced E-mail address in order to be considered. The complete letter of intent must be incorporated in the E-mail messages because we may not be able to access attachments. Proposals may not be submitted electronically.

Only proposals that are received timely, and for which a timely letter of intent is received, will be reviewed and considered by the technical review panel.

FOR FURTHER INFORMATION CONTACT: Catherine Jansto at (410) 786–7762, or CJansto@hcfa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Problem

Historically, a small proportion of Medicare beneficiaries have accounted for a major proportion of Medicare expenditures. For example, in 1993 roughly 10 percent of the Medicare beneficiaries accounted for 70 percent of the $129.4 billion in total Medicare expenditures. Hospital payments accounted for a major proportion of this expense.

We believe Medicare beneficiaries with congestive heart failure and diabetes mellitus are a population for whom innovations in care through effective case management interventions may improve clinical outcomes and the quality of life for the following reasons:

- Research suggests that some complications related to congestive heart failure and diabetes mellitus are avoidable; and
- Control of these diseases requires a complex treatment regimen.

Research also suggests that individuals with congestive heart failure or diabetes mellitus may suffer fewer adverse health outcomes and that additional more costly care might be avoided if these patients adhere to treatment regimens or receive adequate post-hospital care. Although neither congestive heart failure nor diabetes mellitus can be cured, careful adherence to recommended lifestyle changes and medication regimens can control symptoms, reduce complications, and improve the quality of life. These lifestyle changes and medication regimens may include restrictive diets, weight loss, exercise programs, careful self-monitoring of symptoms, and multiple medications that must be taken as prescribed, monitored with blood tests, and adjusted if indicated. However, both recommended lifestyle changes and medication regimens can be difficult for patients to understand and maintain. Indeed, among individuals with either congestive heart failure or diabetes mellitus, nonadherence to treatment regimens has been identified as a major contributor to exacerbations of symptoms and to preventable hospitalizations. The Agency for Health Care Policy and Research's 1994 clinical practice guidelines for congestive heart failure recommend, as a key element of comprehensive care, that "after a diagnosis of heart failure * * * all patients should be counseled regarding the nature of heart failure, drug regimens, dietary restrictions, symptoms of worsening heart failure, what to do if these symptoms occur, and prognosis." Similarly, patients diagnosed with diabetes mellitus also should be counseled regarding appropriate measures for management of their disease. Recognizing the importance of patient education as a component of a comprehensive plan of care for diabetics, section 4105 of the Balanced Budget Act of 1997 (Pub. L. 105–33, enacted on August 5, 1997) expanded coverage for diabetes outpatient self-management training. Thus, at a minimum, individualized patient education and counseling to improve understanding of, and adherence to, complex self-care regimens should be basic features of case management models for patients with congestive heart failure or diabetes mellitus. However, models may be more complex, including frequent monitoring of patients' signs and symptoms, adherence to the prescribed treatment plan, as well as other sophisticated interventions.

While case management interventions may not result in the same level of measurable improvements in all beneficiaries with congestive heart failure or diabetes mellitus, properly identified patients have the potential to benefit significantly. Beneficiaries who are likely to experience avoidable hospitalizations are prime candidates for case management interventions that will identify medical problems early, improve treatment regimen compliance, and coordinate post-hospital care. The expectation is that a case management intervention that achieves these improvements will reduce overall costs substantially by reducing the frequency of hospital admissions and other costly aspects of treatment. The case management intervention is expected to maintain or improve the quality of care.

Based in part on the potential for chronic care case management to

improve beneficiary health status and to lower costs through reduced hospitalizations and disease complications, HCFA sponsored a series of case management demonstrations. These demonstrations, mandated by section 4207(g) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Pub. L. 101–508, included case management approaches aimed at a number of chronic illnesses, including congestive heart failure. Specifically, the legislation called for demonstrations to "provide case management services to Medicare beneficiaries with selected catastrophic illnesses, particularly those with high costs of health care services." The resulting demonstrations were implemented in three sites, AdminaStar Solutions, Iowa Foundation for Medical Care (IFMC), and Providence Hospital. The projects began operation in October 1993 and continued through November 1995.

Although all three demonstration sites generally focused on increased education regarding proper patient monitoring and management of the specified chronic condition, the targeted conditions and case management protocols differed in each site. The AdminaStar site focused exclusively on congestive heart failure, the IFMC project focused on congestive heart failure and chronic obstructive pulmonary disease, and the Providence Hospital site case management intervention applied to a wider range of chronic conditions. None of the projects were aimed specifically at diabetes case management. Rather, these projects varied in the extent to which management of diabetes as a co-morbid condition was addressed. At the start of the project, all three sites anticipated sharply reduced hospitalizations and lower medical costs compared to the beneficiary control groups.

B. Evaluation and Findings

The legislation required a formal evaluation of the project. The evaluation (Costs and Consequences of Case Management for Medicare Beneficiaries, NTIS: PB98–103328), performed by Mathematica Policy Research, Inc., found the following:

• *The three demonstration projects successfully identified and enrolled populations of Medicare beneficiaries who were likely to incur much higher than average Medicare reimbursements during the demonstration period.* In all three sites, beneficiaries with chronic illnesses who were identified for the project used far greater resources than those in the general Medicare population.

• *Each project encountered unexpectedly low levels of enthusiasm for the demonstration from beneficiaries and their physicians.* For all three sites, recruiting volunteer beneficiaries was more difficult than anticipated, and refusal rates were sometimes as high as 90 percent. Although the project teams engaged in outreach activities, participation by and coordination with beneficiaries' physicians was difficult.

• *The projects failed to improve client self-care or health, or to reduce Medicare spending, despite engendering high levels of satisfaction among the high cost, chronically ill beneficiaries who eventually participated.* Comparisons of health status, functional status, and expenditures between the control and the intervention groups showed no improvements due to the case management intervention.

The evaluation report suggested the following primary reasons for the lack of outcome and cost impacts found in these case management demonstrations:

• *The clients' physicians were not involved in the interventions.* The evaluation study found that case managers received little or no cooperation from clients' physicians. Despite outreach by the case managers, most physicians provided little interaction with the case managers, and few opportunities for constructive rapport developed. The case managers at all three projects indicated that they would have been more effective if their activities had been coordinated with the clients' physicians' advice, and if these physicians had generally supported the case management efforts.

• *The projects did not have sufficiently focused interventions.* Even at the two demonstration sites that focused specifically on congestive heart failure, little guidance was built into the interventions regarding the types of activities to be emphasized, how often to contact and monitor clients at different levels of severity, or the content of the education provided.

• *The projects lacked staff with sufficient case management expertise and the specific clinical knowledge to generate the desired reductions in hospital use.* The case managers in these projects, virtually all of whom were nurses, received only a few days of initial training to review project procedures and clinical topics; however, some completed additional in-service training or attended seminars. This limited training may have been an inadequate substitute for more comprehensive experience or background in the specific target disease and in community-based care or case management.

• *The projects had no financial incentives to reduce Medicare spending.* In these projects, the case management intervention focused on providing education or arranging services, but had no target outcomes (for example, holding hospital readmission rates at or below a pre-determined level) upon which manager reimbursement was based. In addition, since the clients' physicians played almost no role in these interventions, there was no incentive for the providers of care to render services efficiently. If payment either for the case management services, or to the providers of care had been based in part on measurable outcome targets, the projects' personnel might have monitored patient outcomes more closely and focused efforts more consistently on activities that would increase the likelihood of improving outcomes or reducing costs.

C. Issues To Address in Future Studies

The results of this evaluation indicate that the following issues need to be addressed in any future work related to chronic illness case management:

• The importance of the involvement of the client's physicians;

• The need for focused interventions based upon the etiology of the disease, severity of the condition, co-morbid conditions, psychosocial factors, and other factors specific to the Medicare population;

• The need for staff specifically trained in case management; and

• The necessity for some incentives, particularly financial incentives, to control costs and improve outcomes. In addition, we expect that future studies will benefit from testing whether the added costs of modifying and intensifying case management interventions to address limitations identified by the prior demonstrations can be implemented in a fiscally responsible manner (both in terms of costs for the case management services and of the overall financing strategy). Specifically, we recommend that future studies clarify whether savings from reduced medical costs would be sufficient to cover the case management costs in the Medicare fee-for-service environment (where beneficiaries are not bound to primary care physicians for service approvals). The Mathematica evaluation estimated that the costs associated with providing the relatively generic case management interventions tested in the AdminaStar congestive heart failure demonstration reached about 14 percent of average client medical expenditures. Based on the most successful trial to date, if an estimate of the possible savings from

focused congestive heart failure interventions is about 23 percent of client medical expenditures, then the potential net savings could be up to 9 percent (23 percent minus 14 percent). Whether the cost of more focused case management interventions would be less than the savings provided by the interventions, and whether these interventions could lead to measurable improvement in beneficiary outcomes are unknown.

Another consideration for future studies is that HCFA's experience with case management demonstration projects has established, as a key element for success, the need for creative incentive arrangements that promote interdisciplinary collaboration to affect appropriate provision and substitution of services. In essence, development of a financing strategy that supports the goals of a Medicare fee-for-service case management demonstration is as important to the potential success of the project as is the design of the delivery model and specific interventions. However, given the nature of the Medicare fee-for-service program, HCFA recognizes that the feasibility of implementing a case management delivery model in the program may be complicated. Particularly challenging is that Medicare fee-for-service beneficiaries are able to seek services from any qualified provider (there are no lock-in provisions), the program does not offer an oral medication benefit, and that separate payment for non-face-to-face interventions is typically not allowed. Further, because Medicare fee-for-service providers receive payment for discrete units of service, physicians and other providers face direct incentives to increase volume and intensity of their services and to avoid the marginal costs of providing services that are not directly reimbursed.

In addition, there are other system-wide challenges to case management implementation in a fee-for-service environment. For example, a large proportion of Medicare beneficiaries have supplemental insurance that typically covers co-payments and deductibles, thereby leaving them little incentive to use the health care delivery system efficiently.

Despite these challenges, in the Medicare fee-for-service program, and in its payment demonstrations, there are numerous examples of alternative financing methodologies that have been developed and implemented successfully (such as the hospital prospective payment system). However, these experiences have indicated that careful attention to the efficient pricing of services, incentive and administrative arrangements, and the interaction between the provision of discrete services and the broader service delivery system is required. Therefore, a successful demonstration project to implement a case management delivery model in the Medicare fee-for-service program must efficiently provide and oversee well-integrated case management services, use a fiscally responsible financing strategy that involves appropriate, carefully crafted incentive arrangements, and address the challenges presented by the nature of the fee-for-service program.

D. Demonstration Authority

Our authority to engage in this proposed demonstration project is based upon section 402 of the Social Security Amendments of 1967, as amended (42 U.S.C. 1395b–1). Specifically, section 402(a)(1) of the Social Security Amendments of 1967, as amended (42 U.S.C. 1395b–1), authorizes the Secretary "either directly or through grants to public or nonprofit private agencies, institutions and organizations or contracts with public or private agencies, institutions, and organizations, to develop and engage in experiments and demonstration projects" for one of eleven specified purposes. Of these specific purposes, we believe that the most appropriate category for the demonstration announced in this notice is section 402(a)(1)(B). Specifically, the purpose given in section 402(a)(1)(B) is:

> to determine whether payments for services other than those for which payment may be made under such programs (and which are incidental to services for which payment may be made under such programs) would, in the judgement of the Secretary, result in more economical provision and more effective utilization of [Medicare covered services] where such services are furnished by organizations and institutions which have the capability of providing—
>
> (i) comprehensive health care services,
>
> (ii) mental health care services (as defined by section 2691(c) of [title 42],
>
> (iii) ambulatory health care services (including surgical services provided on an outpatient basis), or
>
> (iv) institutional services which may substitute, at lower cost, for hospital care.

Thus, for consideration, proposals must provide evidence that the applicant and the proposed project fall within the parameters of the demonstration authority of section 402(a)(1)(B).

II. Provisions of This Notice

A. Purpose

This notice announces HCFA's solicitation for proposals for demonstration projects that will use existing, innovative case management interventions to improve clinical outcomes and quality of life for beneficiaries diagnosed with congestive heart failure or diabetes mellitus who are in the Medicare fee-for-service program under Parts A and B, and that will provide savings to the Medicare program at least sufficient to cover the payment made for the case management services. These savings are to result from more efficient provision and utilization of services and the prevention of avoidable, costly medical complications. Under the demonstration, using a fiscally responsible payment methodology that, at a minimum, is budget neutral, HCFA will make payment for the proposed case management services. Thus, over the course of the project, the aggregate Medicare payment for the case management services may be no greater than the total expected program savings from the case management interventions.

Applicants must propose an all-inclusive payment amount (for example, per service, case rate, monthly fee, per diem) for their proposed unit of case management services. No separate payment will be made for capital investments, administrative, implementation, operating, data collection, research, evaluation, or any other costs incurred by the demonstration selectee(s) in the provision of the proposed case management services. The selectee(s) will be required to cooperate in a formal evaluation of the demonstration. No additional funding will be provided for this cooperation.

HCFA intends to award a maximum of two proposed projects that best meet the evaluation criteria, and plans to operate the demonstration project(s) for three years from implementation. The selected projects(s) will test congestive heart failure case management, diabetes case management, or both.

B. Requirements for Submissions

1. Innovative Proposals

In this solicitation, HCFA seeks innovative proposals that test whether case management interventions improve clinical outcomes and quality of life for Medicare fee-for-service beneficiaries with congestive heart failure or diabetes mellitus, while providing savings to the Medicare program at least sufficient to cover the expenditures for these services. HCFA is interested in case management models that are specifically targeted to the Medicare population and that take into account

the beneficiaries' relative health status, age, and other factors, rather than the application of generic clinical case management delivery system models. Of particular importance is the fact that many Medicare beneficiaries have multiple medical conditions. Case management interventions that focus exclusively on one condition may fail to address the interaction of various disease states. While a diagnosis of congestive heart failure or diabetes mellitus is a basic condition for beneficiary participation in the demonstration, HCFA is interested in and will give preference to proposals that focus on beneficiaries most likely to benefit from case management interventions that take patient co-morbidities into account in the case management interventions provided.

HCFA seeks to test existing case management delivery protocols and interventions that, at a minimum, have been pilot tested, thus, preventing the need for a long developmental time frame. Proposals must build upon lessons learned in HCFA's previous case management demonstrations and must address specifically the following issues in the context of the Medicare fee-for-service program under Parts A and B:

- Integration and involvement of the client's physicians in case management activities;
- Well-defined clinical case management delivery model protocols that focus on congestive heart failure or diabetes mellitus, and that demonstrate an individualized approach to patient education, counseling, and other services;
- Focused training and experience of the case management staff; and
- Budget neutral payment methodology and incentive arrangements that are administratively feasible, and that support measurable outcome targets, such as reduced medical spending and improved beneficiary clinical outcomes or health status.

Proposals must show clearly that the demonstration design incorporates the four issues described above. In addition, applicants must provide a scientific, clinically-based rationale for their design. We recommend that, at a minimum, the applicant include a detailed discussion of the following project elements:

- Process for a beneficiary participant's identification, selection, and discharge from the program;
- Definition and scope of services to be provided;
- Process for ensuring adequate post-hospital care and flow of patient information from setting to setting;
- Process for payment allocation across the proposed providers;
- Details of any risk or risk sharing arrangements;
- Existing quality improvement processes and study results;
- Description of the pertinent research questions related to cost and health outcomes;
- Proposed data elements that will be collected to support the measurement of these outcomes;
- Data system capabilities;
- Qualifications of staff and management;
- Scope of the project, including the number of beneficiaries, number and types of providers, location, and period of performance; and
- Implementation plan.

Proposals for models that rely on medication management regimens must address issues related to the cost of the medications, beneficiaries' ability to afford the medications, and implications for the applicant's protocols, and other pertinent information. In addition, applicants must provide clear evidence of actual net cost savings and outcomes achieved during prior pilot testing or implementation. Preference will be given to proposals that include the following:

- Evidence of cost effective clinical case management delivery model protocols, specific to the Medicare population;
- Clinically-based approach to identify patients with congestive heart failure or diabetes mellitus who are most likely to benefit from case management;
- Use of focused interventions and appropriateness screening, based upon the etiology of the disease, severity of the condition, and other relevant factors; and
- Protocols that have been tested specifically with a Medicare population diagnosed with congestive heart failure or diabetes mellitus.

2. Experimental Design and Implementation Plan

Many of the design elements of the proposed demonstration project will depend on the protocol offered by the applicant. At a minimum, for consideration, the proposed demonstration project must provide for voluntary participation for Medicare beneficiaries, a randomized experimental design, and budget neutrality (that is, no expected increase in Medicare program costs).

Proposals that include existing case management delivery protocols and interventions that have never been implemented on a Medicare population must detail the modifications to the protocols for application to the Medicare fee-for-service population. Proposals must include a detailed implementation strategy and plan, and provide evidence of how the plan supports the project's goals. In addition, proposals must include evidence of the feasibility of implementing the proposed payment model in a fee-for-service environment.

3. Replication of Models

HCFA's purpose in this solicitation is to identify clinical case management delivery system models for congestive heart failure or diabetes mellitus that, if evaluated as successful, could be replicated throughout the Medicare fee-for-service program under Parts A and B. Accordingly, the protocols tested in this demonstration cannot be proprietary in nature to the extent that the application of the intervention beyond the demonstration will require HCFA to contract only with the demonstration selectee.

4. Eligible Organizations and General Policy Considerations

HCFA is interested in proposals from a variety of qualified organizations. However, to be considered responsive, the applicant must satisfy all of the requirements described in sections I.D., II.A., and II.B. of this notice. Organizations that believe they meet these requirements may submit a letter of intent to submit a complete proposal.

5. Letter of Intent

A signed letter of intent must be received by the HCFA project officer as indicated in the **DATES** and **ADDRESSES** sections of this notice. The letter of intent must indicate the applicant's intention to submit a completed proposal for congestive heart failure case management, diabetes case management, or both. By submitting a letter of intent, the applicant is not obligated to submit a proposal. The letter must be signed by a duly authorized official and include the applicant's name, address, contact person, business telephone number, and all existing HCFA provider number(s) and an Employer Identification Number (EIN) for basic identification purposes.

For each timely submitted letter of intent, the HCFA project officer, or designee, will contact the specified representative (contact person) to discuss the application process. Organizations that submit a timely letter of intent may submit a completed proposal and 10 copies (along with a copy of the previously timely submitted letter of intent) to the HCFA project

officer as indicated in the **DATES** and **ADDRESSES** sections of this notice. Applicants submitting proposals for both congestive heart failure case management and diabetes case management should submit 2 completed proposals (one for congestive heart failure and one for diabetes) along with 10 copies of each proposal and a copy of the previously timely submitted letter of intent.

This notice is not covered by the Paperwork Reduction Act of 1995 and accordingly will not be reviewed by the Office of Management and Budget.

Authority: Sections 402(a)(1) and 402(a)(1)(B) of the Social Security Amendments of 1967, as amended (42 U.S.C. 1395b–1).

(Catalog of Federal Domestic Assistance Program No. 93.779; Health Financing, Demonstrations, and Experiments)

Dated: May 13, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–15509 Filed 6–10–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1043–N]

Medicare Program; June 24 and 25, 1998, Meeting of the Competitive Pricing Advisory Committee

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Competitive Pricing Advisory Committee. This meeting is open to the public.

DATES: The meeting is scheduled for June 24, 1998 from 9:00 a.m. until 5:30 p.m. and for June 25, 1998 from 9:00 a.m. until 1:00 p.m.

ADDRESSES: The meeting will be held at the Bethesda Ramada Hotel and Conference Center, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Lu Zawistowich, Sc.D., Executive Director, Competitive Pricing Advisory Committee, Health Care Financing Administration, 7500 Security Boulevard C4–14–17, Baltimore, Maryland 21244–1850, (410) 786–6451.

SUPPLEMENTARY INFORMATION: Section 4011 of the Balanced Budget Act of 1997, (BBA) (Pub. L. 105–33) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. Section 4012 of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (the CPAC). The CPAC will meet periodically to make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research design for implementing the project.

The CPAC consists of 15 individuals who are independent actuaries, experts in competitive pricing and the administration of the Federal Employees Health Benefit Program, and representatives of health plans, insurers, employers, unions, and beneficiaries. In accordance with section 4012(a)(5) of the Balanced Budget Act, the CPAC shall terminate on December 31, 2004.

The CPAC held its first meeting on May 7, 1998. The CPAC members are: James Cubbin, Executive Director, General Motors Health Care Initiative; Robert Berenson, M.D., Director, Center for Health Plans and Providers, HCFA; John Bertko, CEO and Senior Actuary, PM-Squared Inc.; Dave Durenberger, Senior Health Policy Fellow, University of St. Thomas and Founder of Public Policy Partners; Gary Goldstein, M.D., CEO, The Oschner Clinic; Samuel Havens, Healthcare Consultant and Chairman of Health Scope/United; Margaret Jordan, Healthcare Consultant and CEO, The Margaret Jordan Group; Chip Kahn, CEO, The Health Insurance Association of America; Cleve Killingsworth, President, Health Alliance Plan; Nancy Kichak, Director, Office of Actuaries, Office of Personnel Management; Len Nichols, Principal Research Associate, The Urban Institute; Robert Reischauer, Senior Fellow, The Brookings Institute; John Rother, Director, Legislation and Public Policy, American Association of Retired Persons; Andrew Stern, President, Service Employees International Union, AFL–CIO; and Jay Wolfson, Director, The Florida Information Center, University of South Florida. The Chairperson is James Cubbin and the Co-Chairperson is Robert Berenson, M.D.

The agenda will include description and discussion of private/public sector experience with competitive pricing, the status of quality of care measurements, risk adjustment in the context of competitive pricing, and the desired criteria for demonstration site selection. The CPAC will also discuss additional information needed before selecting the recommended demonstration design.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues should contact the Executive Director by 12 noon, June 11, 1998, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director no later than 12 noon, June 18, 1998. Anyone who is not scheduled to speak may submit written comments to the Executive Director by 12:00 noon, June 18, 1998. The meeting is open to the public, but attendance is limited to the space available.

(Section 4012 of the Balanced Budget Act of 1997, Pub. L. 105–33 (42 U.S.C. 1395w–23 note) and section 10(a) Pub. L. 92–463 (5 U.S.C. App.2, section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 4, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–15600 Filed 6–8–98; 2:43 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: May 1998

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of May 1998, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national

effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
AUGUSTIN, DELOUIS ELOY, AZ	06/18/1998
BALKAN, WILLIE RIVIERA BEACH, FL	06/18/1998
BIO-CARE, INC AGAWAM, MA	06/18/1998
BLEEKER, LINDA V LOCUST HILL, VA	06/18/1998
BURCIAGA, GUADALUPE L ALBUQUERQUE, NM	06/18/1998
BUTTS, PRESTON RAMON MEMPHIS, TN	06/18/1998
CAIRNS, MARK P MANDEVILLE, LA	06/18/1998
CHAPMAN, SHIRLEY M MEMPHIS, TN	06/18/1998
CHUOKE, TANYA ANN ARANSAS PASS, TX	06/18/1998
CONNOLLY, GREGORY J SPRINGFIELD, MA	06/18/1998
CT TRANSPORTATION COMPANY, INC CHICOPEE, MA	06/18/1998
DAWSEY, BERNADETTE MILWAUKEE, WI	06/18/1998
DOWD, LINDA MCCABE AZLE, TX	06/18/1998
DUPEYRON, ORLANDO RAIFORD, FL	06/18/1998
EDMUNDS, DAVID WALTER MUNHALL, PA	06/18/1998
FANNING, KENDRA KERBOW FORT SMITH, AR	06/18/1998
FARR, PETER ELKHART, IN	06/18/1998
FERRANTE, DEBORAHA FLORENCE TARZANA, CA	06/18/1998
FORD, TONY CURTIS MEMPHIS, TN	06/18/1998
GARCIA, SUSAN D MADISON, KS	06/18/1998
GAYTON, PHILIP H SEATTLE, WA	06/18/1998
GREAT LAKES PSYCHOLOGICAL SVCS CHICAGO, IL	06/18/1998
HALLEM, NICHOLE LYNN SIOUX FALLS, SD	06/18/1998
HAMMOND, KATHERINE HARBOR SPRINGS, MI	06/18/1998
HAMMOND, ALAN HARBOR SPRINGS, MI	06/18/1998
HENRY, DELORES A NEW CHURCH, VA	06/18/1998
HOLLIS, ALBERT M FT LAUDERDALE, FL	06/18/1998
JENKINS, ALISON G NEW BLOOMFIELD, MO	06/18/1998
JIMENEZ, JUAN JOSE MIAMI, FL	06/18/1998
JONES, SANDRA KAY GROVETON, TX	06/18/1998
JUSTICE, IRENE BALL HONAKER, VA	06/18/1998
KAHN, STEVEN A LAKE GEORGE, NY	06/18/1998
KNIGHT, RONALD LEE MELBOURNE, FL	06/18/1998
LEVY, MARILYN TUCSON, AZ	06/18/1998
LIU, I-HAN WESTWOOD, MA	06/18/1998
LOTT, CHARLES H FT PIERCE, FL	06/18/1998
M & B TRANSPORTATION, INC MILWAUKEE, WI	06/18/1998
MARTINEZ-MIRANDA, BLACINA PHOENIX, AZ	06/18/1998
MCGEE, RODNEY KARL SACRAMENTO, CA	06/18/1998
MELTON, SHARI L GRESHAM, OR	06/18/1998
MICHAEL, DAN W MELBOURNE, FL	06/18/1998
MOREHOUSE, LISA M BATON ROUGE, LA	06/18/1998
NEWTON, LUCILLE BROWNSVILLE, TX	06/18/1998
OTERO, RUBEN L MT VERNON, NY	06/18/1998
PHILLIPS, MILDRED JANICE HOWE, OK	06/18/1998
QUISENBERRY, SONYA MONROE, MI	06/18/1998
ROWLAND, CHRISTOPHER V JAMAICA PLAIN, MA	06/18/1998
RUSSELL, CARLA JO TURKEY CREEK, LA	06/18/1998
RUTHERFORD, WILLIAM CHEVY CHASE, MD	06/18/1998
SAUL, MARY JACQUELINE MONROE, MI	06/18/1998
SAUNDERS, GEORGE E GREEN BAY, VA	06/18/1998
SHAW, ROXIE WINNSBORO, LA	06/18/1998
SHUMEL, LAWRENCE BROOKLYN, NY	06/18/1998
STROH, JOHN R LOVINGTON, NM	06/18/1998
TEIXEIRA, LOUIS D LUDLOW, MA	06/18/1998
TRAHMS, ROBERT GEORGE TIBURON, CA	06/18/1998
WEINER, JOEL BRIAN W ATLANTIC BEACH, NY	06/18/1998
WEISENFELD, MICHAEL W BLOOMFIELD, MI	06/18/1998
WILSON, LINDA FAYE CROSSETT, AR	06/18/1998
FELONY CONTROLLED SUBSTANCE CONVICTION	
BAILEY, MELVIN FORT DIX, NJ	06/18/1998
SNELL, BYRON RAY FAIRTON, NJ	06/18/1998
PATIENT ABUSE/NEGLECT CONVICTIONS	
ADAMS, LISA DIANNE POLLOK, TX	06/18/1998
ALHABSI, CARMENCITA BRONX, NY	06/18/1998
CARREON, MILAGROS UPLAND, CA	06/18/1998
DAVIS, DEMIEQUA PEARL, MS	06/18/1998
DURR, DEBRA A WESSON, MS	06/18/1998
HOFFMAN, SUSAN OXFORD, MS	06/18/1998
HUDSON, ANGELA WEIR, MS	06/18/1998
HUFF, DELLA REESE VICTORIA, TX	06/18/1998
JACKSON, CHANDRA HAMMOND, LA	06/18/1998
KIRBY, RICHARD DAVID BALTIMORE, MD	06/18/1998
KNIGHT, LINDA CLARKSDALE, MS	06/18/1998
LIGHTFOOT, DORETHA ANN FORT WORTH, TX	06/18/1998
MANNING, RAYMOND F BLOOMFIELD, IA	06/18/1998
MARTINEZ, CAMARINO GARCIA AVENAL, CA	06/18/1998
MATTHEWS, CHESTER R NASHVILLE, TN	06/18/1998
MCCARTER, VERNELL STURGIS, MS	06/18/1998
MITCHELL, WILLIAM QUIMBA WALNUT RIDGE, AR	06/18/1998
MONTOYA, MANUEL ARTHUR JR DENVER, CO	06/18/1998
ORTEGA, EDWARD R OXNARD, CA	06/18/1998
RAMOS, MARIA LUISA AMARILLO, TX	06/18/1998
RODMAN, MICHAEL DEE TAFT, OK	06/18/1998
RODRIGUEZ, ROSA DEL RIO, TX	06/18/1998
SANDIFER, LAMONT K PINOLA, MS	06/18/1998
SMART, ROBERT STEVEN CARLISLE, AR	06/18/1998
SMITH, NATALIE MAGNOLIA, AR	06/18/1998
TEASLEY, PORSHA DUPREE SMACKOVER, AR	06/18/1998
THOMAS, DEWAYNE DEMETRIUS HOUSTON, TX	06/18/1998
WATSON, DANA LAMBERT GATESVILLE, TX	06/18/1998
WHITAKER, SHIRLEY I KANSAS CITY, KS	06/18/1998
WHITLEY, REBECCA BOONEVILLE, MS	06/18/1998
CONVICTION FOR HEALTH CARE FRAUD	
GRAHAM, JIMMMY RICHARD N LITTLE ROCK, AR	06/18/1998
NICHOLS, RONDA R DANBURY, CT	06/18/1998
PETERS, FLORENCE BUFFALO GROVE, IL	06/18/1998
SHLEIFER, THOMAS M N LAS VEGAS, NV	06/18/1998
SULLIVAN, JOHN M LEWISBURG, PA	06/18/1998
TIMOTHE, MARJORIE BROOKLYN, NY	06/18/1998
WASHINGTON, VERONICA SHERMAN	06/18/1998

Subject city, state	Effective date
SHREVEPORT, LA WOOD, ANTON A WESTERVILLE, OH	06/18/1998
CONTROLLED SUBSTANCE CONVICTIONS	
AUSTIN, KIRK JAY SANTA CRUZ, CA	06/18/1998
BRANDT, PATRICIA SAGINAW, MI	06/18/1998
WARD, JAN WALKER FORT WORTH, TX	06/18/1998
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ANDERSON, CHARLES BELLEVILLE, IL	06/18/1998
ANDERSON, VONNA JANE HIGHLAND, CA	06/18/1998
ARROYO, JOSE C ELLICOTT CITY, MD	06/18/1998
BARTON, JOHN S LOUISVILLE, KY	06/18/1998
BEEBE, JANICE M LITTLE FALLS, MN	06/18/1998
BIGLER, DEBRA LYNN L SUNLAND, CA	06/18/1998
BIRTLE, DEBRA L SAN CLEMENTE, CA	06/18/1998
BLACKMON, ROYCE E BUTLER, TN	06/18/1998
BOWES, ROBERT R SANTA ANA, CA	06/18/1998
BRADLEY, WILLIAM ROBINS BALTIMORE, MD	06/18/1998
BREIT, PATRICIA J HUNTINGTON BEACH, CA	06/18/1998
BURKE, PAUL WEBER JR PARKERSBURG, WV	06/18/1998
BUTT, FARIDA RASHID ISLAMABAD PAKISTAN,	06/18/1998
CAMERON, PAUL F W HARTFORD, VT	06/18/1998
CHERRY, MARGARET D VIRGINIA BEACH, VA	06/18/1998
CHIAROTTINO, GARY D BELLINGHAM, WA	06/18/1998
CHRISTIE, PAMELA S WOODBRIDGE, VA	06/18/1998
COLEMAN, MARK V SALEM, VA	06/18/1998
COLLIMORE, ELLEN SOUTHPORT, CT	06/18/1998
COOK, SCOTT MINNEAPOLIS, MN	06/18/1998
COOK-LAMKIN, OLIVIA D PARAMOUNT, CA	06/18/1998
COWARDIN, STEVE W RICHMOND, VA	06/18/1998
CROWELL, DEBORAH E RIDGEFIELD, CT	06/18/1998
D'AVIS, LUIS SKOKIE, IL	06/18/1998
DALAL, AJITKUMAR QUINCY, IL	06/18/1998
DAVID, EMMANUEL T JR BANNING, CA	06/18/1998
DEBENEDETTO, SHARON R NEWPORT NEWS, VA	06/18/1998
DEERING, PATRICIA FRY AXTON, VA	06/18/1998
DELGADO, CARLOS G	06/18/1998
PHILIPPINES 6000,	
DEVITO, CHRISTINA MARIE FALLS CHURCH, VA	06/18/1998
DOW, JOSEPH ELWOOD PACOIMA, CA	06/18/1998
DOYLE, THOMAS J SAN DIEGO, CA	06/18/1998
EAGAN, CYNTHIA H GLOUCESTER, MA	06/18/1998
EDWARDS, LINDA NORRIS CITY, IL	06/18/1998
ELWARD, LAWRENCE BRIDGEPORT, CT	06/18/1998
ESTES, BETSY A MCGAHEYSVILLE, VA	06/18/1998
FORD, BRIAN LEE BELLEVUE, WA	06/18/1998
GAMBLE, RUBY FAYE LANCASTER, TX	06/18/1998
GANZ, MATTHEW HAYWARD, CA	06/18/1998
GERARDO, LETICIA M NEW YORK, NY	06/18/1998
GIAMARCO, LOUIS A WAKEFIELD, MA	06/18/1998
GLEASH, TANYA WESTMONT, IL	06/18/1998
GOLDBERG, IRWIN C W HOLLYWOOD, CA	06/18/1998
GROTH, ANITA E HAM LAKE, MN	06/18/1998
HAILE, TSIGE MINNEAPOLIS, MN	06/18/1998
HAINES, JEFFREY WILLIAM MORENO VALLEY, CA	06/18/1998
HARRIS, DANIEL D BOSTON, MA	06/18/1998
HEIM, ALYCE A MINNEAPOLIS, MN	06/18/1998
HENDERSON, LARRY MEREDOSIA, IL	06/18/1998
HERROD, JAMES M MURFREESBORO, TN	06/18/1998
HICKS, STEVEN HAMPTON, VA	06/18/1998
HOLT, KENNETH W ROANOKE, VA	06/18/1998
HOO, ROBERT K COSTA MESA, CA	06/18/1998
HORN, WENDIE C ELIZABETHTON, TN	06/18/1998
HUMENANSKY, DIANE B ST PAUL, MN	06/18/1998
HUR, RETA CHICAGO, IL	06/18/1998
ITEN, MICHELLE A SCOTTSDALE, AZ	06/18/1998
JACKSON, STEPHEN ROYAL BEVERLY HILLS, CA	06/18/1998
JOHNSON, HOOPER D HARLINGEN, TX	06/18/1998
JOHNSON, O GUY JR ST PAUL, MN	06/18/1998
JOHNSTON, ANGELIQUE SHELBYVILLE, IL	06/18/1998
JONES, ANN SOUTH NORWALK, CT	06/18/1998
JOYCE, DAVID LEE ANNAPOLIS, MD	06/18/1998
KENNEY, NANCY ANN SEAL BEACH, CA	06/18/1998
KRAMER, CAROLYN I LA MIRADA, CA	06/18/1998
LAVOIE, MICHELE	06/18/1998
SOUTHBURY, CT	
LOUDON, SCOTT GREENE FREMONT, CA	06/18/1998
MACK, KAREN THURSTON LOS ANGELES, CA	06/18/1998
MANOR, LINDA BETTY YAZOO CITY, MS	06/18/1998
MATORY, WILLIAM E IRVINE, CA	06/18/1998
MILLS, STEVEN G BUZZARDS BAY, MA	06/18/1998
MILLS, TERNETTA CHICAGO, IL	06/18/1998
MIYAZIMA, MARILYN I LONGMONT, CO	06/18/1998
MULLANNEY, PATRICK J SAN DIEGO, CA	06/18/1998
MURPHY-MUNN, KATHLEEN DENISE BROOKLYN, NY	06/18/1998
MUTERT, CINDY L HUMANSVILLE, MO	06/18/1998
NAIL, GREGORY CHARLES SPOKANE, WA	06/18/1998
NAPOLI, SALVATORE FORT LEE, NJ	06/18/1998
PADGET, RUTH SPRINGFIELD, IL	06/18/1998
PERKINS, CASSANDRA P HUNTINGTON BEACH, CA	06/18/1998
PETERS, CHRISTY A ROANOKE, VA	06/18/1998
PHIPPS, MARTA M PILOT MOUNT, IA	06/18/1998
POWELL, PHILLIP HARDY MARSHALL, TX	06/18/1998
PRYOR, DAWN ANTOINETTE CHARLOTTESVILLE, VA	06/18/1998
RAITANO, MARY ANGELA PASADENA, CA	06/18/1998
SCHEIBNER, ADRIANNA BEVERLY HILLS, CA	06/18/1998
SCHIEVE, DONALD R BULLHEAD CITY, AZ	06/18/1998
SCRIBNER, ROBSON P WINCHESTER, VA	06/18/1998
SHARMA, SWARAN K BUFFALO, NY	06/18/1998
SILBERMAN, MICHAEL K FORT WORTH, TX	06/18/1998
SILVA, MARCELINO S LOCKHART, TX	06/18/1998
SINN, VICKY L WAYLAND, IA	06/18/1998
SMITH, DEBORAH THOMAS COLUMBIA, PA	06/18/1998
SMITH, RICHARD CHICAGO, IL	06/18/1998
SMITH-SATTLEFIELD, ALECIA CENTERVILLE, IL	06/18/1998
STEWART, DEBRA J BARRE, VT	06/18/1998
TARTAGLIA. DEBORAH OAKVILLE, CT	06/18/1998
TOMASINO, INGA HOUSTON, TX	06/18/1998
TOWNSEND, JUNE DALE APPLE VALLEY, CA	06/18/1998
VANNEIL, KATHLEEN MARY WEBSTER, NY	06/18/1998
VANPATTEN, EARL L SPOKANE, WA	06/18/1998
WARNACK, GERALD	06/18/1998

Subject city, state	Effective date
STERLING HGTS, MI	
WATSON, RITA W ..... RICHMOND, VA	06/18/1998
WENTWORTH, DAPHNE J ..... CONCORD, NH	06/18/1998
WILLMER, KAREN A ..... PHILADELPHIA, PA	06/18/1998
WOLF, ROBERT ..... NEW ROCHELLE, NY	06/18/1998
WOLFE, GERALD L ..... POWAY, CA	06/18/1998
YEE, ROBERT RANDALL ..... SACRAMENTO, CA	06/18/1998
FEDERAL/STATE EXCLUSION/ SUSPENSION	
BYERS, THOMAS Q ..... BONNER FERRY, ID	06/18/1998
CONNELY, LAURIE E ..... KOOSKIA, ID	06/18/1998
DUTT, DAVID S ..... BOISE, ID	06/18/1998
GREENIDGE, NEIL TREVOR .. BRONX, NY	06/18/1998
GUSTIN, KELLY D ..... PRIEST RIVER, ID	06/18/1998
RUMPAKIS, JOHN M B ..... LAKE OSWEGO, OR	06/18/1998
OWNED/CONTROLLED BY CONVICTED/ EXCLUDED	
EKG UNLIMITED, INC EGLIN, FL	06/18/1998
INDIAN RIVER YELLOW CAB W MELBOURNE, FL	06/18/1998
LOD MEDICAL SERVICES, INC ..... RAIFORD, FL	06/18/1998
DEFAULT ON HEAL LOAN	
ACOSTA (DELGADO), FELIBERTO D ..... BRONX, NY	06/18/1998
ATALLAH, HASSAN A ..... TORRANCE, CA	06/18/1998
BARTON, ROBERT L ..... PRESCOTT, AZ	06/18/1998
BELL, DERRICK LEE ..... MODESTO, CA	06/18/1998
BOUFFORD, EDWARD J ..... SALEM, MA	06/18/1998
BUCKLEY, ALETA M ..... LAS VEGAS, NV	06/18/1998
CARLOS H POWERS, JR, DDS, PC ..... WASHINGTON, DC	06/18/1998
CHAPMAN, ROBERT DAVID III HOUSTON, TX	06/18/1998
CHOI, SEONG Y ..... DIAMOND BAR, CA	06/18/1998
CLAWSON, PATRICIA A ..... CORDES LAKES, AZ	06/18/1998
COHEN, DANIEL B ..... SOUTHFIELD, MI	06/18/1998
DIRHAM, PAMELA M ..... REDONDO BEACH, CA	06/18/1998
DOLAN, DAVID PATRICK ..... OMAHA, NE	06/18/1998
GALBRAITH, ERNEST L ..... MEMPHIS, TN	06/18/1998
GARCIA, NATIVIDAD ..... PATERSON, NJ	06/18/1998
GARRIES, MAURICE D ..... HEMPSTEAD, NY	06/18/1998
GORE, LORI A ..... SOUTHFIELD, MI	06/18/1998
GRIFFITH, DAVID L ..... MARYSVILLE, WA	06/18/1998
GRULLON, IVETTE A ..... NEW YORK, NY	06/18/1998
LEATHERS, KEVIN P ..... KIRKLAND, WA	06/18/1998
NORTON, LUCILLE PATRICIA AUGUSTA, ME	06/18/1998
VILLETA, JAVIER G ..... SAN JUAN, PR	06/18/1998
WEIGEL, HOWARD J ..... OLD BRIDGE, NJ	06/18/1998
WHEELER, TREV D ..... ONTARIO, OR	06/18/1998
WHEELER, JACQUELYN L ..... WASHINGTON, DC	06/18/1998
WIESEN, KENNETH M ..... CHERRY HILL, NJ	06/18/1998
WILLIAMS, WALTER HOWARD ..... EL PASO, TX	06/18/1998
ZENGOE, CLARE T ..... NAMPA, ID	06/18/1998
EXCLUSION BASED ON SETTLEMENT AGREEMENT	
ASIS MEDICAL EQUIPMENT, INC ..... MIAMI, FL	12/17/1997
GERMAN, MARIA ..... MIAMI, FL	12/17/1997
LOPEZ, FRANK J ..... HOMOSASSA SPNGS, FL	10/10/1997
PHYSICIAN'S 1ST CHOICE, INC ..... HOMOSASSA SPRNGS, FL	10/10/1997
REBOLLO, SUSANNA ..... MIAMI, FL	12/17/1997
SOMED, CO ..... HOMOSASSA SPNGS, FL	10/10/1997

Dated: June 1 , 1998.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 98–15560 Filed 6–10–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: July 23–24, 1998.

Time: July 23, 1998, 8:00 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Neal A. Musto, SRA, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

(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: June 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–15561 Filed 6–10–98; 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 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1–GRB–C (C3)–S.

Date: June 25, 1998.

Time: 9:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate contract proposals.

Place: Embassy Suites Hotel Crystal City, 1300 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Dan E. Matsumoto, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1–GRB–C (C2)–S.

Date: June 25, 1998.

Time: 12:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Embassy Suites Hotel Crystal City, 1300 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Dan E. Matsumoto, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1–GRB–C (C1)–S.

Date: June 26, 1998.

Time: 8:00 a.m. to Adjournment.

Agenda: To review and evaluate contract proposals.

Place: Embassy Suites Hotel Crystal City, 1300 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Dan E. Matsumoto, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(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: June 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–15562 Filed 6–10–98; 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 Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–4(O1).

Date: June 29, 1998.

Time: 8:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites, 1300 Concourse Drive, Linthicum, MD 21090.

Contact Person: William Elzinga, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

(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: June 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–15563 Filed 6–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meeting of the National Institute of Dental Research Special Grants Review Committee

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 Committee: National Institute of Dental Research Special Grants Review Committee.

Date: June 18–19, 1998.

Time: 8:30 a.m. to Adjournment.

Place: Hilton Hotel, 620 Perry Parkway, Gaithersburg, Maryland 20877.

Contact Person: Dr. William Gartland, Scientific Review Administrator, NIDR Special Grants Review Committee, Natcher Building, Room 4AN–38E, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To review and evaluate grant applications and/or contract proposals.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the extramural research review cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 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. 93.121, Dental Research Institute; National Institutes of Health, HHS)

Dated: June 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–15564 Filed 6–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Proposed Project

Treatment Improvement Protocols (TIPs): Retrospective Evaluation; New

Since 1992, the Center for Substance Abuse Treatment (CSAT) has published 25 Treatment Improvement Protocols, which provide administrative and clinical practice guidance to the substance abuse treatment field. Under the proposed project, three primary studies will be conducted to evaluate the impact of TIPs. The first of these, the

Retrospective Study, will examine TIPs published by CSAT as of the time of the study. This study will examine methods of dissemination used by CSAT; the success of those methods in reaching the target audiences; users' perceptions of the value of TIPs; decisions to implement the guidance presented in TIPs; and the successes, correlates, and barriers associated with implementation. The Retrospective Study uses a one-group posttest-only design to provide the framework for a surveys of respondents from four distinct target audiences of interest to CSAT: (1) Single State Agency Directors; (2) directors of substance abuse treatment facilities listed in the most recent Uniform Facilities Data Set (UFDS) database; (3) clinical directors of treatment facilities listed in the database; and (4) front-line clinicians/counselors working in facilities listed in the database. Measures will include organization characteristics and outcomes associated with the following variables: awareness, receipt, and reading of TIPs; perceived utility of TIPs; and the impact of TIPs on changing substance abuse treatment practices. The estimated annualized burden for a 1-year data collection period is summarized below.

	Number of respondents	Number of responses per respondent	Average burden per response (hrs.)	Total burden hours
Single State Agency Directors	56	2	.55	62
Facility Directors	1040	1.48	.47	718
Clinical Supervisors	1040	1.40	.44	642
Counselors	1280	1.32	.41	696
Total				2118

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 4, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–15546 Filed 6–10–98; 8:45 am]

BILLING CODE 4162–20 P

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–843688

Applicant: Cincinnati Zoo, Cincinnati, OH

The applicant requests a permit to import one live captive born cheetah (*Acinonyx jubatus*) from South Africa for the purpose of enhancement to the survival of the species through conservation education.

PRT–843094

Applicant: Henry Doorly Zoo, Omaha, NE

The applicant requests a permit to import blood samples collected from captive-held Galapagos tortoise (*Geochelone nigra*) from locations world-wide for the purpose of scientific research.

PRT–843141

Applicant: Riverbanks Zoological Garden, Columbia, SC

The applicant requests a permit to import blood samples collected from captive-held thick-billed parrots (*Rhynchopsitta pachrhyncha*) from locations world-wide for the purpose of scientific research.

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).

PRT–801652

Applicant: USGS Biological Resources Division, Alaska Science Center, Anchorage, AK

Permit Type: Take for Scientific Research.

Name and Number of Animals: Pacific walrus (*Odobenus rosmarus*), no additional animals involved.

Summary of Activity To Be Authorized: The applicant requests amendment of their permit to allow for the attachment of crittercam devices to Pacific walrus in order to test the camera's usefulness in studying the foraging behavior of walrus. A related activity associated with this request is commercial/educational photography involving no more than Level B harassment of Pacific walrus. That proposal is being reviewed under a separate permit amendment request submitted by the Ravetch Underwater Films [see 63 FR 83].

Source of Marine Mammals: Alaska.

Period of Activity: If amendment is issued, permit expiration date would remain 12/31/00.

PRT–843203

Applicant: USGS–BRD, California Sea Otter Project, Santa Cruz, CA

Permit Type: Take for Scientific Research.

Name and Number of Animals: Southern sea otter (*Enhydra lutris nereis*), 15.

Summary of Activity To Be Authorized: The applicant requests a permit to allow sea otters undergoing rehabilitation in captivity access to baited commercial finfish and shellfish traps in an experimental setting, to see if and how they become entrapped. No harm to sea otters is expected.

Source of Marine Mammals: Southern sea otters currently in captivity for rehabilitation purposes at Monterey Bay Aquarium, Monterey, CA; Marine Wildlife Veterinary Care and Research Center, Santa Cruz, CA; and Sea World of California, San Diego, CA.

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.

PRT–843445

Applicant: Dennis John Tucker, Deforest, WI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–843452

Applicant: Joseph J. Sisca, Jr., Brewster, NY

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

PRT–838648

Applicant: Alan Sackman, New York, NY

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

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 for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203, phone (703) 358–2104 or Fax (703) 358–2281.

Dated: June 5, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–15498 Filed 6–10–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1020–00]

Call for Nominations for the Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations.

SUMMARY: The purpose of this notice is to solicit nominations from the public to fill a position which has recently been vacated on the Bureau of Land Management (BLM, Front Range Resource Advisory Council.

This council provides advice and recommendations to BLM on management of the public lands. The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to establish advisory councils to provide advice on land use planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). In order to reflect a fair balance of viewpoints, the membership of Resource Advisory Councils must be representative of the various interests concerned with the management of public lands and users of the public lands.

The position to be filled on the Front Range Resource Advisory Council is in Category 1—holders of federal grazing permits; representatives of energy and mining development; transportation or right-of-way; timber industry; off-road vehicle use and developed recreation. Individuals may nominate themselves or others. Nominees must be residents of Colorado. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed Nomination/Background Information Form, as well as any other information that speaks to the nominee's qualifications.

DATES: Completed Nomination/Background Information Forms and any other necessary information should be received in the BLM, Canon City District Office on or before July 27, 1998.

ADDRESSES: Bureau of Land Management (BLM) Canon City District Office, 3170 East Main, Canon City, Colorado 81212. Telephone (719) 269–8500, TDD (719) 269–8597.

FOR FURTHER INFORMATION: Contact Ken Smith at (719) 269–8553.

SUPPLEMENTARY INFORMATION: Nomination/Background Forms are available from the Canon City District Office. Completed Nomination/Background Forms should be returned to the address listed above. Nominees will be evaluated based on their education, training, and experience with the issues and knowledge of the geographical area of the Council. Nominees should have demonstrated a commitment to collaborative resource decision making.

Donnie R. Sparks,

District Manager.

[FR Doc. 98–15576 Filed 6–10–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CO–030–5101–00–YCKD; COC–51280]

Record of Decision, Final Supplement to the Final 1992 Environmental Impact Statement TransColorado Gas Transmission Project; Colorado and New Mexico

AGENCY: Bureau of Land Management (BLM), Interior, and Forest Service (FS), Agriculture.

ACTION: Notice of availability of a 1998 Record of Decision for the Final Supplement to the Final 1992 Environmental Impact Statement TransColorado Gas Transmission Project; Colorado and New Mexico.

SUMMARY: The Bureau of Land Management (BLM), as lead agency, and in cooperation with the U.S. Forest Service (USFS) has prepared a Record of Decision (ROD) for the Final Supplement (Supplement) to the 1992 Final Environmental Impact Statement (FEIS) for the TransColorado Gas Transmission (TransColorado) Project on Federal lands in Colorado and New Mexico. TransColorado Gas Transmission Company is the proponent. Lands managed by the BLM in the Montrose, Craig, and Grand Junction Districts in Colorado, and the Farmington District in New Mexico, and the USFS in the Uncompahgre and San Juan National Forests, Colorado, are

crossed by the TransColorado pipeline project. The impacts of implementing the proponent's Proposed Action Alternative, the No Action Alternative, and the Agency Preferred Alternative were analyzed in the Supplement.

The 1998 ROD for the Final Supplement to the 1992 FEIS adopts the Agency Preferred Alternative. The 1998 ROD approves the following actions associated with the Agency Preferred Alternative:

1. The construction, operation, maintenance, and termination of known proposed route changes and minor realignments (less than 100 ft.) from the approved pipeline right-of-way (ROW) grant COC–51280.

2. The use of known additional temporary use areas adjacent to the approved ROW or proposed ROW route changes or minor realignments.

3. The minor realignments to the pipeline centerline and the use of relocated temporary work areas, in unspecified locations to accommodate conditions that might be encountered during construction.

4. Modjfications to several environmental protection measures contained in the 1992 ROW grant and 1992 ROD.

5. The re-authorization of an expired 25 foot-wide temporary use permit (TUP) for necessary work space adjacent to and parallel to the entire length of the pipeline, including along approved route changes and minor realignments.

Further, the amended MLA ROW grant offered to TransColorado will contain stipulations concerning hazardous materials, threatened and endangered species, BLM and USFS sensitive species, Department of Transportation health and safety issues, any future modifications to mitigation measures, valid existing rights, Plan of Development, strict liability, steep slopes special mitigation and visual resource mitigation.

ADDRESSES: The Record of Decision, the 1998 Supplement, and the 1992 FEIS are available for public review at the following BLM and USFS offices: BLM Grand Junction District, BLM Montrose District, BLM San Juan Resource Area, BLM Farmington District, Grand Mesa, Uncompahgre, and Gunnison National Forests, and San Juan National Forest. Public reading copies are available at the federal depository libraries in Colorado and New Mexico, and public libraries within San Juan County, New Mexico, and La Plata, Montezuma, Dolores, San Miguel, Montrose, Delta, Mesa, Garfield and Rio Blanco Counties, Colorado, and at TransColorado Offices in Salt Lake City and Montrose, CO.

FOR FURTHER INFORMATION CONTACT: Bill Bottomly (970) 240–5337, Ilyse Auringer (970) 385–1341, Dave Lehmann (970) 344–3021, or Steve Hemphill (970) 874–6633.

SUPPLEMENTARY INFORMATION: After preparing Draft and Final Environmental Impact Statements, the BLM and USFS signed Records of Decision on December 1, 1992, for a 292 mile-long TransColorado Gas Transmission pipeline from Meeker, Colorado to Bloomfield, New Mexico. Under the authority of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended, BLM issued a 50 foot-wide ROW grant on December 4, 1992, accompanied by a 25 foot-wide Temporary Use Permit, excepting 1.7 miles near Grand Junction, Colorado, to TransColorado (COC–51280). The Federal Energy Regulatory Commission issued TransColorado a Certificate of Public Convenience and Necessity on June 3, 1994. TransColorado completed the 22.5 mile Phase I of the project in December, 1996. The proponent is now prepared to construct the remainder of the pipeline during 1998.

Public participation has occurred throughout the preparation of the Supplement. The Notice of Intent to prepare this Supplement to the FEIS was published in the **Federal Register** on November 21, 1997. "Open House" forums were held from October 21 through December 10, 1997 at Norwood, Durango, Delta, Rangely, Dolores, and Grand Junction, Colorado. Field trips to locations on the San Juan National Forest were offered on November 15 and 22, 1997. The Draft Supplement was published on January 23, 1998, and was available for public comments for a 60-day period that closed on March 18, 1998. The BLM and USFS received 52 written comment letters and several oral comments during the public comment period on the Draft Supplement, including at the public meetings held on February 17, 18, and 19, 1998 in Durango, Dolores, and Grand Junction, Colorado, respectively. The Final Supplement was published on April 24, 1998, for a 30-day availability period which ended on May 24, 1998. Two comment letters were received, neither of which resulted in any changes to the Final Supplement.

The purpose of the amended ROW and related authorizations is for the construction, operation, maintenance and termination of one 22 to 24 inch diameter natural gas pipeline, appurtenances, and associated facilities between the Piceance Basin near Meeker, Colorado to the interconnection near the Coyote Gulch Treating Plant, northwest of Bloomfield, New Mexico.

Pursuant to 40 CFR 1506.3, the BLM and the USFS have independently reviewed the Supplement in conjunction with the 1992 FEIS and have concluded that, with the mitigation measures documented in the 1992 FEIS and those identified in the Agency Preferred Alternative of the Supplement to the 1992 FEIS, the BLM and USFS comments and suggestions have been satisfactorily integrated.

The Authorized Officer has adopted the Supplement and the Agency Preferred Alternative in the Supplement, relative to the federal lands administered by the BLM and USFS, subject to the additional mitigation in the ROD. Letters of concurrence with the ROD from the Uncompahgre National Forest and the San Juan National Forest are on file at the Montrose District Office of the BLM. The ROD approved the following amendments to the TransColorado Gas Transmission Company ROW grant COC–51280 on Federal lands managed by the BLM and USFS:

1. Route Changes and Realignments

Offer to TransColorado, and grant if accepted, an amended MLA ROW grant COC–51280 for the Federal lands involved, incorporating pipeline route changes greater than 100 feet from the existing centerline of the pipeline, and pipeline realignments that are less than 100 feet from the existing centerline of the pipeline. The permanent width of the amended ROW will be 50 feet. The term of the amended ROW grant will be for 30 years from the date of the original ROW grant, COC–51280. The route changes and realignments herein are described in Chapter 2, Tables 2–1, 2–2, and 2–3, of the Agency Preferred Alternative of the Supplement. Maps of each route change are shown in Appendix B of the Supplement. Legal descriptions for these route changes and realignments on Federal lands affected by the ROD are shown in Attachment 1 of the ROD. The route of the entire ROW, including these route changes and realignments, and ancillary facilities, is shown on the official, Approved ROW Alignment Sheets for the pipeline and related facilities designated as *TransColorado Pipeline Project Construction Alignment Sheets TCP–3022D–1101 to 1155, 1301 to 1324, 7500, and 9200 to 9250.* The offered amended ROW grant will be subject to the terms and conditions as specified in the ROD, as well as all of the terms and conditions specified in the 1992 ROD from the FEIS.

2. Temporary Use Areas

Offer to TransColorado and grant if accepted Temporary Use Permits (TUPs) for temporary use areas (TUAs) on the Federal lands for the purpose of constructing one 22 to 24 inch natural gas pipeline associated with ROW COC–51280 and amended ROW COC–51280. These TUPs will be subject to all stipulations specified in the ROD as well as all stipulations specified in the 1992 ROD from the FEIS. These subject TUAs are listed in Table 2–4 and Appendix C of the Supplement. Legal descriptions for these TUAs are shown in Attachment 1 of the ROD. All TUAs are shown on the official Approved ROW Alignment Sheets for the pipeline and related facilities designated as *TransColorado Pipeline Project Construction Alignment Sheets TCP–3022D–1101 to 1155, 1301 to 1324, 7500, and 9200 to 9250.*

3. Field Pipeline Realignments and Field Relocation of Temporary Use Areas

Authorize BLM and USFS delegated representatives to approve realigning the staked centerline of the pipeline described in ROW grant COC–51280 as amended, up to a maximum of 100 feet from the staked centerline. All such realignments shall be implemented only with the specific conditions that (1) the realignment can reasonably be constructed, (2) a determination has been made by the agency archaeologist that no significant cultural resources will be effected, (3) a determination has been made by the agency biologist that no direct effects (e.g. taking) of listed species will occur, (4) a determination has been made by the Authorized Officer's representative that soil and slope stability can be maintained, and erosion will be controlled using methods identified in the project POD.

Authorize BLM and USFS delegated representatives to approve relocating TUAs a maximum of 100 feet from the original approved TUA boundary, subject to the following conditions: (1) The TUA is no larger than the size originally approved; (2) a determination has been made by the agency archaeologist that no significant cultural resources will be effected, (3) a determination has been made by the agency biologist that no direct effects (e.g. taking) of listed species will occur, (4) a determination has been made by the Authorized Officer's representative that soil and slope stability can be maintained, and erosion will be controlled using methods identified in the project POD.

4. Revised Environmental Protection Measures

Approve the 18 revised environmental protection measures in the Agency Preferred Alternative, Table 2–6 on the Supplement. These environmental protection measures are shown in Attachment 2 of the ROD, "Revised Tables 2–12, TransColorado Gas Transmission Project Environmental Protection Measures for Federal Lands" and Table 2–13, TransColorado Gas Transmission Project Site-Specific Environmental Protection Measures." The amended ROW grant and all TUPs offered to TransColorado will be subject to these revised environmental protection measures, all terms and conditions as specified in the ROD, as well as all terms and conditions specified in the 1992 ROD from the FEIS. The amended ROW grant offered to TransColorado will condition all granted areas (to include the original granted alignment, all route changes and all realignments) to all terms and conditions as specified in the ROD, as well as all terms and conditions specified in the 1992 ROD from the FEIS.

5. Re-Authorization of the 25-foot Wide Temporary Use Area

Offer to TransColorado and grant if accepted a Temporary Use Permit (TUP) for a 25-foot wide temporary use area (TUA) on the Federal lands adjacent to and for the length of the ROW and amended ROW. The purpose of this TUA will be for the construction of one 22 to 24 inch natural gas pipeline associated with ROW COC–51280. This TUP will be subject to all stipulations of the ROD as well as all stipulations of the 1992 ROD from the FEIS. Legal description for this TUA is shown in Attachment 1 of the ROD. The TUA is shown on the official Approved ROW Alignment Sheets for the pipeline and related facilities designated as *TransColorado Pipeline Project Construction Alignment Sheets TCP–3022D–1101 to 1155, 1301 to 1324, 7500, and 9200 to 9250.*

Additional Mitigation and Monitoring

The amended MLA ROW grant COC–51280 (to include the original granted alignment, all route changes and all realignments) and all TUPs offered to TransColorado will contain the following additional stipulations and environmental protection measures on Federal lands. These measures are based on environmental concerns which were not fully incorporated into the Final Supplement. The term "holder" refers to the holder of the MLA ROW grant, TransColorado Gas Transmission Company, its successors and assigns. Inclusion of these measures should provide for all practicable means to avoid or reduce environmental harm, in accordance with the requirements under 43, Code of Federal Regulations (43 CFR, Part 2881.2).

6. Hazardous Materials

Holder will be required to provide information on hazardous materials that will be used, produced, transported or stored on the ROW, either temporarily during construction or permanently, in accordance with the requirements of BLM Instruction Memorandum No. 94–253 (Hazardous Materials Management on Rights-of-way, July 28, 1994 and refer to Department of Interior Standard Form 299, Item #19). Currently, three categories of hazardous materials, explosives and blasting agents, paint, and coatings are identified as being brought on site during the project. Based on the use or transport of these materials, during the project by TransColorado on Federal lands, the following stipulations will be included in the amended ROW grant:

(a) Holder shall comply with all applicable Federal laws and regulations concerning hazardous materials and toxic substances, existing or hereafter enacted or promulgated. In any event, the holder shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, *et seq.*) with regard to any toxic substances that are used, generated by or stored on the ROW or on facilities authorized under the ROW grant. (See 40 CFR, Part 702–799) Additionally, any release of toxic substances (leaks, spills, etc.) at or in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the BLM Authorized Officer concurrent with the filing of the reports to the involved Federal agency or State government.

(b) The holder agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.* or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, *et seq.*) on the ROW (unless the

threatened release is wholly unrelated to the ROW holder's activity on the ROW). This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.

(c) The holder shall comply with all applicable Federal, State and local laws or ordinances concerning the use, storage and transport of explosives and blasting agents. The holder shall provide the appropriate office of the Bureau of Alcohol, Tobacco and Firearms (BATF), Regulatory Enforcement, with a list of dates and locations for the explosives and blasting agent storage facilities to be used on the Project, at least 14 days prior to the establishment of such storage facilities. In addition, the BLM Authorized Officer in his or her discretion may require the holder to employ additional security measures for the storage or transport of explosives and blasting agents, including but not limited to the use of 24-hour on site security personnel. These additional security measures will be developed through consultation between the BLM Authorized Officer, BATF, appropriate land managing agencies, Federal, State and local law enforcement agencies and the holder.

7. Threatened and Endangered Species

The Holder shall comply with all conservation measures and conservation recommendations contained in the US Fish and Wildlife Service's (USFWS) May 18, 1998, Final Biological Opinion (Attachment 3). The BLM will retain jurisdiction should the Section 7 consultation process need to be reinitiated at any point during this project. These measures will also be incorporated into the Plan of Development (POD) for the project.

8. Sensitive Species

The Holder shall comply with all mitigation measures contained in the Final Biological Evaluation for BLM and USFS "sensitive species" identified for the TransColorado Project will be implemented (Attachment 4). These measures will also be incorporated into the Plan of Development for the project.

9. Department of Transportation; Health and Safety

In accordance with 43 CFR 2881.2(c), TransColorado shall comply with all applicable Federal and State law that will protect the safety and health of pipeline workers and the general public, including, but not limited to, protection against the sudden rupture and slow degradation of the pipeline. This includes compliance with all such applicable measures required by FERC, Department of Transportation (DOT) and appropriate State Agencies of Colorado and New Mexico. TransColorado shall design, construct, operate, and maintain all facilities in accordance with applicable Federal (including DOT) and State law governing pipelines and pipeline construction.

10. Mitigation Measure Modification Requests

Any changes in mitigation measures that apply to activities on Federal lands must be approved in writing, in advance, by the BLM Authorized Officer or delegated Authorized Officer's Representative. TransColorado must request such changes in writing at least 7 days prior to the date that the change in the mitigation measure would take effect. Minor on-site one-time variances to mitigation measures may be approved, in writing, by the BLM/USFS designated Compliance Inspectors on a case-by-case basis.

11. Valid Existing Rights

This MLA ROW shall be subject to all valid existing rights on Federal lands as of the date of the grant and amended grant.

12. Alignment Sheets, Legal Descriptions and TUPs

The Official Approved Alignment Sheets will be part of the amended MLA ROW grant to be offered and granted, if accepted by TransColorado. All TUPs will reference tracking numbers, mileposts, or specific locations along the pipeline centerline on the subject Alignment Sheets and in Appendix C in the Supplement.

13. Plan of Development

TransColorado is required to provide the BLM and USFS a Plan of Development (POD) that details how the pipeline and associated facilities will be constructed. The final POD will become part of the amended ROW grant by reference. The final POD will be completed and approved by the BLM and the USFS prior to the issuance of any construction-related Notice to Proceed (NTPs) for Federal lands. If all required environmental protection measures from both the 1992 and 1998 RODS are not included in the POD to the satisfaction of the BLM and the USFS, no construction related NTP will be issued for Federal lands. Prior to any construction or other surface disturbance associated with ROW grant C–51280 or amended ROW C–51280 or related TUPs, the Authorized Officer or delegated agency representative will issue written NTPs. Any NTP shall authorize construction or use only as therein expressly stated and only for the particular location, segment, area, or use described.

14. Strict Liability

Chapter 3 the 1992 FEIS and Chapter 3 and Appendix D of the Supplement to the 1992 FEIS identify specific steep slopes of the San Juan National Forest where the TransColorado Project presents a foreseeable hazard or risk to the United States. These potential hazards or risks are documented in Appendix D of the Supplement to the 1992 FEIS. The slope stability issue of these specific slopes is discussed in (1) the 1991 "Engineering Geology and Geotechnical Engineering Services, Alternative "J" and Alternative "E" Canyon Crossings, San Juan National Forest, Montezuma County, Colorado, TransColorado Project" by Sergent, Hauskins & Beckwith (SHB); in (2) the "Special Geotechnical and Engineering Investigations for the Proposed TransColorado Pipeline Route Through the San Juan National Forest" prepared by Universal ENSCO Inc. and AGRA Earth and Environmental, dated March, 1998; in (3) a letter from AGRA Earth and Environmental entitled "Validity of the 1991 SHB Report on the Engineering Geology and Geotechnical Engineering Regarding Slopes in the San Juan National Forest, Montezuma County, Colorado"; in (4) two reports from Dr. Nicholas Sitar titled "Stability Analysis of Soil Strength Parameters for the Proposed TransColorado Pipeline" and an "Addendum to Review of Stability Analysis of Soil Strength Parameters for the Proposed TransColorado Pipeline", dated December 22, 1997 and December 30, 1997, respectively; in (5) the AGRA Earth and Environmental January 1998 "Reclamation Plan, Shallow Slope Stability Mitigation Plan, TransColorado Pipeline Company San Juan National Forest" and; in (6) the USFS San Juan National Forest April 23, 1998 report, "Comments on TransColorado Pipeline Geotechnical Engineering and Engineering". These impact discussions demonstrate the differences in the professional geotechnical conclusions concerning the slope stability of the specifically identified steep slopes of the San Juan National Forest and that the Project presents a foreseeable hazard or risk to the United States due to geologic hazards, rockfalls and slope instability. These hazards may result in ruptured, damaged or corroded pipe, which may pose a public and environmental safety hazard, including fire and explosion. The costs of suppressing wildland fires caused by

these environmental safety hazards would be likely to exceed $1,000,000, depending on the time of year and fire hazard conditions. Damages to highways and other facilities, as well as liability for human injuries, could also exceed this amount. In accordance with the regulations under 43 CFR 2883.1–4, this potential for a foreseeable risk or hazard to the United States requires that the MLA amended ROW grant offered to TransColorado be subject to the following strict liability stipulation:

The holder shall be liable for damage or injury to the United States to the extent provided by 43 CFR 2883.1–4. The holder shall be held to a standard of strict liability for damage or injury to the United States resulting from fire, explosion or soil movement (including land slides, slumps and rockfalls, as well as wind and water-caused movement of particles) caused or substantially aggravated by any of the following within the ROW or permit area:

(a) Activities of the holder, including but not limited to construction, operation, maintenance, and termination of the facility.

(b) Activities of other parties including but not limited to:

(i) Land clearing and logging.

(ii) Earth-disturbing and earth-moving work.

(iii) Blasting.

(iv) Vandalism and sabotage.

(c) Acts of God.

The maximum limitation for such strict liability damages shall not exceed one million dollars ($1,000,000) for any one event, and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which the damage or injury occurred.

This requirement shall not impose strict liability for damage or injuries resulting primarily from an act of war or from the negligent acts or omissions of the United States.

The strict liability stipulation contained in MLA amended ROW grant COC–51280 offered to TransColorado will be applied only to the locations on Federal lands managed by the San Juan National Forest described in the ROD in Attachment 5 of the ROD.

15. Steep Slopes Mitigation

All steep slope mitigation and construction measures and environmental protection measures contained in Appendix D, "Steep Slopes Construction Plan" of the Supplement will be followed. On these designated steep slope locations on the San Juan National Forest and on the Grand Mesa Slopes (see Appendix D–2, Supplement), these measures will take precedence over general mitigation measures. TUPs issued on these designated steep slopes of the San Juan National Forest (Attachment 5), will be stipulated such that TUAs will not be used for the storage of merchantable timber. NTPs for these same TUAs on the San Juan National Forest will also contain this stipulation.

16. Visual Resource Mitigation

In the visually sensitive areas of the Grand Mesa Slopes Area and the Grand Valley, and the Dolores River Canyon crossing, the BLM Authorized Officer or delegated representative, at his/her discretion will require the implementation of some or all of the visual resource mitigation requirements stated in Attachment 2 of the ROD (Revised Tables 2–12 and 2–13 of the 1992 FEIS) and Appendix D of the Supplement to the 1992 FEIS. Additionally, for the Dolores River Canyon crossing and steep slopes, the final determination of visual resource mitigation measures will be at the discretion of the Authorized Officer, following construction. Design holes for tree planting shall be installed in quantity and dimension as directed by the Authorized Officer.

The decisions in the 1998 ROD may be appealed to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with the regulations contained in 43 Code of Federal Regulations (CFR), Part 4 and the enclosed Form 1842–1. If an appeal is taken, your notice of appeal must be filed with the Bureau of Land Management, District Manager, Montrose District, 2465 South Townsend Avenue, Montrose, Colorado 81401 within 30 days from the date of publication of this Notice of Availability in the **Federal Register**. The appellant has the burden of showing that the decision appealed from is in error.

The decision(s) in the ROD may be appealed to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with the regulations contained in 43 Code of Federal Regulations (CFR), Part 4. If an appeal is taken, your notice of appeal must be filed with the Bureau of Land Management, Montrose District Manager, 2465 South Townsend Avenue, Montrose, Colorado 81401, within 30 days after the date of publication in the **Federal Register**. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulations at 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the IBLA and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of immediate and irreparable harm if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Adverse parties of record who must be served with a copy of the appeal and statement of reasons are: Mr. C. Kim Blair, TransColorado Gas Transmission Company, 79 South State St., P. O. Box 11450, Salt Lake City, Utah 84147.

Dated: June 4, 1998.

Mark W. Stiles,

District Manager, Montrose District, Bureau of Land Management.

Dated: June 4, 1998.

Robert L. Storch,

Forest Supervisor, Grand Mesa, Uncompahgre, and Gunnison National Forests, Forest Service.

[FR Doc. 98–15685 Filed 6–10–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–00; GP8–0216]

Eastern Washington Resource Advisory Council Tour and Meeting

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Tour and meeting of the Eastern Washington Resource Advisory Council; June 25, 1998, beginning and ending in Spokane, Washington.

SUMMARY: A tour of Bureau of Land Management recreation sites and meeting of the Eastern Washington Resource Advisory Council will be held on June 25, 1998. The tour and meeting will convene at 8:00 a.m., at the Spokane District Office of the Bureau of

Land Management, 1103 N. Fancher, Spokane, Washington, 99212. The tour and meeting will conclude at 5:00 p.m. or upon completion of the tour at the Spokane BLM office. Public comments will be heard from 12:30 p.m. until 1:00 p.m. at BLM's Lakeview Ranch tour stop.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212; or call 509–536–1200.

Dated: June 5, 1998.

Gary J. Yeager,

Acting District Manager.

[FR Doc. 98–15620 Filed 6–10–98; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–395]

Effects on U.S. Trade of the European Union's Association Agreements With Selected Central and Eastern European Partners

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation, scheduling of public hearing, and notice of opportunity to submit comments.

EFFECTIVE DATE: June 2, 1998.

SUMMARY: Following receipt on April 15, 1998, of a request under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) from the United States Trade Representative (USTR), the U.S. International Trade Commission (Commission) instituted investigation No. 332–395, Effects on U.S. Trade of the European Union's Association Agreements with Selected Central and Eastern European Partners. The Commission plans to submit its report to the USTR by April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Diane Manifold, Office of Economics (202–205–3271 or e-mail to dmanifold@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Background

The European Union (EU) has signed a number of trade-liberalizing agreements with trading partners in Central and Eastern Europe and the Mediterranean. These agreements have established the starting point for negotiations on EU membership, which will commence this year.

To help it better understand the implications for the United States of such agreements, USTR requested on April 15, 1998 that the Commission conduct a fact-finding investigation under section 332(g) of the Tariff Act of 1930 to assess the effects on U.S. trade flows, sector-by-sector (including agriculture) of the European Union's association agreements with selected Central and Eastern European partners. As requested by the USTR, the Commission in its report on the investigation will:

(1) Describe the trade and investment-related provisions of the association agreement, including trading partner tariff preferences for EU goods and estimate the percentage of trading partner imports of goods and services from the EU that are covered collectively by the provisions;

(2) Analyze the changes in access to the trading partner's market such provisions create for the United States;

(3) Identify the product sectors where notable changes have occurred or are likely to occur to imports from the United States as a result of the association agreements; and,

(4) After examining trends in trade by the partner countries, analyze the likely effects of the agreements on U.S. industries in the identified sectors.

In addition, as requested by USTR, the Commission will review, and compile a bibliography of, existing academic and other literature relating to this topic; solicit to the extent possible the views of U.S. firms having experience in the relevant markets; and discuss aggregate effects of all five agreements to the extent possible. USTR requested that these trends be placed in the context of other economic and policy developments that may also have had an impact on the country's trade and investment flows since entry-into-force of the agreements.

Public Hearing

A public hearing in connection with this investigation will be held in the Commission Hearing Room, 500 E Street, SW, Washington, DC 20436, beginning at 9:30 am on November 18, 1998. All persons will have the right to appear by counsel or in person, to present testimony, and to be heard. Requests to appear at the public hearing should be filed in writing with the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, DC 20436, on or before noon November 6, 1998. Persons testifying at the hearing are encouraged to file prehearing briefs or statements; the deadline for filing such briefs or statements (a signed original and 14 copies) is noon, November 6, 1998. The deadline for filing posthearing briefs or statements is November 25, 1998. Any confidential business information included in such briefs or statements to be submitted at the hearing must be submitted in accordance with the procedures set forth in section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

In the event that, as of COB November 6, 1998, no witnesses have filed a request to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after November 6, 1998, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received not later than COB November 25, 1998. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, D.C. 20436.

Accessibility

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Hearing-impaired persons are advised that information on this investigation can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be

obtained by accessing its Internet server (http:www.usitc.gov).

Issued: June 5, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–15488 Filed 6–10–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–406]

Certain Lens-Fitted Film Packages; Notice of Commission Determination Not To Review an Initial Determination Amending the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 5), which amended the complaint and notice of investigation in the above-captioned investigation to correct the names and/or addresses of three respondents.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 25, 1998, based on a complaint by Fuji Photo Film Co., Ltd. of Tokyo, Japan. 63 FR 14474. Twenty-seven entities were named as respondents in the investigation. On April 23, 1998, the Commission investigative attorney (IA) moved to amend the complaint and notice of investigation to correct the names and/or addresses of three of the respondents. The corrected names and addresses are as follows: Boecks Camera LLC, 9229 West Sunset Blvd., Suite 101, Los Angeles, CA 90069; BPS Marketing, 18642 142nd Ave., Woodinville, WA 98072; and PhilmEx LLC, 5548 Lindbergh Lane, Bell, CA 90201. The correct information was supplied in the respondents' responses to the complaint and notice of investigation. Neither complainant nor respondents objected to the IA's motion.

The ALJ issued an ID amending the complaint and notice of investigation on May 19, 1998 in accordance with the IA's motion. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000.

Issued: June 5, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–15487 Filed 6–10–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Bureau of Justice Assistance Application Form—State Criminal Alien Assistance Program.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 4, 1997, allowing for a 60-day public comment period. No comments were received by the Office of Justice Programs, Bureau of Justice Assistance.

The purpose of this notice is to allow an additional 30 days for public comments until; [Insert the date of 30 days from the date published in the Federal Register]. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, D.C., 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information, will have practical utility; (2) evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of this Information Collection

(1) Type of information collection: Reinstatement, with change, of a previously approved collection for which OMB Clearance has expired.

(2) The title of the form/collection: Bureau of Justice Assistance Application Form—State Criminal Alien Assistance Program.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: None.

Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: State and local governments that have correctional facilities for incarceration of criminal offenders and those accused of crimes.

Other: None.

SCAAP was created by the Crime Act of 1994, and is designed to provide assistance to state and local correctional agencies that incarcerate illegal aliens.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: Of the possible, 3200 governmental entities that are eligible to

apply, it is estimated that only approximately 500 will actually apply for SCAAP. The time burden of the 500 applicants is 30 minutes per application.

(6) An estimate of the total public burden (in hours) associated with the collection: The total hour burden to complete the applications is 250 annual burden hours.

Public Comment on this proposed information collection is strongly encouraged.

Dated: June 4, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–15383 Filed 6–10–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs, National Institute of Justice

[OJP (NIJ)–1183]

RIN 1121–ZB20

Announcement of the Availability of the National Institute of Justice "Solicitation for Policing Research and Evaluation: Fiscal Year 1998"

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of Solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Solicitation for Policing Research and Evaluation: Fiscal Year 1998."

DATES: Due date for receipt of proposals is close of business July 20, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice, in partnership with the Office of Community Oriented Policing Services, announces its solicitation for a fourth year of research and evaluation on community oriented policing. For this solicitation NIJ is particularly interested in efforts that build on and consolidate existing research findings pertaining to community oriented policing, especially those research efforts that seek to advance theory in these areas. Researchers are encouraged to look beyond current practices and propose research that forges new concepts and theories. Major topic areas of interest include: community policing evaluations, community policing organizational issues, the police and the community, problem solving strategies and tactics for community policing, locally-initiated partnerships, the impact of technology on policing, and how crime is measured.

The NIJ/COPS partnership anticipates granting multiple awards totaling up to $8 million under this solicitation.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Solicitation for Policing Research and Evaluation: Fiscal Year 1998" (refer to document no. SL000286). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–15566 Filed 6–10–98; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL SCIENCE FOUNDATION

Speical Emphasis Panel In Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date and Time: June 29–30, 1998; 8:30 a.m.–5:00 p.m.

Place: Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Usha Varshney, Program Director, Physical Foundations of Enabling Technologies (PFET) Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230, Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Physical Foundations on Enabling Technologies proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552B(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 8, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–15577 Filed 6–10–98; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (ARM Financial Group, Inc., Class A Convertible Common Stock, $.01 Par Value) File No. 1–12294

June 4, 1998.

ARM Financial Group, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified Security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A filed on April 24, 1998, on the New York Stock Exchange, Inc. ("NYSE"). Trading in the Company's Security on the NYSE commenced at the opening of business on April 28, 1998, and concurrently therewith such Security was suspended from trading on the Amex.

The Company complied with Amex Rule 18 by filing with the Exchange a certified copy of a resolution adopted by the Company's Board of Directors authorizing the withdrawal of the Security from listing and registration on the Amex and by setting forth in detail to the Exchange the reasons and facts supporting the withdrawal.

The Company's decision to withdraw its Security from listing and registration on the Amex was based on its belief that the securities of most of its competitors

trade on the NYSE and that listing its Security on such Exchange would enhance its competitive position.

By letter dated April 24, 1998, the Amex informed the Company that it had no objection to the withdrawal of the Company's Security from listing and registration on the Amex.

By reason of Section 12(b) of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports with the Commission and the NYSE under Section 13 of the Act.

Any interested person may, on or before June 25, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–15504 Filed 6–10–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (GP Strategies Corporation, Common Stock, $.01 Par Value) File No. 1–7234

June 4, 1998.

GP Strategies Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified Security ("Security") from listing and registration on the Pacific Exchange, Inc. ("PXC" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security has been listed for trading on the PCX and, pursuant to a Registration Statement on Form 8–A which became effective March 23, 1998, the New York Stock Exchange, Inc. ("NYSE"). Trading in the Security commenced on the NYSE on March 27, 1998, and concurrently therewith such Security was suspended from trading on the PCX.

In making the decision to withdraw its Security from listing and registration on the PCX, the Company believes that the NYSE offers enhanced visibility and will enable the Company to further broaden its institutional shareholder base.

By letter dated April 8, 1998, the PCX informed the Company that it had no objection to the withdrawal of the Company's Security from listing and registration on the PCX.

By reason of Section 12(b) of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports with the Commission and the NYSE under Section 13 of the Act.

Any interested person may, on or before June 25, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–15503 Filed 6–10–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40062; File No. SR–NASD–98–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASD Regulation, Inc. Relating to At-Large Industry Members of the National Adjudicatory Council

June 3, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 12, 1998, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD Regulation, Inc. ("NASD Regulation"). The filing was thereafter amended on May 19, 1998.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend Article V, Section 5.2 of its By-Laws relating to the composition of the National Adjudicatory Council ("NAC"). The NAC, which is responsible for overseeing Association disciplinary proceedings, is balanced between industry and non-industry members. The current by-laws require the NASD Regulation Board of Governors to divide the United States into various geographical regions for the purpose of selecting nominees for industry positions on the NAC. The purpose of the current proposal is to differentiate between those industry positions on the NAC that are subject to such regional nomination requirements, and those that are not. The following sets forth the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

BY-LAWS OF NASD REGULATION, INC

* * * * *

ARTICLE V

NATIONAL ADJUDICATORY COUNCIL

* * * * *

Number of Members and Qualifications

Sec. 5.2(a) The National Adjudicatory Council shall consist of no fewer than 12 and no more than 14 members. The number of Non-Industry members, including at least three Public members, shall equal or exceed the number of Industry members. In 1999 and thereafter, *each* [the Industry members shall represent a] geographic region [designated] *established* by the Board under Article VI, Section 6.1 *shall be represented by an Industry member.*

[3] See Letter from T. Grant Callery, General Counsel, NASD to Katherine England, Assistant Director, Commission dated May 19, 1998. Several additional non-substantive textual changes were also provided by telephone call on June 2, 1998. Telephone call between Alden Adkins, General Counsel, NASD Regulation and Mandy S. Cohen, Division of Market Regulation, Commission.

Those Industry members not representing a geographic region, if any, shall be considered at-large Industry members.

* * * * *

Nomination Process

Sec. 5.3 (a) *Pursuant to Article VII, Section 9 of the NASD By-Laws, the National Nominating Committee shall nominate all candidates for the National Adjudicatory Council for subsequent appointment by the Board.* Each Regional Nominating Committee shall nominate an Industry member *candidate* for consideration by the National Nominating Committee as provided in Article VI *of these By-Laws* [and subsection (b) of this Section] *Candidates for at-large Industry member positions on the National Adjudicatory Council shall not be subject to regional nominating procedures.*

* * * * *

ARTICLE VI

National Adjudicatory Council Regional Nominations for Industry Members

Establishment of Regions

Sec. 6.1 The Board shall establish boundaries for geographical regions within the United States for the purpose of nominating candidates for *regional industry* [membership] *member positions* on the National Adjudicatory Council to the National Nominating Committee. The Board may make changes from time to time in the number or boundaries of the regions as the Board deems necessary or appropriate in accordance with Article V, Section 5.2(a). The Board shall prescribe such policies and procedures as are necessary or appropriate to address the implementation of a new region configuration in the event of a change in the number or boundaries of the regions.

* * * * *

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 Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the NASD Regulation By-Laws to permit one or more Industry members of the NAC[4] to serve as at-large Industry members of the NAC, rather than requiring that all Industry members represent a region as is currently provided in the NASD Regulation By-Laws. Currently, the NASD Regulation By-Laws authorize the NASD Regulation Board to appoint an NAC of 12 to 14 members, and require that the number of Non-Industry members equal or exceed the number of Industry members.[5] Thus, the NAC generally will include six or seven Industry members. The By-Laws also require that beginning in 1999 and thereafter, all Industry members represent a geographic region.[6] Industry members must be nominated by a Regional Nominating Committee and may be challenged for such nomination.[7] The Regional Nominating Committees then nominate their candidates to the National Nominating Committee, which makes the final determination as to the nominees presented to the NASD Regulation Board for appointment to the NAC.[8]

The proposed rule change would create up to two NAC Industry members who would not be subject to the regional nominating process; instead, these members would be considered as at-large Industry members of the NAC. The number of at-large Industry members could vary from year-to-year depending on the total number of Industry seats on the NAC and the number of regions selected by the Board. For example, if the Board determined that there should be a 12- or 13-member NAC (which would include six Industry seats) and five regions, then there would be one at-large Industry member. If the Board determined that there should be a 14-member NAC (which would include seven Industry seats) and five regions, then there would be two at-large Industry members. If the number of Industry seats and the number of regions were equal, then there would be no at-large Industry seats that year. Thus, given the limitations on the size of the NAC and the number of Industry seats, the proposed rule change would create zero, one, or two at-large Industry members in any given year.

The proposed rule change would provide NASD Regulation with greater flexibility in the nomination and appointment of Industry members to the NAC. The availability of an at-large seat could assist the National Nominating Committee in recruiting a particularly strong candidate for the NAC by permitting the National Nominating Committee to nominate that candidate to an at-large seat so that the candidate would not have to go through the regional nominating process. Similarly, where a region had two strong candidates, the proposed rule change would allow the National Nominating Committee to nominate one of the candidates to an at-large seat, which in some circumstances could save the time and expense associated with a contested nomination.[9] At the same time, NASD member involvement in nominating Industry members for the NAC would be preserved by requiring most Industry members of the NAC to represent regions. This additional flexibility would help ensure that the most highly qualified candidates are selected for the NAC.

The proposed rule change is consistent with the corporate reorganization approved by the Commission in SR–NASD–97–71[10] in that the number of regions that may be established by the Board is not specified in the NASD Regulation By-Laws so that the Board may retain flexibility in determining the appropriate number of regions. The proposed rule change also is consistent with the regional plan approved by the Board at its meeting on May 6, 1998, which proposes a 12-member NAC and five regions for 1999. The proposed rule change thus would permit five Industry members of the NAC to be nominated by the regions for consideration by the National Nominating Committee and one at-large

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[4] The functions of the NAC include hearing appeals and conducting reviews of disciplinary proceedings, statutory disqualification proceedings, and membership proceedings; reviewing offers of settlement; reviewing exemptions granted or denied by staff; and making recommendations to the Board on policy and rule changes relating to securities business and sales practices and enforcement policies, including policies with respect to fines and other sanctions. See Article V, Section 5.1 of the NASD Regulation By-Laws.

[5] Article V, Section 5.2 of the NASD Regulation By-Laws.

[6] Id.

[7] Article VI of the NASD Regulation By-Laws.

[8] Article VII, Section 9 of the NASD By-Laws; Article VI, Section 6.25 of the NASD Regulation By-Laws.

[9] See Article VI, Sections 6.13 to 6.26 of the NASD Regulation By-Laws.

[10] Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997) (File No. SR–NASD–97–71).

Industry member of the NAC who would not be subject to the regional nominating requirements in Article VI of the NASD Regulation By-Laws. All six Industry members, along with six Non-Industry members, would be nominated by the National Nominating Committee and appointed by the NASD Regulation Board.

NASD Regulation proposes to make the rule change effective upon approval from the Commission.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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. The NASD believes that the proposed rule change will provide greater flexibility to the National Nominating Committee and the NASD Regulation Board in selecting the most highly qualified candidates for the National Adjudicatory Council, which serves an important role in reviewing disciplinary, membership, and other matters for NASD Regulation.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe the proposed rule change would 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

Withing 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the propose 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 NASD Regulation. All submissions should refer to file number SR–NASD–98–36 and should be submitted by July 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15505 Filed 6–10–98; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S1 covers the Office of the Deputy Commissioner, Finance, Assessment and Management. Notice is given that Subchapter S1K, the Office of Program and Integrity Reviews (OPIR) is being retitled to the Office of Quality Assurance and Performance Assessment (OQAPA) and being amended to reflect minor organizational changes. The changes are as follows:

Section S1.10 *The Office of the Deputy Commissioner, Finance, Assessment and Management*—(Organization):

Retitle:

D. "The Office of Program and Integrity Reviews" (S1K) to "The Office of Quality Assurance and Performance Assessment" (S1K).

[11] 17 CFR 200.30–3(a)(12).

Section S1.20 *The Office of the Deputy Commissioner, Finance, Assessment and Management*—(Functions):

Retitle:

D. "The Office of Program and Integrity Reviews" (S1K) to "The Office of Quality Assurance and Performance Assessment" (S1K).

Retitle: Existing Subchapter S1K, "The Office of Program and Integrity Reviews" (S1K) to "The Office of Quality Assurance and Performance Assessment" (S1K).

Change all references to "The Office of Program and Integrity Reviews" (S1K) to "The Office of Quality Assurance and Performance Assessment" (S1K) and all references to "OPIR" to "OQAPA" throughout Chapter S1 and all its Subchapters.

Section S1K.00 *The Office of Quality Assurance and Performance Assessment*—(Mission):

Delete the last sentence.

Section S1K.10 *The Office of Quality Assurance and Performance Assessment*—(Organization):

C. The Immediate Office of the Associate Commissioner for Quality Assurance and Performance Assessment (S1K).

Retitle:

1. "The Administration, Matching and Data Management Staff" (S1K–3) to "The Data Management Staff" (S1K–3).

Retitle:

F. "The Office of Regional Program and Integrity Reviews" (S1K–F1—S1K–FX) to "The Office of Regional Quality Assurance and Performance Assessment" (S1K–F1—S1K–FX).

Section S1K.20 *The Office of Quality Assurance and Performance Assessment*—(Functions):

C. The Immediate Office of the Associate Commissioner for Quality Assurance and Performance Assessment (S1K).

Retitle:

1. "The Administration, Matching and Data Management Staff" (S1K–3) to "The Data Management Staff" (S1K–3).

Amend to read as follows:

1. The Data Management Staff supports OPIR components, including the Office of Regional Quality Assurance and Performance Assessment (ORQAPA), by planning, developing, maintaining and improving OQAPA's communications and data processing systems and the quality review data bases for SSA programs.

Retitle:

F. "The Office of Regional Program and Integrity Reviews" (S1K–F1—S1K–FX) to "The Office of Regional Quality Assurance and Performance Assessment" (S1K–F1—S1K–FX).

Change all references to "The Office of Regional Program and Integrity Reviews" to "The Office of Regional Quality Assurance and Performance Assessment" and all references to "ORPIR" to "ORQAPA" throughout Subchapter S1K.

Dated: May 13, 1998.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 98–15552 Filed 6–10–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Office of International Energy Policy

[Public Notice 2832]

Notice of Receipt of Application for a Permit for Pipeline Facilities To Be Constructed and Maintained on the Borders of the United States

AGENCY: Office of International Energy Policy, Department of State.

The Department of State has received an application from Boise Cascade Corporation, a Delaware corporation, for a Presidential Permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, seeking authorization for the continued operation and maintenance of four existing pipelines at the International Dam at International Falls, Minnesota on the U.S.-Canada border. The dam extends across the border between International Falls and Fort Frances, Ontario.

The pipelines were constructed in the 1915–40 period and have been in use since that time. The pipelines traverse the International Dam for a distance of approximately 1030 feet and convey water, steam, and filler material between the applicant's paper mill and a pulp and paper mill located in Fort Frances, Ontario. There will be no construction and no changes in the present use of the pipelines.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Daniel L. Martinez, Office of International Energy Policy, Department of State, Washington, DC 20520. Tel: (202) 647–4557.

Dated: May 28, 1998.

William A. Weingarten,

Director, Office of International Energy and Commodities Policy.

[FR Doc. 98–15538 Filed 6–10–98; 8:45 am]

BILLING CODE 4710–07–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of the Second Round of Accelerated Tariff Eliminations Under Provisions of the North American Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notification of articles proposed for accelerated tariff elimination under the North American Free Trade Agreement.

SUMMARY: Section 201(b) of the North American Free Trade Agreement Implementation Act of 1993 ("the Act") grants the President, subject to the consultation and lay-over requirements of section 103(a) of the Act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States, Mexico and Canada under Article 302(3) of the North American Free Trade Agreement ("the NAFTA"). This notice is intended to inform the public of those articles on which the United States has provisionally agreed to accelerate the elimination of duties as a result of the second round of talks.

FOR FURTHER INFORMATION CONTACT: Office of Western Hemisphere Affairs, Office of the United States Trade Representative, Room 522, 600 17th Street, NW., Washington, DC 20508; telephone: (202) 395–3412; fax: (202) 395–9517. The list of products for which the United States will accelerate tariff elimination, as well as the lists for Mexico and Canada and can be obtained from the USTR Internet Web Page, at *www.ustr.gov* under "Reports.".

SUPPLEMENTARY INFORMATION: Two **Federal Register** notices provide information on the second round. A notice soliciting petitions appeared May 12, 1997 (62 FR 25992) and a request for comments on the list of products to be considered appeared October 21, 1997, (62 FR 54671).

Article 302 of the NAFTA provides that the Parties may consider and agree to accelerate the elimination of customs duties on goods of a Party. Pursuant to this provision, the United States, Canada and Mexico solicited requests from interested parties in May 1997. As a result, approximately 1,500 8-digit tariff subheadings were considered by the three Parties. For trade between the United States and Canada, all duties subject to tariff reductions were eliminated on January 1, 1998. Therefore, this acceleration round resulted in two parallel agreements, one between the United States and Mexico and another between Mexico and Canada.

Section 201 of the Act authorizes the President to proclaim such modifications in NAFTA duty treatment as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions provided in the NAFTA, subject to the consultation and layover requirements of section 103 of the Act. Pursuant to section 103, on May 29, 1998, a report was submitted to the House Ways and Means and Senate Finance Committees that sets forth the proposed action to be proclaimed, the reasons therefore, and the advice obtained from the International Trade Commission and appropriate advisory committees. After expiration of the 60-day consultation and layover period, the President may proclaim the proposed changes in NAFTA duty treatment.

As a part of the process, USTR requested the advice of the United States International Trade Commission (USITC) and consulted with private sector trade advisory groups. As was the practice under the first NAFTA tariff acceleration and the three rounds conducted under the provisions of the United States-Canada Free Trade Agreement, the United States did not agree to provide accelerated tariff elimination for those products subject to negative advice. In a similar manner, the governments of Canada and Mexico declined to agree to acceleration for products subject to negative comments by their interested parties.

The Parties agreed to accelerated tariff elimination on the remaining products, involving all or parts of approximately 600 8-digit tariff lines for which one or more of the Parties have provisionally agreed to eliminate duties at the conclusion of the necessary domestic procedures.

As noted above, the relevant private sector advisory committees were consulted throughout this process, and have expressed no objection to eliminating tariffs for the products appearing in the Annex. In addition, the USITC provided a report to USTR indicating that the proposed eliminations would have no harmful impact on the United States.

The attached list shows the tariff subheadings for which the United States proposes to eliminate the remaining tariffs on imports of NAFTA-qualifying goods from Mexico, effective August 1, 1998.

Regarding future tariff acceleration activity, trilateral work to date has brought about a positive process of consultations and communication among the private sectors of the NAFTA

countries. To encourage this process of industry cooperation, the Governments of the three NAFTA countries have agreed to keep this consultation process open, so that if consensus is reached among the industries for particular items which were included in the **Federal Register** notice of October 21, 1997, and equivalent notices published by Mexico and Canada, the Governments will proceed with the appropriate internal procedures to implement acceleration for such items. A further **Federal Register** notice will be published in the near future providing information on procedures regarding such industry consensus, as well as those for new NAFTA accelerated tariff reduction requests.

Jon Huenemann,

Assistant U.S. Trade Representative for North America.

NAFTA Tariff Acceleration—Second Round Annex: List of Subheadings for Which the United States Has Provisionally Agreed To Accelerate Elimination of Duties for NAFTA Qualifying Goods of Mexico

2909.49.10, 2909.49.15, 2915.90.14, 2915.90.18, 2916.39.03, 2916.39.06, 2916.39.45, 2916.39.75, 2917.39.70, 2921.22.10, 2922.49.27, 2924.29.75, 2933.40.08, 2933.40.15, 2933.40.20, 2933.40.26, 2933.40.60. 2933.40.70, 2933.90.13, 2934.90.05, 2934.90.06, 2934.90.08, 2934.90.39, 2934.90.44, 3808.30.50, 3811.90.00, 3822.00.50, 3824.90.28, 3824.90.45, 3824.90.90, 5112.11.10, 5112.19.20, 5208.11.20, 5208.11.40, 5208.11.60, 5208.11.80, 5208.12.40, 5208.12.60, 5208.12.80, 5208.19.40, 5208.19.60, 5208,19.80, 5208.21.20, 5208.21.40, 5208.21.60, 5208.22.40, 5208.22.60, 5208.22.80, 5208.29.40, 5208.29.60, 5208.29.80, 5208.31.40, 5208.31.60, 5208.31.80, 5208.32.30, 5208.32.40, 5208.32.50, 5208.39.40, 5208.39.60, 5208.39.80, 5208.41.40, 5208.41.60, 5208.41.80, 5208.42.30, 5208.42.40, 5208.42.50, 5208.43.00, 5208.49.20, 5208.49.40, 5208.49.60, 5208.49.80, 5208.51.40, 5208.51.60, 5208.51.80, 5208.52.30, 5208.52.40, 5208.52.50, 5208.59.40, 5208.59.60, 5208.59.80, 5209.11.00, 5209.21.00, 5209.29.00, 5209.31.60, 5209.39.00, 5209.41.60, 5209.43.00, 5209.49.00, 5209.51.60, 5209.59.00, 5210.11.40, 5210.11.60, 5210.11.80, 5210.19.40, 5210.19.60, 5210.19.80, 5210.21.40, 5210.21.60, 5210.21.80, 5210.29.40, 5210.29.60, 5210.29.80, 5210.31.40, 5210.31.60, 5210.31.80, 5210.39.40, 5210.39.60, 5210.39.80, 5210.41.40, 5210.41.60, 5210.41.80, 5210.42.00, 5210.49.20, 5210.49.40, 5210.49.60, 5210.49.80, 5210.51.40, 5210.51.60, 5210.51.80, 5210.59.40, 5210.59.60, 5210.59.80, 5211.11.00, 5211.19.00, 5211.21.00, 5211.29.00, 5211.31.00, 5211.39.00, 5211.41.00, 5211.43.00, 5211.49.00, 5211.51.00, 5211.59.00, 5212.11.10, 5212.11.60, 5212.12.10, 5212.12.60, 5212.13.10, 5212.13.60, 5212.14.10, 5212.14.60, 5212.15.10, 5212.15.60, 5212.21.10, 5212.21.60, 5212.22.10, 5212.22.60, 5212.23.10, 5212.23.60, 5212.24.10, 5212.24.60, 5212.25.10, 5212.25.60, 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.33.30, 5402.33.60, 5402.39.30, 5402.39.60, 5402.41.90, 5402.43.10, 5402.43.90, 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* = Only portions of the subheading as described below will have duty elimination accelerated:

for 5403.10.00: Solution dyed viscose rayon yarn certified by the importer to be solution dyed (provided for in subheading 5403.10.00)

for 5403.31.00: Solution dyed viscose rayon yarn certified by the importer to be solution dyed (provided for in subheading 5403.31.00)

[FR Doc. 98–15291 Filed 6–10–98; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 98–04–05 established the currently effective two-month SFFL applicable through May 31, 1998.

In establishing the SFFL for the two-month period beginning June 1, 1998, we have projected non-fuel costs based on the year ended December 31, 1997 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 98–6–7 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic, 1.3284
Latin America, 1.4838
Pacific, 1.5152

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: dated June 5, 1998.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–15559 Filed 6–10–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–97–3202]

Waiver for Canadian Electric Utility Motor Carriers From Alcohol and Controlled Substances Testing

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of final determination.

SUMMARY: The FHWA is waiving certain Canadian electric utility motor carriers and drivers from the alcohol and controlled substances testing requirements in connection with certain limited emergency operations. The FHWA received a petition from Hydro Quebec and Eastern Utilities Associates to waive these carriers. The FHWA received no comments to the proposed waiver. The FHWA will waive those Canadian electric utility motor carriers and drivers who enter the United States at the emergency request of a member New England Mutual Assistance Roster utility to quickly restore electric utility service for the New England electric utilities and their customers. The FHWA is taking this action in accordance with the Commercial Motor Vehicle Safety Act of 1986. This waiver for Canadian electric utility motor carriers extends only to the alcohol and controlled substances testing requirements for drivers required to be licensed under the commercial driver's license (CDL) requirements.

DATES: This final determination is effective on July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Office of Motor Carrier Research and Standards, (HCS–10), (202) 366–4009; Mr. Michael Falk, Office of the Chief Counsel, (HCC–20), (202) 366–1384; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

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

Under What Authority Does the FHWA Have Responsibility To Act?

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99–570, Title XII, October 27, 1986, 100 Stat. 3207–170), as amended, requires the FHWA to provide notice and an opportunity for comment before the FHWA waives a regulation as it applies to individuals or commercial motor vehicles. The specific section of the law, now codified at 49 U.S.C. 31315, provides the following:

> After notice and an opportunity for comment, the Secretary of Transportation (Secretary) may waive any part of this chapter or a regulation prescribed under this chapter as it applies to a class of individuals or commercial motor vehicles if the Secretary decides the waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. A waiver under this section shall be published in the **Federal Register** with reasons for the waiver. (Pub. L. 103–272, Sec. 1(e), July 5, 1994, 108 Stat. 1029).

This waiver authority has been delegated to the Federal Highway Administrator [49 CFR 1.48(v) (1997)].

On March 12, 1998 (63 FR 12144), the FHWA published a notice of petition for waiver and requested comments. The FHWA received no comments to the docket. The FHWA, therefore, will grant the petition and waive the alcohol and controlled substances testing requirements as proposed in the March 12, 1998, notice.

Who May Use This Waiver?

The Canadian utilities belonging to the New England Mutual Assistance Roster may use this waiver. The following four utilities and any other Canadian electric utility motor carriers in the provinces of Ontario, New Brunswick, Nova Scotia, and Quebec responding to the six New England States will also be eligible to use this waiver from compliance.

1. Hydro-Quebec 75 Boulevard Rene-Levesque ouest, Montreal, Quebec H2Z 1A4
2. Ontario Hydro, 700 University Avenue, Toronto, Ontario M5G 1X6
3. New Brunswick Power Corporation, 515 King Street, P.O. Box 2000, Fredericton, New Brunswick E3B 4X1
4. Novia Scotia Power Incorporated, P.O. Box 910, Halifax, Nova Scotia B3J 2W5.

The FHWA limits this waiver to Canadian electric utility motor carriers responding to any New England Mutual Assistance Roster member utility's request for emergency assistance.

What Conditions Apply to This Waiver?

The FHWA requires the following five conditions, modified from the New England Mutual Assistance Roster principles, to serve as the basis for this waiver governing emergency assistance between the Canadian utilities and the New England utilities in the United States:

1. The emergency assistance period begins when the Responding Canadian Electric Utility Motor Carrier's (the Responding Carrier) drivers or equipment cross the United States-Canada border transporting equipment and supplies to the Requesting New England Mutual Assistance Roster Motor Carrier (the Requesting Carrier). The emergency assistance period terminates when the Responding Carrier completes the transportation of such drivers or equipment and crosses back into Canada across the Canada-United States border.
2. The drivers of the Responding Carrier must at all times during the emergency assistance period in the United States continue to be drivers of the Responding Carrier and must not be deemed drivers of the Requesting Carrier for any purpose.
3. The Responding Carrier must make available at least one supervisor in addition to the crew foremen. All instructions for work to be done by the Responding Carrier's crews must be given by the Requesting Carrier to the Responding Carrier's supervisor(s); or, when the Responding Carrier's crews are to work in widely separated areas, to such of the Responding Carrier's foremen as may be designated for the purpose by the Responding Carrier's supervisor(s).
4. All time sheets and work records pertaining to the Responding Carrier's drivers furnishing emergency assistance must be kept by the Responding Carrier.
5. The Requesting Carrier must indicate to the Responding Carrier the type and size of trucks and other equipment desired as well as the number of job functions of drivers requested, but the extent to which the Responding Carrier makes available such equipment and drivers must be at the Responding Carrier's sole discretion.

To Whom May the Canadian Utilities Provide Emergency Assistance?

The FHWA limits this waiver to emergency assistance provided by the Canadian electric utility motor carrier members in the four named Canadian provinces to any member of the New England Mutual Assistance Roster in the New England region of the United States. The following six States make up the New England region of the United States:

1. Connecticut
2. Maine
3. Massachusetts
4. New Hampshire
5. Rhode Island
6. Vermont

The following 19 electric utilities presently make up the United States members of the New England Mutual Assistance Roster. In the future, any new members in the above named six States will also be eligible to receive emergency assistance from the waived Canadian electric utilities.

1. Bangor Hydro-Electric Company, 33 State Street, P.O. Box 932, Bangor, Maine 04401
2. Boston Edison Company, 800 Boylston Street, Boston, Massachusetts 02199
3. Burlington Electric Department, 585 Pine Street, Burlington, Vermont 05401
4. Central Maine Power, 83 Edison Drive, Augusta, Maine 04336
5. Central Vermont Power Service Corporation, 77 Grove Street, Rutland, Vermont 05701
6. Citizens Utilities Company, Box 604, Newport, Vermont
7. Commonwealth Electric Company, 2421 Cranberry Highway, Wareham, Massachusetts 02571
8. Concord Electric Company, One McGuire Street, Concord, New Hampshire 03301
9. Eastern Utilities Associates, P.O. Box 2333, Boston, Massachusetts 02107.

Includes the following five electric utility divisions.

a. Blackstone Valley Electric
b. Eastern Edison
c. EUA Service Corporation
d. Montaup Electric
e. Newport Electric

10. Exeter & Hampton Electric, 114 Drinkwater Road, Kensington, New Hampshire 03874
11. Fitchburg Gas and Electric Company, 285 John Fitch Highway, P.O. Box 2070, Fitchburg, Massachusetts 01420
12. Green Mountain Power Corporation, 25 Green Mountain Drive, P.O. Box 850, South Burlington, Vermont 05402–0580
13. New England Electric System, 25 Research Drive, Westborough, Massachusetts 01582
14. Northeast Utilities, P.O. Box 270, Hartford, Connecticut 06141–0270
15. Public Service of New Hampshire, 1000 Elm Street, P.O. Box 330, Manchester, New Hampshire 03105
16. Taunton Municipal Lighting Plant, 55 Weir Street, Taunton, Massachusetts 02780
17. The United Illuminating Company, 157 Church Street, New Haven, Connecticut 06506
18. Vermont Electric Power Company, Inc., RR 1, Box 4077, Rutland, Vermont 05701
19. Vermont Marble—Power Division, 61 Main Street, Proctor, Vermont 05765.

Is This Waiver of the Canadian Electrical Utilities in the Public Interest and Does it not Diminish the Safe Operation of Commercial Motor Vehicles?

The FHWA has determined this waiver meets the requirements of 49 U.S.C. 31315 and believes it is in the public interest to provide a limited waiver to the Canadian electric utility motor carriers. Unlike a Canadian for-hire or private motor carrier that regularly delivers or picks up products, or a provincial or Canadian Federal government entity regularly traversing a State to service provincial citizen interests, the Canadian utilities, on rare occasions, enter the United States for limited periods of time for the sole purpose of restoring electrical service to United States citizens. The FHWA believes such limited and infrequent operations in the United States do not diminish the safe operations of commercial motor vehicles and is in the public interest, especially in the affected localities.

The FHWA believes, through mutual cooperation with Canadian authorities, the Canadian Federal and provincial governments have sufficient regulations in place for Canadian electric utility motor carriers to limit drivers' use of alcohol and controlled substances while operating commercial motor vehicles wholly within Canada. See Standard 6, Items 12.1 through 12.6, 13.1, and 13.2 of the National Safety Code for Motor Carriers, Canada, December 1994. Read literally, the FHWA's current regulations require these Canadian electrical utility motor carriers to set up programs to conduct testing for drivers who may never come across the United States-Canadian border or for drivers that cross the border on a very limited emergency basis. The FHWA believes that the alcohol and controlled substances testing rules, by preventing Canadian electric utility motor carriers and their Canadian drivers from responding quickly and effectively to requests for electrical emergency relief within the United States, may impede rather than promote safety. The safe operation of commercial motor vehicles may well depend upon rapid emergency response, e.g., to restore electricity to traffic signals. The safety of the public also depends upon rapid emergency response, e.g., to restore electricity as a source of heat and light to hospitals, the elderly, and homes in general. The regulatory burdens the testing requirements entail are not justifiable when their effect, during limited periods when electric power failures can most effectively be contained or mitigated, is to increase the risks to public health and welfare.

The FHWA believes this waiver will not impair the safety of the Canadian electric utilities' motor vehicle operations during emergencies. Other applicable provisions of the Federal Motor Carrier Regulations (49 CFR parts 300 through 399) remain in effect, unless an authority having the power to declare an emergency, as set forth in 49 CFR 390.23, does so. Commercial driver's license requirements in 49 CFR part 383 (and those under the Canadian National Safety Code) are not waived even if 49 CFR 390.23 was used to grant specific relief.

Based upon no comments to the docket for the proposed waiver, the FHWA finds good cause to assume the public believes the waiver is in the public interest and will not diminish the safe operation of commercial motor vehicles.

Analyses and Notices

The FHWA has determined that this action is not a significant action within the meaning of the Department of Transportation's policies and procedures.

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this waiver on small entities with twenty or fewer truck tractors or straight trucks.

Final Flexibility Analysis (FFA)

This action provides a limited waiver to certain Canadian electric utility motor carriers and their drivers. The FHWA believes there are a maximum of four affected small entities at this time. These are the Canadian electric utilities named above. Additional Canadian electric utilities will be eligible for this waiver, if the electric utilities are domiciled and operate primarily (i.e., 51

percent or more) in one of the four Canadian provinces of Ontario, Quebec, New Brunswick, or Nova Scotia.

The United States electric utilities named must, without this waiver, limit the responders available to restore highway safety, e.g., traffic signals, and restore electric power to their customers. Failure to grant the waiver will delay the efficient and quick response to restore electric power to prevent highway accidents and incidents, and to save lives from cold weather.

The FHWA believes no other Federal rules exist for alcohol and controlled substances testing of Canadian electric utility motor carriers responding to New England Mutual Assistance roster members. The FHWA is aware of Nuclear Regulatory Commission (NRC) and Department of Energy (DOE) testing requirements for alcohol and controlled substances, but believes these are limited to nuclear power plants and DOE installations in the United States. The FHWA believes the four named Canadian electric utility motor carriers are not required by the NRC or DOE to require alcohol and controlled substances testing to restore electric power to United States customers. The FHWA requested the New England Mutual Assistance Roster members to provide information on whether the NRC or the DOE have regulations requiring such testing. The FHWA received no comments from the roster members or anyone concerning this issue.

Based upon this FFA evaluation, the FHWA believes any impact upon these small entities is highly unlikely. Furthermore, the FHWA notes the Omnibus Act mandates alcohol and controlled substances testing and the CMVSA mandates the waiver authority irrespective of the size of the entities.

For the reasons in the FFA above, the FHWA certifies this action does not have a significant economic impact on a substantial number of small entities.

This waiver has been analyzed in accordance with the principles and criteria contained in the Unfunded Mandates Reform Act of 1995 (the Unfunded Mandates Act) (Pub. L. 104–4, 109 Stat. 48). The FHWA has determined this action does not have sufficient unfunded mandate implications to warrant the preparation of an unfunded mandate assessment.

The amendments made by this waiver do not have a substantial direct effect on States, nor on the relationship or distribution of power between the national government and the States because these changes do little to limit the policy making discretion of the States.

The waiver is not intended to preempt any State law or State regulation. Moreover, the changes made by this waiver impose no additional cost or burden upon any State. Nor does the waiver have a significant effect upon the ability of the States to discharge traditional State governmental functions.

For purposes of section 202 of the Unfunded Mandates Act, the waiver of alcohol and controlled substances testing requirements does not impose a burden greater than $100 million. The FHWA, therefore, is not required to prepare a separate unfunded mandate assessment for this waiver.

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., the FHWA estimates this waiver has an annual burden savings of about $21,000. The information collection requirements associated with compliance by Canadian motor carriers and drivers with part 382 was included in the information collection budget approval request approved on September 22, 1997, by the Office of Management and Budget (OMB) under the PRA and has been assigned OMB control number 2125–0543, approved through September 30, 2000.

The FHWA estimates four Canadian electric utility motor carriers send no more than 100 drivers to the United States for an emergency relief effort. The FHWA estimates these four Canadian electric utility motor carriers have a few thousand drivers each since they are monopolies in the areas they serve, but only send a couple dozen drivers to an emergency in the United States.

The FHWA has calculated the information collection burden on these carriers in complying with 49 CFR part 382 based upon figures submitted and approved by the OMB in 1997. See Docket No. FHWA–1997–2313–7. The four motor carriers share an estimated information collection start-up cost of $US 10,000 (excluding laboratory set-up costs) and an estimated recurring annual cost of $US 21,000 and 240 hours of time. The FHWA excluded laboratory start-up information collection costs because the approximately 70 laboratories across the United States and Canada able to perform the analysis of urine specimens have been in operation for at least one year and have incurred the start-up costs in prior years. The Canadian motor carriers do not incur the laboratory's start-up costs. The FHWA has calculated into the figure, though, the information collection cost of setting up contracts with the laboratories to conduct the testing.

The FHWA has included revised spreadsheets for these calculations in the docket for review. Refer to the docket number appearing at the top of this document.

Since the FHWA is granting this waiver, the FHWA will submit a request to the OMB, on a Form OMB–83C, to reduce the information collection burden by these amounts.

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

Authority: 49 U.S.C. 31301 *et seq.*; and 49 CFR 1.48.

Issued on: June 5, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 98–15609 Filed 6–10–98; 8:45 am]

BILLING CODE 4910–22–P

Corrections

Federal Register
Vol. 63, No. 112
Thursday, June 11, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1485

Agreements for Development of Foreign Markets for Agricultural Commodities

Correction

In rule document 98–14522, beginning on page 29938, in the issue of Tuesday, June 2, 1998, make the following corrections:

§ 1485.11 [Corrected]

1. On page 29940, in the second column, under **Subpart B–Market Access Program**, the section heading, "**§ 1485 Definitions.**" should read "**§ 1485.11 Definitions.**".

2. On the same page in the same column, in § 1485.11, in the definition of "Credit memo", in the second line, "owned" should read "owed".

§ 1485.16 [Corrected]

3. On page 29940 in the third column, in § 1485.16(b), the paragraph designation "(b)" should read "(6)".

4. On the same page, in the same column, in § 1485.16(b)(11), in the fourth line, after "plan" add "year". And in the eighth line, remove ";and" and insert a period.

5. On the same page, in the same column, in § 1485.16(c)(8), in the ninth line, "its" should read "it".

§ 1485.21 [Corrected]

6. On page 29941, in the first column, in § 1485.21, in the seventh line, "dire ed" should read "indicated".

7. On the same page, in the same column, in § 1485.21, in the ninth line, "participants" should read "participant". And after "pay" add "to".

8. On the same page, in the same column, in the signature line, "*Adminstrator*" should read "*Administrator*".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

Correction

In notice document 98–14690 appearing on page 30223, in the issue of Wednesday, June 3, 1998, make the following correction:

On page 30223, in the first column, under the **DATES** heading, in the third line, "[insert date 60 days from publication in Federal Register]" should read "August 3, 1998".

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federal register

Thursday
June 11, 1998

Part II

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Refrigerant Recycling; Substitute Refrigerants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6107–1]

Protection of Stratospheric Ozone; Refrigerant Recycling; Substitute Refrigerants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the rule on refrigerant recycling promulgated under section 608 of the Clean Air Act to clarify how the requirements of section 608 extend to refrigerants that are used as substitutes for chlorofluorocarbon (CFC) and hydrochlorofluorocarbon (HCFC) refrigerants. This proposed rule would supplement a self-effectuating prohibition on venting substitute refrigerants to the atmosphere that became effective on November 15, 1995. It would also exempt certain substitute refrigerants from the prohibition on the basis of current evidence that their release does not pose a threat to the environment. In addition, EPA is proposing to change the current requirements for CFC and HCFC refrigerants to accommodate the proliferation of new refrigerants on the market and to strengthen and clarify the existing leak repair requirements for equipment containing CFC and HCFC refrigerants. This proposed rule will significantly reduce emissions of environmentally harmful refrigerants in a cost-effective manner.

DATES: Written comments on the proposed rule must be received by August 10, 1998, unless a hearing is requested by June 18, 1998. If a hearing is requested, written comments must be received by August 31, 1998. If requested, a public hearing will be held at 10:00 am, July 1, 1998, at 501 3rd St. NW, Washington, DC in the 1st Floor Conference Room. Individuals wishing to request a hearing must contact the Stratospheric Ozone Information Hotline at 1–800–296–1996 by June 18, 1998. To find out whether a hearing will take place, contact the Stratospheric Ozone Information Hotline between June 22, 1998 and July 1, 1998.

ADDRESSES: Comments should be submitted in duplicate to the attention of Air Docket No. A–92–01 VIII.H at: Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Additional information may be found at Air Docket No. A–91–42, which is incorporated by reference for purposes of this rulemaking. (Please do *not* submit comments on this proposed rule to A–91–42.) The Air and Radiation Docket and Information Center is located in room M–1500, Waterside Mall (Ground Floor), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Dockets may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Debbie Ottinger, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Regulated Entities

Entities potentially regulated by this action include those who manufacture, own, maintain, service, repair, or dispose of all types of air-conditioning and refrigeration equipment; those who sell or reclaim refrigerants; and manufacturers of refrigerant recycling and recovery equipment. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers of air-conditioning or refrigeration equipment. Technicians who service, maintain, repair, or dispose of air-conditioning and refrigeration equipment. Owners of air-conditioning and refrigeration equipment, including building owners and operators, grocery stores, chemical, pharmaceutical, and petrochemical manufacturers, ice machine operators, utilities. Manufacturers of recycling and recovery equipment. Refrigerant reclaimers. Scrap yards and auto dismantlers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria contained in section 608 of the Clean Air Amendments of 1990; discussed in regulations published on December 30, 1993 (58 FR 69638); and discussed below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Effective November 15, 1995, section 608(c)(2) of the Clean Air Act prohibits the knowing release of substitutes for CFC and HCFC refrigerants during the maintenance, service, repair, or disposal of air-conditioning and refrigeration equipment, unless EPA determines that such release does not pose a threat to the environment. Although EPA is proposing to determine that releases of some substitute refrigerants do not pose a threat to the environment, there are other substitutes, specifically HFCs and PFCs, for which EPA is not proposing to make such a determination. Thus, EPA is proposing a regulation that will clarify how the venting prohibition of section 608(c)(2) must be implemented for HFC and PFC refrigerants, as well as any other refrigerants whose release EPA does not find does not pose a threat to the environment. EPA is also proposing to strengthen the existing leak repair requirements for some types of appliances containing CFCs and HCFCs, in recognition of design changes that have lowered achievable leak rates.

By establishing requirements regarding the maintenance, service, repair, and disposal of appliances containing HFC and PFC refrigerants, EPA believes that this proposed rule would help to minimize any environmental harm that might result from the transition away from ozone-depleting chemicals. In this respect, this proposed rule is similar to regulations being implemented under sections 609 and 612 of the Act. This rule would directly limit emissions of gases that result in global warming, whose possible consequences are discussed at length in section III.B.2 below. In addition, the proposed rule would reduce emissions of ozone-depleting refrigerants by establishing a consistent regulatory framework for all halocarbon refrigerants and by lowering leak rates for appliances containing ozone-depleting refrigerants. The environmental and human health consequences of ozone depletion include increased rates of skin cancer and cataracts, suppression of the immune system, increased formation of ground-level ozone, damage to crops and other plants, and damage to marine microorganisms at the base of the aquatic food chain. The establishment of a consistent regulatory framework would also facilitate compliance with the Section 608 National Recycling and Emissions Reduction Program by simplifying and clarifying regulatory requirements.

A. Section 608 of the Clean Air Act

Section 608 of the Clean Air Act, as amended in 1990, provides the legal basis for this rulemaking. It requires EPA to establish a comprehensive program to limit emissions of ozone-depleting refrigerants, and prohibits the release of these refrigerants, and eventually their substitutes, during the servicing and disposal of air-conditioning and refrigeration equipment.

Section 608 is divided into three subsections. In brief, the first, section 608(a), requires regulations to reduce the use and emission of class I substances (CFCs, halons, carbon tetrachloride, and methyl chloroform) and class II substances (HCFCs) to the lowest achievable level, and to maximize the recycling of such substances. Section 608(b) requires that the regulations promulgated pursuant to subsection (a) contain requirements concerning the safe disposal of class I and class II substances. Finally, section 608(c) establishes self-effectuating prohibitions on the venting into the environment of class I or class II substances, and eventually their substitutes, during servicing and disposal of air-conditioning or refrigeration equipment.

Specifically, subsection 608(c) provides in paragraph (1) that, effective July 1, 1992, it is "unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as a refrigerant" in a manner that "permits such substance to enter the environment." The statute exempts from this self-effectuating prohibition "de minimis releases associated with good faith attempts to recapture and recycle or safely dispose" of a substance. EPA considers releases to meet the criteria for exempted de minimis releases when they occur while the recycling and recovery requirements of the section 608 and 609 regulations are followed (40 CFR 82.154(a)). Section 608(c)(2) extends the prohibition on venting to substances that are substitutes for class I and class II refrigerants, effective November 15, 1995, unless the Administrator determines that such venting or release does not pose a threat to the environment. .

On May 14, 1993, EPA published final regulations implementing subsections (a), (b), and (c)(1) (58 FR 28660). These regulations include evacuation requirements for appliances being serviced or disposed of, standards and testing requirements for recycling and recovery equipment, certification requirements for technicians, purity

standards and testing requirements for used refrigerant sold to a new owner, certification requirements for refrigerant reclaimers, leak repair requirements, and requirements for the safe disposal of appliances that enter the waste stream with the charge intact.

EPA is today proposing regulations to implement and clarify the requirements of section 608(c)(2), which extends the prohibition on venting to substitutes for CFC and HCFC refrigerants. EPA believes that these regulations are also important to the Agency's efforts to continue to carry out its mandate under section 608(a) to minimize emissions of ozone-depleting substances. In addition to sections 608 (a) and (c), EPA is relying on its authority under section 301(a) of the Act to promulgate these requirements.

While section 608(c) is self-effectuating, EPA regulations are necessary to define "(d)e minimis releases associated with good faith attempts to recapture and recycle or safely dispose" of such substances and to effectively implement and enforce the venting prohibition. EPA believes that these regulations will help to implement the prohibition by providing: (1) Clear guidance to technicians working with substitute refrigerants on what releases do and do not constitute violations of the prohibition, (2) information on the performance of recycling and recovery equipment intended for use with substitute refrigerants through the equipment certification program, and (3) information on how to recycle effectively and efficiently through the technician certification program. Section 301(a) authorizes EPA to "prescribe such regulations as are necessary to carry out (its) functions under this Act." Section 608(c) provides EPA authority to promulgate regulations to interpret, implement and enforce the venting prohibition. Section 301(a) supplements EPA's authority under section 608(c) to promulgate regulations to carry out EPA's functions under section 608(c).

Section 608(a) provides EPA additional authority to promulgate many of the requirements proposed today. Section 608(a) requires EPA to promulgate regulations regarding use and disposal of class I and II substances that "reduce the use and emission of such substances to the lowest achievable level" and "maximize the recapture and recycling of such substances." Section 608(a) further provides that "(s)uch regulations may include requirements to use alternative substances (including substances which are not class I or class II substances) * * * or to promote the use of safe alternatives pursuant to section 612 or any combination of the foregoing." As discussed further below, improper handling of substitute substances is likely to produce contamination (and therefore reduction in recycling) and release of class I and class II substances. EPA's authority to promulgate regulations regarding use of class I and II substances, including requirements to use alternatives, is sufficiently broad to include requirements on how to use alternatives, where this is needed to reduce emissions and maximize recycling of class I and II substances.

In particular, certification requirements for technicians who perform work that could release substitute refrigerants to the atmosphere, as enforced through a sales restriction on substitutes, are critical to fulfill the statutory goals for class I and II substances. Technician certification and a sales restriction are necessary to ensure that persons lacking the expertise tested through certification do not release or contaminate class I and II substances in the course of using substitutes to recharge or perform other work on systems containing class I and II substances. In addition, applying one consistent set of requirements to all relevant refrigerants will promote compliance with and enforcement of those requirements for both ozone-depleting refrigerants and their substitutes by reducing complexity and minimizing loopholes.

As discussed below, EPA is proposing requirements very similar to those for CFCs and HCFCs for some alternative refrigerants, while EPA is proposing to exempt other refrigerants from the prohibition on venting because their release or disposal does not pose a threat to the environment.

B. Factors Considered in the Development of this Proposal

In developing these proposed regulations, EPA has considered a number of factors. First, EPA has considered which non-ozone-depleting refrigerants should be classified as "substitute" refrigerants. EPA is proposing to adopt a definition that is similar to that adopted by EPA in its Significant New Alternatives Policy (SNAP) Program, except the proposed definition omits the proviso of the SNAP definition that a substitute be "*intended* for use as a replacement for a class I or class II substance." For the purposes of section 608, therefore, EPA proposes to consider a refrigerant a substitute in a certain end-use if the substance is used as a substitute for CFCs or HCFCs in that end-use by any user. That is, EPA would consider a refrigerant a "substitute" for CFCs or HCFCs under section 608 if any of the following were the case: (1) The substitute refrigerant immediately replaced a CFC or HCFC in a specific instance, (2) the substitute refrigerant replaced another substitute that replaced a CFC or HCFC in a specific instance (was a second- or later-generation substitute), or (3) the substitute refrigerant had always been used in a particular instance, but other users in that end-use had used it to replace a CFC or HCFC.

EPA does not believe that it is appropriate under section 608 to consider the intent or history of an individual user in determining whether a refrigerant is a "substitute" for CFCs or HCFCs in a given instance. First, it is reasonable to interpret "substitute" to include second- or later as well as first-generation substitutes for CFCs and HCFCs. As discussed earlier, the goal of these regulations is to minimize any environmental harm that might be associated with the transition away from CFC and HCFC refrigerants. In many cases, the transition away from CFCs and HCFCs is a multi-step process, with substitutes supplanting each other as they are tested and developed. In the absence of the phaseout of CFCs and HCFCs, the later-generation substitutes would probably never have been used. Thus, even if a substance is not being used as a direct substitute for CFCs or HCFCs in a particular instance, its use is the result of the transition away from CFCs and HCFCs and the substance serves as a substitute for these chemicals. (Of course, the environmental impact of the release of the chemical is the same regardless of what it replaces.)

Second, it is also reasonable to interpret "substitute" to mean a refrigerant that is occasionally used as a substitute for CFC or HCFC refrigerants in a given end-use (e.g., cold storage warehouses), even if the refrigerant has always been used by a particular user or in a particular end-use. EPA has broad authority to promulgate and implement clear, enforceable regulations, and exercise of this authority would be impeded if the Agency had to attempt to trace the individual histories of specific appliances in implementing and enforcing the requirements. As an example of how this definition would work under these regulations, ammonia used in cold storage warehouses would be considered a "substitute," and would therefore be subject to section 608(c)(2),[1]

[1] As discussed below, ammonia may nevertheless be exempted from these regulations because EPA is

because at least some cold storage warehouses have substituted ammonia for CFCs. This would be true even if the ammonia in a given cold storage warehouse were the original refrigerant at that particular site, or if another substitute had first replaced the original CFC refrigerant and ammonia in turn had replaced that substitute.

Using this criterion, EPA has identified five classes of substitute refrigerants in the sectors covered by the SNAP rule: hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), hydrocarbons (HCs), chemically active common gases, including ammonia and chlorine, and inert atmospheric constituents, including carbon dioxide and water. EPA has divided substitutes into these classes on the basis of the varying environmental impacts of each class and the varying regulatory structures already in place for each class.

As the second factor in this proposed rulemaking, EPA has made a proposed determination regarding whether or not the release or disposal of a substitute refrigerant during the service or disposal of an appliance poses a threat to the environment. This determination consists of two findings. In the first finding, EPA determines whether release or disposal of a substitute refrigerant could pose a threat to the environment due to the toxicity or other inherent characteristic of the refrigerant. In the second finding, EPA determines whether and to what extent such release or disposal actually takes place during the servicing and disposal of appliances. The release and disposal of many substitute refrigerants are limited and/or controlled by other authorities, such as OSHA regulations and building codes. To the extent that release during the servicing and disposal of appliances is adequately controlled by other authorities, EPA proposes to defer to these authorities rather than set up a second regulatory regime.

As is discussed in more detail below, EPA recognizes that release of HFCs and PFCs during the servicing and disposal of appliances could pose a threat to the environment due to the global warming potential (GWP) of these refrigerants, that release of hydrocarbons during the servicing and disposal of appliances could pose a threat due to the flammability and smog-forming capability of these refrigerants, and that release of chemically active common gases during the servicing and disposal of appliances could pose a threat due to the toxicity and flammability of these refrigerants. However, EPA is proposing to determine that the release of hydrocarbons and chemically active common gases during the servicing and disposal of appliances is adequately controlled by other authorities, and therefore does not actually pose a threat. EPA is also proposing to determine that the release of inert atmospheric constituents during the servicing and disposal of appliances does not pose a threat to the environment.

As the third factor in this proposed rulemaking, EPA has considered the availability of technology to control releases, the environmental benefits of controlling releases, and the costs of controlling releases for each class of substitutes. (In proposing new permissible leak rates for certain CFC and HCFC appliances, EPA has considered these factors for CFCs and HCFCs.) In addition, as much as possible, EPA has sought to maintain consistency between the proposed requirements for HFCs and those for CFCs and HCFCs. The Agency considers such consistency important for two reasons. First, it will reduce confusion, simplify the regulatory scheme, and ease compliance both with the requirements applying to substitutes and with those applying to CFCs and HCFCs. Second and more important, the Agency believes that much of the rationale for the recycling program developed for ozone-depleting refrigerants applies to any recycling program for environmentally harmful refrigerants.

C. Public Participation

In developing this proposed rule, EPA has also considered comments received during meetings with industry, government, and environmental representatives. On March 10, 1995, EPA convened a meeting with 20 representatives of appliance manufacturers, servicers, and users, recycling and recovery equipment manufacturers, equipment testers, and refrigerant reclaimers and wholesalers, soliciting comment on a range of regulatory options. A summary of this meeting is available in the public docket for this rulemaking. EPA has also met with industry and government representatives to gather data on refrigerant emissions, to better understand current industry practices, and to determine when and how existing regulatory authorities control emissions of substitute refrigerants. Finally, EPA has worked with the air-conditioning and refrigeration industry's primary standards-setting organizations, the Air Conditioning and Refrigeration Institute (ARI) and the American Society of Heating, Refrigeration, and Air-Conditioning Engineers, Inc. (ASHRAE), in developing its proposal. Wherever appropriate, EPA has incorporated standards and guidelines from these organizations into the proposed rule.

III. Scope of Statutory and Proposed Regulatory Requirements

A. Overview of Proposed Requirements

1. HFCs and PFCs

EPA is proposing to extend the regulatory framework for CFCs and HCFCs to HFCs and PFCs, making appropriate adjustments for the varying physical properties and environmental impacts of these refrigerants. Thus, appliances containing HFC or PFC refrigerants would have to be evacuated to established levels; recycling and recovery equipment used with HFCs or PFCs would have to be certified (although existing recovery equipment that met certain minimum standards would be grandfathered); technicians who work with HFCs or PFCs would have to be certified (although technicians who have been certified to work with CFCs and HCFCs would be grandfathered); sales of HFC and PFC refrigerants would be restricted to certified technicians; used HFC and PFC refrigerants sold to a new owner would have to be tested to verify that they meet industry purity standards; refrigerant reclaimers who purify HFCs or PFCs would have to be certified; owners of HFC and PFC appliances above a certain size would have to repair leaks above a certain size; final disposers of small appliances and motor vehicle air conditioners (MVACs) containing HFCs or PFCs would have to ensure that refrigerant was recovered from this equipment before it was disposed of; and manufacturers of HFC and PFC appliances would have to provide a servicing aperture or a "process stub" on their equipment in order to facilitate recovery of the refrigerant.

2. Chemically Active Common Gases

EPA is proposing to find that for the purposes of section 608, the release and disposal of chlorine and ammonia do not pose a threat to the environment because the release and disposal of these refrigerants during the servicing and disposal of appliances are adequately controlled by other authorities in the air-conditioning and refrigeration applications where these refrigerants are currently used. Therefore, EPA is proposing to find that the venting prohibition does not apply to these substances and the Agency is not proposing recycling requirements for these refrigerants at this time.

proposing to determine that it is adequately controlled under other authorities.

However, these proposed findings apply to currently SNAP-identified end uses only. If ammonia and chlorine are proposed for use in other applications, EPA will evaluate whether the venting prohibition and recycling requirements should apply in those applications.

3. Hydrocarbons

EPA is proposing to find that for the purposes of section 608, the release and disposal of hydrocarbons during the servicing and disposal of appliances do not pose a threat to the environment, because they are adequately controlled by other authorities in the industrial process refrigeration applications in which these refrigerants are currently used. Therefore, EPA is proposing to find that the venting prohibition does not apply to these substances and the Agency is not proposing recycling requirements for these refrigerants at this time. However, these proposed findings apply to currently SNAP-identified end uses only. If hydrocarbons are proposed for use in other applications, EPA will evaluate whether the venting prohibition and recycling requirements should apply in those applications.

4. Proposed Changes to Requirements for CFCs and HCFCs

In today's document, EPA is also proposing a number of changes to the regulations covering CFC and HCFC refrigerants. Several of these proposed changes are intended to accommodate the growing number of refrigerants (both HFCs and HCFCs) that either are or will be subject to the regulations. Such changes include the adoption of evacuation requirements based solely on the saturation pressures of refrigerants, the use of representative refrigerants from saturation pressure categories for certifying recycling and recovery equipment, and the adoption of the most recent industry purity and analytical standard for refrigerants, ARI 700–1995, which includes a number of refrigerants omitted from its predecessor, ARI 700–1993.

Based on improvements in equipment design and maintenance that have reduced leak rates over the last five years, EPA is also proposing to reduce the maximum allowable leak rates for appliances containing more than 50 pounds of refrigerant. At the same time, EPA is proposing to make several changes to the leak repair requirements promulgated at § 82.156(i), the associated recordkeeping provisions at § 82.166(n) and (o), and the definition of "full charge" at § 82.152. EPA is also proposing to add a definition for "leak rate" under § 82.152 for the purposes of § 82.156(i). The need for most of these proposed changes was brought to EPA's attention by industry stakeholders. EPA is also responding to inquiries concerning whether or not leaks that occur after repairs have been completed and all applicable verification tests have been successfully performed are considered new leaks. In addition, the stakeholders suggested several clarifying changes to the recordkeeping provisions.

B. Determination of Whether Release or Disposal Poses a Threat to the Environment

1. Methodology

In determining whether the release or disposal of a substitute refrigerant during the servicing and disposal of appliances poses a threat to the environment, EPA has examined the potential effects of the refrigerant from the moment of release to its breakdown in the environment, considering possible impacts on workers, building occupants, and the environment as a whole. As noted above, these effects vary among the different classes of refrigerant. EPA has also examined the extent to which the release or disposal of a substitute is already controlled by other authorities. In some cases, such authorities tightly limit the quantity of the substitute emitted or disposed of; in others, they ensure that the substitute is disposed of in a way that will limit its impact on human health and the environment. In still others, existing authorities address some threats (e.g., occupational exposures) but not others (e.g., long-term environmental impacts). The analysis below discusses the potential environmental impacts of and existing controls on each class of refrigerants.

2. HFCs and PFCs

a. *Potential Environmental Impacts*

i. Toxicity and Flammability

Most HFCs and PFCs have been classified as A1 refrigerants under ASHRAE Standard 34, indicating that they have low toxicity and no ability to propagate flame under the test conditions of the Standard. (The exception is HFC 152a, which has been classified as an A2 refrigerant. This indicates that it may propagate flame under the test conditions, but only at relatively high concentrations and with relatively low heat of combustion.) However, like CFCs and HCFCs, HFCs can have central nervous system depressant and cardiotoxic effects at high concentrations (several thousand ppm) and can displace oxygen at very high concentrations.

ii. Long-term Environmental Impacts

Once released into the atmosphere, hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs) have the ability to trap heat that would otherwise be re-radiated from the Earth back to space. This ability, along with the relatively long atmospheric lifetime of these gases (particularly the PFCs), gives both HFCs and PFCs relatively high global warming potentials (GWPs). The GWP of a gas is a measure of the ability of a kilogram of that gas to contribute to global warming compared to the ability of a kilogram of carbon dioxide to contribute to global warming over a given span of time. The 100-year GWPs of HFCs under consideration for use as refrigerants range from 140 (for HFC–152a) to 11,700 (for HFC–23), and the GWPs of PFCs under consideration for use as refrigerants range from 8,700 (perfluorocyclo-butane) to 9,200 (perfluoroethane). HFC 134a, the most common individual HFC used in air-conditioning and refrigeration equipment, has a global warming potential of 1,300. Thus, the global warming impact of releasing a kilogram of an HFC or PFC ranges from 140 to 11,700 times the impact of releasing a kilogram of CO_2.[2] (Factoring in the 35% uncertainty associated with individual GWPs, this range becomes 90 to 15,800.)

EPA recognizes that the release of refrigerants with high global warming potentials could pose a threat to the environment. Internationally accepted science indicates that increasing concentrations of greenhouse gases, including HFCs and PFCs, will ultimately raise atmospheric and oceanic temperatures. Although the precise timing and extent of likely warming are uncertain, the Intergovernmental Panel on Climate Change (IPCC)[3] concluded in a 1995

[2] The CFCs and HCFCs being replaced by the HFCs are also greenhouse gases, though their direct warming effect is counteracted somewhat by the indirect cooling effect caused by their destruction of stratospheric ozone, which is itself a greenhouse gas. The IPCC Second Assessment noted that "The net GWPs for the ozone-depleting gases, which include the direct "warming" and indirect "cooling" effects, have now been estimated.* * * The indirect effect reduces their net GWPs: those of the chlorofluorocarbons tend to be positive, while those of the halons tend to be negative" (IPCC Second Assessment, Working Group I report, p. 73).

[3] The IPCC was jointly established by the World Meteorological Organization and the United Nations Environment Programme in 1988 to assess the scientific information that is related to the various components of the climate change issue, and to formulate realistic response strategies for the management of the climate change issue. The first IPCC report was developed by 170 scientists from

Report that the global mean temperature would probably rise between 1 and 3.5°C by 2100. Such a temperature rise would probably be associated with a number of adverse environmental impacts, including increased drought at middle latitudes, increased flood frequency and inundation due to sea level rise, and forest and species loss due to the rapid poleward migration of ideal ranges.

It is already well established that naturally occurring greenhouse gases keep the Earth 33°C warmer than it otherwise would be. Since 1800, human activities have released additional greenhouse gases to the atmosphere at an exponentially increasing rate. Atmospheric concentrations of carbon dioxide have risen by approximately 30 percent; methane concentrations have risen by 145 percent; and nitrous oxide concentrations have risen by 15 percent. In addition, concentrations of man-made fluorocarbons, which have no natural source, have risen quickly over the past 50 years.

These trends may have already had an influence on global climate. The draft of the most recent report of the IPCC stated that "emerging evidence points towards a detectable human influence on climate." In support of this statement, the draft report notes that the global mean surface temperature has increased by between about 0.3 and 0.6°C since the late 19th century, that the 20th century global mean temperature is at least as high as that of any other century since 1400 A.D. (before which data are too sparse to allow reliable estimates), that the years since 1990 have been some of the warmest in the instrumental record (the nine warmest years this century have all occurred since 1980), and that sea levels around the world have risen by between 10 and 25 centimeters over the past 100 years. Moreover, several other events consistent with global warming have been observed, including a decrease in Northern Hemisphere snow cover, a simultaneous decrease in Arctic sea ice, and continued melting of alpine glaciers. The report concludes:

> Observed global warming over the past 100 years is larger than our best estimates of the magnitude of natural climate variability over at least the last 600 years. More importantly, there is evidence of an emerging pattern of climate response in the observed climate record to forcings by greenhouse gases and sulphate aerosols. The evidence comes from the geographical, seasonal and vertical patterns of temperature change. Taken together, these results point towards a detectable human influence on global climate.

Because of the large thermal inertia of Earth's climate system (including the atmosphere and the oceans), the full effects of added greenhouse gases are not likely to be felt until many decades after their release into the atmosphere. Once these effects are felt, reversing them will take centuries. Thus, policy decisions in the near term have long-term consequences.

Global warming is expected to have far-reaching effects both domestically and internationally. Changes in precipitation and increased evaporation from higher temperatures could affect water supplies and water quality, posing threats to hydropower, irrigation, fisheries, and drinking water. In the U.S., floods and droughts will probably occur more often because of an intensification of the hydrologic cycle.

The IPCC report projects that sea level will rise by about 50 cm by 2100, using a mid-range emissions scenario and best-estimate values of climate sensitivity and ice-melt sensitivity to warming. Such a rise could inundate more than 5,000 square miles of land in the U.S. if no protective actions are taken. Low-lying areas on the U.S. Atlantic and Gulf coasts are especially at risk. Internationally, parts of many low-lying areas such as parts of the Maldives, Egypt, and Bangladesh could be completely inundated and made uninhabitable by a similar sea level rise.

Climate change could also have direct impacts on human health. Global warming may shift the range of infectious diseases, increasing the risks of malaria and dengue fever in the United States. Changing temperatures and precipitation patterns may produce new breeding sites for pests and pathogens. In addition, climate change is likely to increase deaths from heat stress.

Agriculture would also be affected, as large areas of the eastern and central U.S. are expected to become drier as the earth warms. Although changes in management practices and technological advances might reduce many of the potentially negative effects of climate change in agriculture, such changes would be expensive. Agricultural production in developing countries is likely to be more vulnerable to climate change, given that they have fewer economic resources.

Finally, climate change could profoundly affect natural habitats and wildlife. Temperature changes of the magnitude expected from the enhanced greenhouse effect have occurred in the past, but the previous changes took place over centuries or millennia, whereas those expected from increased greenhouse gases will take place over decades. For example, the ideal range for some North American forest species may shift as much as 300 miles to the north over the next several decades. Rates of natural migration and adaptation of species and communities appear to be much slower than the predicted rate of climate change. As a result, populations of many species and inhabited ranges could change as the climate to which they are adapted effectively shifts northward or to higher elevations.

b. *Current Practices and Controls*

Under the SNAP program, HFCs (either pure or in blends) have been approved for use in almost every major air-conditioning and refrigeration end-use, including household refrigerators, motor vehicle air conditioners, retail food refrigeration, comfort cooling chillers, industrial process refrigeration, and refrigerated transport. HFC 134a in particular has claimed a large share of the market for non-ozone-depleting substitutes in these applications. Given this range of applications, HFCs have the potential to come into contact with consumers, workers, the general population, and the environment.

EPA has approved PFCs for use in relatively few end-uses because of their large global warming potentials and long atmospheric lifetimes. These end-uses include uranium isotope separation, for which no other substitute refrigerant has been found, and some heat-transfer applications. In these applications, PFCs may come into contact with workers, the general population, and the environment.

Analyses performed for both this rule and the SNAP rule indicate that existing regulatory requirements and industry practices are likely to keep the exposure of consumers, workers, and the general population to HFCs and PFCs below levels of concern (although recycling requirements would reduce still further the probability of significant exposure) (U.S. EPA. 1994. *Risk Screen on the Use of Substitutes for Class I Ozone-Depleting Substances: Refrigeration and Air Conditioning, Office of Air and Radiation, March 15, 1994. Office of Air and Radiation, March 15,1994, and Regulatory Impact Analysis for the Substitutes Recycling Rule*, Office of Air and Radiation, 1998). However, these requirements and practices do not

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25 countries and was peer-reviewed by an additional 200 scientists. Since that time, the number of scientists developing and reviewing the report has grown. This group comprises most of the active scientists working in the field in the world today, and therefore the report is an authoritative statement of the views of the international scientific community at this time.

address release of HFCs or PFCs to the wider environment.

For example, ASHRAE Standard 15[4] requirements for equipment with large charge sizes are likely to limit the exposure of building occupants and workers to HFC and PFC refrigerants, but will not necessarily reduce releases to the outdoors. Under ASHRAE 15, equipment containing large charges of HFCs or PFCs (or HCFCs or CFCs) must be located in a machinery room that meets certain requirements. These include requirements for tight-fitting, outward-opening doors, refrigerant detectors that actuate alarms when refrigerant levels rise above recommended long-term exposure levels, and mechanical ventilation that discharges to the outdoors. However, ASHRAE 15 does not include requirements for refrigerant recycling.[5] In general, ASHRAE 15 addresses design specifications rather than service and disposal practices such as recycling, and ASHRAE 15 requirements are codified and enforced by state or local building code agencies rather than by contractor or technician licensing boards.

Similarly, the American Industrial Hygiene Association (AIHA) has developed exposure limits for HFCs. These may be referenced by OSHA under its general duty clause to compel employers to protect employees from identified health hazards. However, local exhaust ventilation rather than recycling may be used to minimize exposures during service and disposal operations that involve significant releases of refrigerant. This will reduce worker exposure to the refrigerant, but will not reduce the exposure of the general environment.

Finally, many of the statutory and regulatory mechanisms that limit release of other substitutes such as ammonia do not apply to HFCs or PFCs. HFCs and PFCs are not listed chemicals for SARA Title III or CERCLA reporting requirements; nor are they listed as EPA section 112(r) hazardous air pollutants.

c. *Conclusion*

Given the high global warming potentials of HFCs and PFCs and the fact that no authority other than section 608(c)(2) currently controls their release from appliances into the environment, EPA is not proposing to find that the release of HFCs and PFCs does not pose a threat to the environment.[6]

EPA's consideration of global warming potential in determining whether to exempt refrigerants from the venting prohibition of 608(c)(2) is supported by precedent under the Title VI regulatory program, Presidential directive, and the legislative history of section 608. First, EPA has specifically considered the global warming potential of substitutes in determining whether they are acceptable for various end uses under the Significant New Alternatives Program (SNAP) that implements section 612.[7] As stated in the final SNAP rule (59 FR 13049, March 18, 1994), EPA believes that "overall risk" includes global warming potential. Second, in October 1993, the President directed EPA through the Climate Change Action Plan (CCAP) to work with manufacturers, sellers, and users of PFCs and HFCs to minimize emissions of these substances.

Third, the legislative history of section 608(c)(2) indicates that Congress specifically intended that EPA consider the global warming potential of substitute refrigerants in determining whether to exempt them from the venting prohibition. In a statement read into the record shortly before passage of the Clean Air Act Amendments of 1990, Senators Chafee and Baucus, the Senate managers of the bill, stated that "(section 608(c)(2)) is an important provision because many of the substitutes being developed * * * are 'greenhouse gases' and have radiative properties that are expected to exacerbate the problem of global climate change." The Senators specifically directed that "(t)he Administrator shall consider long term threats, such as global warming, as well as acute threats (in making the determination under 608(c)(2))" (Cong. Rec. S 16948 (Oct. 27, 1990)). EPA believes that in light of this legislative history, the precedents cited above, and the expected effects of global warming, it would be very difficult to justify exempting HFCs or PFCs from the venting prohibition of paragraph 608(c)(2) on the basis that their release does not pose a threat to the environment.

3. *Chemically Active Common Gases*

The two chemically active common gases used as refrigerants are ammonia and chlorine.

a. *Potential Environmental Impacts*

i. Toxicity and Flammability

Ammonia can pose a human health hazard through either inhalation or ingestion. It is irritating at relatively low concentrations, and disabling (and possibly deadly) at higher concentrations. Ammonia can also pose a hazard to aquatic organisms if it is discharged to surface waters at high concentrations.

Ammonia is classified as a B2 refrigerant under ASHRAE 34, indicating that it is toxic at relatively low concentrations and flammable at relatively high concentrations. Toxicity reference values that have been established for ammonia include a Permissible Exposure Limit (PEL) of 50 ppm, a Threshold-Limit Value (TLV) and a Recommended Exposure Limit (REL) of 25 ppm, a Short-term Exposure Limit (STEL) of 35 ppm, and an Immediately Dangerous to Life and Health (IDLH) value of 500 ppm.[8]

Chlorine gas is highly toxic. Inhalation of chlorine gas at high concentrations can cause pulmonary edema, cardiac arrest, and inflammation of the larynx. Exposure to concentrations of chlorine below 5 ppm can irritate mucous membranes, the respiratory tract, and skin, and can cause headaches, nausea, blister formation, vomiting and reduced pulmonary function. Toxicity Reference Values that have been established for chlorine gas include a PEL of 1 ppm, a TLV of 0.5 ppm, a STEL of 1 ppm, and an IDLH of 30 ppm. ASHRAE 34 has not classified chlorine.

Chlorine is non-combustible in air, but most combustible materials will burn in chlorine as they do in oxygen.

ii. Long-Term Environmental Impacts

Ammonia is a naturally occurring compound, and is a central compound in the environmental cycling of nitrogen. In surface water, groundwater, or sediment, ammonia will undergo sequential transformation by two

[4] ASHRAE 15, Safety Code for Mechanical Refrigeration, is an industry standard developed by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers. ASHRAE 15 forms the basis for state and local building codes throughout the U.S.

[5] ASHRAE Guideline 3 recommends recycling of all fluorocarbon refrigerants, but is not codified or enforced by any governmental agency.

[6] In 1995, a modeling study indicated that trifluoroacetic acid (TFA), a breakdown product of HFC 134a, might accumulate and concentrate in urban wetlands with high evaporation rates. EPA is monitoring the research in this area. To the extent that TFA formation and concentration pose a threat to the environment, recycling requirements for HFC 134a will address this threat as well as the threat from global warming related to HFC 134a.

[7] Note that a finding under section 612 that a substitute is acceptable for use in a closed refrigeration system is different from a finding under section 608(c)(2) that the release of that substitute does not pose a threat to the environment. Thus, substances that have been approved under SNAP for use as refrigerants may nevertheless be subject to the venting prohibition of 608(c)(2).

[8] PELs are established by OSHA, TLVs and STELs by the American Congress of Governmental Industrial Hygienists, and RELs and IDLHs by the National Institute of Occupational Safety and Health (NIOSH). PELs and TLVs are 8=hour time-weighted averages (TWAs).

processes in the nitrogen cycle, nitrification and denitrification, eventually leading to the production of elemental nitrogen.

Ammonia can also undergo volatilization or ionization. If released to surface water, ammonia may volatilize to the atmosphere. The rate of volatilization decreases as pH and temperature decrease. The toxicity of ammonia to aquatic organisms (fish are especially vulnerable) also decreases with pH. In addition to its direct effects, ammonia can indirectly cause in-stream toxicity through its contribution to eutrophication and its effect on biological oxygen demand.

Because chlorine used as a refrigerant is typically recaptured or chemically transformed rather than released, its environmental fate will not be discussed here.

Ammonia and chlorine have GWPs of 0.

b. *Current Practices and Controls*

When refrigeration technology was first developed, ammonia was one of the first refrigerants to gain acceptance. It is now used almost exclusively in industrial process refrigeration systems in the meat packing, dairy, frozen juice, brewery, cold storage, and other food industries. In these applications, ammonia may come into contact with workers, the general population, and the environment. (Ammonia is also used with water in small absorption refrigeration units. However, while ammonia could conceivably come into contact with consumers in this application, these exposures are likely to be of little concern because the charge is small and is mixed with water, limiting release to the air.) Additional exposures to ammonia may occur from its use in non-refrigerant applications, such as fertilizer and common household cleaner, but these exposures will not be discussed here except as a context for refrigerant-related exposures.

Due to its high toxicity, chlorine has not been submitted or approved for use as a refrigerant except in industrial processes involved in chlorine manufacture. In this application, chlorine could come into contact with workers, the general population, and the environment.

Analyses performed for both this rule and the SNAP rule (*RIA* and *Risk Screen*) indicate that regulatory requirements and industry practices are likely to keep the exposure of workers, the general population, and the environment to ammonia and chlorine below levels of concern.

Occupational exposure to ammonia is primarily controlled by OSHA requirements and national and local building and fire codes. As mentioned above, OSHA has established a PEL for ammonia of 50 ppm. This is an enforceable standard that can be met through containment, safe disposal, ventilation, and/or use of personal protective equipment. OSHA also has requirements in place to prevent catastrophic releases, including the Hazardous Waste Operations and Emergency Response Standard (HAZWOPER), the Hazard Communication Standard, and Process Safety Management (PSM) regulations. (PSM regulations cover systems containing more than 10,000 pounds of ammonia.) These standards require employee training, emergency response plans, and written standard operating procedures.

ASHRAE 15 (and state and local codes based on it) imposes strict quantity limits for direct-type ammonia refrigeration systems (which possess no secondary, heat transfer fluid), and prohibits the use of ammonia altogether in direct-type comfort cooling systems. Indirect type ammonia refrigeration and air-conditioning systems (which possess a secondary, heat transfer fluid) must be housed in a separate mechanical equipment room. This equipment room must meet the requirements listed above for HFC equipment rooms and must also meet several fire-proofing requirements.

Releases of ammonia to the wider environment are addressed by several authorities. CERCLA and SARA require reporting of accidental and intentional releases of ammonia to the atmosphere. (Under CERCLA section 103 and SARA Title III Section 304, releases of more than 100 pounds of ammonia must be reported immediately, unless they are "Federally permitted" such as through National Pollutant Discharge Elimination System (NPDES), State Implementation Plans (SIPs), etc. In that case, however, they are controlled under the permitting authority.

The more common method of ammonia disposal is to mix the ammonia into water, which absorbs about a pound of ammonia per gallon of water, and then to dispose of the water/ammonia solution. Releases of ammonia to surface waters are governed by permits issued by states (or, in some cases, by EPA Regional Offices) to publicly owned treatment works (POTWs) under NPDES. NPDES permits must include conditions necessary to meet applicable technology-based standards and water quality standards. Water quality standards established by states consist of a designated use for the waters in question, water quality criteria specifying the amount of various pollutants that may be present in those waters and still allow the waters to meet the designated use, and anti-degradation policies.

Entities that discharge to a POTW (usually through a municipally-owned sewer system) must themselves comply with Clean Water Act pre-treatment requirements, which may include categorical pretreatment standards on an industry-by-industry basis as well as local limits designed to prevent interference with the biological processes of the treatment plant (or pass through of pollutants). Notification and approval requirements enable POTWs to manage the treatment process, to avoid ammonia overloading, and to protect the treatment processes, collection systems, and facility workers. The POTW typically considers a number of factors before granting discharge approval for ammonia, including the POTW plant's treatment capacity, existing industry discharge patterns, the impact on the POTW's biological treatment processes, the effect on the sewage collection systems (i.e., sewer lines), and the possible hazards to workers at the plant or in the field. The POTW also considers the possibility that ammonia disposed from refrigeration systems may largely be converted to other forms of nitrogen (e.g., nitrates) before arriving at the POTW facility. In general, ammonia from refrigerant uses makes up a small percentage of the ammonia treated by the POTW.

Ammonia is also listed as a regulated substance for accidental release prevention in the List of Substances and Thresholds rule (59 FR 4478, January 31, 1994) promulgated under section 112(r) of the Act. This rule states that if a stationary source handles more than 10,000 pounds of anhydrous ammonia (or 20,000 pounds of 20% or greater aqueous ammonia) in a process, it is subject to chemical accident prevention regulations promulgated under section 112(r). These regulations, which were published on June 20, 1996 (61 FR 31668), require stationary sources to develop and implement a risk management program that includes a hazard assessment, an accident prevention program (including training and the development of standard operating procedures), and an emergency response program. In addition, section 112(r)(1) of the Act states that companies have a general duty to prevent accidental releases of extremely hazardous substances, including ammonia and chlorine.

Exposures to chlorine are controlled through many of the same regulatory mechanisms that control exposures to ammonia, except enforceable

concentration and release limits are lower for chlorine than for ammonia. For instance, the OSHA PEL for chlorine is 1 ppm, compared to 50 ppm for ammonia. Similarly, the reporting threshold under CERCLA section 103 and SARA Title III for chlorine releases is ten pounds, compared to 100 pounds for ammonia; and the quantity of chlorine that triggers requirements under section 112(r) of the Clean Air Act is 2,500 pounds per process.

In addition to these requirements, chlorine is also subject to restrictions under section 112(b) and 113 of the Clean Air Act (CAA). Chlorine is listed as a Hazardous Air Pollutant (HAP) under section 112(b) of the CAA, and under section 113 of the CAA, criminal penalties can be assessed for negligently releasing HAPs into the atmosphere.

EPA is currently investigating whether there are any chlorine sources that are "major sources" under CAA section 112(a). A "major" source is one that releases more than 10 tons per year of any given HAP, or 25 tons per year or more of any combination of HAPs. Such sources would be regulated under a National Emissions Standard for Hazardous Air Pollutants (NESHAP). Because chlorine emissions are currently well controlled during chlorine manufacture, no manufacturer emits more than 10 tons per year of chlorine.

Current industry practices and engineering controls in chlorine manufacture will be applied to the use of chlorine as a refrigerant, minimizing potential releases and exposures. These practices and controls include use of system alarms that activate at chlorine concentrations of 1 ppm, use of self-contained breathing apparatus during servicing, isolation of liquid chlorine in receivers during servicing, and use of a caustic scrubber to neutralize gaseous chlorine during servicing. The anticipated charge sizes in the refrigeration system are several hundred times smaller than the quantity of chlorine in the process stream and bulk storage, and chlorine emissions from the refrigeration system are likely to be significantly smaller than those emanating from the process and storage systems, which are already well controlled for safety and health reasons.

c. *Conclusion*

Because releases of ammonia and chlorine from their currently approved refrigeration applications are adequately addressed by other authorities, EPA is proposing to find that the release of ammonia and chlorine refrigerants during the servicing and disposal of appliances in these applications does not pose a threat to the environment under section 608. EPA requests comment on this proposed finding and on the rationale behind it.

4. Hydrocarbons

a. *Potential Environmental Impacts*

i. Toxicity and Flammability

Hydrocarbons, including propane, propylene, and butane, are classified as A3 refrigerants by ASHRAE Standard 34, indicating that they have low toxicity and high flammability. Like CFCs, HCFCs, and HFCs, they can displace oxygen at high concentrations and cause asphyxiation. Toxicity reference values that have been established for hydrocarbons include a PEL for propane of 1,000 ppm, and IDLHs of 20,000 ppm and 50,000 ppm for propane and butane respectively.

ii. Long-Term Environmental Impacts

Hydrocarbons are volatile organic compounds (VOCs) and therefore contribute to ground-level ozone (smog) formation. Because ozone is a greenhouse gas, hydrocarbons contribute slightly and indirectly to global warming. They do not deplete stratospheric ozone.

b. *Current Practices and Controls*

EPA has approved hydrocarbons under the SNAP program only for use in industrial process refrigeration systems used for hydrocarbon manufacture. In this application, hydrocarbons have the potential to come into contact with workers, the general population, and the environment. However, analyses performed for both this rule and the SNAP rule indicate that existing regulatory requirements and industry practices adequately protect workers, the general population, and the environment from exposure to hydrocarbon refrigerants.

As is the case for ammonia and chlorine, occupational exposures to hydrocarbons are primarily controlled by OSHA requirements and national and local building and fire codes. As noted above, OSHA has established a PEL for propane of 1,000 ppm, and NIOSH has established IDLHs of 20,000 ppm and 50,000 ppm for propane and butane respectively. The PEL is an enforceable standard, and the IDLHs trigger OSHA personal protective equipment requirements. OSHA's Process Safety Management, confined space entry, and HAZWOPER requirements apply to all hydrocarbon refrigerants. These requirements include employee training, emergency response plans, air monitoring, and written standard operating procedures.

ASHRAE 15 prohibits the use of hydrocarbon refrigerants except in laboratory and industrial process refrigeration applications. Refrigeration machinery must be contained in a separate mechanical equipment room that complies with the requirements for HFC equipment rooms and also complies with several fire-proofing requirements.

As is the case for ammonia and chlorine, certain hydrocarbons (including butane, cyclopropane, ethane, isobutane, methane, and propane) are listed as regulated substances for accidental release prevention under regulations promulgated under section 112(r) of the Clean Air Act. In addition, hydrocarbons are considered VOCs, and are therefore subject to state VOC regulations implemented in accordance with the Clean Air Act. The regulatory status of new VOC sources is based on area ground-level ozone classifications. Although states and industry have various options regarding the permitting of new VOC sources, industry typically must implement technologies that provide lowest achievable emissions rates, and must offset new VOC contributions through reductions in existing sources.

According to industry and OSHA representatives, current industry service practices for hydrocarbon refrigeration equipment include monitoring efforts, engineering controls, and operating procedures. System alarms, flame detectors, and fire sprinklers are used to protect process and storage areas. Fugitive emissions monitoring is routinely conducted. If a leak is found, repairs are attempted within five days. If initial repair attempts are unsuccessful, the system is shut down, unless releases from a shutdown are predicted to be greater than allowing a continued leak. During servicing, OSHA confined space requirements are followed, including continuous monitoring of explosive gas concentrations and oxygen levels. Hydrocarbon refrigerants may be returned to the product stream or can be released through a flare during servicing. Due to fire and explosion risks and the economic value of the hydrocarbon, direct venting is not a widely used procedure. In general, hydrocarbon emissions from refrigeration systems are likely to be significantly smaller than those emanating from the process and storage systems, which are already well-controlled for safety reasons.

c. *Conclusion*

Because the release of hydrocarbons from industrial process refrigeration systems appears to be adequately addressed by other authorities, EPA is proposing to find that the release of hydrocarbon refrigerants during the servicing and disposal of such systems does not pose a threat to the environment under section 608. EPA requests comment on this proposed finding and on the rationale behind it.

5. Inert Atmospheric Constituents

EPA has approved CO_2 under SNAP as a replacement for CFC-13, R-13B1 and R-503 in very low temperature and industrial process refrigeration applications, and as a substitute for CFC-113, CFC-114, and CFC-115 in non-mechanical heat transfer applications. CO_2 is a well-known, nontoxic, nonflammable gas. Its GWP is defined as 1, and all other GWPs are indexed to it. EPA's understanding is that CO_2 is readily available as a waste gas, and therefore no additional quantity of the chemical needs to be produced for refrigeration applications. Thus, the use of such commercially available CO_2 as a refrigerant does not contribute to global warming, and release of such CO_2 from appliances has no net contribution to global warming. On this basis, EPA proposes to find that release and disposal of CO_2 refrigerant during the servicing and disposal of appliances does not pose a threat to the environment under section 608. EPA requests comment on the factual basis for this proposal.

EPA has approved direct nitrogen expansion as an alternative technology for many CFCs and HCFCs used in vapor compression systems. Nitrogen is a well-known, nontoxic, nonflammable gas that makes up 78% of Earth's atmosphere. Nitrogen contributes neither to global warming nor to ozone-depletion. EPA therefore proposes to find that the release and disposal of elemental nitrogen during the servicing and disposal of appliances does not pose a threat to the environment.

EPA has approved evaporative cooling as an alternative technology to motor vehicle air conditioners using CFC-12. Evaporative cooling operates simply through the evaporation of water to the atmosphere. Water released from evaporative cooling is nontoxic and contributes neither to ozone depletion nor to global warming. EPA therefore proposes to find that the release and disposal of water during the servicing and disposal of appliances does not pose a threat to the environment.

IV. The Proposed Rule

A. Definitions

1. Appliance

EPA is proposing to amend the current definition of "appliance" to include air-conditioning and refrigeration equipment that contains substitutes for class I and class II substances, as well as equipment that contains class I and class II substances. This amendment is consistent with the definition of "appliance" in section 608(c)(2), which states, "[f]or purposes of this paragraph, the term 'appliance' includes any device which contains and uses as a refrigerant a substitute substance and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer." EPA proposes to continue to interpret "appliance" to include all air-conditioning and refrigeration equipment except that designed and used exclusively for military applications. Thus, the term "appliance" would include household refrigerators and freezers (which may be used outside the home), other refrigeration appliances, residential and light commercial air conditioning, motor vehicle air conditioners, comfort cooling in vehicles not covered under section 609, and industrial process refrigeration.

a. *Inclusion of Heat Transfer Devices in the Term "Appliance".* A manufacturer of PFCs has submitted comments requesting that EPA exclude non-mechanical heat transfer applications from the definition of appliance. The manufacturer maintained that "heat transfer does not involve the use of a refrigerant under the accepted technical definitions of this term," and cited the technical definition of refrigerant in the ASHRAE handbook as "the working fluid in a refrigeration cycle, absorbing heat from a reservoir at low temperature and rejecting heat at a higher temperature." In addition, the manufacturer stated that heat transfer applications are such a small segment of the ODS replacement market that they should be exempt from regulation on de minimis grounds. Citing the *Alabama Power Co.* v. *Costle* decision (636 F.2d 323, DC Cir 1979), the commenter argued that EPA may make such exemptions "if it finds (1) that Congress was not extraordinarily rigid in drafting section 608, and (2) that the burdens associated with regulating the de minimis categories yield trivial benefits." Finally, the manufacturer requested that if EPA does decide to continue to consider heat transfer applications appliances, EPA adopt a unique approach to these systems, as they differ physically from "traditional" air-conditioning and refrigeration systems. ("Issues Associated with Extending Regulations Under Section 608 to ODS Substitutes Used in Heat Transfer Applications," Michael I. Dougherty and Larry G. Headrick, 3M Specialty Chemicals Division, September 5, 1995).

In the past, EPA has considered non-mechanical heat transfer applications that use the heat transfer fluid as the primary refrigerant to be appliances. In an applicability determination issued on June 6, 1993, EPA determined that electrical transformers containing CFC–113 were appliances because the 113 "acts to transport heat out of the transformer." The determination stated further that "(t)he fact that the transport of heat is accomplished without the use of compressors or expansion valves does not alter the role of the CFC–113 which acts as a coolant." Moreover, under the Significant New Alternatives Program, EPA has classified non-mechanical heat transfer applications as part of the refrigeration and air-conditioning major industrial use sector.

EPA does not see any legal, technical, or environmental justification for reversing these findings, although EPA is requesting comment on the option of adopting unique requirements under section 608 for non-mechanical heat transfer applications. As noted above, the fundamental cooling function of the heat transfer fluid is not changed because a compressor is not involved. While one technical definition of "refrigerant" may refer only to moving heat from low-to high-temperature regions, commonly accepted dictionary definitions of "refrigerant" and "refrigerate" refer generally to making or keeping things cool.[9] Neither the statute nor its legislative history indicate that Congress intended the term to be more restrictive in the statute than it is in common use.

Given that heat transfer applications are appliances, EPA does not believe that it would be appropriate to exempt some or all of these applications from recycling requirements because they consume a small quantity of refrigerant relative to other appliance types. The commenter states that de minimis exemptions are permissible where Congress has not been "extraordinarily

[9] *The Random House College Dictionary* defines "refrigerate" as "to make or keep cold or cool, as for preservation," and "refrigerant" as "a substance used as an agent in cooling or refrigeration." *Webster's Ninth New Collegiate Dictionary* defines "refrigerate" as "to make or keep cold or cool," and "refrigerant" as "a substance used in refrigeration."

rigid," and maintains that section 608 gives the Agency flexibility to exercise its discretion in this area. In support of this argument, the commenter cites the explicit exemptions in section 608(c) for (1) de minimis releases associated with good faith attempts to recover and recycle, and (2) releases of ODS substitutes that do not pose a threat to the environment.

However, the legislative history of section 608 indicates that Congress intended both of these exemptions to be interpreted narrowly. As noted above, the Senate managers of the CAA bill specifically identified releases of substitutes with high global warming potential as a "threat to the environment," and PFCs have among the highest global warming potentials of any refrigerants. The Senate managers also read the following statement into the record regarding the explicit exemption for de minimis releases:

> Exceptions to this provision are included for certain de minimis releases. As used in this context, de minimis refers to extremely small amounts. The fact that de minimis, in other contexts under this Act, may be as much as several tons is not relevant nor controlling in this context. Most appliances contain only a few ounces of class I or class II refrigerant. Interpreting de minimis to mean anything other than an extremely small amount would render this provision a nullity. The exception is included to account for the fact that in the course of properly using recapture and recycling equipment, it may not be possible to prevent some small amount of leakage (Cong. Rec. S 16948 (Oct. 27, 1990)).

Thus, both the statute and the legislative history clearly limit the applicability of the de minimis exemption to those releases that unavoidably occur during the course of recycling. The de minimis exemption is *not* intended to exempt any sector from recycling requirements; indeed, the Senate managers specifically proscribe a broad interpretation of de minimis, noting that it would "render (section 608(c)) a nullity."

Furthermore, Congress' explicit provision of a sharply limited exemption from section 608(c) for de minimis releases associated with good faith efforts to recapture and recycle or safely dispose of a substitute undermines the argument that EPA has an understood authority to grant a much broader de minimis exemption under *Alabama Power Co.* v. *Costle*. Congress has specifically addressed the scope of possible exemptions from section 608(c) and declared this scope quite limited. Consequently, EPA has included both small appliances (which individually have very small charge sizes) and very high-pressure appliances (which collectively consume only a small percentage of refrigerants) in the scope of the section 608 recycling requirements.

Moreover, EPA does not believe that the regulation of releases of PFCs used as heat transfer fluids meets either of the criteria established by the court in *Alabama Power* for finding an implied authority to allow a de minimis exemption. De minimis authority may be implied where "the burdens of regulation yield a gain of trivial or no value." *Alabama Power* at 360–61. First, EPA does not consider the benefits of this proposed regulation to be "trivial." The commenter estimates potential annual consumption of PFC heat transfer fluids to be 580,000 pounds, or 264 metric tons. If this consumption is weighted by the average 100-year GWP of the PFCs and compared to the consumption of all other refrigerants weighted by the 100-year GWP of HFC–134a, it makes up 1.5 percent of total refrigerant consumption in the U.S.[10] If the PFC consumption and other refrigerant consumption are weighted by their 500-year GWPs, the PFCs make up 7.2 percent of total U.S. refrigerant consumption.

Second, the commenter does not demonstrate that recycling PFC heat transfer fluids would impose significant burdens. While the unique characteristics and applications of heat transfer appliances may warrant specialized recycling requirements, they do not render recycling impracticable or even extraordinarily difficult. Indeed, the commenter notes that PFC heat transfer fluids are already subject to use restrictions under the SNAP program that require recycling during the servicing and disposal of equipment, and observes that total losses from heat transfer equipment are currently less than 10 percent per year. Moreover, heat transfer applications using CFCs and HCFCs have clearly been subject to section 608 requirements since the applicability determination on electrical transformers was issued in June, 1993. Since EPA has not received any information indicating that users of these applications have been unable to comply, and since PFCs were selected as substitutes for CFCs and HCFCs in these applications precisely because they have similar physical characteristics, there is no reason to believe that recycling PFCs in these applications will be difficult. Thus, EPA is not proposing to exempt heat transfer applications from the requirements of this proposed rule.

b. Coverage of One-Time Expansion Devices. Similarly, EPA believes that one-time expansion devices are appliances, and that the release of refrigerants from one-time expansion devices is prohibited by section 608(c)(2), unless EPA finds that the release of these refrigerants does not pose a threat to the environment. One-time expansion devices, which include "self-chilling cans," rely on the release and associated expansion of a compressed refrigerant to cool the contents (e.g., a beverage) of a container.

EPA considers refrigerant release from such devices to be prohibited by section 608(c). First, the refrigerant in these devices acts as a not-in-kind substitute for CFCs and HCFCs in household and commercial refrigerators. Although the refrigerant in a one-time expansion device is not being used in the same system as CFC–12 in a household or commercial refrigerator, it is providing the same effect of cooling the container. EPA has previously considered not-in-kind technologies, such as evaporative cooling, to be substitutes under SNAP. The SNAP regulation defines "substitute or alternative" as "any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or II compound." This approach is consistent with the language of section 612 of the Clean Air Act, in which Congress repeatedly identified "product substitutes" as substitutes for class I and class II substances. Section 612(a) states the policy of the section: "To the maximum extent practicable, class I and class II substances shall be replaced by chemicals, **product substitutes,** or alternative manufacturing processes that reduce overall risks to human health and the environment" (emphasis added).[11] As stated in the SNAP regulation, EPA has interpreted the phrase "substitute substances" in 612(c) to incorporate the general definition of substitute in 612(a) and 612(b) (3) and (4) (59 FR 13050). As noted above, the proposed definition of "substitute" in today's document is very similar to that in the SNAP regulations, except the proposed definition omits the proviso that the substitute be *intended* for use as

[10] This figure is based on the commenter's projection of PFC heat transfer fluid consumption and EPA's estimate of U.S. consumption of CFC and HCFC refrigerants in 1992.

[11] Section 612(b)(3) directs EPA to "specify initiatives * * * to promote the development and use of safe substitutes for class I and class II substances, including alternative chemicals, **product substitutes,** and alternative manufacturing processes" (emphasis added). Similarly, section 612(b)(4) requires EPA to "maintain a public clearinghouse of alternative chemicals, **product substitutes,** and alternative manufacturing processes" (emphasis added).

a replacement for a class I or class II substance. Thus, under the proposed definition in today's document, and consistent with the definition in the SNAP regulations and section 612 of the Act, EPA would consider the refrigerant in a one-time expansion device to be a "substitute substance" under section 608(c)(2).

Second, one-time expansion devices, which rely on the release of compressed gases to cool the contents of containers, are encompassed by the term "appliance." A one-time expansion device is a device that holds and uses a substitute substance to make the contents of the container cool for individual consumption. Thus, it is a "device which contains or uses" a "refrigerant" "for household or commercial purposes." The operating principle of a one-time expansion device, vapor compression and expansion, is the same as that of a traditional refrigerator. The only technological differences between a one-time expansion device and a traditional refrigerator are that, with a one-time expansion device, the compression part of the vapor-compression/expansion cycle takes place at the factory, and the refrigerant escapes during expansion instead of being cycled back to a compressor to be recompressed.

Third, EPA believes that the opening of a one-time expansion device constitutes disposal of the device. This interpretation is consistent with the definition of "disposal" included in the recycling regulations for CFCs and HCFCs at § 82.152. "Disposal" is the process leading to and including:

(1) The discharge, deposit, dumping or placing of any discarded appliance into or on any land or water;

(2) The disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; or

(3) The disassembly of any appliance for reuse of its component parts.

The act of opening a one-time expansion device meets this definition of disposal. Opening the device irreversibly discharges the refrigerant and thereby ends the useful life of the cooling device. Cooling the container is a one-time action that occurs immediately prior to consuming or using its contents, after which the remaining component parts of the appliance will be discarded. In addition, with the irreversible discharge of the critical portion of the cooling device, the appliance has been partially disassembled and one of its component parts has been discharged. Thus, the act of opening the device and cooling the container is a process that leads quickly and inevitably to the final disposal of the appliance, and the act itself includes the permanent disassembly of the appliance and discharge of one of the component parts. Finally, the act of opening the device is a "knowing" release of refrigerant, as a person opening the device could not fail to be aware that his or her action is causing release of a gas to the atmosphere.

Thus, the release occurs in the course of "maintaining, servicing, repairing, or disposing of an appliance" and is subject to the venting prohibition. While EPA is proposing to exempt some substitute refrigerants in one-time expansion applications from the section 608 requirements because their release does not pose a threat to the environment (see the discussion of CO_2 above), EPA does not believe that it can make this finding for the HFC refrigerants that have been suggested for use in one-time expansion devices due to global warming concerns. EPA recognizes that this has the effect of prohibiting the use of HFCs (or other refrigerants whose release EPA does not find does not pose a threat to the environment) in this application. As discussed below, EPA is proposing to use its authority under section 608(c)(2) and section 301(a) to prohibit the manufacture of one-time expansion devices using refrigerants that EPA has not exempted from the venting prohibition.

c. Secondary Loops. Rather than cooling things or people directly, many refrigeration and air-conditioning systems operate by cooling an intermediate fluid, which is then circulated to the things or people to be cooled. This intermediate fluid (and the structure for transporting it) is referred to as a secondary loop. Secondary loops are commonly used in air conditioners in large buildings,[12] in industrial process refrigeration systems, and in some specialty and commercial refrigeration systems.

There are different types of secondary loops. Interpreted in the broadest sense, secondary loops include, on the one hand, the lower temperature loops of cascade systems, and on the other, the ventilation systems that circulate air that is cooled by an air-conditioner, since both of these types of loops circulate a fluid that is cooled by a primary refrigerant loop. However, these loops differ from each other in a number of ways. The former move heat from cooler to warmer areas, and there is a change of state in the secondary fluid. The latter move heat from warmer to cooler areas (because they return air that is warmed by the inhabitants and equipment in the building), and there is no change of state in the secondary fluid. The type of loop that is most commonly considered a secondary loop falls between these two types, but somewhat closer to air circulation systems: it is a closed loop that circulates a liquid that is cooled by a primary refrigerant loop and that is used to move heat from warmer to cooler areas with no change of state.[13]

EPA is requesting comment regarding what types of secondary loops should be considered to be part of an "appliance." The definition of "appliance" with respect to secondary loops is somewhat ambiguous under Act. Given this ambiguity, Congress has delegated to EPA the authority to interpret "appliance" consistent with the language and purpose of section 608. The purpose of section 608 is to reduce emissions of ozone-depleting substances and to ensure that the phaseout of ozone-depleting refrigerants does not result in new environmental problems from emissions of their replacements.

In defining the boundaries of an appliance, EPA believes that it is appropriate to consider both the proximity of the loop to the primary cooling mechanism and the mode of functioning of the loop (including the direction of heat transfer and whether or not a change of state is involved); otherwise, it may be difficult to draw a clear line between the appliance and its surroundings. For example, a common-sense definition of appliance would probably not include the ventilation system used to circulate cooled air, but, as noted above, such a ventilation system could be considered a secondary loop. In fact, because the transfer of heat from warmer to cooler objects occurs spontaneously, any fluid between the primary loop of an appliance and the things or people cooled could be considered a secondary (or tertiary, etc.) loop. In order to avoid an overly expansive interpretation of "appliance," EPA is proposing to interpret as part of an "appliance" refrigerant loops that (1) are primary or (2) move heat from cooler to warmer areas or (3) involve a change of state of the fluid. Under this interpretation, secondary loops that used water, brine, or other materials to transport heat from warmer to cooler areas without a change of state would

[12] Large building air conditioners are commonly called "chillers," which is short for "water chillers." Most building air conditioners cool water or brine that is then circulated throughout the building.

[13] The 1997 *ASHRAE Handbook, Fundamentals,* defines "secondary coolant" as "any liquid cooled by the refrigerant and used to transfer heat without changing state" (p. 20.1).

not be considered to be part of an "appliance." On the other hand, cascade system secondary loops that used fluids to transport heat from cooler to warmer areas with a change of state would be considered to be part of an "appliance." EPA believes that this interpretation would cover those secondary loops that are traditionally considered to be part of the air conditioner or refrigerator, while excluding those that are not. In addition, the Agency believes that this interpretation would capture the majority of air-conditioning and refrigerating components that have used ozone-depleting substances in the past.

This interpretation is also consistent with EPA's decision not to list secondary fluids under SNAP. In that decision, published on March 10, 1997, EPA expressed concern that listing secondary fluids could discourage their use and could be very burdensome to the Agency and the regulated community, as the number of secondary fluids is quite large. In addition, the Agency noted that there was little information or data suggesting that the use of these fluids in secondary loops posed an environmental or safety risk (52 FR 10700).

The Agency requests comment on its interpretation of "appliance" as it applies to secondary loops. Specifically, EPA requests comment on whether there are human health or environmental risks that could be significantly reduced by subjecting to the venting prohibition secondary loops that transport heat from warmer to cooler areas without a change of state. Based on information received to date, the Agency believes that most secondary fluids are either environmentally benign or controlled under other authorities. However, if some secondary fluids were neither benign nor adequately controlled under other authorities, EPA could interpret "appliance" to include secondary loops and individually exempt fluids whose release did not pose a threat to the environment. In this way, EPA could subject to the venting prohibition only those secondary fluids whose release posed a threat. Given the large number of secondary fluids, however, the Agency is concerned that it would be difficult to identify and list all of the secondary fluids whose release does not pose a threat.

EPA also requests comment on the extent to which ozone depleting substances such as HCFC–123 are used in secondary loops that transport heat from warmer to cooler areas. EPA believes that such ozone-depleting substances should be recovered, given their environmental impact and the availability of equipment and expertise to recover and recycle them. However, to require such recovery, EPA would not necessarily need to define secondary loops as part of an appliance and thereby subject them to the section 608(c) venting prohibition. Instead, the Agency could use its broad authority to minimize emissions and maximize recycling of class I and class II substances under section 608(a). EPA requests comment on this approach.

2. Full Charge

Compliance with the leak repair requirements requires calculating both the full charge of the appliance and the leak rate. EPA has previously defined full charge at § 82.152 as the amount of refrigerant required for normal operating characteristics and conditions of the appliance as determined by using one or a combination of the four methods specified at § 82.152. Through this action, EPA is proposing to eliminate the phrase "for the purposes of § 156(i)" and the word "all" from paragraph (2) in the definition of full charge at § 82.152. The definition refers to "other relevant considerations." The term "all" is implicit in that language. EPA believes this change will improve the readability of the provision by eliminating redundancy.

3. High-pressure Appliance

As discussed below in section IV.B.1.a, EPA is proposing to base evacuation requirements for CFC, HCFC, HFC, and PFC appliances on the saturation pressure of the refrigerant. As part of this approach, EPA is proposing two changes to its definition of high-pressure appliances. One of the changes would modify the system for classifying refrigerants by their saturation pressures. Rather than classifying the refrigerants according to their boiling points at atmospheric pressure, EPA would classify them according to their saturation pressures at 104 degrees F. The other change would split what are currently defined as high-pressure appliances into two groups. One group would remain subject to the current requirements for high-pressure CFC and HCFC (except HCFC–22) appliances and would continue to be called "high-pressure appliances." The other group would be subject to the current requirements for HCFC–22 appliances and would be called "higher-pressure appliances," as described below.

The proposed revised definition of "high-pressure appliances" reads as follows:

High-pressure appliance means an appliance that uses a refrigerant with a liquid phase [14] saturation pressure between 45 psia and 220 psia at 104 degrees Fahrenheit. This definition includes but is not limited to appliances using R114, R12, R134a, R500, and R401A, B, and C.

4. Higher-Pressure Appliance

As described above, EPA is proposing to create a new category of "higher-pressure appliances" whose refrigerants have saturation pressures between 220 psia and 305 psia at 104 degrees F. Appliances in this category would be subject to the current requirements for HCFC–22 appliances. The proposed definition of "higher pressure appliances" reads as follows:

Higher-pressure appliance means an appliance that uses a refrigerant with a liquid phase saturation pressure between 220 psia and 305 psia at 104 degrees Fahrenheit. This definition includes but is not limited to appliances using R22, R502, R402A and B, and R407A, B, and C.

5. Leak Rate

EPA has not previously promulgated a formal definition for leak rate. Through today's action, EPA is proposing to add a definition for leak rate for the purposes of applying leak repair requirements contained in § 82.156(i). Currently, § 82.156(i) refers to applicable allowable annual leak rates for different appliances. While EPA believes that there is a general understanding on how to calculate leak rates, EPA is proposing to add a specific definition in the regulations for clarity. EPA believes this definition will address some of the issues raised by the Chemical Manufacturers' Association (CMA).

EPA and CMA jointly issued a compliance guide for leak repair in October 1995. That guide, known as the Compliance Guidance For Industrial Process Refrigeration Leak Repair Regulations Under Section 608 of the Clean Air Act (Compliance Guidance), includes a section on calculating leak rates. The Compliance Guidance states that each time the owner or operator adds refrigerant to an appliance normally containing 50 pounds or more of refrigerant, the owner or operator should promptly calculate the leak rate to ensure that the appliance is not leaking at a rate that exceeds the applicable allowable leak rate. If the amount of refrigerant added indicates

[14] Zeotropic blends exert different pressures at the same temperature, depending upon the percentage of vapor vs. liquid in the container. For reasons discussed below in section IV.B.1.a., EPA is proposing to classify refrigerants according to their liquid phase saturation pressures at 104 degrees F.

that the leak rate for the appliance is above the applicable allowable leak rate, the owner or operator must perform corrective action by repairing leaks, retrofitting the appliance, or retiring the appliance in accordance with the requirements of § 82.156(i). As noted below, the applicable allowable leak rate for commercial refrigeration and industrial process refrigeration equipment normally containing 50 pounds or more of refrigerant is currently 35 percent, but EPA is proposing to lower this for some types of equipment. The applicable allowable annual leak rate for all other appliances normally containing 50 pounds or more of refrigerant is currently 15 percent, but again, EPA is proposing to lower this.

The Compliance Guidance specifically mentions two methods for calculating leak rates. One method for calculating the leak rate is described in the Compliance Guidance as follows:

(1) Take the number of pounds of refrigerant added to the appliance to return it to a full charge and divide it by the number of pounds of refrigerant the appliance normally contains at full charge;

(2) Take the number of days that have passed since the last day refrigerant was added and divide by 365 days;

(3) Take the number calculated in step (1) and divide it by the number calculated in step (2); and

(4) Multiply the number calculated in step (3) by 100 to calculate a percentage.

This method is summarized in the following formula:

$$\text{Leak rate (\% per year)} = \frac{\text{pounds of refrigerant added}}{\text{pounds of refrigerant in full charge}} \times \frac{\text{365 days/year}}{\text{\# days since refrigerant last added}} \times 100\%$$

Because this method takes the quantity of refrigerant (percentage of charge) lost between charges and scales it up or down to calculate the quantity that would be lost over a year-long period, it will be referred to as the "annualizing method."

The second method mentioned in the Compliance Guidance is to calculate the "rolling average." The term "rolling average" is not defined in the Compliance Guidance, but EPA believes it is commonly calculated by:

(1) Summing up the quantity of refrigerant (e.g., pounds) added to the appliance over the previous 365-day period (or over the period that has passed since leaks in the appliance were last repaired, if that period is less than one year),

(2) Dividing the result of step one by the quantity (e.g., pounds) of refrigerant the appliance normally contains at full charge, and

(3) Multiplying the result of step two by 100 to obtain a percentage.

This method is summarized in the following formula:

$$\text{Leak rate (\% per year)} = \frac{\text{pounds of refrigerant added over past 365 days (or since leaks were last repaired)}}{\text{pounds of refrigerant in full charge}} \times 100\%$$

EPA is considering four options for its formal definition of "leak rate." The first option is to require appliance owners to calculate leak rates using only the "annualizing" method. The second option is to require owners to calculate leak rates using only the "rolling average" method. The third option is to require owners to calculate leak rates using whichever of the two methods yields the higher calculated leak rate, and the fourth option is to permit owners to calculate leak rates using either method, so long as the same method is always used for the same appliance, facility, or firm.

EPA believes that there are advantages and disadvantages to each approach. The annualizing method is relatively simple, catches some kinds of leaks more quickly than the rolling average method.[15] and does not penalize owners whose appliances leak slowly but show no signs of leakage until a relatively large percentage of the charge has been lost. On the other hand, the annualizing method permits owners whose appliances spring a fast leak after a long period of slow leakage to delay repair, because it permits them to "dilute" the true leak rate by averaging the refrigerant loss over more than one year.

The rolling average method is relatively simple and catches some kinds of leaks (such as the sudden fast leak described in the previous paragraph) more quickly than the annualizing method. On the other hand, the rolling average method permits owners to delay repair of certain types of leaks longer than the annualizing method, and it may force owners whose appliances actually leak below the applicable leak rate to undertake repair, especially if these owners have no way of recognizing that they have a leak until a relatively large percentage of the charge has been lost.

Requiring the use of whichever method yields the highest calculated leak rate is a more complicated approach (both for compliance and enforcement) than requiring the use of either method alone, but ensures that leaks are caught as quickly as possible. However, because this approach incorporates the rolling average method, it shares that method's potential to penalize appliance owners whose appliances leak below the applicable leak rate but do not show signs of leakage until they have lost a relatively large percentage of charge.

Permitting appliance owners to use the method of their choice to calculate leak rates is somewhat more complicated to enforce than requiring either method alone, but could be easier for owners to comply with if they have more experience with one method than the other. It might permit owners to select the method that permits them to perform leak repair less frequently, but both the annualizing and rolling average methods eventually catch all leaks above the maximum allowable rate. Because appliance owners using the rolling average method would be doing so at their discretion, this approach neutralizes any equity concerns associated with that method. However, to implement this approach, EPA would have to resolve two issues. First, the Agency would have to implement some

[15] Suppose a previously leak-tight appliance springs a leak. If the appliance owner is adding *less* than the applicable allowable percentage of charge and the time since the last recharge is *less* than one year, the annualizing method will force the owner to repair the leaks before the rolling average method will. If an appliance owner is adding *more* than the applicable allowable percentage of charge and the time since the last recharge is *more* than one year, the reverse holds true.

type of recordkeeping requirement (1) to ensure that once appliance owners chose a method for calculating leak rates, they used the same method consistently, and (2) to permit EPA inspectors to understand and audit leak repair records. Second, EPA would have to determine whether the same method for calculating leak rates should be used for individual appliances, whole facilities, or entire firms. EPA believes that using different methods for different appliances within the same facility would be excessively confusing and difficult to enforce; the Agency would prefer the same method to be used on a facility or firm basis.

EPA is proposing the third option, requiring use of whichever method yields the higher calculated leak rate, as its lead option. Specifically, EPA is proposing to define "leak rate," as follows:

Leak rate means the rate at which an appliance is losing refrigerant, measured between refrigerant charges or over 12 months, whichever is shorter. The leak rate is expressed in terms of the percentage of the appliance's full charge that would be lost over a 12-month period if the current rate of loss were to continue over that period. The rate is calculated using the following method:

(1) Take the number of pounds of refrigerant added to the appliance to return it to a full charge and divide it by the number of pounds of refrigerant the appliance normally contains at full charge;

(2) Take the shorter of (a) 365 days and (b) the number of days that have passed since the last day refrigerant was added and divide that number by 365 days;

(3) Take the number calculated in step (1) and divide it by the number calculated in step (2); and

(4) Multiply the number calculated in step (3) by 100 to calculate a percentage.

This method is summarized in the following formula:

$$\text{Leak rate (\% per year)} = \frac{\text{pounds of refrigerant added}}{\text{pounds of refrigerant in full charge}} \times \frac{\text{365 days/year}}{\text{shorter of: \# days since refrigerant last added and 365 days}} \times 100\%$$

Note that using this formula is equivalent to using whichever of the two formulas above yields the higher calculated leak rate, since it reduces to the formula for the annualizing method if less than one year has passed since refrigerant was last added, while it reduces to the formula for the rolling average method if more than one year has passed since refrigerant was last added.

The Agency believes that this approach would require owners to repair leaks quickly without being unduly burdensome. EPA requests comment on this approach and on the other options presented here.

6. Low-pressure Appliance

EPA is proposing to revise the definition of "low-pressure appliance" to refer to saturation pressures at 104 degrees F rather than boiling points. The proposed revised definition reads: Low pressure appliance means an appliance that uses a refrigerant with a liquid phase saturation pressure below 45 psia at 104 degrees Fahrenheit. This definition includes but is not limited to appliances using R11, R123, and R113.

7. Opening

EPA is proposing to amend the definition of "opening" to include service, maintenance, or repair on an appliance that would release class I, class II, or substitute refrigerants unless the refrigerant were recovered previously from the appliance.

EPA is also requesting comment on adding disposal to the definition of "opening;" see section IV.F. for a discussion of this option.

8. Reclaim

EPA is proposing to amend the definition of "reclaim" to reflect the proposed update of the refrigerant purity standards at appendix A from standards based on ARI 700–1993 to standards based on ARI 700–1995. In addition, EPA is proposing to slightly reword the definition of "reclaim" to remove the reference to a "purity" standard and thereby make the definition more consistent with the full range of requirements provided in appendix A. EPA has always interpreted § 82.154(g) and § 82.164 to require that persons who "reclaim" refrigerant must reprocess the refrigerant to *all* of the specifications of appendix A that are applicable to that refrigerant and to verify that the refrigerant meets these specifications using the analytical methodology prescribed in appendix A.

9. Refrigerant

Although the regulations currently use the term "refrigerant" in several places, EPA has not previously defined this term. EPA is proposing to add a definition of "refrigerant" that would include any class I or class II substance used for heat transfer purposes, or any substance used as a substitute for such a class I or class II substance by any user in a given end-use, except for the following substitutes in the following end-uses:

Ammonia in commercial or industrial process refrigeration or in absorption units

Hydrocarbons in industrial process refrigeration (processing of hydrocarbons)

Chlorine in industrial process refrigeration (processing of chlorine and chlorine compounds)

Carbon dioxide in any application

Nitrogen in any application

Water in any application

EPA is proposing this definition primarily to simplify the rule. The proposed definition would permit EPA to refer to covered class I, class II, and substitute refrigerants without having to reiterate a list of either included or excepted refrigerants each time. At the same time, EPA believes that the proposed definition would appropriately define "refrigerant" for purposes of section 608. The Agency does not intend the definition either to expand or diminish the scope of the section 608 requirements, and believes that the definition is consistent with EPA's past interpretations of the term "refrigerant." In the past, EPA has interpreted "refrigerants" to include the fluids in traditional vapor-compression systems, such as refrigerators, air-conditioners, and heat pumps, as well as the fluids in heat transfer systems that lack compressors, such as electrical transformers. EPA has adopted this interpretation based on both technical and common definitions of "refrigerant." The Agency believes that the proposed definition would cover the fluids covered by the technical and common definitions. The rationale for the proposed exceptions is discussed above in section III.B.

As discussed above, EPA is proposing to interpret "appliance" to exclude secondary loops that move heat from warmer to cooler areas using a fluid that does not change state. If EPA retains its proposed interpretation of "appliance,"

the Agency could add a restriction to the definition of "refrigerant" to the same effect, ensuring consistency between the interpretation of "appliance" and the definition of "refrigerant." EPA requests comment on this option, and on the proposed definition.

10. Substitute

EPA is proposing to define "substitute" as any chemical or product substitute, whether existing or new, that is used by any person as a replacement for a class I or II compound in a given end-use. As discussed in section I.B. above, this definition is similar to the definition of "substitute" used in the SNAP rule, but it omits the proviso that a substitute be *"intended* for use as a replacement for a class I or class II substance." Thus, it includes substances that may not have been used to replace class I or class II substances in a given instance, but are used to replace class I or class II substances in other instances of that end-use.

11. Technician

EPA is amending the definition of technician to include persons who perform maintenance, service, repair, or disposal that could be reasonably expected to release class I, class II, or substitute refrigerants from appliances into the atmosphere.

12. Very-High-Pressure Appliance

EPA is proposing to revise the definition of "very-high-pressure appliance" to refer to saturation pressures at 104 degrees Fahrenheit rather than boiling points. Because 104 degrees F is above the critical temperatures of many very-high-pressure refrigerants, meaning that there is no "saturation pressure" in the usual sense for those refrigerants at that temperature, EPA is also adding the phrase "or with a critical temperature below 104 degrees Fahrenheit" to the definition. The proposed revised definition reads as follows:

Very-high-pressure appliance means an appliance that uses a refrigerant with a critical temperature below 104 degrees Fahrenheit or with a liquid phase saturation pressure above 305 psia at 104 degrees Fahrenheit. This definition includes but is not limited to appliances using R410A and B, R13, R23, and R503.

B. Required Practices

EPA is proposing to require persons servicing or disposing of air-conditioning and refrigeration equipment that contains HFCs and PFCs to observe certain service practices that minimize emissions of these refrigerants. As noted above, these service practices are very similar to those required for the servicing or disposal of CFC and HCFC equipment. The most fundamental of these practices is the requirement to recover HFC and PFC refrigerants rather than vent them to the atmosphere. As noted above, the knowing venting of substitutes for class I and class II refrigerants (except those exempted by the Administrator) during maintenance, service, repair or disposal is expressly prohibited by section 608(c)(1) and (2) of the Act, as of November 15, 1995. Section 608(c)(1) exempts from the prohibition de minimis releases associated with good faith attempts to recapture and recycle or safely dispose of these refrigerants.

The statutory language of section 608(c)(2) simply extends to substitute refrigerants the section 608(c)(1) prohibition on venting of class I and II substances and its exemption for de minimis releases associated with good faith attempts to recapture and recycle or safely dispose of refrigerant. For releases of class I and II substances, EPA has interpreted as "de minimis releases associated with good faith attempts to recapture and recycle or safely dispose" of refrigerants, releases that occur despite compliance with EPA's required practices for recycling and recovery under 40 CFR 82.156, including use of recovery or recycling equipment certified under 40 CFR 82.158. Compliance with the regulations represents "good faith attempts to recapture and recycle or safely dispose" of refrigerant, and consequently releases that occur despite such compliance should be considered de minimis releases under section 608(c).[16] EPA proposes to interpret the phrase "good faith attempts to recapture and recycle or safely dispose" similarly when it applies to section 608(c)(2). Thus, "good faith attempts to recapture and recycle or safely dispose" of substitute refrigerants are defined by the proposed provisions concerning evacuation of equipment, recycling and recovery, use of certified equipment, and technician certification. EPA believes that these provisions appropriately define good faith attempts to recapture and recycle or safely dispose of substitute refrigerants for the reasons discussed in EPA's justification of each provision. Under this approach, emissions that take place during servicing or disposal when these provisions are not followed would not be de minimis emissions.

To implement section 608(c)(2) more effectively, EPA proposes not only to define "good faith attempts to recapture and recycle or safely dispose" according to the proposed provisions, but also more directly to require compliance with the proposed provisions for substitute refrigerants regarding evacuation of equipment, use of certified equipment, and technician certification in any instance where a person is opening (or otherwise violating the refrigerant circuit) or disposing of an appliance, as defined in 40 CFR 82.152. It is physically impossible to open appliances (or otherwise violate the refrigerant circuit) or dispose of appliances without emitting at least some refrigerant, even if some effort is made to recapture the refrigerant. Even after the appliance has been evacuated, some refrigerant remains, which is released to the environment when the appliance is opened or disposed of. Other activities that fall short of opening but that involve violation of the refrigerant circuit also release refrigerant, albeit very small quantities, because connectors (e.g., between hoses or gauges and the appliance) never join together with no intervening space. Even in the best case in which a good seal is made between a hose and an appliance before the valve between them is opened, some refrigerant will remain in the space between the valve and the outer seal after the former is closed. This refrigerant will be released when the outer seal is broken. Thus, whenever a person opens an appliance (or otherwise violates the refrigerant circuit) or disposes of an appliance, he or she will necessarily violate the venting prohibition unless the exception for de minimis releases applies. Because EPA is proposing to define the exception such that it only applies when the person complies with the proposed provisions related to recapture, recycling and disposal, compliance with the section 608(c)(2)

[16] EPA believes that both the statute and its legislative history support this interpretation of "de minimis releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance." Given the lack of specificity in the statute, Congress clearly intended to give EPA discretion to interpret the meaning of the phrase. Moreover, EPA's interpretation is consistent with the legislative history on the provision. As noted above, the Senate managers explained in their report that the exception for de minimis releases was "included to account for the fact that in the course of properly using recapture and recycling equipment, it may not be possible to prevent some small amount of leakage" (Congressional Record S16948, October 26, 1990). The Senate managers clearly equated "properly using recapture and recycling equipment" with "good faith attempts to recapture" refrigerant. EPA believes that the Senate managers' term "properly using" implies at least compliance with the requirements to evacuate appliances to certain levels, to use certified recovery equipment, and to become certified as a technician.

venting prohibition would require compliance with the proposed provisions. EPA believes that given this factual context, it has sufficient authority under sections 608(c)(2) and 301(a) to implement section 608(c)(2) by simply requiring compliance with the proposed provisions, as a matter of law, without in each instance first requiring a demonstration that the person's activities have actually released refrigerant.

1. Evacuation of Appliances

EPA is proposing that before HFC and PFC appliances are opened for maintenance, service, or repair, the refrigerant in either the entire appliance or the part to be serviced (if the latter can be isolated) must be transferred to a system receiver or to a certified recycling or recovery machine. (As discussed below in the equipment certification discussion, EPA is proposing to permit technicians to recover HFCs or PFCs using equipment certified for use with multiple CFC or HCFC refrigerants of similar saturation pressures.) The same requirements would apply to equipment that is to be disposed of, except for small appliances, MVACs, and MVAC-like appliances, whose disposal is covered under section c. below. EPA is proposing that HFC and PFC appliances be evacuated to established levels that are the same as those for CFCs and HCFCs with similar saturation pressures. At the same time, in order to implement an approach based solely on saturation pressures, EPA is proposing minor changes to the current system for classifying CFC and HCFC appliances. As for CFCs and HCFCs, evacuation levels for HFCs and PFCs would also depend upon the size of the appliance and the date of manufacture of the recycling and recovery equipment.

Technicians repairing MVAC-like appliances are not subject to the evacuation requirements below, but are subject to a requirement to "properly use" (as defined at 40 CFR 82.32(e)) recycling and recovery equipment approved pursuant to § 82.36(a).

a. Evacuation Requirements for Appliances Other Than Small Appliances, MVACs, and MVAC-like Appliances. Table I lists the proposed levels of evacuation for air-conditioning and refrigeration equipment other than small appliances, MVACs, and MVAC-like appliances. These levels would apply to equipment containing CFCs and HCFCs as well as HFCs and PFCs. The Agency has considered a number of factors in developing these levels, including the technical capabilities, ease of use, and costs of recycling and recovery equipment, the thermodynamic characteristics of the HFC and PFC refrigerants, the need for a relatively simple and consistent regulatory scheme for all refrigerants, the servicing times that would be necessary to achieve different vacuums, and the amounts of refrigerant that would be released under different evacuation requirements and their impact on the environment.

TABLE 1.—REQUIRED LEVELS OF EVACUATION FOR APPLIANCES

[Except for small appliances, MVACs, and MVAC-like appliances]

Type of appliance	Inches of Hg vacuum (relative to standard atmospheric pressure of 29.9 inches Hg)	
	Using recovery or recycling equipment manufactured or imported before Nov. 15, 1993	Using recovery or recycling equipment manufactured or imported on or after Nov. 15, 1993
Very high-pressure appliance	0	0.
Higher-pressure appliance, or isolated component of such appliance, normally containing less than 200 pounds of refrigerant.	0	0.
Higher-pressure appliance, or isolated component of such appliance, normally containing 200 pounds or more of refrigerant.	4	10.
High-pressure appliance, or isolated component of such appliance, normally containing less than 200 pounds of refrigerant.	4	10.
High-pressure appliance, or isolated component of such appliance, normally containing 200 pounds or more of refrigerant.	4	15.
Low-pressure appliance	25	25 mm Hg absolute.

As noted above, the evacuation requirements in Table 1 are very similar to those currently in place for CFC and HCFC appliances. The current evacuation requirements for CFC and HCFC appliances are based largely, but not entirely, on their saturation pressures. (Refrigerants are actually classified according to their boiling points at atmospheric pressure, which are generally inversely related to their saturation pressures at higher temperatures.) The current regulation has three saturation pressure categories for appliances: low pressure, high-pressure, and very-high-pressure. Successively deeper vacuums are required for lower pressure appliances.

EPA adopted this approach because the saturation pressure of a refrigerant is directly related both to the percentage of refrigerant that is recovered at a given vacuum level and to the compression ratio that is necessary to achieve that vacuum.[17] A comparison between R502, which has a saturation pressure of 245 psia at 104°F, and R11, which has a saturation pressure of 25.3 psia at 104°F, makes this clear. At an evacuation level of 10 inches of mercury vacuum and an ambient temperature of 104°F, 96

[17] The saturation pressure of a refrigerant is the same as its vapor pressure, that is, the characteristic pressure of the vapor in a vapor/liquid mixture of that refrigerant at equilibrium at a given temperature. A compression ratio is the ratio of the pressures of a gas on the discharge and suction sides of the compressor.

percent of R502 refrigerant vapor has been recovered, but only 61 percent of R11 refrigerant vapor has been recovered. For R502, the compression ratio necessary to achieve this vacuum is about 25 to 1, but for R11 the compression ratio necessary is only about one tenth of that, 2.6 to 1. Most recovery compressors have a compression ratio limit of between 20 and 30 to 1, meaning that it is difficult to achieve an evacuation level much lower than 10 inches of vacuum for R502, but that it is easy to achieve a lower evacuation level for R11. Thus, a refrigerant's saturation pressure directly affects both the technical feasibility and the environmental impact of a given evacuation level.

However, saturation pressure is not the only factor affecting the feasibility and cost-effectiveness of various evacuation levels for appliances. Other considerations include the discharge temperature of the refrigerant (the temperature of the refrigerant as it emerges from the compressor) and the social value of the refrigerant (which includes both its price and the environmental damage avoided by containing it). Due to these considerations, EPA established a special set of evacuation requirements for R–22 appliances, which would otherwise have been treated as high-pressure appliances. EPA established somewhat less stringent requirements for R22 appliances because (1) R–22 has both a relatively high saturation pressure and a relatively high discharge temperature among high-pressure refrigerants, making it relatively difficult to evacuate deeply, and (2) R–22 has a low ODP compared to R12, R500, and R502, all of which contain CFCs (58 FR 28674).

When EPA began its evaluation of possible evacuation levels for HFC appliances, the Agency believed that it might be appropriate to establish less stringent levels for these refrigerants than for CFCs of similar saturation pressure, following the precedent established with R22. On a pound-for-pound basis, EPA estimates that HFCs generally cause less environmental harm than the CFCs they replace. However, when EPA performed its analysis of the costs and benefits of attaining various vacuum levels, it found that the social cost of releasing the HFCs and PFCs (which, again, is a combination of the lost private value of the refrigerant and the environmental damage that results from its release) justified reaching vacuum levels only slightly less deep than those for the CFCs being replaced. For instance, EPA found that the socially optimal level of evacuation for R12 appliances containing 50 pounds of refrigerant was 15 to 22 inches of vacuum [18], while the socially optimal level of evacuation for R134a appliances containing the same quantity was 8 to 17 inches of vacuum.[19] Based on these results, the most important factor in determining appropriate evacuation levels for any particular charge size appears to be the saturation pressure of the refrigerant.

Moreover, standards set by saturation pressure would be easier for technicians to remember and implement than standards that varied both by saturation pressure and type of refrigerant. The current CFC and HCFC regulations contain 12 categories of evacuation requirements, a number that could conceivably be doubled if EPA established new categories for HFCs. EPA believes that the limited benefit that might be gained by such "fine-tuning" is outweighed by the confusion and non-compliance that could result from the proliferation of different requirements. Many participants at the March 10, 1995, industry meeting on substitutes recycling expressed a belief that establishing consistent requirements for CFCs, HCFCs, HFCs, and PFCs would enhance compliance with the recovery requirements for all of these refrigerants.

EPA is proposing two changes to the current system for classifying appliances in order to implement an approach based solely upon saturation pressure. The first proposed change is to classify refrigerants according to their saturation pressures at 104 degrees F rather than their boiling points. The second proposed change is to eliminate the special category for R22 and to replace it with a new saturation pressure category that includes the "high-pressure" refrigerants with the highest saturation pressures.

EPA is proposing to classify refrigerants according to their saturation pressures at 104 degrees F [20] because many of the refrigerants that have entered the market over the past few years pose two difficulties for the existing system based on boiling points. First, many of the new HFC and HCFC blends do not have precise boiling points. Instead, these refrigerants exhibit "glide," boiling and condensing over a range of temperatures at a given pressure. Second, refrigerants' boiling points have served as a surrogate for their saturation pressures at higher temperatures, but the relationship between boiling point and saturation pressure is not as consistent for the new refrigerants as it is for traditional CFCs and HCFCs. For instance, a lower boiling point has generally indicated a higher saturation pressure at a given temperature. However, R402B, with a boiling point of −53.2 degrees F, actually has a lower saturation pressure at 104 degrees F than R407A, with a boiling point of −49.9 degrees. The new approach avoids these difficulties because it links evacuation requirements directly to the refrigerant saturation pressure at a temperature similar to those where recovery typically takes place.

EPA has attempted to select bracketing saturation pressures for appliance categories so as to maintain as much consistency as possible with the current categories based on boiling points. For instance, because the current definition of "high-pressure appliances" includes R114 appliances at the low-pressure end, and the saturation pressure of R114 at 104 degrees F is slightly above 45 psia, EPA is proposing to use a saturation pressure of 45 psia as the lower-bound saturation pressure for high-pressure appliances.

One issue raised by the proposed approach is how to classify appliances using very high pressure refrigerants such as R13, R23, and R503. These

[18] EPA established a 10-inch vacuum level for equipment containing less than 200 lbs of high-pressure refrigerant in consideration of the fact that this evacuation requirement would apply not only to large R12 appliances, but to smaller R12 appliances and to appliances containing somewhat higher pressure refrigerants (e.g., R502). Very deep evacuation requirements were not justified for the last two. In addition, many appliances are likely serviced at higher temperatures than the 70° used in EPA's model, making attainment of deep vacuums more difficult.

[19] Calculated optimal vacuums depend upon labor costs, the estimated social cost of releasing the refrigerant, the displacement of the recovery device compressor, and the clearance of the recovery device compressor. The 8-inch optimal vacuum is based on relatively low compressor displacement, relatively high compressor clearance, and the assumption that the release of one kilogram of R134a would cause about 60 cents worth of environmental damage; the 17–inch optimal vacuum is based upon relatively high compressor displacement, relatively low compressor clearance, and the assumption that the release of one kilogram of R134a would cause about six dollars worth of environmental damage. If the R134a is assumed to cause *no* damage (which, for the reasons discussed in section III.B.2, is an extremely unlikely assumption), the lower-bound optimal vacuum rounds to seven inches.

[20] Zeotropic blends exert different pressures at the same temperature, depending upon the percentage of vapor vs. liquid in the container. For instance, a container of R407C vapor has a saturation pressure of 223.8 psia at 104 degrees, while a container of R407C liquid has a saturation pressure of 254.5 psia at 104 degrees. EPA is proposing to classify refrigerants according to their liquid saturation pressures at 104 degrees F. This is because the vacuum that can be drawn on an appliance is determined by the discharge pressure against which the recovery compressor must pump near the conclusion of the recovery process, and this discharge pressure is that of a recovery tank that is likely to be nearly filled with liquid.

refrigerants do not have a saturation pressure in the traditional sense at 104 degrees F because this temperature is above their critical temperatures. (As noted above, the saturation pressure of a refrigerant is the pressure of the vapor in a vapor/liquid mixture, but refrigerants above their critical temperatures cannot exist in a liquid state regardless of the pressure.) To address this concern, EPA is proposing to modify the definition of very high pressure appliances to add the phrase "or whose critical temperatures fall below 104 degrees F."

EPA requests comment on its proposed use of refrigerants' saturation pressures at 104 degrees F rather than boiling points to classify them. An alternative might be to retain the current system based on boiling points, making allowances for temperature glide. For example, in cases where glide caused a refrigerant to straddle the line between two pressure categories, EPA could place the "straddling" refrigerant into the category suggested by the lower end of the boiling range (the "bubble point"). This point is the one typically listed in pressure-temperature charts, and EPA believes that it is the point that would determine the maximum evacuation level (minimum pressure) that is physically possible for the refrigerant.

Some custom refrigerant blends exhibit very large glides (e.g., over 60 degrees Celsius). For such refrigerants, the appropriate evacuation level may be difficult to predict based on either saturation pressure or a single "bubble" or "dew" point. EPA has worked and will continue to work with the manufacturers of these refrigerants to determine appropriate evacuation levels on a case-by-case basis.

The second change that EPA is proposing to the current classification scheme is to eliminate the special category for R22 and to replace it with a new saturation pressure category that includes the "high-pressure" refrigerants with the highest saturation pressures (those with boiling points approximately between −40 and −50 degrees C and saturation pressures between 220 psia and 305 psia at 104 degrees F). EPA would designate this as the "higher-pressure" refrigerants category. This would enable EPA to tailor requirements to refrigerants with relatively high saturation pressures without increasing the overall number of categories. The new category would include appliances containing R22, R502, R404C, and R407 A, B, and C, and would be subject to the same requirements as R22 appliances. For several of these refrigerants, the combination of a relatively high saturation pressure and high discharge temperature makes recovery into a deep vacuum difficult. On the other hand, these refrigerants have significantly lower saturation pressures than still higher pressure refrigerants, such as R410A and B (with saturation pressures near 350 psia) and R13 and R503 (whose critical temperatures fall below 104 degrees F).

EPA requests comment on the establishment of the "higher-pressure" saturation pressure category. EPA specifically requests comment on the proposed use of 305 psia as the upper bound saturation pressure for this category. The pressures to which R22 appliances must be evacuated (and therefore to which "higher-pressure" appliances would have to be evacuated) are 0 inches of vacuum, or atmospheric pressure, for appliances containing less than 200 pounds of refrigerant, and 10 inches of vacuum, or 9.8 psia, for appliances containing more than 200 pounds of refrigerant. Drawing a 10-inch vacuum on an appliance containing a refrigerant with a saturation pressure of 305 psia would require recovery equipment to attain a compression ratio of 30 to 1. EPA's current understanding is that this is very close to the maximum achievable compression ratio for most recovery compressors, and may even be beyond the abilities of some models. (However, the compression ratio necessary to achieve this vacuum may be lowered by cooling the condenser of the recovery equipment.) Thus, it may be appropriate to establish a different upper-bound saturation pressure for this category, such as 265 psia.

EPA also requests comment on whether it is appropriate to include R502 (which has a relatively low discharge temperature) in this category, or whether the possibility of drawing a deeper vacuum on this refrigerant merits its inclusion in a lower-pressure category despite the confusion that might result.

One concern raised at the March 10, 1995, meeting was whether the energy consumption associated with lengthy operation of recovery equipment might result in the emission of more global warming gases (CO_2) than would be contained through continuing the refrigerant recovery process, removing the justification for deep recovery. To investigate this concern, EPA and a laboratory that tests recovery and recycling equipment compared the rates of power consumption (and resultant emissions of CO_2) and refrigerant recovery for both high- and low-pressure recovery equipment. Both the CO_2 emissions rate and the refrigerant recovery rate were weighted by the GWPs of the gases being emitted or captured. (Both the EPA and laboratory analyses are included in the docket for this rulemaking.) The conclusion of both EPA and the laboratory was that the rate of CO_2 emission resulting from use of recovery equipment was dwarfed by the rate of refrigerant recovery even at the latest (and therefore slowest) stages of recovery. Specifically, the minimum rate of refrigerant recovery for high-pressure recovery equipment was greater than the maximum rate of CO_2 emissions attributable to recovery by more than a factor of 2000, and the minimum rate of recovery for low-pressure equipment out paced the rate of CO_2 emissions by a factor of over 1000. These large differences are in part attributable to the high global warming potential of most HFC refrigerants compared to CO_2.

b. Evacuation Levels for Small Appliances. EPA is proposing to establish the same evacuation requirements for servicing small appliances charged with HFCs as it has for small appliances charged with CFCs and HCFCs. Technicians opening small appliances for service, maintenance, or repair would be required to use equipment certified either under Appendix B, ARI 740–1993, or under Appendix C, Method for Testing Recovery Devices for Use with Small Appliances, to recover the refrigerant.

Technicians using equipment certified under Appendix C would have to capture 90 percent of the refrigerant in the appliance if the compressor were operating, and 80 percent of the refrigerant if the compressor were not operating. Because the percentage of refrigerant mass recovered is very difficult to measure on any given job, technicians would have to adhere to the servicing procedure certified for that recovery system under Appendix C to ensure that they achieve the required recovery efficiencies.

Technicians using equipment certified under Appendix B would have to pull a four-inch vacuum on the small appliance being evacuated.

c. Evacuation Levels for Disposed MVACs, MVAC-like Appliances, and Small Appliances. EPA is proposing to establish the same evacuation requirements for disposing of small appliances, MVACs, and MVAC-like appliances that are charged with HFCs as it has for these types of appliances charged with CFCs and HCFCs. MVACs and MVAC-like appliances would have to be evacuated to 102 mm (approximately four inches) of mercury vacuum, and small appliances would have to have 80 or 90 percent of the

refrigerant in them recovered (depending on whether or not the compressor was operating) or be evacuated to four inches of mercury vacuum.

d. Request for Comment on Establishing Special Evacuation Requirements for Heat Transfer Appliances. As noted in section IV.A.1.a. above, EPA received comments from a manufacturer of PFCs that stated that special evacuation requirements may be appropriate for certain types of heat transfer appliances containing PFCs, such as some types of electrical transformers. The commenter specifically noted that evacuating some types of heat transfer systems may result in damage to those systems, that in many cases, parts to be repaired may be isolated from the refrigerant charge, and that many repairs may be performed quickly, releasing little refrigerant even if the system is not evacuated.

EPA does not currently believe that special evacuation requirements for heat transfer appliances are necessary, for two reasons. First, EPA has not heard from users or servicers of heat transfer appliances that the current requirements regarding the recovery of CFCs and HCFCs from such appliances (which are the same as those for similarly sized appliances containing refrigerants of similar pressure) are difficult to implement. Because PFCs have physical characteristics similar to those of the CFCs that they replace in heat transfer appliances, EPA believes that any potential problems associated with implementing the proposed evacuation requirements for PFCs would have already surfaced with CFCs and HCFCs. Second, the current evacuation provisions appear to adequately address most of the situations that the commenter has identified. Specifically, the current regulations establish an exception to the evacuation requirements for non-major repairs and permit isolation of parts to be repaired. Before non-major repairs, technicians need only evacuate (or pressurize, in the case of low-pressure appliances) appliances to atmospheric pressure. If a part can be isolated from the refrigerant charge, technicians may repair the part without recovering the refrigerant into an external container.

EPA requests comment on the need for special evacuation requirements for heat transfer appliances in light of the arguments presented here.

e. Proposed Clarifications of Evacuation Requirements. EPA has received a request for two clarifications of the evacuation requirements for appliances. The first request for clarification concerns whether a part of the appliance that is not a separate tank may be considered a "system receiver," in which the system charge may be isolated while another, isolated part of the appliance is opened for repairs. The second request for clarification concerns whether an isolated portion of an appliance that already meets the required level of evacuation due to normal operating characteristics may be opened for repairs without further evacuation. In addition to proposing a minor change to the regulatory language to respond to the first request, EPA is proposing to add language to § 82.156(a) to clarify that, except in the case of non-major repairs to low-pressure appliances, liquid refrigerant must be removed from appliances (or from the isolated parts to be serviced) before they are opened to the atmosphere.

Regarding the first request for clarification, EPA is today clarifying that, for purposes of complying with § 82.156(a), EPA interprets the term "system receiver" to include a part of the appliance that is not a separate tank, if that portion of the appliance can be isolated from the portion of the appliance that is opened for repairs. From an environmental perspective, EPA believes that the critical consideration is whether the part of the appliance to be opened to the atmosphere for repair has had the refrigerant removed and isolated from it, not the configuration of the remaining appliance parts within which the refrigerant is isolated. To clarify this point, EPA is proposing to amend § 82.156(a) by adding the following examples after the term "system receiver": "(e.g., the remaining portions of the appliance, or a specific vessel within the appliance)". EPA requests comment on this proposed change.

In addition to clarifying its interpretation of "system receiver," EPA is proposing to add language to § 82.156(a) to ensure that the regulations clearly preclude a possible misinterpretation of these requirements. EPA has always interpreted § 82.156(a) to require that, except in the case of non-major repairs to low-pressure appliances, liquid refrigerant must be removed from appliances (or from the isolated parts to be serviced) before they are opened to the atmosphere. Currently, § 82.156(a) reads (in part) "all persons disposing of appliances * * * must evacuate the refrigerant in the entire unit to a recovery or recycling machine certified pursuant to § 82.158. All persons opening appliances * * * must evacuate the refrigerant in either the entire unit or the part to be serviced (if the latter can be isolated) to a system receiver or a recovery or recycling machine certified pursuant to § 82.158." Sections 82.156(a)(1) through (5) specify pressures to which the appliances must be evacuated.

It has come to EPA's attention that it may be possible in some cases to briefly attain the required evacuation levels specified in §§ 82.156(a)(1) through (5) while there is still liquid refrigerant in the appliance or in the isolated part to be serviced. In general, if vapor is removed from a mixture of liquid and vapor refrigerant at equilibrium, reducing the vapor pressure, the liquid will boil until the equilibrium between the vapor and liquid states is restored, returning the vapor pressure to the saturation pressure of the refrigerant. However, heat must flow into the system from the environment for this to occur, and such heat flow takes time. Thus, if an individual quickly recovers vapor from an appliance, permitting no time for the liquid to boil to return the vapor pressure to the equilibrium value, the pressure specified in § 82.156(a) may be attained, albeit only temporarily. If the individual opens the appliance at this point, a great deal of refrigerant will be released to the environment. This is because the density of liquid refrigerant is typically one to two orders of magnitude greater than that of vapor refrigerant, meaning that a large mass of refrigerant may be concentrated in a relatively small volume of liquid, and the liquid will continue to boil off into the atmosphere as long as the appliance is opened.

EPA believes that the use of the phrase "evacuate the refrigerant" in § 82.156(a), as well as the language in § 82.154(a) (the prohibition on venting) already clearly indicate that liquid refrigerant must be removed from the appliance or isolated part before it is opened for servicing. Otherwise, a significant portion of the refrigerant will not be evacuated to a recovery device, a good faith effort to recover and recycle refrigerant will not be made, and releases to the environment will be considerably more than de minimis. Nevertheless, to eliminate any possible ambiguity on this point, the Agency is proposing to add the phrase, "including all liquid refrigerant," after the phrase, "the refrigerant," in both places where it occurs in § 82.156(a). To ensure that the modified language does not implicitly override § 82.156(a)(2)(i)(B), which provides that recovery of liquid is not required in cases of non-major repairs to low-pressure appliances, EPA is proposing to add the parenthetical phrase "(except as provided at § 82.156(a)(2)(i)(B))" to the second occurrence of "including all liquid

refrigerant." EPA requests comment on this proposed change.

In response to the second request for clarification, EPA believes that if a part of an appliance already meets the required level of evacuation due to normal operating characteristics, it may be isolated and opened for repairs without further evacuation, so long as liquid refrigerant is not present in the isolated part. Again, the purpose of the requirement to evacuate under § 82.156(a) is to minimize refrigerant emissions from the part. If the required level of evacuation has been met, and no liquid is present in the isolated part, only de minimis quantities of refrigerant will be released when the part is opened to the atmosphere. Therefore, this situation meets the requirements to evacuate under § 82.156(a).

2. Disposition of Recovered Refrigerant

EPA is proposing to establish purity requirements for HFCs and PFCs very similar to those for CFCs and HCFCs. In addition, the Agency is proposing to update its purity requirements for all refrigerants to reflect the most recent industry standard, ARI 700–1995, Specifications for Fluorocarbon and Other Refrigerants, and is requesting comment on adopting a generic standard of purity for those refrigerants that are not covered by ARI 700–1995.

a. Background. Currently, before being sold for use as a refrigerant, used CFCs and HCFCs must be reclaimed by a certified reclaimer to the ARI 700–1993 Standard of purity, which is codified as Appendix A to subpart F. In a separate rulemaking, EPA has proposed to add more flexibility to the purity standards for CFC and HCFC refrigerants, permitting contractors to transfer refrigerant from one customer's to another customer's equipment, so long as (1) the refrigerant remains within the contractor's constant custody and control, (2) the refrigerant is returned to the ARI 700 Standard of purity, and (3) this purity is verified through submission of a representative sample to an analytical laboratory certified by an EPA-approved laboratory certification program. That proposal would also require third party certification of reclaimers. See 61 FR 7858 (February 29, 1996).

b. Extending Purity Requirements to HFC and PFC Refrigerants. EPA is not today soliciting comment on which refrigerant purity regime is preferable for all refrigerants. Instead, EPA requests comment on whether the purity of HFCs and PFCs should be maintained through a different regulatory approach than the purity of CFCs and HCFCs, and if so, why.

EPA believes that the rationale for promulgating purity standards for CFCs and HCFCs also applies to HFCs and PFCs[21]. EPA discussed the rationale for covering CFCs and HCFCs at length in the May 14, 1993 final rule (58 FR 28678–28679), the March 17, 1995, and February 29, 1996 direct final rules, and the December 27, 1996 final rule extending the reclamation requirement (60 FR 14608, 61 FR 7724, and 61 FR 68506). In summary, the purity requirements are intended to prevent refrigerant releases that would result from refrigerant contamination, particularly releases linked to damage to equipment caused by use of contaminated refrigerant. This damage, including sludging of high-viscosity oils in low temperature systems, freezing of moisture in capillary tubes, corrosion from acids, and high head-pressures from noncondensables and refrigerant mixtures, could be caused by contaminated HFCs and PFCs (and their lubricants) as well as by contaminated CFCs and HCFCs. Equipment damage from contaminated refrigerant would result in costs to equipment owners and releases of refrigerant from damaged equipment though increased leakage, servicing, and replacement. In addition, such damage would ultimately lead to a reduction in consumer confidence in the quality of used refrigerant.

Given these potential effects, EPA believes that promulgating purity requirements for HFCs and PFCs is vital to implementation and enforcement of section 608(c)(2). Any reduction in consumer confidence in the quality of used refrigerant would undermine a fundamental incentive to comply with the section 608(c)(2) prohibition on venting substitute refrigerants. Without a market for the used refrigerant, there is no economic incentive to recover it; indeed, the costs of recovery and destruction create a significant economic incentive simply to release the substance, in violation of the venting prohibition. Moreover, the removal of economic incentives to comply with the prohibition is particularly deleterious to compliance because direct enforcement of the prohibition is difficult. The prohibition applies to numerous small entities, including over one million technicians, and EPA lacks the resources to monitor their refrigerant-related activities on an individual basis. Under these circumstances, establishing economic incentives for compliance, or at least neutralizing economic disincentives to compliance, is particularly critical to implementing the statutory prohibition on venting.

The proliferation of refrigerants and lubricants on the market has made efforts to protect refrigerant purity more important than ever. The increasing number of refrigerants increases the probability of refrigerant mixture, particularly if equipment that has been retrofitted with new refrigerant is not properly identified, leading to mixture of a CFC with the HCFC or HFC that replaced it. Requirements to analyze refrigerant before sale to a new owner can prevent mixed refrigerants from being placed into equipment or from contaminating a larger batch of refrigerant.

Moreover, EPA believes that purity standards must apply to all refrigerants in similar applications in order to ensure purity for any subset of these refrigerants. As noted above, several persons attending the March 10, 1995 public meeting stated that failure to apply standards to HFCs could erode compliance with the standards for CFCs and HCFCs, because technicians would become either confused or skeptical regarding standards that were applied inconsistently. Such standards would also be difficult to enforce. For instance, without purity standards, contractors could sell dirty HFCs on the open market, and it would be relatively easy to hide commerce in dirty CFCs or HCFCs within commerce in dirty HFCs (e.g., through deliberate mislabelling, a tactic that has been used to import CFCs illegally). Thus, purity standards for HFCs are important to prevent damage to CFC and HCFC equipment and subsequent emissions of these refrigerants as well. As a consequence, EPA believes that purity standards for HFCs and PFCs are important to implement the section 608(a)(2) requirement to reduce emissions of CFCs and HCFCs to the lowest achievable level.

EPA is proposing to extend the purity requirements to HFCs and PFCs by revising prohibitions 82.154(g) and (h) to refer simply to "refrigerant" rather than to "class I and class II substances." In addition, EPA is proposing to include purity standards and analytical protocols for HFC refrigerants in Appendix A.

c. Updating the Purity Standard. EPA is proposing to adopt the most recent version of the industry purity standard and analytical protocol for refrigerants, ARI 700–1995. ARI 700–1995 includes standards for a number of refrigerants that are not addressed by the currently

[21] In finalizing the purity requirements for HFCs and PFCs, EPA will consider comments received on both on the February 29, 1996, document (and on any subsequent document related to purity standards for refrigerant) and on this document.

codified standard, ARI 700–1993. These refrigerants include R404A, R405A, R406A, R407A, B, and C, R408A, R409A, R410A and B, R411A and B, R412A, R507, R508 and R509. In addition, the Appendix C to ARI Standard 700–95 has updated some of the procedures for the analysis of refrigerants in Appendix 93 to ARI 700–1993, which is incorporated by reference into subpart F. First, methods have been added for determining the composition of the zeotropic refrigerant blend families R404, R407, R408, R409, and R410, and of the azeotropic refrigerant blends R507 and R508. These methods will enable laboratories to verify that the blends contain the appropriate percentages of their component materials. Second, a gravimetric test has been added as an alternate method for determining high-boiling residues. The gravimetric test is actually considered to be more accurate than the current volumetric method, and its addition will permit laboratories with the appropriate facilities and expertise to perform more precise measurements of high-boiling residues than are permitted by the volumetric method. (The volumetric method is retained as an alternate in ARI 700–95 because it is adequately precise for most applications, and is less expensive to perform than the gravimetric method.) Finally, several typographic and wording changes have been made to improve the clarity of the standard. EPA believes that these changes will make the reclamation requirements more enforceable while decreasing the burden of industry to prove conformance.

ARI is currently revising ARI Standard 700–95 to reflect further advances in refrigerant analysis and changes in the refrigerant market. Because the next version of the Standard may be completed between the publication of this proposed rule and the final rule, and because EPA believes it is appropriate to adopt the most recent version of the Standard possible, EPA is requesting comment on the changes to the Standard that EPA understands are being considered. These changes include (1) the adoption of a single analysis (for each blend) for determining both the composition of each refrigerant blend and its level of contamination by organic impurities, and (2) the standardization of the presently wide range of equipment, techniques, and calculations used in the current methods for determining the composition of refrigerant blends. Currently, there are no analytical methods for determining blends' levels of contamination by organic impurities, and the adoption of a standardized and consolidated composition/impurity analysis will therefore make the standard more enforceable without significantly increasing the burden on laboratories. These changes are discussed in more detail in a report developed by Integral Sciences Incorporated for the Air-Conditioning and Refrigeration Technology Institute (ARTI). This report is entitled *Methods Development for Organic Contaminant Determination in Fluorocarbon Refrigerant Azeotropes and Blends* and is included in the docket for this rulemaking.

d. Generic Standard of Purity. Despite EPA's proposed adoption of the latest industry standard, the Agency's purity standards are likely to be rendered incomplete shortly after their promulgation by the rapid development and introduction of new refrigerants into the market. In general, there is likely to be a delay between the introduction of new refrigerants and the adoption of specific purity standards for them by ARI and EPA. Although EPA plans to consider purity requirements along with recycling requirements for each new refrigerant as it undergoes SNAP review, the Agency is requesting comment on establishing a generic purity standard for refrigerants for which specific purity standards have not yet been codified. The ARI 700 standard includes specifications for boiling points, boiling ranges, isomer contents, noncondensables, water, high-boiling residue, particulates/solids, acidity, and chlorides. Except for boiling points, boiling ranges, and high boiling residues, the specifications for all CFC, HCFC, and HFC refrigerants are identical or vary systematically according to the saturation pressure of the refrigerant. EPA is requesting comment on whether HFCs for which specific standards have not been codified should be subject to the following maximum contaminant levels, which are based on those of ARI 700:

GENERIC MAXIMUM CONTAMINANT LEVELS

Contaminant	Reporting units	Low pressure refrigs.	Other refrigs.
Non-condensables	% by volume @ 25°C.	N/A	1.5.
Water	ppm by weight	20	10.
High boiling residue	% by volume	0.01	0.01.
Particulates/solids	Visually clean to pass.	pass	pass.
Acidity	ppm by weight	1.0	1.0.
Chlorides	No visible turbidity	pass	pass

EPA requests comment on the specific contaminant levels presented here.

Since reclamation requires not only that refrigerant be cleaned to a certain level, but also that it be analyzed to verify that it meets that level, a generic standard of purity should be matched by a generic analytical protocol. General analytical procedures exist to determine the levels of acidity, water, high-boiling residue, chloride, and non-condensable gases in refrigerants; these procedures are detailed in parts 1 through 5 of Appendix C to ARI 700–95. However, individual gas chromatography procedures are required for each refrigerant in order to determine the overall purity of that refrigerant. This is because each refrigerant has its own gas chromatogram (profile) and characteristic impurities (other than acid, water, high-boiling residue, chloride, and noncondensable gases). EPA understands that the need to develop gas chromatography procedures is what frequently slows the adoption of reclamation procedures for new refrigerants. Thus, EPA requests comment on whether it would be useful to have generic standards of purity for new refrigerants and analytical protocols for acid, water, high-boiling residues, chloride, and noncondensable gases for these refrigerants in the absence of specific gas chromatography procedures to determine the overall purity of these refrigerants.

e. Possible Application of Standard of Purity to New Refrigerants. EPA believes

that the vast majority of new refrigerant sold meets the ARI 700 standard. However, the Agency understands that on occasion, used or otherwise contaminated refrigerant has been sold as "new." In order to ensure that the Agency can prevent the sale of contaminated refrigerant that is labeled as "new," EPA is requesting comment on whether it should require new refrigerant to meet the ARI 700–1995 specifications. EPA also requests comment on whether producers or sellers of new refrigerant should be required to analyze the refrigerant before its sale, using the protocol set forth in ARI 700–1995.

3. Leak Repair

EPA is proposing to lower the permissible leak rates for some air-conditioning and refrigeration equipment containing more than 50 pounds of CFC[22] and HCFC refrigerant. EPA is also proposing to extend the leak repair requirements (as they would be amended) to air-conditioning and refrigeration equipment containing more than 50 pounds of HFC and PFC refrigerant. Specifically, EPA is proposing to lower the permissible annual leak rate for new commercial refrigeration equipment to 10 percent of the charge per year, the permissible annual leak rate for older commercial refrigeration equipment to 15 percent per year, the permissible annual leak rate for some industrial process refrigeration equipment to 20 percent of the charge per year, the permissible annual leak rate for other new appliances (e.g., comfort cooling chillers) to five percent of the charge per year, and the permissible annual leak rate for other existing appliances to 10 percent of the charge per year. The proposed changes would become effective thirty days after publication of the final rule except for the provisions affecting industrial process refrigeration, which would become effective three years after publication of the final rule. The other aspects of the current leak repair provisions, such as time lines for repair or retrofit, would remain the same.

The current permissible annual leak rates for commercial and industrial process refrigeration and for other appliances are 35 percent per year and 15 percent per year respectively. These limits were set based on information that EPA gathered regarding typical leak rates for these types of equipment in 1991 and 1992. In several recent meetings and conversations with EPA, industry representatives have indicated that air-conditioning and refrigeration equipment manufactured over the past few years has been designed to leak at lower rates than air-conditioning and refrigeration equipment manufactured earlier, and that existing appliances have often been modified with new devices, such as high-efficiency purge devices for low-pressure chillers, that have significantly lowered their leak rates. Manufacturers have made these design changes, and owners have invested in them, in response to growing environmental and economic concerns associated with refrigerant emissions.

a. Comfort Cooling Chillers. EPA's research indicates that the reduction in leak rates has been most dramatic in comfort cooling chillers, where leak rates have been lowered from between 10 and 15 percent per year to less than five percent per year in many cases. Design changes that have contributed to this reduction include the installation of high-efficiency purge devices on low-pressure chillers, the installation of microprocessor-based monitoring systems that can alert system operators to warning signs of leakage (such as excessive purge run time), the use of leak-tight brazed rather than leak-prone flared connections, and the use of isolation valves, which permit technicians to make repairs without evacuating and opening the entire refrigerant circuit. The first two conservation measures can be implemented for existing as well as new equipment; the last two apply primarily to new equipment.

Manufacturers, servicers, and users of chillers state that, as a result of these modifications, new chillers (those built since 1992) typically leak less than five percent per year, with many new chillers leaking around two percent per year, and some leaking less than one percent. Only one type of new equipment has been reported to have a leak rate above five percent; that is high-pressure chillers with open-drive compressors, which have been found to have leak rates ranging from four to seven percent. Older chillers that have been modified with emissions-reduction technologies are reported to leak between one and 10 percent per year. Where industry sources have not distinguished between modified and unmodified older equipment, leak rates have been reported to average four percent per year, indicating that most of the chiller fleet has either been modified to leak less or is significantly better maintained than it was five years ago.

EPA believes that the reported performance of today's chiller fleet argues for lowering the maximum permissible leak rate from 15% per year. The leak repair requirement was promulgated under section 608(a)(2), which requires EPA to promulgate regulations regarding the use and disposal of class I and class II substances, including refrigerants, that reduce the use and emission of such substances to the lowest achievable level. EPA believes that the evidence discussed above demonstrates that the current 15-percent-per-year permissible rate is considerably above the "lowest achievable level of emissions," especially for new equipment. (In fact, EPA acknowledged in the May 14, 1993 rule that the 15-percent-per-year leak rate probably was not the lowest achievable level for at least some comfort cooling equipment, but the Agency did not have sufficient information at that time to develop stricter or more refined standards.)

While section 608(a)(2) does not require EPA to perform a cost-benefit analysis to determine what leak rate(s) would constitute the "lowest achievable level of emissions," such cost-benefit analyses support establishing lower leak rates. One such analysis simply deduces from achieved leak rates that a lower permissible leak rate would be publicly cost-effective. The leak rates reported above, which generally fall well below the current regulatory maximum, are clearly being achieved in response to private incentives alone. If maintaining these leak rates is privately cost-effective, it must be publicly cost-effective, because the public cost of emissions, which includes both the private value of the refrigerant and the environmental damage it causes, exceeds the private cost of emissions, which includes only the private value of the refrigerant.

In another analysis, EPA directly examined the public cost-effectiveness of certain types of leak repair and equipment modification. First, EPA estimated the public benefits of avoiding emissions of refrigerant on a per kilogram basis. Second, EPA calculated the leak reductions that would have to be achieved through repairs and modifications to produce benefits to offset their costs. In general, EPA found that reductions in leak rates on the order of two to 10 percent of the charge per year had to be achieved to justify the cost of the leak repair or equipment modification. These reductions are comparable to those that have already been achieved over the last four years through the implementation of leak repair and equipment

[22] EPA is not aware of any manufacturers of new appliances who are still using CFCs. However, in the event that such appliances were manufactured, they would be subject to the new leak repair requirements.

modification, providing additional evidence that leak rates below the current 15 percent permissible rate can be cost-effectively achieved.

Because EPA's data indicates that new chillers leak less than existing chillers, and because some leak reduction modifications can be applied to new, but not to existing, equipment, EPA is proposing a more stringent standard for new chillers than for older chillers. For chillers built in 1993 or later, EPA is proposing a maximum permissible leak rate of five percent per year. With one exception, the reported leak rates for new chillers all fall below this rate, and the exception, the open-drive type of high pressure chiller, has leak rates between four and seven percent. EPA believes that with careful maintenance, even these chillers can maintain a leak rate below five percent. However, if they cannot, EPA requests comment on whether EPA should establish a larger maximum leak rate for this type of chiller. EPA is currently disinclined to establish a special, larger rate, because EPA believes that, if necessary, chiller designs with lower inherent leak rates can be substituted for the high-pressure, open-drive type at little or no additional cost.

For chillers built in 1992 or earlier, EPA is proposing a maximum permissible leak rate of 10 percent per year. This rate is consistent with the data provided to EPA for fleets that include modified equipment. While EPA considered setting the leak rate for older equipment equal to that for new equipment, information gathered to date indicates that it may be difficult to reduce the emissions of some older equipment to much below 10 percent of the charge per year without undertaking the wholesale replacement of existing joints and seals, which would prove prohibitively expensive. EPA requests comment on the proposed leak rates for both new and existing equipment.

Finally, EPA requests comment on whether there are any appliances that would be classified as "Appliances other than commercial or industrial process refrigeration" that are not comfort cooling chillers and that could not attain the five and 10 percent per year maximum permissible leak rates that are being proposed for new and existing appliances of this type. EPA currently believes that the vast majority, if not all, of the appliances classified as "Appliances other than commercial or industrial process refrigeration" are comfort cooling chillers and can attain the proposed rates.

b. Commercial Refrigeration. In general, leak rates are higher in the commercial refrigeration sector than in the chiller sector. In large part, this is attributable to the facts that (1) equipment in the commercial refrigeration sector is largely assembled in the field (in the grocery store or food storage warehouse) rather than in the factory and (2) commercial refrigeration equipment generally uses a long single refrigerant loop for cooling rather than a short primary refrigerant loop with a secondary loop containing water or brine. The first fact makes it more difficult for original equipment manufacturers to systematically implement leak reduction technologies for commercial refrigeration equipment than for chillers (in fact, in a sense, each of the hundreds of contractors who install the equipment nationwide is a "manufacturer"), and the second tends to raise average leak rates, particularly when the refrigerant loop flows through inaccessible spaces, such as underneath floors. In addition to these considerations, the need to operate commercial refrigeration equipment continuously to keep products from spoiling makes leak repair more difficult.

Nevertheless, data from manufacturers and owners of commercial refrigeration equipment indicates that leak rates considerably lower than 35 percent per year can be achieved cost effectively with this equipment. A study sponsored by EPA's Office of Research and Development analyzed two detailed bodies of data on leakage from commercial refrigeration equipment, one collected by a Midwestern chain of 110 stores and the other gathered by the South Coast Air Quality Management District (SCAQMD), which requires monitoring and reporting of leak rates from large refrigeration systems. The Midwestern chain achieved an average leak rate of 15 percent by establishing written procedures for equipment installation (including a requirement that expansion valves be brazed or "sweated"), a refrigerant monitoring system, and an equipment inspection protocol. This rate was achieved in 1992, before EPA's leak repair requirements were even in effect. The data collected by SCAQMD was based 440 recharging and leak testing events from 56 different stores representing 20 different businesses. The average leak rate achieved by the stores was eight percent of total charge.

The ORD report also investigated the cost-effectiveness of different strategies and technologies for reducing leak rates, finding that many of these approaches could lower leak rates significantly and thereby pay for themselves. Using a combination of these approaches, a number of chains had significantly reduced both overall refrigerant consumption and leakage from equipment over the previous two to eight years. Some of the most effective approaches included vibration elimination devices, use of high-quality brazed rather than mechanical connections, low emission condensers, stationary leakage monitors, refrigerant tracking and improved preventive maintenance. A few of the approaches, such as installation of low-emission condensers, were more applicable to new than to existing equipment; however, many of the approaches, such as refrigerant monitors, refrigerant tracking systems, and improved preventive maintenance, were applicable to both existing and new equipment. These approaches were individually expected to reduce leak rates from equipment by between five and forty percent of the charge per year.

In light of this information, EPA is proposing to establish lower permissible leak rates for commercial refrigeration equipment. Although neither the Midwestern chain nor SCAQMD distinguished between new and old equipment in measuring leak rates, equipment manufacturers (ARI) have stated that leak rates in new equipment are likely to be lower than leak rates in old equipment. This statement, along with the fact that some leak reduction technologies are applicable to new but not to older equipment, indicates that it would be appropriate to establish different permissible leak rates for new and old commercial refrigeration equipment. EPA is therefore proposing that the maximum permissible leak rate for new commercial refrigeration equipment (commissioned after 1992) be lowered to 10 percent per year, and that the maximum rate for old commercial refrigeration equipment (commissioned before or during 1992) be lowered to 15 percent per year. EPA believes that these rates are appropriate in view of the average leak rates achieved in the South Coast Air Quality Management District and in the Midwestern chain and in view of the availability of effective leak reduction approaches.

EPA requests comment on these proposed rates. First, EPA requests comment on whether the relatively low leak rates observed in new equipment are likely to persist throughout its lifetime, or whether those rates are likely to rise over its lifetime to approach the current leak rates of older equipment. In other words, does new equipment leak less simply because it has endured less wear and tear than older equipment, or is new equipment now manufactured and installed in a

way that will minimize leakage over its entire life? Second, EPA requests comment on whether higher or lower rates might be appropriate for different types of commercial refrigeration equipment, given that compressor rack systems, single compressor systems, and self-contained units may have significantly different average leak rates. For instance, because compressor rack systems may include miles of piping and numerous connections that provide many opportunities for leakage, one might expect them to leak a greater percentage of their charge than self-contained units that include only a few feet of piping. Third, EPA requests comment on whether significant percentages (e.g., 10 percent or more) of the various types of commercial refrigeration equipment might not be able to comply with leak rates of 10 or 15 percent without being totally replaced, and, if this is the case, whether permissible leak rates of 15 and 20 percent might be more achievable.

c. Industrial Process Refrigeration. As is the case for commercial refrigeration equipment, leak rates in industrial process refrigeration equipment have been falling, but the rates and consistency of decline across equipment types have been lower than for comfort cooling chillers. While some industrial process refrigeration equipment has attained leak rates between five and 10 percent per year, other equipment has continued to leak near the 35-percent-per-year maximum permissible rate despite the growing price of refrigerants over the past five years. The conditions that contribute to a wide range of leak rates in the commercial refrigeration sector apply even more to the industrial process refrigeration sector. Equipment in the industrial process refrigeration sector is not only assembled on site, but is often custom-designed for a wide spectrum of processes and plants, giving the sector an extraordinarily broad range of equipment configurations and designs. Equipment may be high- or low-pressure; may possess hermetic, semi-hermetic, or open-drive compressors; may use one (primary) or two (primary and secondary) refrigerant loops; may be brand new or decades old; and may range in charge size from a few hundred to over 100,000 pounds of refrigerant. All of these factors are important in determining leak rates, leading to the observed range mentioned above.

Specifically, as is true for chillers, and, to some extent, for retail food refrigeration equipment, industrial process refrigeration equipment built more recently has generally been designed to leak less than equipment built earlier. Similarly, equipment containing hermetic compressors tends to leak less than equipment containing open-drive compressors, because the latter possess openings for their drive shafts, compromising the integrity of the system. Single loop, direct expansion systems tend to leak more than systems possessing a secondary water or brine loop because the former tend to have longer refrigerant loops than the latter, increasing opportunities for leakage. Large equipment may leak more than small equipment for two reasons. First, large equipment tends to be custom-built rather than built on an assembly line in a factory, making it more difficult to regulate manufacturing techniques (joint construction, etc.) that affect leakage. Second, large equipment tends to have more piping and joints than small equipment, increasing the number of potential leak sites.

EPA believes that it is appropriate to consider the date of manufacture, compressor configuration, and possession (or lack) of a secondary loop in determining maximum allowable leak rates for industrial process refrigeration equipment. However, the Agency is reluctant to permit higher leak rates for equipment with very large charge sizes. This is because a given leak rate in large equipment causes more environmental harm than the same leak rate in small equipment. For example, a 20% per year leak rate in equipment with a 10,000 pound charge would result in the release of 2,000 pounds of refrigerant per year, while a 20% per leak rate in equipment with a 1,000 pound charge would result in the release of 200 pounds of refrigerant per year. Thus, although it may be more difficult or expensive to achieve a given leak rate in large equipment than in small equipment, EPA believes that these additional efforts are warranted by the larger environmental impact of leaks from large equipment.

In view of these considerations, EPA is proposing different maximum permissible leak rates based on the equipment's date of manufacture, compressor configuration, and number of refrigerant loops (primary only vs. primary and secondary). EPA thereby expects to increase environmental protection (by lowering the permissible rate where it can be lowered) without imposing undue costs (by accommodating types of equipment for which the rate cannot be lowered). At the same time, however, the Agency wishes to minimize the confusion that might be associated with having multiple permissible rates that are keyed to different combinations of the above criteria. EPA is therefore is proposing a two-rate system for the industrial process sector. As is the case for the comfort cooling and commercial refrigeration sectors, EPA believes that these changes are necessary to carry out section 608(a)(2) of the Act.

Under the proposed approach, industrial process refrigeration equipment would be subject to a 20 percent per year maximum permissible leak rate unless it met all four of the following criteria:

(1) The refrigeration system is custom-built;

(2) The refrigeration system has an open-drive compressor;

(3) The refrigeration system was built in 1992 or before; and

(4) The system is direct-expansion (contains a single, primary refrigerant loop).

Systems that met conditions 1, 2, 3, and 4 would continue to be subject to the 35-percent-per-year maximum permissible leak rate.

The Agency requests comment on the approach, both on the criteria used to sort equipment between the 20% and 35% per year rates, and on the rates themselves. EPA specifically requests comment on whether it might be appropriate to permit a higher leak rate for equipment with a charge size above 10,000 lbs. As noted above, EPA is reluctant to permit higher leak rates for large equipment due to the greater environmental impact of a given leak rate from large equipment; however, if it is demonstrably impossible to reduce the leak rate of such equipment without undertaking a massive overhaul, EPA could consider permitting a higher leak rate for large equipment built before 1992. The Agency believes that large equipment built more recently should be able to maintain a leak rate of 20% per year. The Agency also requests comment on whether it would be appropriate to use a measure other than charge size to characterize sprawling, inherently leaky equipment. The Agency is concerned that the proposed characterization might inappropriately permit high leak rates for some large equipment that does not possess an inherently leaky configuration. One alternative would be to use pipe length rather than charge size to characterize equipment as having a leaky configuration.

In addition, EPA requests comment on the interchangeability of leaky and non-leaky equipment designs. That is, are there compelling reasons why users of industrial process refrigeration must use open-drive compressors or direct expansion systems rather than hermetic compressors and secondary loops? The Agency understands that it may be

difficult to transform an existing direct expansion system into a system with a secondary loop. However, persons installing new systems might be expected to have more flexibility.

Other possible approaches to leak repair in industrial process refrigeration equipment could be either more or less complex than the one proposed. A simple approach would lower the current permissible leak rate for all industrial process equipment to a single new rate, perhaps to 25 percent per year. While this approach would be administratively simple, however, it could be costly if a significant fraction of existing equipment was not able to meet the new rate without massive overhaul or replacement. Based on its discussions with users of industrial process refrigeration equipment, EPA believes that this is indeed the case. A more complex approach would establish three or more permissible rates for different classes of equipment based on the above criteria. However, although this approach would better tailor permissible leak rates to the inherent leak rates of different types of equipment, the Agency believes that any environmental or economic gains that might be achieved through such an approach would not justify its complexity and associated difficulty of implementation. EPA requests comment on these potential alternative approaches.

EPA is proposing to make the new leak rates effective for industrial process refrigeration equipment three years after promulgation of this rule. EPA is proposing this delayed effective date for industrial process refrigeration equipment for several reasons. First, the current leak repair requirements for industrial process refrigeration equipment only became effective in September 1995, over two years later than the leak repair requirements for other equipment. Owners and servicers of industrial process refrigeration equipment have therefore had considerably less time than owners and servicers of other types of equipment to learn and implement the existing maximum permissible rates. Thus, promulgating new maximum permissible rates with immediate effective dates would lead to considerable confusion and disruption in this sector, while, inversely, promulgating new rates with delayed effective dates would permit this sector to make an orderly transition between the old and new rates. Second, because it is custom-built, industrial process refrigeration equipment takes longer than other types of equipment to build and to repair. The proposed lead time between promulgation and effective date would permit equipment users sufficient time to order replacement parts or systems that might be necessary to meet the new rates. Finally, industrial processes must be shut down, at considerable expense, before large repairs can be made to their refrigeration systems or before such systems can be replaced. According to industry sources, shutdowns are usually only scheduled to occur every two to five years. Again, this argues for permitting significant lead time between the promulgation and effective date of the new leak rate. EPA requests comment on its proposed three-year delay.

d. Cross-sector Issues. EPA is also requesting comment on four issues that affect all three sectors covered by the leak repair requirements. First, EPA requests comment on its proposal to distinguish between old and new equipment in establishing maximum allowable leak rates. In general, the Agency believes that equipment manufactured after 1992 is, by a significant margin, inherently more leak-tight than equipment manufactured before that date. This means that significantly lower leak rates can be maintained in new equipment than in old equipment for about the same cost. If EPA were to set a single allowable leak rate for old and new equipment, this rate would probably be either difficult to attain in old equipment, forcing the expensive retrofit or replacement of the equipment, or above the rate achievable by new equipment, permitting emissions significantly above the lowest achievable level. However, EPA recognizes that implementing two leak rates for each type of equipment would be more administratively complex than implementing a single leak rate for each type of equipment. To implement two leak rates, equipment owners, operators, and technicians would have to remember both rates, and they would have to be able to distinguish old from new equipment. Based on current information, EPA does not believe this would constitute an unreasonable burden or lead to excessive confusion. However, the Agency requests comment on whether the environmental and economic benefits of having two leak rates justify the increase in administrative complexity that results from this approach.

Second, if the final regulations distinguish among appliances based on their dates of manufacture, EPA requests comment on whether the date of "manufacture" should be defined as the date that appliance leaves the factory or the date that it is installed. The Agency believes that it may be appropriate to define "manufacture" differently for different types of appliances. Appliances that are relatively compact and complete when they leave the factory, such as chillers, could be considered "manufactured" when they leave the factory, while appliances that are assembled in the field from numerous components, such as commercial and industrial process refrigeration equipment, could be considered "manufactured" (or "commissioned") when their installation is complete.

Third, EPA requests comment on the proposed use of the year 1992 as the dividing line between more and less strictly regulated equipment. EPA's research indicates that by the end of that year, most equipment was being manufactured to leak significantly less than equipment built earlier. However, if a significant fraction of equipment manufactured since 1992 still cannot attain the proposed maximum leak rate, it may be appropriate to make the stricter requirements effective for equipment built after 1999 (or whatever year follows the year of publication of the final rule). This would permit equipment purchasers to consider the leakiness of certain types of equipment in their purchasing decisions from now on, allowing for the lag time between equipment ordering and manufacture.

Fourth, EPA requests comment on whether it is possible to distinguish between slow leakage, servicing emissions, and catastrophic emissions in establishing and complying with leak rate limits. This question becomes important with a lower permissible leak rate because the percentage of charge lost through servicing and catastrophic emissions may be a significant fraction of the lower rate. The goal of the leak repair provisions has primarily been to reduce emissions from slow leakage, because servicing emissions are addressed by the rule's recycling requirements and catastrophic emissions (such as those resulting from the triggering of a pressure relief valve) are often beyond the control of equipment owners. Thus, if possible, EPA would like to establish a leak rate based on slow leaks alone. Even if it is not possible to isolate slow leaks from all other types of emissions, EPA would like to avoid establishing a relatively high permissible leak rate based in part on servicing or catastrophic emissions if it is possible to distinguish either one of these types of emissions from slow leaks. On the other hand, the Agency would like to avoid establishing an overly stringent leak rate based on

hypothetical emissions from slow leaks if in practice these cannot be distinguished from other types of emissions.

Based on information gathered to date, EPA believes that servicing emissions and slow leakage may be difficult to separate, since the precise amount of refrigerant lost from equipment may not be known until the equipment is recharged after servicing. However, EPA believes that it should be possible to distinguish between catastrophic and slow emissions. Catastrophic losses will generally come to the attention of equipment owners very quickly after they occur and will be large (for the piece of equipment that experiences a catastrophic loss) compared to losses from slow emissions. Moreover, because correcting the conditions that led to the catastrophic release (e.g., correcting the conditions that led to an over-pressure situation) would be considered to repair the "leak," catastrophic losses would not be expected to compromise compliance with the permissible leak rate. Based on discussions with persons who maintain chillers, EPA believes that catastrophic losses are greater than servicing losses for these appliances. EPA has less information on the relationship between catastrophic losses and servicing emissions for commercial and industrial process refrigeration equipment.

EPA requests comment on whether its understanding of the separability and relative significance of the various types of emissions is correct. EPA also requests that, to the extent possible, commenters distinguish between servicing emissions, catastrophic losses, and losses from slow leaks in their comments on what leak rates are achievable.

e. Coverage of HFC and PFC Appliances. EPA believes that establishing consistent leak repair requirements for CFC, HCFC, HFC, and PFC appliances is necessary to minimize emissions of all four types of refrigerants. As noted above, industry representatives emphasized that exempting HFC and PFC refrigerants from conservation requirements could lead to confusion and skepticism regarding similar requirements for CFCs and HCFCs, which would undermine implementation of the statutory directives to reduce emissions of these substances to the lowest achievable level and to maximize their recapture and recycling. For instance, if owners or operators of refrigeration systems could permit HFC systems to leak, they might fail to establish or maintain leak repair procedures or systems for any of their refrigeration equipment, including CFC or HCFC systems (particularly if these were in the minority at a given site), forgetting or never realizing that the latter were subject to repair requirements. Moreover, in any given application, there is no technological difference between CFC, HCFC and HFC appliances that makes leaks easier to control for one type of refrigerant than the other. Technology and techniques developed to reduce CFC and HCFC emissions can be easily applied to reducing HFC and PFC emissions. Finally, the release of all four types of refrigerants could pose a threat to the environment. EPA is therefore proposing requirements for CFC, HCFC, HFC, and PFC appliances that recognize the design and maintenance advances of the last few years.

f. Clarification of Current Requirements. i. Compliance Scenarios

The initial final rule (May 14, 1993, 58 FR 28660) required owners and operators to "have all leaks repaired" where an appliance subject to the leak repair requirements was leaking above the applicable allowable annual leak rate (58 FR 28716). In a subsequent rulemaking regarding leak repair requirements published August 8, 1995 (60 FR 40420), EPA amended that language to state that "repairs must bring the annual leak rate to below 35 percent of the total charge during a 12-month period" (60 FR 40440) or where appropriate, to below 15 percent. This change in the rule recognizes that appliances without hermetically sealed refrigerant circuits should not be expected to have a "zero" leak rate. Moreover, EPA also believes that it is practical to require the owners or operators to maintain a leak rate that is at or below the applicable allowable annual rate, and where this leak rate has been exceeded, to make the necessary repairs to return the appliance's leak rate to or below the applicable allowable leak rate or to retrofit/retire the appliance. Leaving leaks unrepaired does not necessarily equate to non-compliance; however, maintaining a leak rate above the maximum leak rate of either 15 or 35 percent is non-compliance.

For industrial process refrigeration equipment and for federally-owned commercial refrigeration equipment and federally-owned comfort cooling appliances located in areas subject to radiological contamination, EPA requires owners and operators to perform verification tests to establish that repairs were successful. EPA recognizes that verification tests indicate the success or failure of the repair effort for a given leak or set of leaks, not the leak rate of an appliance. In the August 8, 1995 rulemaking, EPA stated that it was not the Agency's "intention to imply that the verification test shows what the leak rate is. However, EPA believes that where the verification test shows that the repairs have been successful, in most cases this will mean that there has been a reduction in the leak rate" (60 FR 40430). EPA recognizes that knowing a leak has been repaired does not necessarily mean that the owner or operator knows what the current leak rate is. EPA further stated that "if more than one leak exists, it is possible that the leak rate could remain above acceptable levels. In such cases the owners or operators would be expected to take reasonable actions" (60 FR 40430). EPA believes that where owners or operators employ sound professional judgement in responding to a leak rate above the applicable allowable annual leak rate they will reduce the appliance's leak rate to below the applicable allowable annual leak rate.

Section 82.156(i) requires owners or operators to conduct repair efforts to lower an appliance's leak rate to below the applicable allowable annual leak rate. EPA is describing the following scenarios to assist the owners or operators in determining what actions must be taken when an appliance is leaking above the applicable allowable annual leak rate. EPA believes that by describing four likely scenarios, EPA can further clarify for the regulated community how the leak rate and verification tests relate to the repair and/or retrofit/retire provisions promulgated at § 82.156(i).

In the first scenario, the owner or operator discovers that the appliance is leaking above the applicable allowable annual rate. The owner or operator fixes all leaks and verifies that the leaks have been repaired consistent with § 82.156(i). Therefore, where sound professional judgement has been successfully executed, the appliance will have a leak rate below the applicable allowable annual rate. If a leak rate above the applicable allowable annual rate is again suspected a short time after the repairs were completed (perhaps only a few weeks) and leaks are discovered at a new location, these leaks would be considered new leaks. The owner or operator must comply with all applicable requirements promulgated at § 82.156(i) for these new leaks.

In the second scenario, the owner or operator discovers that the appliance is leaking above the applicable allowable annual leak rate. The owner or operator fixes the leaks and verifies that they

have been repaired consistent with § 82.156(i). Therefore, the owner or operator believes the appliance is not leaking above the applicable allowable annual leak rate. The next time leaks are suspected, the owner or operator finds leaks have occurred at the same location. Since the initial leaks were repaired and properly verified consistent with the regulation, leaks at the same location would be considered new leaks. If the leak rate is again above the applicable allowable annual leak rate, the owner or operator must repair the leaks and, where appropriate, perform verification tests, retrofit the appliance, or retire the appliance consistent with the requirements promulgated at § 82.156(i). However, if repeated leaks continue to occur at the same location, this ongoing problem may be an indication that appropriate repairs have not actually been conducted. For example, the particular leak point may involve the connection of two parts that appears to have loosened. Rather than repeatedly tightening the connection, the parts may need to be replaced. EPA believes that where leaks at the same location continue to occur, the owner or operator may not have used sound professional judgement in determining what repair efforts are necessary to reduce the leak rate to below the applicable allowable annual leak rate. Thus, the owner or operator would have violated with the requirements in § 82.156(i).

In the third scenario, the owner or operator discovers that the appliance is leaking above the applicable allowable annual rate and identifies ten different leak sources that are contributing to the high leak rate. The owner or operator determines that repairing six leaks will bring the appliance into compliance by lowering the leak rate to below the applicable allowable annual rate. The owner or operator believes that leaving four leaks unrepaired still will result in a leak rate below the applicable allowable annual rate. The owner or operator fixes and verifies that these six leaks have been repaired consistent with the requirements promulgated at § 82.156(i). The appliance continues to leak, but below the applicable allowable annual rate. In this scenario the owner or operator of the appliance complied with the requirements by actually reducing and maintaining a leak rate that is below the applicable allowable annual rate.

In the fourth scenario, the owner or operator discovers that the appliance is leaking above the applicable allowable annual rate. The owner or operator identifies ten different leak sources that are contributing to the leak rate. The owner or operator decides that repairing six leaks will bring the appliance into compliance by lowering the leak rate to below the applicable allowable annual rate. The owner or operator fixes and verifies that these leaks have been repaired consistent with the requirements promulgated at § 82.156(i). Upon later inspection, it is discovered that the appliance continued leaking above the applicable allowable annual rate and there are no newly identified leak sources. In this scenario the owner or operator never brought the leak rate below the applicable allowable leak rate, and hence violated § 82.156(i), regardless of whether the owner or operator exercised sound professional judgement in deciding upon the leaks to be repaired.

EPA views the above scenarios as consistent with the current regulatory requirements. Therefore, today's action does not propose any regulatory changes associated with these scenarios. Nevertheless, EPA requests comment on the guidance presented for these four scenarios.

ii. Recordkeeping for leak repair. EPA received information from CMA indicating that the recordkeeping and reporting requirements promulgated at § 82.166(n) may be confusing for those subject to the requirements. EPA notes that the structure of these provisions did change between the proposed and final notices (January 19, 1995, 60 FR 3992, and August 8, 1995, 60 FR 40420) to ensure that the format was consistent with the requirements established by the Office of the Federal Register. The August 8, 1995 final rule requires the same information to be maintained or submitted as EPA proposed in the January 19, 1995, except as discussed in the preamble to the August 8, 1995 final rule.

CMA and its members requested that EPA consider whether these provisions could be redrafted for clarity. EPA agrees that the readability of these provisions can be improved. Therefore, EPA is proposing to modify the presentation of the requirements to more clearly indicate what records must be kept and what information must be reported. EPA is not proposing any changes in the substance of the requirements. EPA requests comment on these proposed changes and whether they improve readability of the provisions.

iii. Replacement refrigerants. EPA is proposing to amend § 82.156(i)(6) to incorporate a requirement that was discussed in the preamble to the May 14, 1993 initial final rule (58 FR 28680) but that was inadvertently excluded from the regulatory text. In the preamble, EPA indicated that if the owners or operators elect to retrofit an appliance rather than repair leaks that are above the applicable allowable annual rate, the owners or operators must use a refrigerant with a lower ozone-depleting potential (ODP) than the original refrigerant. Owners and operators would still retain the options of either retiring the appliance or repairing the existing leaks in accordance with the existing requirements. EPA refers readers to the preamble discussion in the May 14, 1993 rule for additional information. EPA believes this proposed change is important to minimize the use of refrigerants that are potentially more harmful to stratospheric ozone. It would be environmentally unsound to exempt owners or operators from repairing leaks on the grounds that they will retrofit or replace the leaky appliance if the replacement refrigerant would pose an equivalent or even greater threat to the stratospheric ozone. Therefore, EPA is today proposing to modify the regulatory text to ensure that only a substitute refrigerant with a lower ODP is used. EPA requests comment on this proposed regulatory change.

iv. Minor Clarifications. EPA is proposing to modify the text throughout § 82.156(i) and § 82.166(n) and (o) to substitute the word "retire" for the word "replace" and to add "operators" where the regulation inadvertently refers solely to owners. EPA believes these changes are necessary because the term "retire" better describes the activities that are discussed and because the requirements are applicable to both owners and operators.

EPA is also proposing to modify § 82.156(i)(3), which requires owners and operators to exercise sound professional judgement and to perform verification tests, to clarify that it applies to all owners and operators of industrial process refrigeration equipment and not just to those who are granted additional time under paragraph (i)(2). At the same time, EPA is proposing to clarify that the paragraph applies to owners and operators of federally-owned commercial refrigeration equipment and of federally-owned comfort cooling appliances who are granted additional time under paragraphs (i)(1) and (i)(5). In the preamble to the August 8, 1995 rule, EPA stated that initial and follow-up verification tests must be performed even where the repairs are completed within 30 days (60 FR 40430). EPA inadvertently neglected to make the corresponding change to the regulatory text. Therefore, EPA is proposing to change the first sentence in the

paragraph to the following: "Owners or operators of federally-owned commercial refrigeration equipment or of federally-owned comfort cooling appliances who are granted additional time under paragraphs (i)(1) or (i)(5) of this section, and owners or operators of industrial process refrigeration equipment, must have repairs performed in a manner that sound professional judgment indicates will bring the leak rate below the applicable allowable leak rate."

In addition, EPA is proposing to amend § 82.156(i)(3)(ii) and (i)(6)(i) to provide owners and operators 30 days to prepare and 1 year to execute a retrofit/retirement plan, where the owners or operators have unsuccessfully attempted to repair the appliance and therefore are switching to a retrofit/retirement mode. Section 82.156(i)(3)(ii) permits owners and operators who are unable to verify that repairs have been successful to switch to a retrofit/retirement mode. EPA is proposing to delete from this paragraph the phrase "* * * of this section within one year after the failure to verify that repairs had been successfully completed." This phrase starts the one-year retrofit/retirement implementation clock based on the date of the failed verification test. EPA provided this provision because the Agency believes it is appropriate to permit the owner or operator of industrial process refrigeration equipment that fails a follow-up verification test to complete a retrofit within approximately one year of that failed test in situations where the owner or operator made good faith efforts to repair an appliance before deciding to switch to a retrofit or retirement mode.

However, in establishing this provision, EPA was concerned with the potential to abuse such a safeguard. Owners and operators who realize that a retrofit or retirement is necessary could attempt to repair the appliance while knowing such efforts were useless, merely to extend the date by which a retrofit or retirement must be completed. In an effort to limit abuse in this situation, the current regulations provide that the one-year time frame to complete a retrofit or retirement is triggered by the date of the failure to verify successful repairs. However, concerns have been raised regarding whether this limited time frame inadvertently increases the burden for those that made good faith efforts to repair the appliances, by lessening the retrofit/retirement clock by up to 30 days. In addition, those who intentionally violate the spirit of this good faith provision still could seek some extra time by pursuing useless repairs, albeit 30 days less than what is potentially available under the current regulations.

While EPA does not believe this 30-day difference imposes a significant burden under the current regulations, EPA recognizes the need to provide the owners or operators with sufficient time to develop and implement retrofit or retirement plans. Therefore, EPA is proposing to eliminate the reference to the date of the failure to verify that repairs have been successfully completed. By deleting this reference, owners or operators would have 30 days from the failure to verify that the repairs were successful to develop a retrofit/retirement plan, and one year from the plan's date to complete the retrofit or retirement, or such longer time periods as may apply under 82.156(i)(7) and (i)(8). EPA requests comment on these proposed changes.

EPA is proposing to make several other minor clarifying changes to the regulatory text. EPA is proposing changes at §§ 82.156(i)(1), (i)(2), (i)(3)(i), (i)(5), (i)(6)(i) and 82.166(o)(10)(i) and (ii). At §§ 82.156(i)(1), 82.156(i)(2) and 82.156(i)(5) EPA is proposing to express maximum allowable leak rates in terms of the proposed defined term, "leak rate." EPA believes that these changes would make the regulatory text more easily understood. In various sections of the regulations, EPA is proposing a number of minor non-substantive wording changes to make the regulatory text clearer and easier to read. None of these additional modifications should affect the meaning of the regulatory text.

EPA requests comments on these proposed changes regarding whether the changes will improve the clarity and readability of the regulatory text.

4. Proposed Changes for Servicing of MVAC-like Appliances

a. Background. MVAC-like appliances are open-drive compressor appliances used to cool the driver's or passenger's compartment of non-road motor vehicles, such as agricultural or construction vehicles. MVAC-like appliances are essentially identical to motor vehicle air conditioners (MVACs), which are subject to regulations promulgated under section 609 of the Act. However, because MVAC-like appliances are contained in non-road vehicles, they are subject to regulations promulgated under section 608 of the Act.

Due to the similarities between MVACs and MVAC-like appliances in design and servicing patterns, EPA has established requirements regarding the servicing of MVAC-like appliances that are very similar to those for MVACs (58 FR 28686). In fact, many of the section 608 requirements for MVAC-like appliances that are published at subpart F simply refer to the section 609 requirements for MVACs that are published at subpart B. For instance, § 82.156(a)(5) states that persons who open MVAC-like appliances for maintenance, service, or repair may do so only while "properly using," as defined at § 82.32(e), recycling or recovery equipment certified pursuant to § 82.158(f) or (g) as applicable. The definition of "properly using" appears in the regulations published at subpart B, and the reference therefore subjects MVAC-like appliances to the evacuation and refrigerant purity requirements of subpart B. Similarly, the equipment and technician certification provisions applicable to MVAC-like appliances in subpart F (§§ 82.158(f) and 82.161(a)(5)) refer to the equipment and technician certification provisions applicable to MVACs in subpart B (§§ 82.36(a) and 82.40).

The section 609 and 608 regulations treat MVACs and MVAC-like appliances (and persons servicing them) slightly differently in four areas. First, persons who service MVACs are subject to the section 609 equipment and technician certification requirements only if they perform "service for consideration," while persons who service MVAC-like appliances are subject to the section 608 equipment and technician certification requirements regardless of whether they are compensated for their work.[23] Second, persons who service MVACs must have a piece of recovery and recycling equipment available at their place of business, even if they never open the refrigeration circuit of the MVACs (e.g., if they only perform top-offs). In contrast, persons who service MVAC-like appliances are required to have a piece of recovery and recycling equipment available at their place of business only if they open the appliances (i.e., perform work that would release refrigerant to the environment unless the refrigerant were recovered previously). Third, recycling and recovery equipment that is intended for use with MVACs and that was manufactured before the effective date of the section 609 equipment certification provisions must be demonstrated to be "substantially identical" to certified recycling equipment, while recycling and recovery equipment that is intended for use with MVAC-like appliances and that was manufactured before the effective

[23] Note that persons servicing MVACs are subject to the section 608 vending prohibition regardless of whether they are compensated for their work.

date of the section 608 equipment certification provisions must simply be able to pull a 4-inch vacuum. Finally, persons servicing MVAC-like appliances have the option of becoming certified as Type II technicians instead of becoming certified as MVAC technicians under subpart B. The first three differences arise from differences between the statutory requirements of sections 608 and 609; the last is intended to give persons who service MVAC-like appliances flexibility in choosing the type of training and testing most appropriate to their work.

b. Recent Amendments to Subpart B. In a final rule published on December 30, 1997 (62 FR 68025), EPA made several changes to the provisions governing servicing of MVACs and MVAC-like appliances (as they are currently defined) at subpart B. First, EPA extended the regulations to MVACs containing substitutes for CFC and HCFC refrigerants. Second, EPA explicitly allowed mobile servicing of MVACs and MVAC-like appliances. That is, technicians are permitted to transport their recovery or recycling equipment from their place of business in order to recover refrigerant from an MVAC or MVAC-like appliance before servicing it. Third, EPA permitted refrigerant recovered from disposed MVACs or MVAC-like appliances to be reused in MVACS or MVAC-like appliances, as long as the refrigerant was processed through approved refrigerant recycling equipment before being charged into the MVAC to be serviced.

Fourth, EPA adopted new standards for recycling and recovery equipment intended for use with MVACs. These new standards address HFC-134a recover/recycle equipment, HFC-134a recover-only equipment, service procedures for HFC-134a containment, purity of recycled HFC-134a, recover/recycle equipment intended for use with both CFC-12 and HFC-134a, and recover-only equipment designed to be used with any motor vehicle refrigerants other than CFC-12 and HFC-134a. Please refer to the December 30, 1997, final rule for a detailed explanation and justification of these changes for MVACs.

As noted above, these regulations apply both to MVACS containing all types of refrigerant and to MVAC-like appliances containing class I and class II substances. As is discussed at length in the final amendment to subpart B, EPA believes that it is appropriate to cover both MVACs and MVAC-like appliances under the subpart B regulations, although EPA is relying on section 608 authority to cover MVAC-like appliances. In brief, the rationale for this approach is that (1) MVACs and MVAC-like appliance are very similar, and the requirements for MVAC-like appliances under the subpart F regulations have historically referred back to the requirements for MVACs under subpart B, and (2) MVACs and MVAC-like appliances are often serviced by the same group of people, and therefore publishing the requirements for both MVACs and MVAC-like appliances in the same place will minimize confusion within this group. Under this approach, most of the provisions governing MVAC-like appliances have been reproduced in the regulations at subpart B and will be removed from the regulations at subpart F; an important exception is the definition of MVAC-like appliance, which will remain in the regulations at subpart F. Thus, the final subpart B rule covers MVAC-like appliances as they are currently defined in the subpart F regulations, which means MVAC-like appliances containing CFCs or HCFCs. (However, the subpart B amendment does not affect the four differences between the treatment of MVACs and MVAC-like appliances identified above.)

c. Today's Proposal. In this document, EPA is proposing to change the definitions of "appliance," "MVAC-like appliance" (which is based on the definition of "appliance"), and "opening" in subpart F to include substitute refrigerants. This would effectively apply the major requirements of the amended subpart B regulations (when this rule was finalized) to MVAC-like appliances containing substitutes for CFCs and HCFCs. EPA is also proposing editorial changes to eliminate redundancy between the subpart B and subpart F rules in their treatment of MVAC-like appliances.

EPA believes that in order to implement the venting prohibition, it is necessary to apply the major subpart B requirements (including the requirements to properly use recycling and recovery equipment and to certify recycling and recovery equipment and technicians) to MVAC-like appliances containing substitute refrigerants. The basic rationale for applying the subpart B requirements to MVAC-like appliances containing substitute refrigerants is the same as that for applying the equivalent subpart F requirements to other appliances containing substitute refrigerants; this reasoning is presented throughout this document. In the case of MVAC-like appliances, however, the similarities in design and servicing patterns between MVACs and MVAC-like appliances make it appropriate to subject MVAC-like appliances to the required practices and certification programs established for MVACS in subpart B rather than to the required practices and certification programs established for stationary appliances in subpart F. (As noted above, the argument for parallel coverage of MVACs and MVAC-like appliances was discussed at length in the May 14, 1993 rule at 58 FR 28686.) EPA requests comment on the regulatory approach and rationale presented here.

C. Equipment Certification

The final rule published on May 14, 1993 requires that refrigerant recycling and recovery equipment manufactured after November 15, 1993, and used to service appliances containing CFCs or HCFCs be tested by an EPA-approved laboratory to ensure that it meets certain performance standards. These standards vary among equipment used to service MVAC-like appliances, small appliances, and other appliances. EPA is proposing to require that equipment used to service appliances containing HFCs and PFCs be tested by an EPA-approved laboratory to the same standards as apply to equipment used to service appliances containing class I and class II refrigerants, as applicable. Because EPA is simultaneously proposing to permit the use of representative refrigerants in equipment testing (as opposed to requiring testing with every refrigerant), equipment models already certified for use with CFCs and HCFCs might not always need additional testing in order to be certified for use with HFCs and PFCs. In addition, as discussed below, EPA is proposing to grandfather existing recovery and recycling equipment that is certified for use with at least two CFCs and HCFCs for use with HFCs and PFCs of similar saturation pressure.

1. Certification of Recovery and Recycling Equipment Intended for Use with Appliances Except Small Appliances, MVACs, and MVAC-like Appliances

a. Background. For recovery equipment used with appliances other than small appliances, MVACs and MVAC-like appliances, the laboratory must verify that the equipment is capable of achieving applicable required evacuation levels and that the equipment releases no more than 3% of the quantity of refrigerant being recycled through noncondensables purging. In addition, the laboratory must measure the vapor and liquid recovery rates of the equipment. To perform all of these measurements, the

laboratory must use the test procedure set forth in ARI 740–93, an industry test protocol for recycling and recovery equipment that EPA included in the final rule as Appendix B.

A proposed rule published on February 29, 1996 requested comment on amending the certification requirements to include a new, more representative method for measuring the equipment's refrigerant recovery rate; requirements to measure the equipment's recovery rate and final vacuum at high temperatures; a limit on the total quantity of refrigerant that may be released from equipment from noncondensables purging, oil draining, and equipment clearing; a requirement to measure the quantity of refrigerant left in the condenser of equipment after clearing has occurred; standards for external hose permeability; and a requirement that equipment be tested with recovery cylinders that are representative of those used with the equipment in the field. In addition, EPA proposed to require that equipment that is advertised as "recycling equipment" be capable of cleaning up refrigerants to the contamination levels (except that for "Other Refrigerants") set forth in the IRG–2 table of Maximum Contaminant Levels of Recycled Refrigerants in Same Owner's Equipment.

b. Certification of Recovery/recycling Equipment Used With HFCs and PFCs. EPA is today proposing equipment certification requirements for recovery and recycling equipment used with HFCs and PFCs that are very similar to the requirements for recovery and recycling equipment used with CFCs and HCFCs, as they were proposed to be amended in the February 29, 1996 document. The evacuation requirements would depend upon the saturation pressure of the refrigerant, the size of the appliance in which it is used, and the date of manufacture of the recovery equipment. These standards, which are described in Table 1 and Table 2, are consistent with the proposed evacuation requirements discussed in section IV.B.1.a. above.

TABLE 1.—LEVELS OF EVACUATION WHICH MUST BE ACHIEVED BY RECOVERY OR RECYCLING EQUIPMENT INTENDED FOR USE WITH APPLIANCES [1] MANUFACTURED ON OR AFTER NOVEMBER 15, 1993

Type of appliance with which recovery or recycling machine is intended to be used.	Inches of vacuum (relative to standard atmospheric pressure of 29.9 inches of Hg)
Very high-pressure appliance	0
Higher-pressure appliance or isolated component of such appliance, normally containing less than 200 pounds of refrigerant	0
Higher-pressure appliance, or isolated component of such appliance, normally containing 200 pounds or more of refrigerant	10
High-pressure appliance, or isolated component of such appliance, normally containing less than 200 pounds of refrigerant	10
High-pressure appliance, or isolated component of such appliance, normally containing 200 pounds or more of refrigerant	15
Low-pressure appliance	[2] 25

[1] Except for small appliances, MVACs, and MVAC-like appliances.
[2] mm Hg absolute.

The vacuums specified in inches of Hg vacuum must be achieved relative to an atmospheric pressure of 29.9 inches of Hg absolute.

TABLE 2.—LEVELS OF EVACUATION WHICH MUST BE ACHIEVED BY RECOVERY OR RECYCLING EQUIPMENT INTENDED FOR USE WITH APPLIANCES [1] MANUFACTURED BEFORE NOVEMBER 15, 1993

Type of appliance with which recovery or recycling machine is intended to be used.	Inches of vacuum (relative to standard atmospheric pressure of 29.9 inches of Hg)
Very high-pressure appliance	0
Higher-pressure appliance or isolated component of such appliance, normally containing less than 200 pounds of refrigerant	0
Higher-pressure appliance, or isolated component of such appliance, normally containing 200 pounds or more of refrigerant	4
High-pressure appliance, or isolated component of such appliance, normally containing less than 200 pounds of refrigerant	4
High-pressure appliance, or isolated component of such appliance, normally containing 200 pounds or more of refrigerant	4
Low-pressure appliance	[2] 25

[1] Except for small appliances, MVACs, and MVAC-like appliances.
[2] mm Hg absolute.

The other certification requirements, including the requirement to use the more representative method for measuring the equipment's refrigerant recovery rate, the requirement for high-temperature testing, and limits on refrigerant emissions from air purging, oil draining, equipment clearing, and hoses, would be identical to those proposed for CFC and HCFC recovery and recycling equipment in the February 29, 1996 document.

EPA believes that certification of recovery and recycling equipment used with HFCs and PFCs is necessary to implement and enforce both section 608(c)(2) and section 608(a). In order to comply with the prohibition on venting of substitute refrigerants by making good faith efforts to recover them, technicians must recover the refrigerants using equipment that minimizes refrigerant emissions and mixture, and they must complete the recovery process. Certification of HFC and PFC recovery equipment would permit technicians to achieve all of these goals. First, certification would provide reliable information on the ability of equipment to minimize emissions, measuring and/or establishing standards for recovery efficiency (vacuum level) and emissions from air purging, oil draining, equipment clearing, and hose permeation.

Second, certification would provide reliable information on the equipment's ability to clear itself when it was switched between refrigerants. Without sufficient clearing capability, equipment may retain residual refrigerant in its condenser, which will be mixed with the next batch of a different refrigerant recovered by the equipment. Because it is frequently impossible to reclaim and expensive to destroy, such mixed refrigerant is much more likely than unmixed refrigerant to be vented to the atmosphere. Third, certification would provide reliable information on the equipment's recovery speed, without which technicians may purchase equipment that recovers too slowly, tempting them to interrupt recovery before it is complete. As discussed in the May 14, 1993, final rule, EPA believes that the information on equipment performance provided by a disinterested third-party testing organization is more reliable than that provided by other sources, such as equipment manufacturers (58 FR 28686–28687).

Certification of recovery equipment used with HFCs and PFCs would also maximize recycling and minimize emissions of CFCs and HCFCs. As discussed below, there is no physical difference between ozone-depleting refrigerants and their fluorocarbon substitutes that would prevent a technician from purchasing and using HFC recovery equipment on CFCs or HCFCs. At the same time, uncertified recovery and recycling equipment is likely to be less expensive than certified equipment, which must meet standards and undergo testing. Thus, if uncertified HFC or PFC equipment is available on the market, technicians may well decide to purchase and use it with CFCs and HCFCs instead of or in addition to HFCs and PFCs. In this way, failure to require certification for recovery equipment used with HFCs and PFCs would undermine the current certification program for equipment used with CFCs and HCFCs, leading to greater emissions of the latter. These emissions could occur through any of the routes identified above; that is, directly from leaky or inefficient equipment, or indirectly through refrigerant mixture or incomplete recovery.

c. Use of Representative Refrigerants In Equipment Testing. Currently, equipment certification organizations test recovery and recycling equipment with each of the refrigerants for which the equipment is to be rated. Given the proliferation of new refrigerants and the associated cost of testing equipment with each one, EPA is proposing to permit equipment to be tested with only one or two representative refrigerants from each saturation pressure category for which it is to be rated. At least one of the representative refrigerants would be one that was among the most difficult to recover in its category, that is, a refrigerant whose relatively high saturation pressure and/or discharge temperature made attainment of deep vacuums relatively difficult. This would ensure that equipment that could attain the required vacuums with the representative refrigerant could attain these vacuums with all of the other refrigerants in that category. Other factors that could be considered in the selection of representative refrigerants include moisture affinity, which affects the ease with which refrigerants may be cleaned, materials compatibility, likely popularity, and availability for testing purposes. Different refrigerants might be selected for different testing purposes; for instance, a refrigerant with a high saturation pressure might be selected to test a piece of equipment's ability to draw a vacuum, while a refrigerant with a high moisture affinity might be selected to test the equipment's ability to remove contaminants.

The Agency believes that the saturation pressure (and to some extent, discharge temperature and moisture affinity) of the refrigerant are more important factors in recovery equipment performance than the chemical identity of the refrigerant; in general, equipment that passes the certification test for CFCs and HCFCs is likely to pass the test for HFCs and PFCs of similar (or lower) saturation pressure, as long as the materials used in the recovery equipment are compatible with all of these refrigerants. The equipment certification programs operated by both UL and ARI have been testing recovery and recycling equipment with HFC-134a for the past few years, and equipment performance (final vacuum) with HFC-134a appears to be comparable to that with R-12. EPA requests comment on whether there are factors other than saturation pressure, discharge temperature, moisture affinity, materials compatibility, popularity, and availability that should be considered in selecting a representative refrigerant or in determining the set of refrigerants for which equipment should be certified.

The latest version of ARI 740, ARI 740–1995, already includes a test that is performed with one representative refrigerant. That is high-temperature testing, which is performed with R-22. As discussed in the proposed rule to adopt ARI 740–1995, R-22 was selected because it has a relatively high saturation pressure and discharge temperature, making it harder to recover than many other high-pressure refrigerants (61 FR 7867). Although EPA is proposing to place R22 in a separate saturation pressure category from R134a and R12, EPA believes that it may be appropriate to retain R22 as a representative refrigerant for both pressure categories. EPA requests comment on this issue. EPA also requests comment on whether recovery equipment that is to be certified for use with refrigerants whose saturation pressures are higher than that of R22 should have high-temperature testing performed with R22, or with a higher-pressure refrigerant. Because many new refrigerants have significantly higher saturation pressures than R22 (for instance, R407B has a saturation pressure of 281.7 psia at 104 degrees F, while R22 has a saturation pressure of 222.4 psia at that temperature), EPA believes that equipment that is rated for use with these refrigerants should have high-temperature testing performed with a refrigerant whose saturation pressure is closer to theirs.

In its efforts to revise and update the ARI 740 standard, ARI is currently considering an approach that divides refrigerants into six saturation pressure categories and selects one or two refrigerants for each one. The planned ARI groupings and representative refrigerants for each one are reprinted in Table 3 below.

TABLE 3.—PROPOSED ARI GROUPING OF REFRIGERANTS

Designated group refrigerant	Group No.	Refrigerant No.	PSIA at 104°F, liquid	Bubble point, °F	Critical temp., °F
R-123	I	LOW PRESSURE			
R-11		R-113	18	117.6	417.4
		R-123	22.4	82.1	362.6

TABLE 3.—PROPOSED ARI GROUPING OF REFRIGERANTS—Continued

Designated group refrigerant	Group No.	Refrigerant No.	PSIA at 104°F, liquid	Bubble point, °F	Critical temp., °F
		R-11	25.3	74.9	388.4
R-114	II	MEDIUM PRESSURE—LOW MOISTURE			
		R-114	48.6	38.8	294.3
R-134a	III	MEDIUM PRESSURE			
		R-12	139.7	−21.6	233.2
		R-134a	147.4	−14.9	213.9
		R-401C	151.9	−19.0	234.9
		R-406A	161.4	−26.2	238.1
		R-500	163.7	−28.3	221.9
R-407C	IV	MEDIUM HIGH PRESSURE			
R-22		R-401A	174.9	−27.5	226.4
		R-409A	178.6	−29.6	224.6
		R-401B	183.5	−30.4	223.0
		R-412A	191.8	−37.3	220.6
		R-411A	210.8	−37.5	209.5
		R-407D	217.8	−39.1	216.3
		R-22	222.4	−41.4	205.1
		R-411B	225.5	−42.9	205.7
		R-502	244.8	−49.7	180.0
		R-407C	254.5	−46.4	189.1
		R-402B	255	−53.2	180.7
		R-408A	255	−46.3	182.3
		R-509	256.5	−52.8	188.3
R-410A	V	HIGH PRESSURE			
		R-407A	267.6	−49.9	181.0
		R-404A	269.9	−51.6	161.7
		R-402A	270.6	−46.5	167.9
		R-507	275.5	−52.1	159.6
		R-407B	281.7	−53.1	168.4
		R-410A	352.8	−62.9	162.5
R-508A	VI	VERY HIGH PRESSURE—HIGH MOISTURE			
		R-13	supercritical	−114.5	83.8
		R-23	supercritical	−115.8	78.1
		R-508A	supercritical	−122.2	73.5
		R-503	supercritical	−126.0	67.1
		R-508B	supercritical	−126.9	57.2

ARI's saturation pressure categories are similar, but not identical, to the saturation pressure categories that EPA is proposing to use as the basis for its evacuation requirements. For instance, both EPA and ARI propose to classify R113, R123, and R11 as low-pressure refrigerants, and R13, R23, R508A, R503, and R508B as very-high pressure refrigerants. However, while EPA is proposing to classify R114, R134a, and R401A as high-pressure refrigerants, ARI is proposing to place these refrigerants into three separate saturation pressure categories. Moreover, EPA's proposed dividing line between high and higher-pressure refrigerants would split ARI's "medium high-pressure" category in half, falling between R407D and R22.

EPA does not believe that using different saturation pressure categories for selecting representative refrigerants and for determining evacuation requirements would be a problem if the categories for selecting representative refrigerants fell entirely within the categories for determining evacuation requirements. Thus, EPA believes it would be quite reasonable to separate EPA's high-pressure category into three categories for purposes of selecting representative refrigerants; this would simply mean that recovery and recycling equipment would be tested with more refrigerants. However, if a category for selecting representative refrigerants were split into different categories for determining evacuation requirements, confusion and inefficiency could result. For instance, ARI is considering R22 and R407C as representative refrigerants for its "medium high-pressure" category. If EPA were to promulgate the categories for evacuation requirements proposed today, recovery/recycling equipment that was being certified for use with any refrigerant in the "medium high-pressure" category would have to pull these refrigerants to the relatively deep vacuums required for R12 and R134a, because EPA is proposing to place these refrigerants in the same evacuation category as many of the refrigerants in ARI's "medium high-pressure category." This may be an unnecessarily strict approach, as R22 itself would not need to be drawn to these vacuums in the field. EPA requests comment on this issue.

Because the current regulations establish less stringent evacuation requirements for R22 appliances than for appliances containing refrigerants with lower saturation pressures, and because EPA wishes to retain as much consistency as possible between the proposed and the existing evacuation requirements, EPA is reluctant to eliminate or move its dividing line between the proposed high-pressure and higher pressure evacuation requirement categories. (Again, the proposed dividing line falls between R407D and R22.) In consideration of this issue and the issues discussed above, the Agency requests comment on whether it should adopt the proposed ARI groupings as is or with some changes. If the latter, the Agency requests comment on what changes would be appropriate.

ARI selected the proposed representative refrigerants considering

the saturation pressure, discharge temperature, moisture affinity, materials compatibility, and likely popularity of the refrigerants. ARI is considering using both R11 and R123 as representative refrigerants for the low-pressure category because some equipment uses materials that are compatible with R11 but not with R123, and a requirement for performance testing with R123 may reduce the incidence of equipment failure and refrigerant leakage in the field. ARI is considering a separate grouping for R114 because this refrigerant has a saturation pressure that is significantly higher than lower-pressure refrigerants and significantly lower than higher pressure refrigerants. Although R134a is not the refrigerant with the highest saturation pressure in the next, "medium pressure" category, ARI is considering it as the representative refrigerant because it is likely to be used widely and the refrigerants with higher saturation pressures (R401C, R406A, R500) are not. R134a also has a relatively high moisture affinity.

ARI is considering using both R22 and R407C as representative refrigerants in the "medium high-pressure" category because of their popularity, the high discharge temperature of R22, and the high saturation pressure of R407C at 104 F. (R407C has a saturation pressure of 254.5 psia at that temperature, while the highest pressure refrigerant in the category, R509, has a saturation pressure only 2 psi higher, 256.5) R410A is being considered as the representative refrigerant for the next category because its saturation pressure of 3.8 psia is the highest in its category, and because it has a high moisture affinity. ARI's tentative choice as the representative refrigerant for the very high pressure category is R508A, which is supercritical at 104 degrees F. R508A's critical temperature of 73.5 is 16 degrees higher than that of the highest-pressure refrigerant in the group, R508B, but 10 degrees lower than that of the lowest-pressure refrigerant in the group, R13.

EPA believes that ARI's tentative choices for representative refrigerants would probably appropriately represent their categories, as those categories are currently defined. However, EPA is requesting comment on a few issues. First, EPA requests comment on whether R134a is an appropriate representative refrigerant for the "medium pressure" group, given that its saturation pressure is 16 psi lower than the saturation pressure of the highest-pressure refrigerant in the category, R500. Should the likely popularity of R134a relative to R401C, R406A, and R500 overrule its relatively low saturation pressure? Is equipment that successfully recovers R134a in testing likely to fail to recover refrigerant with a saturation pressure 16 psi higher? EPA requests comment on the same issue as it applies to the use of R508A as the representative refrigerant for "very high pressure" refrigerants. Finally, EPA requests comment on what refrigerant should be chosen to represent the category of refrigerants whose saturation pressures fall between those of R401A and R407D, in case this category is split off from the current "medium high pressure" category, and what refrigerant should be chosen to represent "high pressure refrigerants," in case R410A is split off from this category. EPA believes that R407D and B, which would become the highest pressure refrigerants in these categories, would be appropriate choices, but recognizes that considerations of moisture affinity and/or refrigerant availability may argue for choices with slightly lower saturation pressures.

While the proper selection of representative refrigerants would ensure that recovery equipment could achieve the required vacuum for all the refrigerants in a category, some information would be lost. Specifically, the vapor and liquid recovery rates of equipment with each of the refrigerants in a category would no longer be available. However, technicians and contractors would still be able to compare recovery rates across different makes and models for the representative refrigerant. EPA requests comment on whether the information gained through measuring recovery rates for each refrigerant justifies retaining testing with each refrigerant.

EPA would include representative refrigerants in the equipment testing program by amending Appendix B, the test protocol based on ARI 740–1993. If EPA completes the rulemaking adopting the latest version of ARI 740, ARI 740–1995, before this rule is finalized, EPA would amend that protocol rather than the protocol based on ARI 740–1993. Since the use of representative refrigerants amounts to a relaxation of testing requirements, EPA does not anticipate any problems from adopting this approach only shortly after adopting an earlier set of amendments to the testing requirements.

d. Additional Refrigerants. Industry experts have suggested that a few additional refrigerants could be usefully added to Table 3. These include R124, R125, R403A, R405A, R409B, R410B, and R413B. R124, R125, and R410B are ASHRAE-recognized refrigerants that are included in ARI Standard 700. In addition, R124 and R410B have been determined to be "acceptable" for several end-uses under the SNAP program, and R125 is a component of several refrigerant blends that have been determined to be "acceptable." Thus, it appears appropriate to include these in the equipment certification program. Although R403A and R413A have not been submitted for review under SNAP and are not used in the U.S., they are in use overseas. Industry experts believe that certification for these refrigerants could benefit manufacturers who intend to export refrigerant recovery/recycling equipment to Europe and elsewhere. EPA believes that the same logic may apply to R405A, although it has been found to be "unacceptable" in the U.S. under SNAP due to its high PFC content. R409B does not yet appear in ARI Standard 700, but R409A, whose composition differs from that of R409B by less than five percent, does. Thus, it also seems reasonable to accommodate this fluid in the equipment certification program. EPA requests comment on these possible additions to the equipment certification program.

REFRIGERANTS RECOMMENDED FOR ADDITION TO TABLE 3

Refrigerant	Group No.	PSIA at 104 °F	Bubble point, °F	Critical point, °F
R-124	II	86.0	10.3	252.4
R-413A	III	167.2	−31.0	198.5
R-405A	IV	177.3	−25.2	223.0
R-409B	IV	186.6	−31.4	221.0
R-403A	IV	244.5	−58.0	199.9
R-125	V	290.9	−54.7	151.3
R-410B	V	350.3	−60.3	159.9

EPA is also requesting comment on how R124 would be integrated into Table 3. The working pressure of R-124 differs sufficiently from R-114 that some equipment may not operate correctly with both fluids. For this reason, industry experts recommend that R124 be listed as an additional refrigerant for group II, subject to the following guidelines:

(a) Equipment that is certified for use in group I may also be certified for group II by testing with R-124. The test for R-114 may be waived as the equipment would be shown to operate correctly for both higher and lower pressure fluids.

(b) Equipment that is certified for use in group III may also be certified for group II by testing with R-114. The test for R-124 may be waived as the equipment would be shown to operate correctly for both higher and lower pressure fluids.

(c) Equipment that is not certified in either group I or group III must be tested using both R-114 and R-124 in order to obtain certification for group II.

(d) Equipment that is not certified in either group I or group III may be certified for a single refrigerant from group II through successful testing with the appropriate refrigerant. EPA requests comment on this approach.

e. Materials Compatibility. Although EPA's preliminary information indicates that recovery and recycling equipment designed for use with CFCs and HCFCs can be used with HFCs and PFCs, some industry experts have raised concerns that lubricants, elastomers, filter driers, and/or motor materials used in recovery and recycling equipment may not be compatible with the full range of halocarbon (CFC, HCFC, HFC, and PFC) refrigerants coming into use. Use of incompatible lubricants may lead to compressor wear and ultimately to compressor failure; use of incompatible filter driers may lead to declining performance in refrigerant blends; use of incompatible elastomers may lead to the failure of seals and subsequently to refrigerant leakage from the equipment; and use of incompatible motor materials may lead to motor failure.

Some industry representatives expressed the concern that many models of recycling and recovery equipment have been built and sold with mineral oil, which is not compatible with HFCs. EPA believes that this concern may be addressed by informing equipment manufacturers and users of the need to replace the mineral oil with ester oil if the equipment is used with HFCs, and possibly by requiring equipment manufacturers to use ester lubricants in equipment certified for use with HFCs. EPA understands that ester lubricants work well with all halocarbon refrigerants, and that changing out the oil in recycling and recovery equipment is usually a simple and routine procedure. HCFCs, which dissolve easily into ester oil, may thin it out, necessitating the use of higher viscosity oils, but recycling and recovery equipment manufacturers may address this problem simply by using (or specifying use of) a higher viscosity lubricant. EPA requests comment on whether sufficient mechanisms exist within the industry to ensure that the need and method for changing out lubricants is transmitted to manufacturers and users of recycling and recovery equipment, and whether EPA should require that equipment certified for use with HFCs be sold with ester lubricants.

In addition, industry sources expressed the concern that filter driers, particularly those containing activated carbon, may react undesirably to certain refrigerant blends. Undesirable reactions might include the selective uptake of refrigerant components, changing the composition of the blend, or extreme heating when a filter drier containing activated carbon is used with blends containing hydrocarbon refrigerants. EPA understands that some types of filter driers absorb some blend components more than others, but that this absorption is usually not sufficiently pronounced to significantly change the performance of the blend. EPA further understands that some heating is inevitable when activated carbon is used, but that this heating may not be very great, and that it is counteracted by the refrigerant's tendency to carry heat away from the drier. EPA requests comment on these issues. If some types of filter driers are incompatible with some types of blends, EPA requests comment on whether the Agency should require the use of other types of filter driers that are compatible with all refrigerants, or whether the Agency should require equipment manufacturers to demonstrate, through testing, that the filter driers used in their equipment are compatible with all of the refrigerants for which the equipment is to be certified.

Industry experts also expressed the concern that compressor and motor materials may not be compatible with new refrigerant and lubricant combinations. EPA understands that most recycling and recovery compressors and motors that are intended for use with high-pressure refrigerants are designed to work with R502 and mineral oil. Because the combination of R22 (a component of R502) and mineral oil is a relatively aggressive one (i.e., is likely to chemically attack compressor components), EPA believes that compressors and motors that are designed to handle this combination are likely to tolerate other refrigerant/lubricant combinations, such as HFCs and ester oils. However, EPA requests comment on this issue. EPA also requests comment on whether compressors and motors that are designed to handle refrigerant/lubricant combinations other than R502 and mineral oil (e.g., R11 and mineral oil) may pose compatibility concerns.

Finally, some industry sources stated that the elastomers used in O-rings and other types of seals may not be compatible with all types of refrigerants and lubricants. Some of the potential effects of incompatibility include the swelling of O-rings, which would make it difficult to make and break connections without leakage, and the high-temperature hardening or "compression set" of shaft seals on open-drive compressors, which would lead to failure of the seal. EPA understands that no single material is likely to work equally well with all combinations of refrigerants and lubricants, and that similar materials (e.g., two types of neoprene) may not be equally compatible with the same refrigerant/lubricant combinations. Thus, rather than specifying the use of any single material or set of materials, the Agency is considering requiring manufacturers of recovery and recycling equipment to use materials that have been shown to be compatible with the refrigerants for which the equipment is to be rated or certified. The method for demonstrating compatibility might be sealed tube testing under the conditions of *ASHRAE 97* or some other standard; manufacturers could use the results of industry-wide testing (e.g., MCLR/ARTI testing) if such testing had been performed for the materials, refrigerants, and lubricants of concern. Another possible means of addressing compatibility concerns would be to require manufacturers to test recovery and recycling equipment with all the major refrigerant groups (CFCs, HCFCs, and HFCs and their associated lubricants); but the duration of equipment testing may not be sufficient to reveal compatibility problems, raising the question of whether the additional testing would be useful or justified. EPA requests comment on the elastomer compatibility issue and on the above approaches for addressing it.

f. Fractionation. For a number of reasons, some industry experts have expressed concern that recycling and

recovery equipment, and to some extent, the process of recovery itself, may change the composition of refrigerant blends, affecting their performance. Ways in which recycling and recovery equipment might conceivably change the composition of blends include the selective absorption of certain components by filter driers (discussed above), selective removal of components with higher solubility in oil through oil separation, selective release of certain components during noncondensables purging, and possibly selective diffusion of certain components (those with lower molecular weights) through hoses.

EPA is aware of two studies that have been performed to ascertain how recovery and recycling may affect the composition of blends [24]. One study, performed by ICI Klea, modeled blend behavior during recovery and recycling based on the thermophysical properties of the refrigerants. The other study, performed by Robinair, examined how blend composition changed during and after repeated recycling using actual recycling equipment. Both studies showed recycling had little impact on blend composition, if the complete charge was removed from the system and recharged back into it at the conclusion of service. However, because different models of recovery and recycling equipment may have different impacts on blend composition, and because few models were actually tested in the studies, EPA is requesting comment on whether the certification program for recycling and recovery equipment should be expanded to test equipment's tendency to change blend composition.

g. Flammability. Some refrigerants that have entered the market over the past few years, such as R406A, may be flammable under some conditions (e.g., after fractionation). EPA requests comment on whether the equipment certification program should test whether equipment that is to be certified for "flammable" refrigerants may be used with them safely, and if so, how "flammable" refrigerants should be defined for purposes of equipment testing. ARI is currently considering certifying equipment for use with refrigerants classified under ASHRAE Standard 34 as "lower flammability" (Class 2); no "higher flammability" (Class 3) refrigerants are included in Table 3. EPA requests comment on whether the recovery and recycling process could lead to refrigerant ignition for the Class 2 refrigerants in Table 3. Could these refrigerants (or a subset of them) be ignited by high motor temperatures or by sparking of switches or other equipment components during recovery and recycling? If so, what kinds of tests would be appropriate to determine whether a model of recovery and recycling equipment could be used with these refrigerants safely? Should the ASHRAE 34 classification system be used for purposes of determining flammability for recovery and recycling equipment certification, or would some other system (e.g., one based on auto-ignition temperature) be more appropriate?

If equipment's ability to safely process flammable refrigerants should be tested, EPA requests comment on how representative "flammable" refrigerants might be chosen. One possible approach would be to establish a separate category for "flammable" refrigerants in Table 3, and to test the most flammable among them (using whatever criterion for flammability is ultimately chosen) with the recovery and recycling equipment.

2. Certification of Recovery and Recycling Equipment Intended for Use With Small Appliances

Recovery equipment intended for use with small appliances containing CFCs or HCFCs must currently be tested by an EPA-approved testing organization to verify that it meets at least one of two sets of standards. The equipment must either (1) recover 90% of the refrigerant in the small appliance when the compressor is operating and 80% of the refrigerant in the small appliance when the compressor is not operating, when tested according to Appendix C, or (2) be able to pull a four-inch vacuum when tested according to Appendix B. Equipment manufactured before November 15, 1993, is grandfathered if it can recover at least 80% of the refrigerant in the small appliance whether or not the compressor is operating. EPA is proposing to extend these requirements to recovery equipment that is intended for use with small appliances containing HFCs or PFCs.

Appendix C currently requires that recovery equipment be tested using CFC-12. EPA requests comment on whether appendix C should be amended to require testing with substitute refrigerants in addition to or in place of CFC-12. The substitute refrigerant(s) chosen would be one used in small appliances. As discussed above, EPA is proposing to amend Appendix B to permit testing of equipment with a single representative refrigerant from each saturation pressure and moisture affinity category, and a similar approach may be appropriate for Appendix C.

One factor in addition to saturation pressure that has an impact on recovery efficiencies from small appliances is the miscibility of the refrigerant in the system lubricant. This is especially important in small appliances because there is often as much lubricant in a small appliance as there is refrigerant, and a large percentage of the refrigerant may therefore remain entrained in the lubricant even if the system pressure is relatively low. EPA requests comment on whether its certification requirements for recovery equipment used with small appliances should be amended to account for differences in the miscibilities of CFC-12 and the HFCs in their associated lubricants.

3. Approval of Equipment Testing Organizations To Test Recovery Equipment With HFC and PFC Refrigerants

EPA has approved two equipment testing organizations, the Air Conditioning and Refrigeration Institute and Underwriters Laboratories, to certify equipment under the current standards at § 82.158(b) and Appendix B. EPA anticipates that both organizations will apply to certify equipment under the standards based on ARI 740–95 when these are promulgated in the near future. EPA is proposing to require that approved equipment testing organizations would also have to apply to EPA to become approved to certify equipment under the standards described above, once these are promulgated. However, these organizations would not need to resubmit the information on their test facilities, equipment testing expertise, long-term performance verification programs, knowledge of the standards, and objectivity that they submitted to become approved to certify under § 82.158(b) and Appendix B, or under the new standards based on ARI 740–95. Instead, they would have to submit information only in those areas where their certification programs under the standards described above differed from their previously approved programs. Because the standards described above do not require any testing equipment that differs from that required for the standards based on ARI 740–95, EPA expects submissions to focus on the organizations' knowledge of how the new standards differ from the old. EPA

[24] Kenneth W. Manz, Robinair Division, SPX Corporation, "Recycling Alternate Refrigerants R-404a, R–410a, and R507," and R.W. Yost, ICI Klea, "Practical Aspects of Zeotrope Fractionation in Recovery and Recycling," both presented at the 1996 ASHRAE Winter Meeting, Atlanta, Georgia, February 19, 1996. Copies of the presentations are available for inspection in the public docket for this rulemaking. A yet-to-be-published study performed by EPA's Office of Research and Development yielded similar results.

believes that a one- to two-page letter would suffice.

4. Use of Existing CFC/HCFC Recovery Equipment With HFC and PFC Refrigerants

EPA is proposing to permit technicians to use equipment that is certified for use with at least two CFCs and HCFCs to recover HFCs and PFCs of similar saturation pressure. Based on discussions with equipment manufacturers and testing organizations, EPA believes that most recovery and recycling equipment designed for use with multiple CFC or HCFC refrigerants (e.g., R12, R22, R500, and R502) can be adapted for use with HFC and PFC refrigerants with similar saturation pressures, usually by changing the lubricant to POE lubricant. This equipment would have to meet the standards presented in Table 1 and Table 2. In addition, if it was manufactured on or after November 15, 1993, it would have to have been certified by an EPA-approved third-party certification program (ARI or UL) for at least two refrigerants with saturation pressures similar to the saturation pressure of the refrigerant(s) with which the equipment is to be used. EPA requests comment on this proposal. EPA specifically requests comment on whether and how the Agency should integrate into its grandfathering policy the considerations enumerated above in the discussion of certification of new equipment, including materials compatibility, flammability, and blend fractionation. EPA also requests comment on whether it should permit equipment that was originally designed for use with a single refrigerant to be used with multiple refrigerants. EPA is concerned that equipment designed for use with a single refrigerant may not be equipped with a clearing mechanism to prevent cross-contamination when it is used with a different refrigerant.

D. Technician Certification

Any person doing work that "could reasonably be expected" to release refrigerant from CFC and HCFC appliances is required to become certified. In addition, sales of CFCs and HCFCs are restricted to certified technicians. Technicians become certified by passing a test drawn from a question bank developed jointly by EPA and industry educational organizations. The test includes questions on the role of CFCs and HCFCs in ozone depletion, the requirements of the refrigerant recycling rule, and proper techniques for recycling and conserving refrigerant. EPA makes the question bank available to certifying organizations that demonstrate that they can properly generate, track, and grade tests, issue certificates, and keep records.

EPA is proposing to extend the certification requirements for technicians who work with CFC and HCFC refrigerants to technicians who work with HFCs and PFCs. Technicians who have been certified to work with CFCs and HCFCs would not have to be retested to work with HFCs or PFCs, but new technicians entering the field would have to pass the test to work with CFCs, HCFCs, HFCs, and/or PFCs.

EPA believes that requiring certification of technicians who work with HFCs and PFCs is necessary to implement and enforce both section 608(c) and section 608(a)(2) effectively. As discussed above, section 608(c) prohibits the knowing release of substitute refrigerants during the service, maintenance, repair or disposal of appliances, except for de minimis releases associated with "good faith attempts to recapture and recycle or safely dispose" of the refrigerants. It is reasonable to interpret "good faith attempts to recapture and recycle or safely dispose" as requiring that service, maintenance, repair, or disposal that could release substitute refrigerant be performed by a certified technician. This interpretation is also consistent with EPA's interpretation of the same statutory language as it applies to ozone-depleting refrigerants. For the reasons discussed below, persons who are not certified technicians are far more likely to intentionally or inadvertently release refrigerant contrary to the venting prohibition. In addition, consistent application of technician certification requirements and a sales restriction to class I and II refrigerants and their substitutes is necessary to implement the section 608(a) directive to reduce releases and maximize recapture and recycling of class I and II refrigerants. Technician certification requirements for work with substitute refrigerants would directly reduce some releases of class I and II refrigerants. It would also protect against refrigerant mixture, which otherwise is likely to cause more substantial releases of class I and II refrigerants.

EPA believes that having a certified technician perform the work on an appliance is an important component of good faith recapture and recycling. Certified technicians are much more likely to understand how and why to recover and recycle refrigerants and to have the means to do so. First, technician certification ensures that technicians are trained in refrigerant recovery requirements and techniques. Until recently, technicians in many sectors were not recycling refrigerants at all, and technicians who did recycle were not necessarily minimizing emissions as much as possible. Thus, many technicians lacked expertise that they would need to comply with the recycling and recovery provisions and hence needed training to acquire that expertise. However, while some vocational schools and training programs addressed refrigerant recovery, participation in such programs was low. Given this situation, EPA was concerned that without a testing or training requirement, recovery and recycling often would not occur at all or would occur improperly, leading not only to refrigerant release, but to refrigerant contamination, safety concerns, productivity losses, and equipment damage. EPA discussed at length the benefits of training and certification in the final rule published on May 14, 1993 (58 FR 28691–28694) and in the Regulatory Impact Analysis performed for that rule (6–34 through 6–39). The importance of a certification requirement was confirmed when participation in training programs rose in response to reports that certification would be required, and then fell sharply in response to reports that it would not be required. This indicated that service practice requirements were not, by themselves, likely to drive technicians to acquire training in how to comply with such requirements.

Second, in addition to possessing training in refrigerant recovery, certified individuals are more likely than uncertified individuals to have access to recovery equipment. This is because uncertified individuals, particularly those who work only on their own appliances (e.g., on their own car air conditioners), are unlikely to find it cost-effective to purchase their own recovery equipment. Thus, they are able neither to recover the refrigerant from the appliance before it is serviced nor to recover the "heel" of residual refrigerant from the refrigerant container before it is disposed of. Both the refrigerant in the appliance and that in the refrigerant container are therefore released. (The "heel" is ultimately released to the atmosphere when the container is crushed or corroded.)

EPA anticipates that for the next decade, the majority of technicians subject to section 608 requirements will continue to work with and purchase CFCs and HCFCs and will therefore be certified under the current program.[25]

[25] EPA does not anticipate that many homeowners or other consumers would elect to perform their own repairs on household refrigerators and air conditioners. However, based

However, EPA is concerned that a significant minority could emerge that would work primarily with HFCs, particularly if a lack of certification requirements for work with substitutes created an incentive for doing so. In this case, large numbers of technicians who worked with HFCs might not receive proper training in refrigerant recycling or recovery, leading to release of HFCs. For example, an uncertified person could vent refrigerant before repairing an appliance containing an HFC refrigerant, thereby violating the venting prohibition. Thus, requiring certification for technicians who work with substitute refrigerants is necessary to implement the section 608(c) prohibition.

Requiring certification for technicians who work with substitute refrigerants is also necessary to comply with the section 608(a) requirements for EPA to promulgate regulations that reduce emissions of class I and II refrigerants to the lowest achievable levels and maximize recapture and recycling of such substances. Failure to require technician certification is likely to lead to increased emissions and reduced recycling of ozone-depleting substances under several scenarios. As discussed above, the lack of a technician certification requirement would encourage the emergence of a class of uncertified technicians working primarily with HFCs. However, once such persons were working as professional refrigeration and cooling technicians, there would be strong economic incentives for them to overlook the restrictions on their ability to work with ozone-depleting refrigerants as well. In fact, because of the absence of a certification requirement and their consequent lack of adequate training, they might be unaware of the existence or scope of the restrictions. Thus, they might fail to recycle class I and class II refrigerants properly, and might not recycle them at all. Uncertified technicians would also be likely to perform retrofits using HFCs, which they would be legally entitled to purchase. However, the appliance that they would be retrofitting would contain ozone-depleting substances. Such uncertified technicians would be likely to vent the ozone-depleting substance prior to retrofitting, given their probable lack of training and the fact that return of the substance to a reclaimer would reveal that they were handling it illegally.

Failure to require technician certification to work with HFCs is also likely to encourage the inappropriate mixture of HFC and ozone-depleting refrigerants. In this scenario, refrigerant mixture could occur because uncertified technicians might wish to service CFC or HCFC equipment, but would have access only to HFCs because sales of CFCs and HCFCs are limited to certified technicians. Lacking training, these technicians would probably have a poor understanding of the consequences of mixing refrigerants, and would therefore be more likely than certified technicians to add HFCs to CFC or HCFC systems.

The consequences of such inappropriate mixture include significant losses in performance and energy efficiency in equipment serviced with mixed refrigerants, damage to equipment, the lost value of the mixed refrigerant (which is at best difficult, and often impossible, to separate), and costs for destroying mixed refrigerants. Refrigerant mixture also leads both directly and indirectly to refrigerant release. Mixture leads directly to release because mixtures of certain refrigerants, such as R12 and R134a, have higher pressures than either component alone. Thus, pressure-sensitive components such as air purge devices on recycling machines and relief devices on appliances may be activated by these mixtures, venting the refrigerant to the atmosphere. Purge devices in particular are often set to open when the pressure of the recovery cylinder's contents rises more than 5–10 psi above the expected saturation pressure for the refrigerant; this margin is exceeded by R12/R134a mixtures containing more than ten percent of the contaminating refrigerant.[26] Refrigerant mixture also reduces recycling and leads indirectly to release. First, mixed refrigerants not only lose their value but cost money to reclaim or destroy, encouraging venting. Second, the direct releases and equipment breakdowns caused by contamination lead to increased equipment servicing, which itself leads to unavoidable releases of refrigerant. Thus, whether the refrigerant were vented or mixed, failure to impose a certification requirement on persons working with HFCs would increase the probability of both HFCs and ozone-depleting refrigerants being emitted to the atmosphere.

Evidence collected by EPA indicates that without certification requirements for technicians who work with substitute refrigerants, the emergence of a class of uncertified individuals who are liable to mix refrigerants is likely. Advertisements for one alternative have highlighted the fact that technicians need not be certified to purchase it. These advertisements have also implied, incorrectly, that the substitute may be mixed with R12 without consequence. These advertisements indicate that there is a market for alternatives that can be purchased without certification and that can be used to service CFC and HCFC equipment. At the same time, the advertisements indicate that some parts of the market are transmitting incorrect information that is likely to lead to the inappropriate mixture of the alternatives with CFCs and HCFCs. EPA believes that technicians who have not received training in the need to avoid mixing refrigerants are far more likely to fall prey to such false advertising than certified technicians, who have received training.

Experience from the sales restriction on small containers, which was mandated under section 609 of the Act before the sales restriction under 608 became effective, also strongly supports EPA's concern that inconsistent imposition of technician certification requirements or sales restrictions will lead to refrigerant mixture. Some industry representatives have reported that when sales of small containers of R12 were restricted to only certified technicians, containers of R22, which could still be sold to the general public, began appearing in stores catering to the automotive DIY consumer. This implies that R22 was being used to service R12 equipment. Statistics collected by the Mobile Air Conditioning Society (MACs) indicate that approximately three percent of motor vehicle air conditioners now being serviced are contaminated by mixed refrigerants.

In addition to concerns related to refrigerant mixture and release, industry representatives at the March 10, 1995 meeting cited the need for fairness and consistency in applying rule provisions to all potentially environmentally damaging refrigerants. The two contractors present voiced the opinion that the imposition of less stringent recovery or certification requirements for HFCs could undermine compliance with recycling requirements for both HFCs and ozone-depleting refrigerants by confusing technicians and encouraging a "cavalier" attitude toward refrigerant recovery. Other industry representatives noted that due to similar concerns, their organizations

on the past "Do-It-Yourself" (DIY) market for MVAC refrigerant, EPA expects that many car owners would elect to perform their own repairs on MVACs, if they could obtain refrigerant to do so. Thus, as discussed below, any sales restriction on HFCs would affect both uncertified 608 technicians and the MVACs DIY population.

[26] Based on pressure-temperature graphs provided to Debbie Ottinger of the Stratospheric Protection Division, EPA, by Dave Bateman of the DuPont Company, April 29, 1996.

already required certification for technicians working with HFCs.

For these reasons, EPA currently believes that it is necessary to impose a technician certification requirement in order to implement sections 608(a) and 608(c), and that EPA has authority under these sections to promulgate a technician certification requirement. EPA requests comment on the likelihood that failure to impose a technician certification requirement on persons working with HFCs and PFCs would lead to release and mixture of both ozone-depleting refrigerants and substitutes.

As noted above, EPA is not proposing to require that technicians who have been certified to work with CFCs and HCFCs undertake additional training and testing to work with HFCs and PFCs. The techniques and requirements for recycling HFCs and PFCs are very similar to those for CFCs and HCFCs; where there are differences (such as compatibility with different lubricants), these differences have been highlighted by the certification program for CFCs and HCFCs. In addition, based on statements made by industry and educational representatives at the March 10, 1995 industry meeting, EPA believes that more recent information on proper handling of HFCs and PFCs will be disseminated to certified technicians through refrigerant and equipment manufacturers, industry associations, and the trade press. Thus, the benefits of any recertification requirement would probably be small, and would likely be outweighed by the costs of such recertification. Instead, as part of its regular update of the technician certification question bank, EPA is planning to include more questions on handling HFC and PFC refrigerants and on the potential impacts of global warming. EPA requests comment on this approach for already certified technicians.

E. Sales Restriction

Under the current regulations promulgated under sections 608 and 609, only certified technicians may purchase CFC and HCFC refrigerants. EPA is proposing to extend this sales restriction to HFC and PFC refrigerants. The sales restriction would apply to HFC and PFC refrigerants sold in all sizes of containers for use in all types of appliances, including motor vehicle air conditioners. EPA considers the sales restriction to be necessary to enforce the technician certification requirements of both the refrigerant recycling regulations promulgated under section 608 and those promulgated under section 609[27] and ultimately, to implement the requirements of sections 608(a) and 608(c)(2).

In the absence of a sales restriction, the size and mobility of the population that is subject to the technician certification requirements would make compliance monitoring extremely difficult. Approximately 1.4 million technicians are employed in the stationary and mobile air-conditioning and refrigeration sectors. Many of these technicians, particularly those in the stationary sector, may work out of vans rather than having any fixed place of business. The sales restriction ensures that these technicians are certified by placing monitors on their supply lines. Because inspections can be performed at a relatively small number of centralized retailer and wholesaler locations, the sales restriction itself is relatively easy to enforce.

Discussions with industry representatives indicate that the sales restriction on CFCs and HCFCs was important in encouraging large numbers of technicians to obtain certification. The largest certification organizations report that the numbers of people interested in obtaining certification rose sharply as the November, 1994 effective date of the sales restriction approached. Moreover, the contractors who staff EPA's Stratospheric Ozone Hotline state that during the summer, they receive between 20 and 40 telephone calls per day from individuals who indicate that they are seeking technician certification specifically because they want to be able to purchase refrigerant. This is strong evidence that the sales restriction is critical for ensuring that technicians are certified. As discussed above, EPA believes that technician certification is necessary to meet the requirements of sections 608(a) and (c).

While there are methods of discouraging refrigerant mixing and release other than technician certification combined with a sales restriction, none of them appear to be sufficiently effective to substitute for a sales restriction. One alternative method for preventing mixture of ozone-depleting and HFC refrigerants might be to require that both HFC containers and HFC appliances be equipped with unique fittings that would prevent them from being connected to CFC or HCFC containers and appliances. Under the SNAP program, HFC-134a containers sold for use in the automotive market and MVACs that use HFC-134a are required to be equipped with such fittings.

However, while such fittings may be effective in reducing mixture in some sectors, EPA believes that they would be impractical in other sectors and would not necessarily reduce the venting of the CFC or HCFC to be replaced. Only motor vehicle air conditioners (MVACs) containing substitutes currently possess the specialized fittings; other types of air-conditioning and refrigeration equipment containing substitutes, including household, commercial, and industrial refrigerators and air-conditioners, do not. Introducing a unique fittings requirement to these stationary sectors would be impractical for several reasons.

The most fundamental reason is that the wide array of substitute refrigerants available for stationary equipment makes the development of a unique fitting for each one almost impossible. At least 25 refrigerants are currently being used in the stationary air-conditioning and refrigeration sectors, and more are being developed. Unique fittings are designed by choosing the diameter, turning direction, thread pitch (threads/inch) and shape of threads (normal vs. square, also known as Acme). However, fittings with the same diameter and turning direction can nearly always be connected using a wrench, regardless of thread pitch or shape. Therefore, practically speaking, the number of different fittings is limited to the double the number of different diameters. (Each diameter yields both a clockwise and a counterclockwise fitting.) The number of diameters is itself limited because fittings must differ by at least 0.063 inch in diameter to ensure they will not cross-connect, and the range of diameters is limited by valve core and surrounding space restrictions. (In the MVAC market to date, valve core and surrounding space restrictions have resulted in fittings ranging in diameter from 0.3 inches to 0.625 inches.) Thus, the number of unique fittings that can be developed is limited.

Moreover, even if unique fittings could be found for each of the refrigerants used in the stationary sectors, the logistics of implementing them would be formidable. To begin with, a massive program would be required to retrofit existing stationary appliances and recovery equipment with all of the unique fittings. A great deal of equipment in the stationary

[27] EPA published a final rule under section 609 on December 30, 1997 that requires technicians servicing MVACs containing substitute refrigerants to become certified. However, while section 609 restricts the sale of small containers of class I or class II refrigerants, it does not restrict the sale of HFC or PFC refrigerants. Thus, any sales restriction on these refrigerants must be promulgated under the authority of section 608.

sector has already been retrofitted to use substitute refrigerants; retrofits would presumably be required not only for all this equipment, but for all of the equipment that uses one of the four traditional high-pressure refrigerants (R12, R22, R502, and R500). Otherwise, technicians who became accustomed to relying on fittings to distinguish among refrigerants might cross-contaminate these four.

In addition, the large number of fittings in the stationary sectors would make their use as a control on contamination unwieldy. A single piece of recovery equipment intended for use with high-pressure refrigerants might conceivably require over 20 fittings. Given the similar exterior appearances of the fittings, finding the one that matched a particular appliance would be difficult.

More important, this matching of fittings with appliances is not necessary if the recovery equipment has been properly cleared before use with a new refrigerant. Technicians who work on stationary air-conditioning and refrigeration equipment have long worked with multiple refrigerants, and recovery equipment for stationary appliances has been designed for use with multiple refrigerants. Instead of engineering controls, the stationary sectors have relied on training in refrigerant charging and recovery to prevent cross-contamination. Adopting unique fittings in these sectors would represent a fundamental change of approach that would not only be unwieldy but redundant.

Leaving aside the difficulty of introducing unique fittings to the sectors that do not have them, these fittings may not be sufficient to prevent cross-contamination in those sectors that do have them, such as the automotive sector. Containers of HFCs that are intended for the stationary sector and that therefore possess generic fittings may find their way into the automotive air conditioning sector; industry representatives have stated that this is already occurring to some extent. In addition, equipment is available (e.g., old manifolds with multiple hoses, side can tappers) that permits technicians or DIYers to defeat the specialized fittings when the container is equipped with them. Again, industry representatives indicate that this type of cross contamination is already happening, and the statistics on contaminated refrigerant from the automotive industry support them.

Finally, there is no reason to believe that specialized fittings would prevent an uncertified person from venting the original CFC or HCFC before attempting to recharge a system with a substitute, because this venting may well take place before the person discovers that he or she cannot recharge the equipment with the purchased substitute. As noted above, such venting prevents the requirements of 608(c) and 608(a) from being met.

One option that would address the first of these three concerns, but not the last two, is a more limited sales restriction. This would restrict to certified technicians the sale of containers of substitute refrigerants that lack specialized fittings, but would permit the sale of containers of substitute refrigerants that contain such fittings to the general public. In this manner, DIY consumers and uncertified technicians would have unlimited access only to containers with fittings, making mixture more difficult. However, EPA is concerned that this approach would still permit mixture through defeat of the fittings and would fail to address venting of the refrigerant previously in the system. EPA requests comment on the potential effectiveness and enforceability of such a restriction.

F. Safe Disposal of Small Appliances, MVACs, and MVAC-like Appliances

1. Coverage of HFCs and PFCs

EPA is proposing to adopt the same approach to the disposal of small appliances, MVACs and MVAC-like appliances charged with HFCs and PFCs that it has adopted for these types of equipment charged with CFCs and HCFCs. In the May 14, 1993 rule, EPA established specific requirements for the safe disposal of appliances that enter the waste stream with the charge intact, including small appliances, MVACs, and MVAC-like appliances. Persons who take the final step in the disposal process of small appliances, MVACs, and MVAC-like appliances that contain CFCs or HCFCs must either recover any remaining refrigerant in the appliance or verify that the refrigerant has previously been recovered from the appliance or shipment of appliances. If they verify that the refrigerant has been recovered previously, they must retain a signed statement attesting to this. Recovery equipment used to remove the refrigerant must meet certain standards but does not need to be certified by a third party. Similarly, persons recovering the refrigerant need not be certified.

In addition to the specific safe disposal requirements, refrigerant recovered from disposed small appliances, MVACs, and MVAC-like appliances is subject to the reclamation requirements at § 82.156(g) and (h), which safeguard the purity of refrigerant flowing into the stationary equipment service sectors, and to the reclamation requirement in Appendix A to subpart B, which safeguards the purity of refrigerant flowing into the MVAC and MVAC-like appliance service sectors.

In recent amendments to the subpart B MVAC recycling regulation, EPA explicitly permitted refrigerant recovered from MVACs and MVAC-like appliances at disposal facilities to be reused in MVACs and MVAC-like appliances without being reclaimed as long as certain other requirements were met. These requirements, which apply to HFCs (in MVACs) in addition to CFCs and HCFCs, include the following: Only 609-certified technicians or disposal facility owners or operators may recover the refrigerant; the refrigerant recovered from the MVACs and MVAC-like appliances may not be mixed with refrigerant from any other sources; only section 609-certified recovery equipment may be used to recover the refrigerant; the refrigerant may be reused only in an MVAC or MVAC-like appliance; the refrigerant may be sold only to section 609-certified technicians; and section 609-certified technicians must recycle the refrigerant in section 609-certified recycling equipment before charging it into the MVAC or MVAC-like appliance. As discussed in the amendments to the 609 rule, these restrictions are intended to ensure that the exemption from the reclamation requirement for refrigerant removed from and charged into MVACs and MVAC-like appliances does not compromise the purity of refrigerant flowing into the MVAC and MVAC-like appliance service sectors.

Most of the restrictions (except for the sales restriction and the restrictions as they would apply to MVAC-like appliances) are authorized by section 609, which requires persons servicing motor vehicles for consideration to properly use approved refrigerant recycling equipment and to be properly trained and certified. The statutory definitions of "properly use," "approved equipment" and "properly trained and certified" all reference SAE standards that include purity requirements for refrigerant used to service MVACs.

These requirements for reuse of refrigerant from MVACs and MVAC-like appliances at disposal facilities apply *in addition* to the basic safe disposal requirements of the subpart F regulations under section 608, particularly the requirement that disposers recover the refrigerant (or ensure that the refrigerant is recovered by others) from the MVAC or MVAC-

like appliance before the final step in the disposal process. Disposal facilities must also continue to observe the requirement that they retain signed statements attesting to the removal of the refrigerant from the MVAC or MVAC-like appliance, if applicable.

When refrigerant is recovered from disposed small appliances or when it is recovered from disposed MVACs or MVAC-like appliances and not reused in MVACs and MVAC-like appliances, only the safe disposal and reclamation requirements set forth in the subpart F regulations apply. In today's notice, EPA is proposing to extend these requirements to small appliances, MVACs, and MVAC-like appliances that contain HFCs. These requirements are necessary to implement the 608(c)(2) prohibition on release of substitute refrigerants by defining good faith attempts to recapture and recycle or safely dispose of the refrigerant in the context of the disposal of small appliances, MVACs, and MVAC-like appliances. EPA believes that the rationale for establishing the safe disposal requirements for small appliances, MVACs, and MVAC-like appliances that contain CFCs and HCFCs also applies to these appliances when they contain substitutes for CFCs and HCFCs. As discussed at length in the May 14, 1993 rule, these requirements are designed to ensure that refrigerant is recovered before the appliance is finally disposed of while granting as much flexibility as possible to the disposal facility regarding the manner of its recovery (58 FR 28702). EPA considered such flexibility important for the disposal sector, which is highly diverse and decentralized. Because the disposal infrastructure for appliances charged with HFCs and PFCs is identical to that for appliances charged with CFCs and HCFCs, EPA believes that these considerations apply equally to appliances containing HFCs and PFCs. In addition, applying a consistent set of disposal requirements to appliances containing CFCs, HCFCs, HFCs, and PFCs will reduce confusion and minimize emissions of all four types of refrigerant during the disposal process. Thus, the Agency believes that the regulations regarding the safe disposal of appliances charged with HFCs should be the same as those regarding the safe disposal of appliances charged with CFCs and HCFCs. EPA requests comment on this proposal.

2. Possible Clarifications

EPA is also requesting comment on two possible modifications that EPA is considering making to the safe disposal provisions to ensure that EPA's interpretation of the regulation is clear on its face. As stated in Applicability Determination number 59, the Agency interprets the safe disposal provisions to apply to "the entity which conducted the process where the refrigerant was released if not properly recovered."

Together, the possible changes to the regulations would clarify that paragraph 82.156(f) applies to persons who perform disposal-related activities where the refrigerant would be released if not properly recovered. One clarification would amend the definition of "opening" to include the disposal of appliances. The first sentence of the revised definition of "opening" would read, "Opening an appliance means any service, maintenance, repair, or disposal of an appliance that would release refrigerant from the appliance to the atmosphere unless the refrigerant were recovered previously from the appliance." The rest of the definition would remain unchanged.

The second clarification would add the phrase "persons who open the appliances in the course of disposing of them" to the introductory text of § 82.156(f). The revised text would read (in part), "persons who take the final step in the disposal process of small appliances, MVACs, or MVAC-like appliances (including but not limited to scrap recyclers, landfill operators, and persons who open the appliances in the course of disposing of them) must either: (1) Recover any remaining refrigerant from the appliance in accordance with paragraph (g) or (h) of this section, as applicable; or (2) Verify that the refrigerant has been evacuated from the appliance or shipment of appliances previously." The rest of § 82.156(f) would remain unchanged. EPA requests comment on these two possible changes.

G. Certification by Owners of Recycling or Recovery Equipment

EPA currently requires persons who maintain, service, repair, or dispose of appliances containing CFCs or HCFCs to submit a signed statement to the appropriate EPA Regional office stating that they possess recovery and recycling equipment and are complying with the applicable requirements of the rule. EPA is proposing to extend this provision to persons who maintain, service, repair, or dispose of appliances containing HFCs or PFCs. Persons who had already sent a signed statement to EPA for their work on appliances containing CFCs or HCFCs would not need to send a new statement. EPA anticipates, therefore, that only businesses coming into existence after the date of publication of the final rule would potentially be affected by the amended provision.

EPA believes that the rationale for requiring this report from persons who maintain, service, repair, or dispose of appliances containing HFCs or PFCs is the same as that for requiring it from persons who maintain, service, repair, or dispose of appliances containing CFCs or HCFCs. That is, the requirement would help ensure that persons who opened or disposed of appliances were making a good faith effort to recover and recycle the refrigerant and had the appropriate equipment available to comply with the section 608(c) venting prohibition. EPA would also use this information in conjunction with telephone or other business listings to target its efforts to enforce the venting prohibition. Finally, consistent application of the reporting requirement to businesses that handled appliances containing HFCs and PFCs as well as to businesses that handled appliances containing CFCs and HCFCs would reduce confusion and thereby minimize emissions of all four types of refrigerants.

H. Servicing Apertures

EPA prohibits the sale or distribution of CFC and HCFC appliances that are not equipped either with a process stub (in the case of small appliances) or with a servicing aperture (in the case of all other appliances) to facilitate refrigerant recovery. EPA is today proposing to extend this prohibition to the sale and distribution of appliances containing HFCs or PFCs. EPA believes that the rationale for requiring servicing apertures or process stubs on HFC and PFC appliances is the same as that for requiring these design features on CFC and HCFC appliances. Specifically, these features permit technicians to comply with the venting prohibition by making it much easier for them to attach recovery equipment to the refrigerant circuit and thereby recover the refrigerant properly. Thus, EPA is proposing to require these features in order to implement the venting prohibition.

I. Prohibition on Manufacture of One-Time Expansion Devices That Contain Other Than Exempted Refrigerants

In order to implement the venting prohibition as it applies to one-time expansion devices using refrigerants other than nitrogen or carbon dioxide (see discussion in section IV.A.1.b. above), EPA is proposing a provision that would prohibit their manufacture in or import into the U.S. EPA believes that a prohibition on manufacturing or importing the devices (which include

self-chilling cans) is simultaneously the least burdensome and the most effective, efficient, and equitable way of carrying out the venting prohibition as it applies to them. As discussed earlier in section II.A., EPA believes that section 608(c)(2) implicitly provides the Agency authority to promulgate regulations as necessary to implement and enforce the statutory prohibition, and section 301(a)(1)(a) further supplements that authority. As discussed below, EPA believes that a ban on manufacture and import of the devices is the only practical way to implement the prohibition on venting of section 608(c)(2) of the Act and hence is necessary to implement and enforce that prohibition.[28]

First, a prohibition on manufacturing or importing the devices would not be unreasonably burdensome. One-time expansion devices function only by venting; one-time expansion devices containing other than exempted refrigerants therefore have no legal use, given the self-effectuating venting prohibition of 608(c)(2). Thus, a prohibition on manufacture and import would not interfere with any lawful use of the device or can. At the same time, any burden on potential manufacturers of the can either would not exist, because perfect implementation of the venting prohibition would reduce demand for the cans to zero, or, to the extent that it existed, would exist solely as a result of illegal activity on the part of consumers. Thus, any burden placed on the manufacturer by a ban on manufacturing should be discounted. In contrast, as discussed further below, efforts to stop use of the can would place heavy burdens both on consumers and on EPA.

Second, prohibiting the manufacture or import of cans containing other than exempted refrigerants would be both more effective and more efficient than attempting to prevent the use of such cans by millions of potential consumers. EPA estimates that the total market for canned beverages in the U.S. is 100 billion units per year. Thus, if self-chilling cans captured even a small percentage of this market, very large numbers of cans could be used. For instance, if self-chilling cans captured just one percent of the canned beverage market, one billion self-chilling cans per year could be used, potentially violating the venting prohibition one billion times. Potential consumers of the can would include virtually the entire U.S. population of 265 million people. Without a ban on manufacture, the huge number of potential violators and violations would make the venting prohibition extremely difficult to enforce. A massive outreach campaign would be required to inform the public of the environmental and legal implications of using the cans, and such a campaign would still miss some fraction of the population. Of course, such a campaign would also be very expensive. At the same time, enforcement against consumers who either ignored or were ignorant of the campaign would be very difficult, due to the large numbers of potential consumers and the unpredictable and widespread nature of potential violations. In contrast, outreach to and enforcement against potential manufacturers of the can would only have to reach a few targets, interdicting the cans at the top of the distribution pyramid.

Third, a prohibition on manufacturing or importing cans containing other than exempted refrigerants would be more equitable than an enforcement campaign against consumers who might not recognize the environmental and legal implications of using such cans. While consumers of such cans would be expected to be aware that they were releasing gas to the atmosphere, it might not be reasonable to expect them to be aware that the gas being released contributed significantly to global warming or that its release was illegal, particularly since opening the can and releasing the gas would be the only possible use of a legally purchased product. As noted above, even a massive outreach campaign is likely to miss some fraction of consumers, and given the very large underlying population, even a small fraction would be sizable. However, it is both reasonable and standard practice to hold manufacturers responsible for knowledge of and compliance with the environmental and other laws and regulations applicable to their products.

Thus, a ban on manufacture and import of cans containing other than exempted refrigerants is the only practical way to implement the venting prohibition as it applies to them. Moreover, there are a number of precedents for prohibiting the manufacture, sale, and/or distribution of appliances, other equipment, and refrigerants under section 608 in order to reduce refrigerant emissions. Sections 82.154 (j) and (k) prohibit the sale or distribution of appliances unless they possess servicing apertures or process stubs, and § 82.154(c) prohibits the manufacture or import of recycling or recovery equipment that is not certified. Sections 82.154(g) and (h) prohibit the sale of used ozone-depleting refrigerants that have not been reclaimed (with minor exceptions), and § 82.154(m) prohibits the sale of ozone-depleting refrigerants to uncertified individuals (again with minor exceptions). Sales restrictions were more appropriate than manufacturing bans in the latter cases because (1) a manufacturing ban could not apply to used refrigerants, and (2) purchase and use of ozone-depleting refrigerants by some individuals, in this case certified technicians, is legal.

J. Recordkeeping Requirements

EPA currently requires reporting and recordkeeping from the following persons and entities:

a. Persons Who Sell or Distribute Refrigerant

Persons who sell or distribute any CFC or HCFC refrigerant must retain invoices that indicate the name of the purchaser, the date of sale, and the quantity of refrigerant purchased. These records help the Agency to track refrigerant use and to verify compliance with the venting prohibition (§ 82.166(a)).

b. Technicians

Certified technicians must keep a copy of their certificate at their place of business. This permits EPA inspectors to determine whether a technician has been certified, as required by the regulations (§ 82.166(l)).

Technicians servicing equipment containing 50 or more pounds of CFC or HCFC refrigerant must provide the owner or operator of the appliance with an invoice that indicates the amount of refrigerant added to the appliance. These records permit owners or operators of appliances containing 50 or more pounds of refrigerant to determine whether they need to take action to comply with the leak repair provisions (§ 82.166(j)).

c. Appliance Owners

Owners of appliances containing 50 or more pounds of CFC or HCFC refrigerant must keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added. These requirements ensure that owners can determine when they must take action under the leak repair requirements. In addition, equipment owners who decide not to repair leaks must develop and maintain a record of a plan that states that the equipment will be retired, replaced or retrofitted. The plan permits EPA

[28] EPA has also proposed to find that self-chilling cans using HFC–152a and HFC–134a are unaccepted under its SNAP program. If EPA promulgates a final rule including this finding, the manufacture of self-chilling cans using HFC–152a and HFC–134a will be prohibited unde SNAP.

inspectors to ensure that equipment owners intend to take action to reduce emissions and actually take such action (§ 82.166(k)).

d. Owners of Industrial Process Refrigeration

Owners of industrial process refrigeration equipment who wish to receive an extension or exclusion under the leak repair provisions are subject to the following reporting and recordkeeping requirements.

i. Those persons wishing to extend leak repair compliance beyond the required 30 days must maintain and submit to EPA information identifying the facility, the leak rate, the method used to determine the leak rate and full charge, the date a leak rate greater than allowable was discovered, the location of the leaks, any repair work completed thus far and date completed, a plan to fix other outstanding leaks to achieve allowable leak rate, reasons why greater than 30 days is needed, and an estimate of when repair work will be completed. Any dates and results of static and dynamic tests must also be maintained and submitted to EPA (§ 82.166(n)).

ii. Those persons wishing to extend retrofit compliance beyond the required one year must maintain and submit to EPA information identifying the facility, the leak rate, the method used to determine the leak rate and full charge, the date a leak rate of greater than the allowable rate was discovered, the location of leaks, any repair work that has been completed thus far and date completed, a plan to complete the retrofit or replacement of the system, the reasons why more than one year is necessary, the date of notification to EPA, an estimate of when retrofit or replacement work will be completed, if time changes for original estimates occur, documentation of the reason why, and the date of notification to EPA regarding a change in the estimate of when the work will be completed (§ 82.166(o)).

iii. Those persons wishing to exclude purged refrigerants that are destroyed from the annual leak rate calculations must maintain records on-site to support the amount of refrigerant claimed sent for destruction. These records must include flow rate, quantity or concentration of the refrigerant in the vent stream, and periods of purge flow (§ 82.166(p)).

iv. Those persons wishing to calculate the full charge of an affected appliance by establishing a range based on the best available data, regarding the normal operating characteristics and conditions for the appliance, must maintain records on-site to support the methodology used in selecting or modifying the particular range (§ 82.166(q)).

These requirements allow EPA to determine whether or not extensions and exclusions requested under the leak repair provisions are warranted.

e. Refrigerant Reclaimers

Refrigerant reclaimers must certify to EPA that they will comply with the rule's requirements and must submit lists of the equipment that they use to clean and analyze refrigerants. This information enables EPA to verify reclaimers' compliance with refrigerant purity standards and refrigerant emissions limits. In addition, refrigerant reclaimers must maintain records of the names and addresses of persons sending them material for reclamation and the quantity of material sent to them for reclamation. This information must be maintained on a transactional basis. Within 30 days of the end of the calendar year, reclaimers must report to EPA the total quantity of material sent to them that year for reclamation, the mass of refrigerant reclaimed that year, and the mass of waste products generated that year. These requirements help the Agency to track refrigerant use and to ensure compliance with the venting prohibition by both reclaimers and their customers (§ 82.166(g) and (h)).

f. Equipment Certification Organizations

Equipment testing organizations must apply to EPA to become approved. This application process is necessary to ensure that all approved testing laboratories have the equipment and expertise to test equipment to the applicable standards. Once approved, equipment testing organizations must maintain records of the tests performed and their results, and must submit a list of all certified equipment to EPA annually. Testing organizations must also notify EPA whenever a new model of equipment is certified or whenever an existing certified model fails a recertification test. This information is required to ensure that recycling and recovery equipment meets the performance standards of the regulation (§§ 82.160 and 82.166(c), (d), and (e)).

g. Disposers

Persons who conduct final disposal of small appliances, room air conditioners, and MVACs and who do not recover the refrigerant themselves must maintain copies of signed statements attesting that the refrigerant has been removed prior to final disposal of each appliance. These records help EPA to verify that refrigerant is recovered at some point during the disposal process even if the final disposer does not have recovery equipment (§ 82.166(i)).

h. Technician Certification Programs

Organizations operating technician certification programs must apply to EPA to have their programs approved. The application process ensures that the technician certification programs meet minimum standards for generating, tracking, and grading tests, and keeping records. Approved technician certification programs have to maintain records including the names of certified technicians and the unique numbers assigned to each technician certified through their programs. These records allow both the Agency and the certification program to verify certification claims and to monitor the certification process. Approved technician certification programs also have to submit to EPA reports every six months including the pass/fail rate and testing schedules. Such reports give the Agency the ability to evaluate certification programs and modify certification requirements if necessary (§ 82.166(f)).

EPA is proposing to extend all of these requirements, as applicable, to persons who sell or distribute HFC or PFC refrigerants, to technicians who service HFC or PFC appliances, to persons who own HFC or PFC appliances containing more than 50 pounds of refrigerant, to reclaimers that reclaim HFC or PFC refrigerants, to equipment certification organizations that certify recovery or recycling equipment for use with HFCs or PFCs, and to technician certification programs that certify technicians who work with HFCs or PFCs.

The rationale for requiring these records for persons who handle HFC or PFC refrigerants or equipment is the same as that set forth above for requiring such records for persons who handle CFC or HCFC refrigerants or equipment. In all cases, the records would be necessary to ensure compliance with the regulatory program implementing the section 608(c)(2) prohibition on venting and hence would be necessary to implement and enforce section 608(c)(2) and section 608(a) as well, for the provisions in this proposal that are authorized by that section. The records proposed to be required would make it possible for EPA both to monitor compliance and to enforce against violations.

V. Summary of Supporting Analyses

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency

must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this proposed action to amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order. Nevertheless, the Agency has performed a cost benefit analysis of this regulation, which is available for review in the public docket for this rulemaking. This analysis is summarized below.

1. Baseline

Since these regulations are being promulgated in addition to other provisions that affect the use of substitute refrigerants, the baseline for this analysis must reflect the state of affairs after the implementation of previous provisions and before the implementation of the final rule. The provision of the Clean Air Act that must be considered when defining the baseline for these regulations is the prohibition on venting contained in section 608(c)(2), which is self-effectuating. For the purposes of the analysis, EPA chose two variables to describe the effects of this provision: The percentage of the market in which recycling and recovery would occur as a result of the provision (referred to as either market penetration or compliance); and the average recapture efficiency of the recycling or recovery methods that would be employed by the complying population.

The self-effectuating prohibition on venting in section 608(c)(2) can be considered a minimal requirement to recycle because chemicals must be recycled, or at least stored, if they cannot be vented. However, because the prohibition on venting does not in itself contain standards, maximum recovery efficiency and full compliance would not be expected under the prohibition alone. Instead, recovery efficiency and compliance are likely to vary across sectors depending upon whether recycling is privately cost-effective in that sector. Recycling will be privately cost-effective in a sector when the value of the recovered refrigerant exceeds the labor and equipment costs for the recovery, as it does in sectors with large charge sizes. The cost-benefit analysis assumes that in those sectors where recycling is estimated to be privately cost-effective, compliance with the venting prohibition will be 100 percent, and recovery efficiency will be 95 percent. The figures are assumed to remain the same after imposition of the regulation. In those sectors where recycling is not estimated to be privately cost effective, including the household refrigeration, household air-conditioning, other appliance, and refrigerated transport sectors, compliance with the venting prohibition is assumed to be 80 percent, and recovery efficiencies are assumed to be 75 percent. These figures are assumed to rise to 100 percent and 90 percent respectively after imposition of the regulation.

2. Costs

The costs of the substitutes recycling rule consist of the costs of increased compliance with the venting prohibition (primarily labor costs), the costs of certifying recycling and recovery equipment, the costs of certifying technicians, the costs of the sales restriction, recordkeeping costs, and refrigerant storage costs. The Agency estimates the cost for this regulatory program over a 29-year period between 1996 and 2025 is $1,619 million using a 2% discount rate, and $782 million using a 7% discount rate.

3. Benefits

The benefits of the provisions discussed above consist of (1) avoided damage to air-conditioning and refrigeration equipment that would occur if, without regulation, contaminated refrigerants were charged into equipment, and (2) avoided damage to human health and the environment that would occur if, without regulation, environmentally harmful refrigerants were released rather than recaptured. EPA's estimate of human health and environmental benefits is based on (a) the estimates of the benefits of avoiding emissions of ozone-depleting compounds that were developed for the 1993 RIA, and (b) estimates of the benefits of avoiding emissions of global warming compounds that are derived from a "The Social Costs of Greenhouse Gas Emissions: An Expected Value Approach.[29]" This paper surveyed previous efforts to quantify the effects of global climate change and developed a technique for calculating the marginal impact of emitting a ton of carbon. Benefits quantified include reductions in damages from sea level rise, reduced agricultural yields, reduced water supply, and other impacts. The paper explicitly incorporated many of the uncertainties involved in developing the estimate and thereby developed lower-bound, best-estimate, and upper-bound values for the benefit of avoiding emissions of a ton of carbon. EPA adjusted these estimates to account for the facts that (1) U.S. benefits would only be a fraction of world-wide benefits and (2) on a kilogram-for-kilogram basis, the HFC and PFC refrigerants have many times the global warming potential of carbon.

As noted above, the analysis assumes that the rule increases both compliance with the venting prohibition and the efficiency of many recovery jobs. The Agency estimates the range of benefits to be from $1,060 million to $11,188 million, using the lower and upper bound estimates of the benefits of avoided equipment damage and of the domestic benefits of avoiding emission of a kilogram of refrigerant. These benefits were discounted at a 2% discount rate. The benefits range from $475 million to $5,615 million when discounted at a 7% discount rate.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of 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.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or

[29] Frankhauser, S. "The Social Cost of Greenhouse Gas Emissions: An Expected Value Approach." *Energy Journal* 15(2), 1994, pp. 157–183.

the private sector, in any one year. As noted above, EPA's cost-benefit analysis concluded that the total annual costs of the rule will be less than $100 million per year. State, local, and tribal governments may have to pay some costs for refrigerant recycling when their air-conditioning and refrigeration equipment is serviced or disposed of, but these costs will be small. Moreover, most municipal solid waste facilities do not accept white goods and so will not be affected by the safe disposal provisions of the rule. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the reasons outlined above, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

C. Paperwork Reduction Act

This proposed rule has no new information requirements subject to the Paperwork Reduction Act.

D. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. EPA has concluded that this proposed rule would not have a significant impact on a substantial number of small entities.

EPA performed a detailed screening analysis in 1992 of the impact of the recycling regulation for ozone-depleting refrigerants on small entities. The methodology of this analysis is discussed at length in the May 14, 1993 regulation (58 FR 28710). EPA has updated that analysis to examine the impact of the recycling regulation for substitute refrigerants, and has concluded that this regulation will not have a significant impact on a substantial number of small entities. The methodology for the updated analysis is the same as for the initial analysis, except EPA has also considered the changing market share of HFC equipment and compliance with the venting prohibition that would occur in the absence of the rule. This approach makes the screening analysis more consistent with the cost-benefit analysis discussed above. In addition, EPA added an analysis of the potential impact of a sales restriction on HFC refrigerants on auto parts and supply stores that are small businesses.

In the updated screening analysis, EPA estimates that 118 small businesses may incur compliance costs in excess of 1% of their sales, while 39 small businesses may incur compliance costs in excess of 3% of their sales. These numbers respectively represent 0.1% and 0.03% of the 122,416 small businesses that EPA estimates are affected by the rule. Based on this analysis, EPA does not believe that this regulation will have a significant impact on a substantial number of small entities. Consequently, I hereby certify that this proposed rule will not have a significant adverse effect on a substantial number of small entities.

Although this rule will not have a significant adverse effect on a substantial number of small entities, EPA has made numerous efforts to involve small entities in the rulemaking process and to incorporate flexibility into the proposed rule for small entities, where appropriate. Efforts to involve small entities include the March 10, 1995, industry meeting, which included several trade groups representing small businesses, and a number of individual meetings with both small businesses and associations representing small businesses. EPA has also developed outreach materials, including fact sheets and a videotape, to help small businesses to comply with the existing refrigerant recycling regulations and the prohibition on venting of both ozone-depleting refrigerants and their substitutes.

Moreover, the proposed rule grants to small businesses working with substitute refrigerants the same flexibility that was granted to small businesses working with CFC and HCFC refrigerants (58 FR 28667–28669, 28712). Thus, for instance, the proposed rule would permit persons servicing small appliances (frequently small businesses) to use relatively inexpensive recovery equipment, and would establish a flexible program for the safe disposal of small appliances, MVACs, and MVAC-like appliances. In addition, the rule would permit HVAC/R contractors to recover HFCs using recycling and recovery equipment designed for use with CFCs and HCFCs, and would permit technicians certified to work with CFCs and HCFCs to work with HFCs with no further testing.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In this document, EPA is proposing to use voluntary consensus standards in all of the applications covered by the proposed regulations for which there are voluntary consensus standards available. Thus, EPA is proposing to use ARI Standard 740–1995, Standard for Refrigerant Recovery/Recycling Equipment, and ARI Standard 700–1995, Standard for Specifications for Fluorocarbon and Other Refrigerants. The first establishes requirements and test methods for refrigerant recovery and recycling equipment; the second establishes specifications and test methods for refrigerants. EPA invites public comment on whether there are other available and applicable voluntary consensus standards that the Agency should apply.

F. Children's Health Protection

This proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 82

Environmental protection, Air pollution control, Contractors, Reclaimers, Reclamation, Recycling, Reporting and recordkeeping requirements, Technician.

Dated: May 28, 1998.

Carol M. Browner,

Administrator.

Title 40 of the Code of Federal Regulations, part 82, is proposed to be amended as follows:

PART 82—[AMENDED]

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

1a. Section 82.150 is amended by revising paragraph (a) to read as follows:

§ 82.150 Purpose and scope.

(a) The purpose of this subpart is to reduce emissions of class I and class II refrigerants to the lowest achievable level during the service, maintenance, repair, and disposal of appliances and to maximize compliance with the prohibition on venting of all refrigerants during the service, maintenance, repair, and disposal of appliances in accordance with section 608 of the Clean Air Act.

* * * * *

2. Section 82.152 is amended by adding definitions for "higher-pressure appliance," "leak rate," "one-time expansion device," "refrigerant," and "substitute," and by revising the definitions for "appliance," "full charge," "high-pressure appliance," "low-pressure appliance," "opening," "reclaim," "technician," and "very-high-pressure appliance" to read as follows:

§ 82.152 Definitions.

Appliance means any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

* * * * *

Full charge means the amount of refrigerant required for normal operating characteristics and conditions of the appliance as determined by using one or a combination of the following four methods:

(1) Use the equipment manufacturer's determination of the correct full charge for the equipment;

(2) Determine the full charge by making appropriate calculations based on component sizes, density of refrigerant, volume of piping, and other relevant considerations;

(3) Use actual measurements of the amount of refrigerant added or evacuated from the appliance; and/or

(4) Use an established range based on the best available data regarding the normal operating characteristics and conditions for the appliance, where the mid-point of the range will serve as the full charge, and where records are maintained in accordance with § 82.166(q).

* * * * *

High-pressure appliance means an appliance that uses a refrigerant with a liquid phase saturation pressure between 45 psia and 220 psia at 104 degrees F. This definition includes but is not limited to appliances using R12, R114, R134a, R401A and B, and R500.

* * * * *

Higher-pressure appliance means an appliance that uses a refrigerant with a liquid phase saturation pressure between 220 psia and 305 psia at 104 degrees F. This definition includes but is not limited to appliances using R22, R502, R402A and B, and R407A, B, and C.

* * * * *

Leak rate means the rate at which an appliance is losing refrigerant, measured between refrigerant charges or over 12 months, whichever is shorter. The leak rate is expressed in terms of the percentage of the appliance's full charge that would be lost over a 12-month period if the current rate of loss were to continue over that period. The rate is calculated using the following method:

(1) Take the number of pounds of refrigerant added to the appliance to return it to a full charge and divide it by the number of pounds of refrigerant the appliance normally contains at full charge;

(2) Take the shorter of: (a) 365 days, and (b) the number of days that have passed since the last day refrigerant was added and divide that number by 365 days;

(3) Take the number calculated in step (1) and divide it by the number calculated in step (2); and

(4) Multiply the number calculated in step (3) by 100 to calculate a percentage.

This method is summarized in the following formula:

$$\text{Leak rate (\% per year)} = \frac{\text{pounds of refrigerant added}}{\text{pounds of refrigerant in full charge}} \times \frac{\text{365 days/year}}{\text{shorter of: \# days since refrigerant last added and 365 days}} \times 100\%$$

* * * * *

Low-pressure appliance means an appliance that uses a refrigerant with a liquid phase saturation pressure below 45 psia at 104 degrees Fahrenheit. This definition includes but is not limited to appliances using R11, R123, and R113.

* * * * *

One-time expansion device means an appliance that relies on the release of refrigerant to the environment to obtain cooling.

Opening an appliance means any service, maintenance, or repair on an appliance that would release refrigerant from the appliance to the atmosphere unless the refrigerant were recovered previously from the appliance. Connecting and disconnecting hoses and gauges to and from the appliance to measure pressures within the appliance and to add refrigerant to or recover refrigerant from the appliance shall not be considered "opening."

* * * * *

Reclaim refrigerant means to reprocess refrigerant to all of the specifications in appendix A to 40 CFR part 82, subpart F (based on ARI Standard 700–1995, Specification for Fluorocarbons and Other Refrigerants) that are applicable to that refrigerant and to verify that the refrigerant meets these specifications using the analytical methodology prescribed in appendix A. In general, reclamation involves the use of processes or procedures available only at a reprocessing or manufacturing facility.

* * * * *

Refrigerant means, for purposes of this Subpart, any class I or class II substance used for heat transfer purposes, or any substance used as a substitute for such a class I or class II substance by any user in a given end-use, except for the following substitutes in the following end-uses:

(1) Ammonia in commercial or industrial process refrigeration or in absorption units

(2) Hydrocarbons in industrial process refrigeration (processing of hydrocarbons)

(3) Chlorine in industrial process refrigeration (processing of chlorine and chlorine compounds)

(4) Carbon dioxide in any application

(5) Nitrogen in any application

(6) Water in any application

* * * * *

Substitute means any chemical or product substitute, whether existing or new, that is used by any person as a replacement for a class I or II compound in a given end-use.

* * * * *

Technician means any person who performs maintenance, service, or repair that could be reasonably expected to release refrigerants from appliances, except for MVACs, into the atmosphere. Technician also means any person who performs disposal of appliances, except for small appliances, MVACs, and MVAC-like appliances, that could be reasonably expected to release refrigerants from the appliances into the atmosphere. Performing maintenance, service, repair, or disposal could be reasonably expected to release

refrigerants only if the activity is reasonably expected to violate the integrity of the refrigerant circuit. Activities reasonably expected to violate the integrity of the refrigerant circuit include activities such as attaching and detaching hoses and gauges to and from the appliance to add or remove refrigerant or to measure pressure and adding refrigerant to and removing refrigerant from the appliance. Activities such as painting the appliance, re-wiring an external electrical circuit, replacing insulation on a length of pipe, or tightening nuts and bolts on the appliance are not reasonably expected to violate the integrity of the refrigerant circuit. Performing maintenance, service, repair, or disposal of appliances that have been evacuated pursuant to § 82.156 could not be reasonably expected to release refrigerants from the appliance unless the maintenance, service, or repair consists of adding refrigerant to the appliance. Technician includes but is not limited to installers, contractor employees, in-house service personnel, and in some cases, owners.

Very-high-pressure appliance means an appliance that uses a refrigerant with a critical temperature below 104 degrees Fahrenheit or with a liquid phase saturation pressure above 305 psia at 104 degrees Fahrenheit. This definition includes but is not limited to appliances using R410A and B, R13, R23, and R503.

3. Section 82.154 is amended by revising paragraphs (a), (b), (c), (g), (h), and (m), and by adding paragraphs (o) and (p) to read as follows:

§ 82.154 Prohibitions.

(a) Effective (30 days after publication of the final rule), no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant from such equipment. The knowing release of refrigerant subsequent to its recovery from an appliance shall be considered a violation of this prohibition. De minimis releases associated with good faith attempts to recycle or recover refrigerants are not subject to this prohibition. Releases shall be considered de minimis only if they occur when:

(1) The required practices set forth in § 82.156 are observed, recovery or recycling machines that meet the requirements set forth in § 82.158 are used, and the technician certification provisions set forth in § 82.161 are observed; or

(2) The requirements set forth in subpart B of this part are observed.

(b) No person may open appliances except MVACs and MVAC-like appliances for maintenance, service, or repair, and no person may dispose of appliances except for small appliances, MVACs, and MVAC-like appliances:

* * * * *

(c) No person may manufacture or import recycling or recovery equipment for use during the maintenance, service, or repair of appliances except MVACs and MVAC-like appliances, and no person may manufacture or import recycling or recovery equipment for use during the disposal of appliances except small appliances, MVACs, and MVAC-like appliances, unless the equipment is certified pursuant to § 82.158 (b) or (d), as applicable.

* * * * *

(g) No person may sell or offer for sale refrigerant consisting wholly or in part of used refrigerant unless:

(1) The refrigerant has been reclaimed as defined at § 82.152;

(2) The refrigerant was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The refrigerant is contained in an appliance that is sold or offered for sale together with the refrigerant.

(h) No person may sell or offer for sale refrigerant consisting wholly or in part of used refrigerant unless:

(1) The refrigerant has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.164;

(2) The refrigerant was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The refrigerant is contained in an appliance that is sold or offered for sale together with the refrigerant.

* * * * *

(m) No person may sell or distribute, or offer for sale or distribution, any refrigerant to any person unless:

* * * * *

(o) No person may manufacture or import one-time expansion devices.

(p) Recovery or recycling equipment certified or rated for use with only one refrigerant may not be used to recover other refrigerants.

4. Section 82.156 is amended by revising the introductory text of paragraph (a) to read as follows, by removing paragraph (a)(5), by revising Table 1 to read as follows, by revising paragraph (b) to read as follows, and by redesignating paragraphs (i)(1), (i)(1)(i), (i)(1)(ii) and (i)(1)(iii) as (i)(1)(i), (i)(1)(iii), (i)(1)(iv), and (i)(1)(v), by adding a new paragraph (i)(1)(ii), and by revising newly designated paragraphs (i)(1)(i) and (i)(1)(iii) to read as follows, by redesignating paragraphs (i)(2), (i)(2)(i), and (i)(2)(ii) as (i)(2)(i), (i)(2)(iii), and (i)(2)(iv), by adding a new paragraph (i)(2)(ii), and by revising newly designated paragraph (i)(2)(i) to read as follows, by redesignating paragraphs (i)(5), (i)(5)(i), (i)(5)(ii), and (i)(5)(iii), as (i)(5)(i), (i)(5)(iii), (i)(5)(iv), and (i)(5)(v), by adding a new paragraph (i)(5)(ii), and by revising newly designated paragraph (i)(5)(i) to read as follows, by revising paragraphs (i)(3), (i)(3)(i), (i)(3)(ii), and (i)(6) to read as follows, and by replacing the phrase "annual leak rate" with "leak rate" throughout:

§ 82.156 Required Practices.

(a) All persons disposing of appliances, except for small appliances, MVACs, and MVAC-like appliances must evacuate the refrigerant, including all the liquid refrigerant, in the entire unit to a recovery or recycling machine certified pursuant to § 82.158. All persons opening appliances except for MVACs and MVAC-like appliances for maintenance, service, or repair must evacuate the refrigerant, including all the liquid refrigerant (except as provided in paragraph (a)(2)(i)(B) of this section), in either the entire unit or the part to be serviced (if the latter can be isolated) to a system receiver (e.g., the remaining portions of the appliance, or a specific vessel within the appliance) or a recovery or recycling machine certified pursuant to § 82.158. Certified technicians must verify that the applicable level of evacuation has been reached in the appliance or the part before it is opened.

* * * * *

TABLE 1.—REQUIRED LEVELS OF EVACUATION FOR APPLIANCES

[Except for small appliances, MVACs, and MVAC-like appliances]

Type of appliance	Inches of Hg vacuum (relative to standard atmospheric pressure of 29.9 inches Hg)	
	Using recovery or recycling equipment manufactured or imported before Nov. 15, 1993	Using recovery or recycling equipment manufactured or imported on or after Nov. 15, 1993
Very high-pressure appliance	0	0.
Higher-pressure appliance, or isolated component of such appliance, normally containing less than 200 pounds of refrigerant.	0	0.
Higher-pressure appliance, or isolated component of such appliance, normally containing 200 pounds or more of refrigerant.	4	10.
High-pressure appliance, or isolated component of such appliance, normally containing less than 200 pounds of refrigerant.	4	10.
High-pressure appliance, or isolated component of such appliance, normally containing 200 pounds or more of refrigerant.	4	15.
Low-pressure appliance	25	25 mm Hg absolute.

* * * * *

(b) All persons opening appliances except for small appliances, MVACs, and MVAC-like appliances for maintenance, service, or repair and all persons disposing of appliances except small appliances, MVACs, and MVAC-like appliances must have at least one piece of certified, self-contained recovery or recycling equipment available at their place of business. Persons who maintain, service, repair, or dispose of only appliances that they own and that contain pump-out units are exempt from this requirement. This exemption does not relieve such persons from other applicable requirements of § 82.156.

* * * * *

(i)(1)(i) Owners or operators of commercial refrigeration equipment normally containing more than 50 pounds of refrigerant and commissioned before or during 1992 must have leaks repaired in accordance with paragraph (i)(9) of this section if the leak rate of the appliance exceeds 15 percent per year, except as described in paragraphs (i)(6), (i)(8), and (i)(10) of this section and paragraphs (i)(1)(iii), (i)(1)(iv), and (i)(1)(v) of this section. Repairs must bring the leak rate to or below 15 percent per year.

(ii) Owners or operators of commercial refrigeration equipment normally containing more than 50 pounds of refrigerant and commissioned after 1992 must have leaks repaired in accordance with paragraph (i)(9) of this section if the leak rate of the appliance exceeds 10 percent per year, except as described in paragraphs (i)(6), (i)(8), and (i)(10) of this section and paragraphs (i)(1)(iii), (i)(1)(iv), and (i)(1)(v) of this section. Repairs must bring the leak rate to or below 10 percent per year.

(iii) If the owners or operators of federally-owned commercial refrigeration appliances determine that the leaks cannot be repaired in accordance with paragraph (i)(9) of this section and that an extension in accordance with the requirements discussed in this paragraph (i)(1)(iii) of this section applies, they must document all repair efforts and notify EPA of the reason for their inability to comply within the 30-day repair period in accordance with section 82.166(n). Such notification must be made within 30 days of discovering the leaks. EPA will determine if the extension requested in accordance with the requirements discussed in this paragraph (i)(1)(iii) of this section is justified. If the extension is not justified, EPA will notify the owner/operator within 30 days of receipt of the notification.

* * * * *

(2)(i) The owners or operators of industrial process refrigeration equipment normally containing more than 50 pounds of refrigerant must have leaks repaired in accordance with paragraph (i)(9) of this section if the leak rate of the appliance exceeds 20 percent per year, except as described in paragraphs (i)(6), (i)(7), and (i)(10) of this section, and paragraphs (i)(2)(ii), (i)(2)(iii) and (i)(2)(iv) of this section. Repairs must bring the leak rate to or below 20 percent per year. If the owners or operators of the industrial process refrigeration equipment determine that the leak rate cannot be brought to or below 20 percent per year within 30 days (or 120 days, where an industrial process shutdown in accordance with paragraph (i)(2)(iv) of this section is required) and in accordance with paragraph (i)(9) of this section, and that an extension in accordance with the requirements discussed in this paragraph applies, the owners or operators of the appliance must document all repair efforts and notify EPA of the reason for the inability in accordance with § 82.166(n). Such notification must be made within 30 days of making the determination. Owners or operators who obtain an extension pursuant to this section or elect to utilize the additional time provided in paragraph (i)(2)(iii) of this section must conduct all necessary leak repairs, if any, that can be performed within 30 days of discovering the leaks.

(ii) Notwithstanding the provisions of paragraph (i)(2)(i) of this section, a maximum allowable leak rate of 35 percent per year shall apply to industrial process refrigeration systems meeting all of the following conditions:

(A) The refrigeration system is custom-built;

(B) The refrigeration system has an open-drive compressor;

(C) The refrigeration system was built in 1992 or before; and

(D) The system is direct-expansion (contains a single, primary refrigerant loop).

* * * * *

(3) Owners or operators of federally-owned commercial refrigeration

equipment or of federally-owned comfort cooling appliances who are granted additional time under paragraphs (i)(1) or (i)(5) of this section, and owners or operators of industrial process refrigeration equipment, must have repairs performed in a manner that sound professional judgment indicates will bring the leak rate below the applicable allowable leak rate. When an industrial process shutdown has occurred or when repairs have been made while an appliance is mothballed, the owners or operators shall conduct an initial verification test at the conclusion of the repairs and a follow-up verification test. The follow-up verification test shall be conducted within 30 days of completing the repairs or within 30 days of bringing the appliance back on-line, if taken off-line, but no sooner than when the appliance has achieved normal operating characteristics and conditions. When repairs have been conducted without an industrial process shutdown or system mothballing, an initial verification test shall be conducted at the conclusion of the repairs, and a follow-up verification test shall be conducted within 30 days of the initial verification test. In all cases, the follow-up verification test shall be conducted at normal operating characteristics and conditions, unless sound professional judgment indicates that tests performed at normal operating characteristics and conditions will produce less reliable results, in which case the follow-up verification test shall be conducted at or near the normal operating pressure where practicable, and at or near the normal operating temperature where practicable.

(i) If the owners or operators of federally-owned commercial refrigeration equipment or of federally-owned comfort cooling appliances who are granted additional time under paragraphs (i)(1) or (i)(5) of this section take the appliances off-line, or if owners or operators of industrial process refrigeration equipment take the appliances off-line, they cannot bring the appliances back on-line until an initial verification test indicates that the repairs undertaken in accordance with paragraphs (i)(1) (i), (ii), (iii), (iv), or (v), or (i)(2) (i), (ii), or (iii) or (5) (i), (ii), and (iii) of this section have been successfully completed, demonstrating the leak or leaks are repaired. The owners or operators of the industrial process refrigeration equipment, federally-owned commercial refrigeration equipment, or federally-owned comfort cooling appliances are exempted from this requirement only where the owners or operators will retrofit or retire the industrial process refrigeration equipment, federally-owned commercial refrigeration equipment, or federally-owned comfort cooling appliances in accordance with paragraph (i)(6) of this section. Under this exemption, the owner or operators may bring the industrial process refrigeration equipment, federally-owned commercial refrigeration equipment, or federally-owned comfort cooling appliances back on-line without successful completion of an initial verification test.

(ii) If the follow-up verification test indicates that the repairs to industrial process refrigeration equipment, federally-owned commercial refrigeration equipment, or federally-owned comfort cooling appliances have not been successful, the owner must retrofit or retire the equipment in accordance with paragraph (i)(6) and any such longer time period as may apply under paragraphs (i)(7) (i), (ii) and (iii) or (i)(8) (i) and (ii) of this section. The owners and operators of the industrial process refrigeration equipment, federally-owned commercial refrigeration equipment, or federally-owned comfort cooling appliances are relieved of this requirement if the conditions of paragraphs (i)(3)(iv) and/or (i)(3)(v) of this section are met.

* * * * *

(5)(i) Owners or operators of appliances normally containing more than 50 pounds of refrigerant, manufactured before or during 1992, and not covered by paragraphs (i)(1) or (i)(2) of this section must have leaks repaired in accordance with paragraph (i)(9) of this section if the leak rate of the appliance exceeds 10 percent per year, except as provided in paragraphs (i)(5)(iii), (i)(5)(iv), and (i)(5)(v) of this section.. Repairs must bring the leak rate to or below 10 percent per year.

(5)(ii) Owners or operators of appliances normally containing more than 50 pounds of refrigerant, manufactured after 1992, and not covered by paragraphs (i)(1) or (i)(2) of this section must have leaks repaired in accordance with paragraph (i)(9) of this section if the leak rate of the appliance exceeds 5 percent per year, except as provided in paragraphs (i)(5)(iii), (i)(5)(iv), and (i)(5)(v) of this section. Repairs must bring the leak rate to or below 5 percent per year.

* * * * *

(6) Owners or operators are not required to repair leaks as provided in paragraphs (i)(1), (i)(2), and (i)(5) of this section if, within 30 days of discovering the exceedance of the applicable allowable leak rate, or within 30 days of a failed follow-up verification test, or after making good faith efforts to repair the leaks as described in paragraph (i)(6)(i) of this section, they develop a one-year retrofit or retirement plan for the leaking appliance. Owners or operators who retrofit the appliance must use a refrigerant with a lower ozone-depleting potential than the previous refrigerant and must include such a change in the retrofit plan. Owners or operators who retire and replace the appliance must replace the appliance with an appliance that uses a refrigerant with a lower ozone-depleting potential and must include such a change in the retirement plan. The retrofit or retirement plan (or a legible copy) must be kept at the site of the appliance. The original plan must be made available for EPA inspection upon request. The plan must be dated and all work performed in accordance with the plan must be completed within one year of the plan's date, except as described in paragraphs (i)(6)(i), (i)(7), and (i)(8) of this section. Owners or operators are temporarily relieved of this obligation if the appliance has undergone system mothballing as defined in § 82.152.

(i) If the owner or operator has made good faith efforts to repair leaks from the appliance in accordance with paragraphs (i)(1), (i)(2), or (i)(5) of this section, and has decided, before completing a follow-up verification test, to retrofit or retire the appliance in accordance with paragraph (i)(6) of this section, the owner or operator must develop a retrofit or retirement plan within 30 days of the decision to retrofit or retire the appliance. The owner or operator must retrofit or retire the appliance within one year and 30 days of when the owner or operator discovered that the leak rate exceeded the applicable allowable leak rate, except as provided in paragraphs (i)(7) and (i)(8) of this section.

* * * * *

5. Section 82.158 is amended by revising Table 2 and Table 3, by removing paragraphs (f) and (g), and by redesignating paragraphs (h) through (m) as (f) through (k) to read as follows:

§ 82.158 Standards for recycling and recovery equipment.

* * * * *

TABLE 2.—LEVELS OF EVACUATION WHICH MUST BE ACHIEVED BY RECOVERY OR RECYCLING EQUIPMENT INTENDED FOR USE WITH APPLIANCES [1] MANUFACTURED ON OR AFTER NOVEMBER 15, 1993

Type of appliance with which recovery or recycling machine is intended to be used	Inches of vacuum (relative to standard atmospheric pressure of 29.9 inches of Hg)
Very high-pressure appliance	0
Higher-pressure appliance or isolated component of such appliance, normally containing less than 200 pounds of refrigerant	0
Higher-pressure appliance, or isolated component of such appliance, normally containing 200 pounds or more of refrigerant	10
High-pressure appliance, or isolated component of such appliance, normally containing less than 200 pounds of refrigerant	10
High-pressure appliance, or isolated component of such appliance, normally containing 200 pounds or more of refrigerant	15
Low-pressure appliance	[2] 25

[1] Except for small appliances, MVACs, and MVAC-like appliances.
[2] mm Hg absolute.

The vacuums specified in inches of Hg vacuum must be achieved relative to an atmospheric pressure of 29.9 inches of Hg absolute.

* * * * *

TABLE 3.—LEVELS OF EVACUATION WHICH MUST BE ACHIEVED BY RECOVERY OR RECYCLING EQUIPMENT INTENDED FOR USE WITH APPLIANCES [1] MANUFACTURED BEFORE NOVEMBER 15, 1993

Type of appliance with which recovery or recycling machine is intended to be used	Inches of vacuum (relative to standard atmospheric pressure of 29.9 inches of Hg)
Very high-pressure appliance	0
Higher-pressure appliance or isolated component of such appliance, normally containing less than 200 pounds of refrigerant	0
Higher-pressure appliance, or isolated component of such appliance, normally containing 200 pounds or more of refrigerant	4
High-pressure appliance, or isolated component of such appliance, normally containing less than 200 pounds of refrigerant	4
High-pressure appliance, or isolated component of such appliance, normally containing 200 pounds or more of refrigerant	4
Low-pressure appliance	[2] 25

[1] Except for small appliances, MVACs, and MVAC-like appliances.
[2] mm Hg absolute.

The vacuums specified in inches of Hg vacuum must be achieved relative to an atmospheric pressure of 29.9 inches of Hg absolute.

* * * * *

6. Section 82.161 is amended by revising paragraph (a)(2) as follows:

§ 82.161 Technician Certification.

(a) * * *

(2) Technicians who maintain, service, or repair high-, higher-, or very high-pressure appliances, except small appliances, MVACs, and MVAC-like appliances, or dispose of high-, higher-, or very high-pressure appliances, except small appliances, MVACs, and MVAC-like appliances, must be properly certified as Type II technicians.

* * * * *

7. Section 82.164 is amended by revising the introductory text and paragraphs (a), (b), and (e)(3) to read as follows:

§ 82.164 Reclaimer Certification.

Effective [INSERT DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE] all persons reclaiming used refrigerant for sale to a new owner, except for persons who properly certified under this section prior to [INSERT DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE] must certify to the Administrator that such person will:

(a) Reprocess refrigerant to all of the specifications in appendix A of this Subpart (based on ARI Standard 700–1995, Specification for Fluorocarbons and Other Refrigerants) that are applicable to that refrigerant;

(b) Verify that the refrigerant meets these specifications using the analytical methodology prescribed in appendix A;

* * * * *

(e) * * *

(3) The owner or a responsible officer of the reclaimer must sign the certification stating that the refrigerant will be reprocessed to all of the specifications in appendix A of this Subpart (based on ARI Standard 700–1995, Specification for Fluorocarbons and Other Refrigerants) that are applicable to that refrigerant, that the refrigerant's conformance to these specifications will be verified using the analytical methodology prescribed in appendix A, that no more than 1.5 percent of the refrigerant will be released during the reclamation process, that wastes from the reclamation process will be properly disposed of, and that the information given is true and correct. The certification should be sent to the following address: Section 608 Recycling Program Manager, Reclaimer Certification, Stratospheric Protection Division (6205J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

* * * * *

8. Section 82.166 is amended by revising paragraphs (a), (b), (n), (o)(4), (o)(7), (o)(8), and (o)(10) to read as follows:

§ 82.166 Reporting and recordkeeping requirements.

(a) All persons who sell or distribute any refrigerant must retain invoices that indicate the name of the purchaser, the date of sale, and the quantity of refrigerant purchased.

(b) Purchasers of refrigerant who employ certified technicians may provide evidence that at least one technician is properly certified to the wholesaler who sells them refrigerant; the wholesaler must then keep this information on file and may sell refrigerant to the purchaser or his authorized representative even if such purchaser or authorized representative is not a properly certified technician. In such cases, the purchaser must notify the wholesaler in the event that the purchaser no longer employs at least one properly certified technician. The wholesaler is then prohibited from selling refrigerants to the purchaser until such time as the purchaser employs at least one properly certified technician. At that time, the purchaser must provide new evidence that at least one technician is properly certified.

* * * * *

(n) The owners or operators of appliances must maintain on-site and report to EPA at the address listed in § 82.160 the information specified in paragraphs (n)(1), (n)(2), and (n)(3) of this section, within the time lines specified under § 82.156 (i)(1), (i)(2), (i)(3) and (i)(5) where such reporting and recordkeeping is required. This information must be relevant to the affected appliance.

(1) An initial report to EPA under § 82.156(i)(1)(iii), (i)(2)(i), or (i)(5)(iii) regarding why more than 30 days are needed to complete repairs must include: Identification of the facility; the leak rate; the method used to determine the leak rate and full charge; the date a leak rate above the applicable allowable leak rate was discovered; the location of leaks(s) to the extent determined to date; any repair work that has been completed thus far and the date that work was completed; the reasons why more than 30 days are needed to complete the work and an estimate of when the work will be completed. If changes from the original estimate of when work will be completed result in extending the completion date from the date submitted to EPA, the reasons for these changes must be documented and submitted to EPA within 30 days of discovering the need for such a change.

(2) If the owners or operators intend to establish that the appliance's leak rate does not exceed the applicable allowable leak rate in accordance with § 82.156(i)(3)(v), the owner or operator must submit a plan to fix other outstanding leaks for which repairs are planned but not yet completed to achieve a rate below the applicable allowable leak rate. A plan to fix other outstanding leaks in accordance with § 82.156(i)(3)(v) must include the following information: the identification of the facility; the leak rate; the method used to determine the leak rate and full charge; the date a leak rate above the applicable allowable leak rate was discovered; the location of leaks(s) to the extent determined to date; and any repair work that has been completed thus far, including the date that work was completed. Upon completion of the repair efforts described in the plan, a second report must be submitted that includes the date the owner or operator submitted the initial report concerning the need for additional time beyond the 30 days and notification of the owner or operator's determination that the leak rate no longer exceeds the applicable allowable leak rate. This second report must be submitted within 30 days of determining that the leak rate no longer exceeds the applicable allowable leak rate.

(3) Owners or operators must maintain records of the dates and types of all initial and follow-up verification tests performed under § 82.156(i)(3) and the test results for all follow-up verification tests. Owners or operators must submit this information to EPA within 30 days after conducting each test where required under § 82.156 (i)(1), (i)(2), (i)(3) and (i)(5). These reports must also include: identification of the facility; the leak rate; the method used to determine the leak rate and full charge; the date a leak rate above the applicable allowable leak rate was discovered; the location of leaks(s) to the extent determined to date; and any repair work that has been completed thus far and the date that work was completed.

* * * * *

(o) * * *

(4) The date a leak rate above the applicable allowable rate was discovered.

* * * * *

(7) A plan to complete the retrofit or retirement of the system;

(8) The reasons why more than one year is necessary to retrofit or retire the system;

* * * * *

(10) An estimate of when retrofit or retirement work will be completed. If the estimated date of completion changes from the original estimate and results in extending the date of completion, the owner or operator must submit to EPA the new estimated date of completion and documentation of the reason for the change within 30 days of discovering the need for the change, and must retain a dated copy of this submission.

* * * * *

(q) Owners or operators who choose to determine the full charge, as defined in § 82.152, of an affected appliance by using an established range or by using that method in combination with other methods for determining the full charge must maintain the following information:

* * * * *

9. Appendix A to subpart F is revised to read as follows:

Appendix A—Specifications for Fluorocarbons and Other Refrigerants

This appendix is based on Air-Conditioning and Refrigeration Institute Standard 700–1995.

Section 1. Purpose

1.1 *Purpose.* The purpose of this standard is to evaluate and accept/reject refrigerants regardless of source (new, reclaimed and/or repackaged) for use in new and existing refrigeration and air-conditioning products.

1.1.1 *Intent.* This standard is intended for the guidance of the industry including manufacturers, refrigerant reclaimers, repackagers, distributors, installers, servicemen, contractors and for consumers.

1.1.2 *Review and Amendment.* This standard is subject to review and amendment as the technology advances.

Section 2. Scope

2.1 *Scope.* This standard specifies acceptable levels of contaminants (purity requirements) for various fluorocarbon and other refrigerants regardless of source and lists acceptable test methods. These refrigerants are R11; R12; R13; R22; R23; R32; R113; R114; R123; R124; R125; R134a; R143a; R401A; R401B; R402A; R402B; R404A; R405A; R406A; R407A; R407B; R407C; R408A; R409A; R410A; R410B; R411A; R411B; R412A; R500; R502; R503; R507; R508; and R509 as referenced in the ANSI/ASHRAE Standard 34–1992. (American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., Standard 34–1992). Copies may be obtained from ASHRAE Publications Sales, 1791 Tullie Circle, NE, Atlanta, GA 30329. Copies may also be inspected at Public Docket No. A–92–01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW, Washington, DC in room M–1500.

Section 3. Definitions

3.1 *"Shall," "Should," "Recommended," or "It Is Recommended."* "Shall," "should," "recommended," or "it is recommended" shall be interpreted as follows:

3.1.1 *Shall.* Where "shall" or "shall not" is used for a provision specified, that provision is mandatory if compliance with the standard is claimed.

3.1.2 *Should, Recommended,* or *It is Recommended.* "Should ", "recommended", or "it is recommended" is used to indicate provisions which are not mandatory but which are desirable as good practice.

Section 4. Characterization of Refrigerants and Contaminants

4.1 *Characterization.* Characterization of refrigerants and contaminants addressed are listed in the following general classifications:

4.1.1 *Characterization*

a. Gas Chromatography

b. Boiling point and boiling point range

4.1.2 *Contaminants*

a. Water

b. Chloride

c. Acidity

d. High boiling residue

e. Particulates/solids

f. Non-condensables

g. Impurities including other refrigerants

Section 5. Sampling, Summary of Test Methods and Maximum Permissible Contaminant Levels

5.1 *Referee Test.* The referee test methods for the various contaminants are summarized in the following paragraphs. Detailed test procedures are included in *Appendix-C to ARI Standard 700–95: Analytical Procedures for ARI Standard 700–95,* 1995, Air-Conditioning and Refrigeration Institute. *Appendix C to ARI Standard 700–95* is incorporated by reference. [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 Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, Virginia 22203. Copies may also be inspected at Public Docket No. A–92–01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW, Washington, DC in room M–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.] If alternative test methods are employed, the user must be able to demonstrate that they produce results equivalent to the specified referee method.

5.2 *Refrigerant Sampling.*

5.2.1 *Sampling Precautions.* Special precautions should be taken to assure that representative samples are obtained for analysis. Sampling shall be done by trained laboratory personnel following accepted sampling and safety procedures.

5.2.2 *Gas Phase Sample.* A gas phase sample shall be obtained for determining the non-condensables. Since non-condensable gases, if present, will concentrate in the vapor phase of the refrigerant, care must be exercised to eliminate introduction of air during the sample transfer. Purging is not an acceptable procedure for a gas phase sample since it may introduce a foreign product. Since R11, R113, and R123 have normal boiling points at or above room temperature, non-condensable determination is not required for these refrigerants.

5.2.2.1 *Connection.* The sample cylinder shall be connected to an evacuated gas sampling bulb by means of a manifold. The manifold should have a valve arrangement that facilitates evacuation of all connecting tubing leading to the sampling bulb.

5.2.2.2 *Equalizing Pressures.* After the manifold has been evacuated, close the valve to the pump and open the valve on the system. Allow the pressure to equilibrate and close valves.

5.2.3 *Liquid Phase Sample.* A liquid phase sample is required for all tests listed in this standard except the test for non-condensables.

5.2.3.1 *Preparation.* Place a clean, empty sample cylinder with the valve open in an oven at 110° C (230° F) for one hour. Remove it from the oven while hot, immediately connect to an evacuation system and evacuate to less than 1 mm mercury (1000 microns). Close the valve and allow it to cool. Weigh the empty cylinder.

5.2.3.2 Manifolding. The valve and lines from the unit to be sampled shall be clean and dry. The cylinder shall be connected to an evacuated gas sampling cylinder by means of a manifold. The manifold should have a valve arrangement that facilitates evacuation of all connecting tubing leading to the sampling cylinder.

5.2.3.3 Liquid Sampling. After the manifold has been evacuated, close the valve to the pump and open the valve on the system. Take the sample as a liquid by chilling the sample cylinder slightly. Accurate analysis requires that the sample container be filled to at least 60% by volume, however under no circumstances should the cylinder be filled to more than 80% by volume. This can be accomplished by weighing the empty cylinder and then the cylinder with refrigerant. When the desired amount of refrigerant has been collected, close the valve(s) and disconnect the sample cylinder immediately.

5.2.3.4 Record Weight. Check the sample cylinder for leaks and record the gross weight.

5.3 Refrigerant Characterization.

5.3.1 Primary Method. The primary method shall be gas chromatography (GC) as described in Appendix-C to ARI Standard 700–95. The chromatogram of the sample shall be compared to known standards.

5.3.2 Alternative Method. Determination of the boiling point and boiling point range is an acceptable alternative test method which can be used to characterize refrigerants. The test method shall be that described in the Federal Specification for "Fluorocarbon Refrigerants," BB–F–1421 B, dated March 5, 1982, section 4.4.3.

5.3.3 Required Values. The required values for boiling point and boiling point range are given in Table 1A, Physical Properties of Single Component Refrigerants; Table 1B, Physical Properties of Zeotropic Blends (400 Series Refrigerants); and Table 1C, Physical Properties of Azeotropic Blends (500 Series Refrigerants).

5.4 Water Content.

5.4.1 Method. The Coulometric Karl Fischer Titration shall be the primary test method for determining the water content of refrigerants. This method is described in Appendix-C to ARI Standard 700–95. This method can be used for refrigerants that are either a liquid or a gas at room temperature, including refrigerants 11, 113, and 123. For all refrigerants, the sample for water analysis shall be taken from the liquid phase of the container to be tested. Proper operation of the analytical method requires special equipment and an experienced operator. The precision of the results is excellent if proper sampling and handling procedures are followed. Refrigerants containing a colored dye can be successfully analyzed for water using this method.

5.4.2 Limits. The value for water content shall be expressed as parts per million by weight and shall not exceed the maximum specified (see Tables 1A, 1B, and 1C).

5.5 Chloride. The refrigerant shall be tested for chloride as an indication of the presence of hydrochloric acid and/or metal chlorides. The recommended procedure is intended for use with new or reclaimed refrigerants. Significant

amounts of oil may interfere with the results by indicating a failure in the absence of chloride.

5.5.1 Method. The test method shall be that described in Appendix-C to ARI Standard 700–95. The test will show noticeable turbidity at chloride levels of about 3 ppm by weight or higher.

5.5.2 Turbidity. The results of the test shall not exhibit any sign of turbidity. Report the results as "pass" or "fail."

5.6 Acidity.

5.6.1 Method. The acidity test uses the titration principle to detect any compound that is highly soluble in water and ionizes as an acid. The test method shall be that described in Appendix-C to ARI Standard 700–95. This test may not be suitable for determination of high molecular weight organic acids; however these acids will be found in the high boiling residue test outlined in 5.7. The test requires a 100 to 120 gram sample and has a detection limit of 0.1 ppm by weight calculated as HCl.

5.6.2 Limits. The maximum permissible acidity is 1 ppm by weight as HCl.

5.7 High Boiling Residue.

5.7.1 Method. High boiling residue shall be determined by measuring the residue of a standard volume of refrigerant after evaporation. The refrigerant sample shall be evaporated at room temperature or at a temperature 45°C (115°F) for all refrigerants, except R113 which shall be evaporated at 60°C (140°F), using a Goetz bulb as specified in Appendix-C to ARI Standard 700–95. Oils and/or organic acids will be captured by this method.

5.7.2 Limits. The value for high boiling residue shall be expressed as a percentage by volume and shall not exceed the maximum percent specified (see Tables 1A, 1B, and 1C). An alternative gravimetric method is described in Appendix-C to ARI Standard 700–95.

5.8 Method of Tests for Particulates and Solids.

5.8.1 Method. A measured amount of sample is evaporated from a Goetz bulb under controlled temperature conditions. The particulates/solids shall be determined by visual examination of the Goetz bulb prior to the evaporation of refrigerant. Presence of dirt, rust or other particulate contamination is reported as "fail." For details of this test method, refer to Part 3 of Appendix-C to ARI Standard 700–95.

5.9 Non-Condensables.

5.9.1 Sample. A vapor phase sample shall be used for determination of non-condensables. Non-condensable gases consist primarily of air accumulated in the vapor phase of refrigerants. The solubility of air in the refrigerants liquid phase is extremely low and air is not significant as a liquid phase contaminant. The presence of non-condensable gases may reflect poor quality control in transferring refrigerants to storage tanks and cylinders.

5.9.2 Method. The test method shall be gas chromatography with a thermal conductivity detector as described in Appendix-C to ARI Standard 700–95.

5.9.3 Limit. The maximum level of non-condensables in the vapor phase of a refrigerant in a container shall not exceed 1.5% by volume (see Tables 1A, 1B, and 1C).

5.10 Impurities, including Other Refrigerants.

5.10.1 Method. The amount of other impurities including other refrigerants in the subject refrigerant shall be determined by gas chromatography as described in Appendix-C to ARI Standard 700–95.

5.10.2 Limit. The subject refrigerant shall not contain more than 0.5% by weight of impurities including other refrigerants (see Tables 1A, 1B, and 1C).

Section 6. Reporting Procedure

6.1 Reporting Procedure. The source (manufacturer, reclaimer or repackager) of the packaged refrigerant shall be identified. The refrigerant shall be identified by its accepted refrigerant number and/or its chemical name. Maximum permissible levels of contaminants are shown in Tables 1A, 1B, and 1C. Test results shall be tabulated in a like manner.

TABLE 1A.—PHYSICAL PROPERTIES OF SINGLE COMPONENT REFRIGERANTS

	Reporting units	Reference (sub-clause)	R11	R12	R13	R22	R23	R32	R113	R114	R123	R124	R125	R134a	R143a
Characteristics*:															
Boiling Point*	°F @ 1.00 atm		74.9	−21.6	−114.6	−41.4	−115.7	−61.1	117.6	38.8	82.6	12.2	−55.3	−15.1	−52.6
	°C @ 1.00 atm		23.8	−29.8	−81.4	−40.8	−82.1	−51.7	47.6	3.8	27.9	−11.0	−48.5	−26.2	−47.0
Boiling Point Range*	K		0.3	0.3	0.5	0.3	0.5	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3
Typical Isomer Content	by weight								0–1% R113a	0–30% R-114a	0–8% R123a	0–5% R-124a	N/A	0–5000 ppm R-134	0–100 ppm R-143
Vapor Phase Contaminants:															
Air and other non-condensables.	% by volume @ 25 °C	5.9	N/A**	1.5	1.5	1.5	1.5	1.5	N/A**	1.5	N/A**	1.5	1.5	1.5	1.5
Liquid Phase Contaminants:															
Water	ppm by weight	5.4	20	10	10	10	10	10	20	10	20	10	10	10	10
All other impurities including refrigerants.	% by weight	5.1	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50
High boiling residue	% by volume	5.7	0.01	0.01	0.05	0.01	0.01	0.01	0.03	0.01	0.01	0.01	0.01	0.01	0.01
Particulates/solids	Visually clean to pass	5.8	pass	pass	pass	pass	pass	pass	pass	pass	pass	pass	pass	pass	pass
Acidity	ppm by weight	5.6	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Chlorides***	No visible turbidity	5.5	pass	pass	pass	pass	pass	pass	pass	pass	pass	pass	pass	pass	pass

*Boiling points and boiling point ranges, although not required, are provided for informational purposes.
**Since R11, R13, and R123 have normal boiling points at or above room temperature, non-condensable determinations are not required for these refrigerants.
***Recognized chloride level for pass/fail is 3 ppm.

TABLE 1B.—PHYSICAL PROPERTIES OF ZEOTROPIC BLENDS (400 SERIES REFRIGERANTS)

	Reporting units	Reference (sub-clause)	R401A	R401B	R402A	R402B	R404A	R405A	R406A	R407A	R407B
Characteristics*											
Refrigerant Components.			R22/152a/124	R22/152a/124	R125/290/22	125/290/22	R125/143a/134a	R22/152a/142b/C318.	R22/600a/142b	R32/125/134a	R32/125/134a.
Nominal Comp, weight %.			53/13/34	61/11/28	60/2/38	38/2/60	44/52/4	45/7/5.5/42.5	55/4/41	20/40/40	10/70/20.
Allowable Comp, weight %.			51–54/11.5–13.5/33–35.	59–63/9.5–11.5/27–29.	58–62/1–3/36–40	36–40/1–3/58–62	42–46/51–53/2–6	43–47/6–8/4.5–6.5/40.5–44.5.	53–57/3–5/40–42	19–21/38–42/38–42.	9–11/68–72/18–22.
Boiling Point*	°F @ 1.00 atm		−27.7 to −18.1	−30.4 to −21.2	−54.8 to −53.9	−53.3 to −49.0	−51.0 to −49.8	−31.8 to −21.8	−32.7 to −15.0	−49.9 to −38.1	−53.1 to −45.2.
	°C @ 1.00 atm		−33.2 to −27.8	−34.7 to −29.6	−48.2 to −47.7	−47.4 to −45.0	−46.1 to −45.4	−34.0 to −21.9	−36.0 to −26.1	−45.5 to −38.9	−47.3 to −42.9.
Boiling Point Range*.	K		5.4	5.1	0.5	2.4	0.7	12.1	9.9	6.6	4.4.
Vapor Phase Contaminants:											
Air and other non-condensables.	% by volume @ 25°C.	5.9	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5.
Liquid Phase Contaminants:											
Water	ppm by weight	5.4	10	10	10	10	10	10	10	10	10.
All other impurities including refrigerants.	% by weight	5.1	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50.
High boiling residue.	% by volume	5.7	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01.
Particulates/solids	Visually clean to pass.	5.8	pass	pass	pass	pass	pass	pass	pass	pass	pass.
Acidity	ppm by weight	5.6	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0.
Chlorides**	No visible turbidity	5.5	pass	pass	pass	pass	pass	pass	pass	pass	pass.

*Boiling points and boiling point ranges, although not required, are provided for informational purposes.
**Recognized chloride level for pass/fail is 3ppm.
Shaded columns denote refrigerants for which analytical data is not available.

TABLE 1B (CONTINUED).—PHYSICAL PROPERTIES OF ZEOTROPIC BLENDS (400 SERIES REFRIGERANTS)

	Reporting units	Reference (subclause)	R407C	R408A	R409A	R410A	R410B	R411A	R411B	R412A
Characteristics:*										
Refrigerant Components.			R32/125/134a	R125/143a/22	R22/124/142b	R32/125	R32/125	R1270/22/152a	R1270/22/152a	R22/218/142.
Nominal Comp, weight %.			23/25/52	7/46/47	60/25/15	50/50	45/55	1.5/87.5/11.0	3/94/3	70/5/25.
Allowable Comp, weight %.			22–24/23–27/50–54	5–9/45–47/45–49	58–62/23–27/14–16	48.5–50.5/49.4–51.5	44–46/54–56	0.5–1.5/87.5–89.5/10–11.	2–3/94–96/2–3	68–72/3–7/24–26.
Boiling Point	°F@1.00 atm		46.4 to –33.0	–48.8 to –47.9	32.4 to –18.2	–60.1 to –60.0	–60.3 to –60.2			–40.2 to 25.6.
	°C@1.00 atm		–43.6 to –36.6	–44.9 to –44.4	–35.8 to –27.9	–51.2 to –51.1	–51.3 to –51.2			–40.1 to 32.0.
Boiling Point Range*	K		7.0	0.5	7.9	0.1	0.1			8.1
Vapor Phase Contaminants:										
Air and other noncondensables.	% by volume @25°C	5.9	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5
Liquid Phase Contaminants:										
Water	ppm by weight	5.4	10	10	10	10	10	10	10	10
All other impurities including refrigerants.	% by weight	5.1	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50
High boiling residue	% by volume	5.7	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Particulates/solids	Visually clean to pass.	5.8	pass	pass	pass	pass	pass	pass	pass	pass
Acidity	ppm by weight	5.6	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Chlorides**	No visible turbidity	5.5	pass	pass	pass	pass	pass	pass	pass	pass

*Boiling points and boiling point ranges, although not required, are provided for informational purposes.
**Recognized chloride level for pass/fail is 3ppm.
Shaded columns denote refrigerants for which analytical data is not available.

TABLE 1C.—PHYSICAL PROPERTIES OF AZEOTROPIC BLENDS (500 SERIES REFRIGERANTS)

	Reporting units	Reference (subclause)	R500	R502	R503	R507	R508	R509
Characteristics:*								
Refrigerant Components			R12/152a	R22/115	R23/13	R125/143a	R23/116	R22/218.
Nominal Comp. weight %.			73.8/26.2	48.8/51.2	40.1/59.9	50/50	39/61	44/58.
Allowable Comp. weight %.			72.8–74.8/25.2–27.2	44.8–52.8/47.2–55.2	39–41/59.61	49–51/49–51	37–41/59–63	42–46/56-60.
Boiling Point*	°F@1.00 atm		–28.1	–49.7	–127.7	–52.1	–123.5	–53.9.
	°C@1.00 atm		–33.4	–45.4	–88.7	–46.7	–86.4	–47.7.
Boiling Point Range*	K		0.5	0.5	0.5	0.5	0.5	0.5.
Vapor Phase Contaminants:								
Air and other noncondensables.	% by volume @25° C	5.9	1.5	1.5	1.5	1.5	1.5	1.5.
Liquid Phase Contaminants:								
Water	ppm by weight	5.4	10	10	10	10	10	10.
All other impurities including refrigerants.	% by weight	5.1	0.50	0.50	0.50	0.50	0.50	0.50.
High boiling residue	% by volume	5.7	0.05	0.01	0.01	0.01	0.01	0.01.
Particulates/solids	Visually clean to pass	5.8	Pass	Pass	Pass	Pass	Pass	Pass
Acidity	ppm by weight	5.6	1.0	1.0	1.0	1.0	1.0	1.0
Chlorides**	No visible turbidity	5.5	Pass	Pass	Pass	Pass	Pass	Pass.

*Boiling points and boiling point ranges, although not required, are provided for informational purposes.
**Recognized chloride level for pass/fail in 3ppm.

Appendix A. References—Normative

Listed here are all standards, handbooks, and other publications essential to the formation and implementation of the standard. All references in this appendix are considered as part of this standard.

ASHRAE Terminology of Heating, Ventilating, Air Conditioning and Refrigeration, American Society of Heating Refrigeration and Air-Conditioning Engineers, 1992, 1791 Tullie Circle N.E., Atlanta, GA 30329–2305; U.S.A.

ASHRAE Standard 34–1992, Number Designation and Safety Classification of Refrigerants, American Society of Heating Refrigeration and Air-Conditioning Engineers, 1992, 1791 Tullie Circle N.E., Atlanta, GA 30329–2305; U.S.A.

Appendix C to ARI Standard 700–95: Analytical Procedures to ARI Standard 700–95, Specifications for Fluorocarbon and Other Refrigerants, Air-Conditioning and Refrigeration Institute, 1995, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203; U.S.A.

Federal Specification for Fluorocarbon Refrigerants, BB–F–1421–B, dated March 5, 1992, Office of the Federal Register, National Archives and Records Administration, 1992, 800 North Capitol Street, N.W., Washington, D.C. 20402; U.S.A.

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Part III

Department of Health and Human Services

Food and Drug Administration

Guidance for industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body and Agency Emergency Processing Request Under OMB Review; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0389]

Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body." The guidance is intended to provide information regarding the submission of notifications of health claims or nutrient content claims based on authoritative statements of scientific bodies. This action is in response to provisions of the FDA Modernization Act of 1997 (FDAMA).

DATES: Written comments on agency guidance documents may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled "Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body" to the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance may be sent. Alternatively, you may fax your request to 202–205–5494. See the SUPPLEMENTARY INFORMATION section for electronic access to the guidance. Submit written comments on this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Constance B. Henry, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance entitled "Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body."

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). The guidance entitled "Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body" is issued as a level 1 guidance consistent with GGP's. It may be utilized upon issuance because it is needed to help effect the implementation of the new statutory provisions of FDAMA.

This guidance document represents the agency's current thinking on the submission of notifications under sections 303 and 304 of FDAMA (new section 403(r)(3)(C) and (r)(2)(G) of the Federal Food, Drug, and Cosmetic Act). 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 requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This guidance document contains a collection of information that requires clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995. In a notice published elsewhere in this issue of the **Federal Register**, FDA is announcing that this collection of information has been submitted to OMB for emergency processing. The notice also solicits comments on the collection of information.

An electronic version of the guidance entitled "Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body" is also available on the Internet at "http://www.cfsan.fda.gov/~dms/guidance.html".

Dated: June 5, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–15483 Filed 6–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0320]

Agency Emergency Processing Request Under OMB Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns the submission of notifications of health claims or nutrient content claims based on authoritative statements of scientific bodies. This action is in response to provisions of the FDA Modernization Act of 1997 (FDAMA).

DATES: Submit written comments on the collection of information by June 22, 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. 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:

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.

Notification of a Health Claim or a Nutrient Content Claim Based on an Authoritative Statement

Section 403(r)(2)(G) and (r)(3)(C) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(2)(G) and (r)(3)(C)), as amended by FDAMA, provides that a food producer may market a food product whose label bears a nutrient claim or a health claim that is based on an authoritative statement of a scientific body of the Federal Government or the National Academy of Sciences. Under these sections of the act, a food producer that intends to use such a claim must submit a notification of its intention to use the claim 120 days before it begins marketing.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance entitled "Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body." The guidance provides the agency's interpretation of terms central to the submission of a notification and the agency's views on the information that should be included in a notification. In addition to the information specifically required by the act to be in such notifications, the guidance states that the notifications should also contain information on analytical methodology for the nutrient that is the subject of a claim based on an authoritative statement.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Annual Hours
Guidance for Notifications	12	5	60	1	60

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that this guidance will enable food producers to meet the criteria for notifications that are established in sections 403(r)(2)(G) and 403(r)(3)(C) of the act during the interim period while the agency is initiating notice-and-comment rulemaking in this matter. FDA intends to review the notifications it receives to ensure that they comply with the criteria established for them by the act.

These estimates are based on FDA's experience with health claims and nutrient content claims and with other similar notification procedures that fall under its jurisdiction. Because the claims are based on authoritative statements of certain scientific bodies of the Federal Government or the National Academy of Sciences or one of its subdivisions, FDA believes that the information submitted with a notification will be either provided as part of the authoritative statement or readily available to firms wishing to make claims.

The hour burden estimates contained in Table 1 of this document are for the information collection requests in the guidance only and do not include statutory requirements specifically mandated by the act.

FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA and 5 CFR 1320.13. The information is needed immediately to implement FDAMA, and it is essential to the agency's mission of protecting and promoting the public health. The use of normal clearance procedures would be likely to result in the prevention or disruption of this collection of information.

Dated: June 3, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–15484 Filed 6–10–98; 8:45 am]

BILLING CODE 4160–01–F

federal register

Thursday
June 11, 1998

Part IV

Department of Education

Rehabilitation Training: Rehabilitation Long-Term Training; Notice

DEPARTMENT OF EDUCATION

Rehabilitation Training: Rehabilitation Long-Term Training

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority for fiscal year 1999 and subsequent fiscal years.

SUMMARY: The Secretary proposes a funding priority for fiscal year 1999 and subsequent fiscal years under the Rehabilitation Training: Rehabilitation Long-Term Training program. The Secretary takes this action in order to assist State vocational rehabilitation (VR) agencies in carrying out their Comprehensive System of Personnel Development (CSPD) plans.

DATES: Comments must be received by the Department on or before July 13, 1998.

ADDRESSES: All comments concerning this proposed priority should be addressed to Beverly Steburg, U.S. Department of Education, 61 Forsyth Street, S.W., Room 18T91, Atlanta, Georgia 30303. Telephone: (404)562–6336. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (404) 562–6347. Comments may also be sent through the Internet to:

Beverly_Steburg@ed.gov

You must include the term "Rehabilitation Long-Term Training Program" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Beverly Steburg. Telephone: (404) 562–6336. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (404) 562–6347.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Note: The official version of this document is the document published in the **Federal Register.**

SUPPLEMENTARY INFORMATION: One of the emphases in the 1992 Amendments to the Rehabilitation Act of 1973 (the Amendments) is the need for qualified personnel in the VR program. This is evidenced in both the statutory language and legislative history, including the report of the Senate Committee, which indicates that trained, qualified VR personnel often make the difference between success and failure in facilitating the achievement of quality employment outcomes for individuals with disabilities. Accordingly, the Amendments introduced into the Rehabilitation Act of 1973 (the Act) the provisions of section 101(a)(7) related to the Comprehensive System of Personnel Development. One of the key CSPD provisions, section 101(a)(7)(B) of the Act, requires designated State units (DSUs) to establish and maintain personnel standards for rehabilitation personnel, including VR counselors.

The regulations in 34 CFR 361.18(c) implement the CSPD statutory requirements with respect to the development and maintenance of DSU personnel standards. These provisions require, in part, that DSUs establish personnel standards "that are consistent with any national or State-approved or -recognized certification, licensing, or registration requirements * * *" applicable to a particular profession. In addition, those standards must be based on the "highest requirements in the State"—defined in the regulations to mean the highest entry-level academic degree needed for any national or State-approved or -recognized certification, licensing, registration * * *."

Based on the preceding requirements, if a State has not adopted certification, licensing, or registration requirements for rehabilitation counselors, State VR agency counselors must meet personnel standards that are consistent with the national standard for VR counselors—Certification for Rehabilitation Counselors—meaning that counselors must have a masters degree in rehabilitation counseling or a closely related field. An informal survey by the Council of State Administrators of Vocational Rehabilitation estimates that approximately 45 percent of the current 11,000 counselors nationwide have a masters degree. Some State agencies have very few counselors who meet this standard. To the extent that is the case, VR agencies are required to develop and implement a plan (referred to as the State's CSPD plan) for retraining or hiring counselors that meet the highest requirements in the State.

The proposed priority would support creative, innovative approaches for assisting State agencies to meet the previously-described statutory and regulatory personnel requirements for VR counselors and to carry out their CSPD plans. Distance learning and virtual training arenas are among the potential approaches that can reach counselors conveniently, including counselors who do not live or work near an academic training institution. Degree-granting programs that include competency-based components also would be appropriate under this priority. Those programs would allow for consideration of the past experiences of counselors, yet require rigorous assessment of skills and knowledge to ensure competency in core areas. Generally, training approaches proposed by applicants must address the unique learning needs of currently employed VR counselors, reflect their learning styles and professional experiences, and be accessible at a time and in a place that would maximize participation.

In an effort to maximize benefit to the VR program while minimizing costs, potential applicants may wish to consider collaborative models with, for example, community rehabilitation programs, other public agencies, or private entities.

The Secretary notes that the Rehabilitation Services Administration (RSA) funds only training programs that are accredited. For purposes of this priority, RSA may fund programs that are in the process of applying for accreditation. However, a funded project must be accredited by the time its first graduates complete the program. The Council on Rehabilitation Education is the current body that accredits programs that train rehabilitation counselors.

The Secretary will announce the final priority in a notice in the **Federal Register.** The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The

publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. In any year in which the Secretary chooses to use this proposed priority, the Secretary invites applications through a notice published in the **Federal Register**. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) and section 302(a)(1) of the Rehabilitation Act of 1973, as amended, the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Projects shall—

(1) Provide training to current vocational rehabilitation counselors, including counselors with disabilities, ethnic minorities, and those from diverse backgrounds, toward meeting DSU personnel standards required under section 101(a)(7) of the Act, commonly referred to as the Comprehensive System of Personnel Development (CSPD);

(2) Address the training needs specified in the CSPD plans of those States with which the project will be working; and

(3) Develop innovative approaches (e.g., distance learning, competency-based programs, and other methods) that would maximize participation in, and the effectiveness of, project training.

Multi-State projects and projects that involve consortia of institutions and agencies are also authorized, although other projects will be considered.

The regulations in 34 CFR 386.31(b) require that a minimum of 75 percent of project funds be used to support student scholarships and stipends. The regulations also provide for a waiver of this requirement under certain circumstances, including for new training programs.

Finally, the Secretary intends to approve a wide range of approaches for providing training and different levels of funding, based on the quality of individual projects. The Secretary takes these factors into account in making grants under this priority.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

This proposed priority would address the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The proposed priority furthers the objectives of this Goal by focusing available funds on projects that improve the counseling skills of vocational rehabilitation counselors of State VR agencies, which will improve the responsiveness of the VR system to adults with disabilities and their vocational pursuits.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 18T91, 61 Forsyth Street, S.W., Atlanta, Georgia, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for this proposed priority. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 29 U.S.C. 721 (b) and (e) and 796(e).

(Catalog of Federal Domestic Assistance Number 84.129, Rehabilitation Long-Term Training)

Dated: June 8, 1998.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–15575 Filed 6–10–98; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 2400/P.L. 105–178

Transportation Equity Act for the 21st Century (June 9, 1998; 112 Stat. 107)

Last List June 3, 1998

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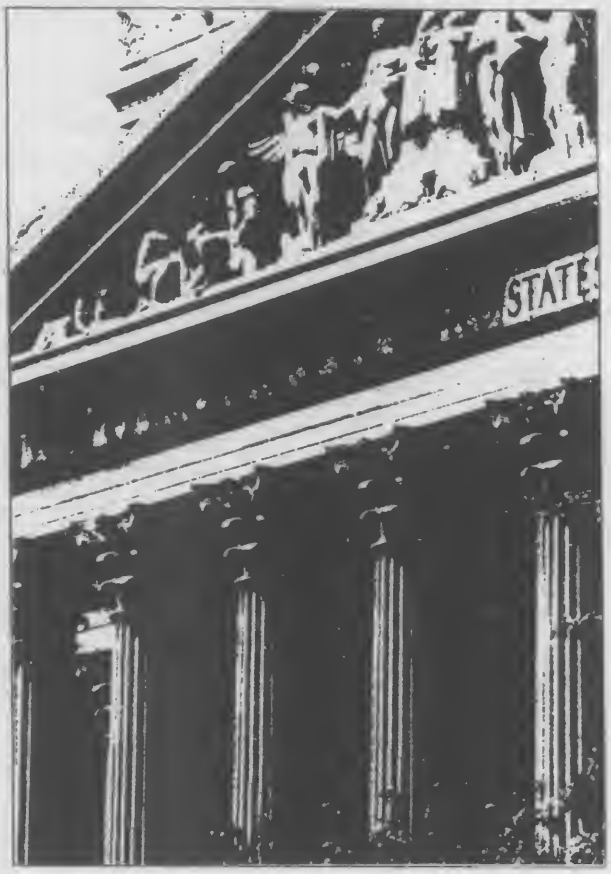

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