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WASHINGTON, DC

WHEN: Tuesday, Nov. 24, 1998 at 9:00 am.

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

Proclamation 7146 of November 9, 1998

Veterans Day, 1998

By the President of the United States of America

A Proclamation

This year on Veterans Day, we celebrate the 80th anniversary of the armistice that finally silenced the guns of World War I. Millions of brave Americans marched into Europe and into the brutality of trench warfare to fight that war. Although President Woodrow Wilson recognized that "it is a fearful thing to lead this great peaceful people into war," he also realized that it was important to do so "for the things which we have always carried nearest our hearts—for democracy, for the right of those who submit to authority to have a voice in their own Governments . . . ." The veterans of the First World War accepted this burden and privilege, which American men and women in uniform have borne throughout the decades and still bear today.

At Cantigny, St. Mihiel, Chateau-Thierry, Belleau Wood, and the Meuse-Argonne, American soldiers withstood the onslaughts of the enemy and, with extraordinary valor and unbending determination, turned the tide of battle and won a signal victory for democracy. Our Nation has been truly blessed by the service of these veterans who set an extraordinary example of courage and devotion to country that inspired the generations of Americans who followed them into the Armed Forces.

Through two world wars, through long and costly struggles against aggression in Korea and Vietnam, through conflict in the Persian Gulf, and in numerous peacekeeping and humanitarian missions, America's veterans have risked their lives and spilled their blood to keep faith with our Nation's fundamental values of freedom, democracy, and human dignity. We owe an enormous debt of gratitude to these patriots, whose service and sacrifice have allowed us to raise our children in a country blessed with peace and prosperity and to shape a brighter future for nations around the world.

In grateful recognition of the contributions of those who have served in our Armed Forces, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor America's veterans. On Veterans Day, we honor all those who have served in our Armed Forces, and we remember with deep respect those who paid the ultimate price for our freedom. America's veterans have answered the highest calling of citizenship, and they continue to inspire us with the depth of their patriotism and the generosity of their service.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Wednesday, November 11, 1998, as Veterans Day. I urge all Americans to acknowledge the courage and sacrifice of our veterans through appropriate public ceremonies and private prayers. I call upon Federal, State, and local officials to display the flag of the United States and to encourage and participate in patriotic activities in their communities. I invite civic and fraternal organizations, places of worship, schools, businesses, unions, and the media to support this national observance with suitable commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

[FR Doc. 98–30451
Filed 11–10–98; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Memorandum of October 27, 1998

Report to the Congress Regarding Conditions in Burma and U.S. Policy Toward Burma

Memorandum for the Secretary of State

Pursuant to the requirements set forth under the heading "Policy Toward Burma" in section 570(d) of the FY 97 Foreign Operations Appropriations Act, as contained in the Omnibus Consolidated Appropriations Act (Public Law 104–208), a report is required every 6 months following enactment concerning:

(1) progress toward democratization in Burma;

(2) progress on improving the quality of life of the Burmese people, including progress on market reforms, living standards, labor standards, use of forced labor in the tourism industry, and environmental quality; and

(3) progress made in developing a comprehensive, multilateral strategy to bring democracy to, and improve human rights practices and the quality of life in Burma, including the development of a dialogue between the State Peace and Development Council (SPDC) and democratic opposition groups in Burma.

You are hereby authorized and directed to transmit the attached report fulfilling these requirements to the appropriate committees of the Congress and to arrange for publication of this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, October 27, 1998.

[FR Doc. 98–30450
Filed 11–10–98; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Notice of November 9, 1998

Continuation of Iran Emergency

On November 14, 1979, by Executive Order 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Notices of the continuation of this national emergency have been transmitted annually by the President to the Congress and the **Federal Register**. The most recent notice appeared in the **Federal Register** on October 1, 1997. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 1998. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
November 9, 1998.

[FR Doc. 98–30452
Filed 11–10–98; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 70

RIN 3150–AF87

Criticality Accident Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to give licensees of light-water nuclear power reactors greater flexibility in meeting the requirement that licensees authorized to possess more than a small amount of special nuclear material (SNM) maintain a criticality monitoring system in each area in which the material is handled, used, or stored. This action is taken as a result of the experience gained in processing and evaluating a number of exemption requests from such licensees and NRC's safety assessments in response to these requests that concluded that the likelihood of criticality was negligible.

EFFECTIVE DATE: The final rule is effective on December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–3224; e-mail: mtj1@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to give persons licensed to construct or operate light-water nuclear power reactors the option of either meeting the criticality accident requirements of paragraph (a) through (c) of 10 CFR 70.24 in handling and storage areas for SNM, or electing to comply with certain requirements that are set forth in a new Section 50.68 in 10 CFR Part 50. The requirements in Section 50.68 are generally the requirements that the NRC has used to grant specific exemptions from the requirements of 10 CFR 70.24. In addition, the NRC is deleting the current text of Section 70.24(d) concerning the granting of specific exemptions from Section 70.24 because it is redundant to 10 CFR 70.14(a). Section 70.24(d) is rewritten to provide that the requirements in paragraphs (a) through (c) of 10 CFR 70.24 do not apply to holders of a construction permit or operating license for a nuclear power reactor issued under 10 CFR Part 50, or combined licenses issued under 10 CFR Part 52, if the holders comply with the requirements of 10 CFR 50.68(b).

II. Discussion

On December 3, 1997 (62 FR 63825), the NRC published a direct final rule in the **Federal Register** that would have provided persons licensed to construct or operate light-water nuclear power reactors with the option of either meeting the criticality accident requirements of paragraph (a) of 10 CFR 70.24 in handling and storage areas for SNM, or electing to comply with requirements that would be incorporated into 10 CFR Part 50 at 10 CFR 50.68. A direct final rule (62 FR 63825) and a parallel proposed rule (62 FR 63911) amending Parts 70 and 50 were published in the **Federal Register** on December 3, 1997. The statement of considerations for the direct final rule and the proposed rule stated that if significant adverse comments were received on the direct final rule, the NRC would withdraw the direct final rule and would address the comments in a subsequent final rule. Significant adverse comments were received from the public, and on February 25, 1998, the NRC published a notice withdrawing the direct final rule and revoking the regulatory text. Since the direct final rule had an effective date of February 17, 1998, it was necessary for the February 25, 1998 notice to revoke the regulatory text which became effective on February 17, 1998, as well as to withdraw the direct final rule. With the withdrawal and revocation, the proposed rule is the only regulatory proposal remaining. The NRC has determined to modify the proposed rule to address public comments and to make several editorial clarifications. The analysis of and response to the public comments to the proposed rule are set forth below.

III. Comments on the Proposed Rule

The NRC received comments on the December 3, 1997, proposed rule (62 FR 63911) from Commonwealth Edison, Carolina Power & Light Company, Southern Nuclear Operating Company, Nuclear Energy Institute, Northern States Power Company, Trojan Nuclear Plant, and Detroit Edison. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW. (Lower Level), Washington, DC. Many of the comment letters suggested editorial type changes, some of which have been incorporated into this final rule. The comments are classified into nine general comments and are addressed as follows:

Comment 1: The proposed rule should not prohibit licensees from applying for exemptions under the guidelines of 10 CFR 70.14 and should contain provisions to note that any existing approved exemptions remain valid.

Response: Even though the wording of paragraph (d) in the current version of 10 CFR 70.24, which provides for applying for exemptions should "good cause" exist, is being deleted, licensees are not prohibited from applying for such exemptions under the guidelines of paragraph (a) of 10 CFR 70.14, "Specific Exemptions."

The standard for issuance of exemptions under Section 70.14 is essentially the same as the "good cause" criterion in paragraph (d) of Section 70.24. Therefore, its removal from Section 70.24(d) will not change the standard for, or otherwise serve to limit the granting of, exemptions to Section 70.24.

This rulemaking does not affect the status of exemptions to the requirements of Section 70.24 that were previously granted by the NRC. A licensee currently holding an exemption to Section 70.24 may continue operation under its existing exemption (including any applicable conditions imposed as part of the granting of the exemption) and its current programs and commitments without any further action. Alternatively, a licensee

currently holding exemptions to Section 70.24 may elect to comply with the new alternative provided under Section 50.68(b), but if it does so, its exemption would be inapplicable and would not serve as a basis for avoiding compliance with the criteria listed in Section 50.68(b). A licensee whose exemption was issued as part of its operating license and whose exemption contained conditions imposed as part of the granting of the exemption, need not apply for a license amendment to delete the exemption conditions as a prerequisite for complying with Section 50.68(b).

Comment 2: For many BWRs, optimum moderation calculations are not performed for the fresh fuel storage racks because administrative controls are in place to preclude these conditions. In accordance with vendor recommendations, compensatory measures have been established to preclude an optimum moderation condition in the fresh fuel storage racks. The rule should contain a provision that exempts this requirement if adequate controls have been established to preclude an optimum moderation condition.

Response: The NRC agrees and has added the following provision to 10 CFR 50.68(b)(3): "This evaluation need not be performed if administrative control and/or design features prevent such moderation, or if fresh fuel storage racks are not used."

Comment 3. The rule should eliminate the reference to General Design Criterion 63 (GDC 63) and should describe the underlying monitoring requirements.

Response: The reference to GDC 63 was initially incorporated to ensure that licensees receiving an exemption to 10 CFR 70.24 would not erroneously view the exemption as the basis for removing from the spent fuel pool area radiation monitors that were installed to meet other monitoring requirements, such as those contained in 10 CFR 20.1501 and GDC 63. This rule change does not affect these other monitoring requirements; therefore, referencing GDC 63 has been deleted.

Comment 4. Placing a limit on enrichment offers no direct safety benefit and should not be included.

Response: The NRC disagrees with the comment. The maximum allowable nominal enrichment of reactor fuel is currently limited to 5-weight percent on the basis of possible criticality concerns even in a dry environment, as well as currently approved extensions to 10 CFR 51.52 based on an environmental impact study for enrichments higher than 5-weight percent. Any future approved enrichment extension can be readily handled by modifying this criterion.

Comment 5. Replace "may not permit" with "shall prohibit the" in Criterion (1).

Response: The NRC agrees and has used the phrase suggested by the commenters.

Comment 6. Use of "pure water" and "unborated water" should be consistent.

Response: The NRC agrees. The final rule uses the term "unborated water."

Comment 7. Criteria (2) and (3) should not be applicable if the licensee does not use the fresh fuel storage racks.

Response: The NRC agrees and has added the following provision to 10 CFR 50.68 (b)(2) and (b)(3): "This evaluation need not be performed if administrative controls and/or design features prevent such moderation or if fresh fuel storage racks are not used."

Comment 8. The meaning of "transportation" in criterion (1) is unclear.

Response: The NRC agrees and has deleted the term.

Comment 9. The phrase "maximum permissible U–235 enrichment" in Criteria (2), (3), and (4) should be replaced by the phrase "maximum fuel assembly reactivity."

Response: The NRC agrees and has used the phrase suggested by the commenter.

IV. Section-by-Section Analysis

10 CFR 50.68

Paragraph (a) of Section 50.68 allows a nuclear power plant licensee (including a holder of either a construction permit or a combined operating license) the option of complying with Section 70.24 (a) through (c), or complying with the requirements in paragraph (b) of Section 50.68. The corresponding provision in Section 70.24 is paragraph (d).

Paragraph (b) sets forth eight specific requirements which a licensee must comply with so long as it chooses under the provisions of Section 50.68 to avoid compliance with the requirements of Section 70.24 (a) through (c).

A licensee currently holding an exemption to Section 70.24 may elect to comply with the new alternative provided under Section 50.68, but if it does so, its exemption to Section 70.24 is inapplicable to, and would not serve as a basis for avoiding compliance with the eight criteria in Section 50.68(b).

10 CFR 70.24

Paragraph (d)(1) of Section 70.24 allows a nuclear power plant licensee (including a holder of either a construction permit or a combined operating license) the option of complying with Section 70.24 (a) through (c), or complying with the requirements in 10 CFR Section 50.68. This paragraph is the corresponding provision to Section 50.68(a).

Paragraph (d)(2) clarifies that the status of exemptions to the requirements of Section 70.24 that were previously granted by the NRC continue unaffected by this rulemaking. A licensee currently holding an exemption to Section 70.24 may continue operation under its existing exemption (including any applicable conditions imposed as part of the grant of the exemption) and its current programs and commitments without any further action.

A license that seeks an exemption from the requirements of Section 70.24 must meet the criteria for an exemption under Section 70.14. The standard for issuance of exemptions remains unchanged from the old rule, since the Commission regards the former "good cause" criterion under the previous version of Section 70.24(d) as being essentially the same as the standard for issuance of exemptions under Paragraph 70.14.

V. Metric Policy

On October 7, 1992, the Commission published its final Policy Statement on Metrication. According to that policy, after January 7, 1993, all new regulations and major amendments to existing regulations were to be presented in dual units. The new addition and amendment to the regulations contain no units.

VI. Finding of No Significant Environmental Impact

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, would not be a major Federal action significantly affecting the quality of the human environment; and therefore, an environmental impact statement is not required. The final rule provides an alternative to existing requirements on criticality monitoring. The alternative method contained in the final rule in the new Section 50.68 represents a codification of the criteria currently used by the NRC for granting exemptions from the criticality monitoring requirements in 10 CFR 70.24(a). These criteria provide an acceptable alternative for assuring that there are no inadvertent criticality events of special nuclear material at nuclear power reactors, which is the purpose of the criticality monitoring

requirements in Section 70.24(a). Experience over 15 years has demonstrated that the alternative criteria have been effective in preventing inadvertent criticality events, and the NRC concludes that as a matter of regulatory efficiency, there is no purpose to requiring licensees to apply for and obtain exemptions from requirements of Section 70.24(a) if they adhere to the alternative criteria in the new Section 50.68. Since the alternative contained in Section 50.68 provides an equally effective method for preventing inadvertent criticality events in nuclear power plants, the NRC concludes that the final rule will not have any significant impact on the quality of the human environment. Therefore, an environmental impact statement has not been prepared for this regulation. This discussion constitutes the environmental assessment for this rulemaking.

VII. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0009 and 3150–0011.

VIII. Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

IX. Regulatory Analysis

The current structure of the current 10 CFR 70.24 is overly broad and places a burden on a licensee to identify those areas or operations at its facility where the requirements are unnecessary, and to request an exemption if the licensee has sufficient reason to be relieved from the requirements. This existing structure has resulted in a large number of exemption requests.

To relieve the burden on power reactor licensees of applying for, and the burden on the NRC of granting exemptions, this amendment permits power reactor facilities with nominal fuel enrichments no greater than 5-weight percent of U–235 to be excluded from the scope of 10 CFR 70.24, provided they meet specific requirements being added to 10 CFR Part 50. This amendment is a result of the experience gained in processing and evaluating a number of exemption requests from power reactor licensees and NRC's safety assessments in response to these requests which concluded that the likelihood of criticality was negligible.

The only other viable option to this amendment is for the NRC to make no changes and allow the licensees to continue requesting exemptions. If no changes are made, the licensees will continue to incur the costs of submitting exemptions and NRC will incur the costs of reviewing them. Under this rule, an easing of the burden on licensees results from not having to request exemptions. Similarly, the NRC's burden will be reduced by avoiding the need to review and evaluate these exemption requests.

This rule is not a mandatory requirement, but an easing of burden action which results in regulatory efficiency. Also, the rule does not impose any additional costs on existing licensees and has no negative impact on public health and safety, but will provide savings to future licensees, and may provide some reduction in burden to current licensees whose current exemption includes conditions which are more restrictive than the requirements in Section 50.68. There will also be savings in resources to the NRC as well. Hence, the rule is shown to be cost beneficial.

The foregoing constitutes the regulatory analysis for this final rule.

X. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC hereby certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This rule affects only the licensees of nuclear power plants. These licensee companies that are dominant in their service areas, do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, 5 U.S.C. 601, or the size standards adopted by the NRC (10 CFR 2.810).

XI. Backfit Analysis

The NRC has determined that this rule does not impose a backfit as defined in 10 CFR 50.109(a)(1), since it provides an alternative to existing requirements on criticality monitoring. Accordingly, the NRC has not prepared a backfit analysis for this rule.

XII. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major rule" and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons stated in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 50 and 70:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

The authority citation for 10 CFR part 50 continues to read as follows:

1. **Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 and 50.81

also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.68 is added under the center heading "Issuance, Limitations, and Conditions of Licenses and Construction Permits" to read as follows:

§ 50.68 Criticality accident requirements.

(a) Each holder of a construction permit or operating license for a nuclear power reactor issued under this part or a combined license for a nuclear power reactor issued under Part 52 of this chapter, shall comply with either 10 CFR 70.24 of this chapter or the requirements in paragraph (b) of this section.

(b) Each licensee shall comply with the following requirements in lieu of maintaining a monitoring system capable of detecting a criticality as described in 10 CFR 70.24:

(1) Plant procedures shall prohibit the handling and storage at any one time of more fuel assemblies than have been determined to be safely subcritical under the most adverse moderation conditions feasible by unborated water.

(2) The estimated ratio of neutron production to neutron absorption and leakage (k-effective) of the fresh fuel in the fresh fuel storage racks shall be calculated assuming the racks are loaded with fuel of the maximum fuel assembly reactivity and flooded with unborated water and must not exceed 0.95, at a 95 percent probability, 95 percent confidence level. This evaluation need not be performed if administrative controls and/or design features prevent such flooding or if fresh fuel storage racks are not used.

(3) If optimum moderation of fresh fuel in the fresh fuel storage racks occurs when the racks are assumed to be loaded with fuel of the maximum fuel assembly reactivity and filled with low-density hydrogenous fluid, the k-effective corresponding to this optimum moderation must not exceed 0.98, at a 95 percent probability, 95 percent confidence level. This evaluation need not be performed if administrative controls and/or design features prevent such moderation or if fresh fuel storage racks are not used.

(4) If no credit for soluble boron is taken, the k-effective of the spent fuel storage racks loaded with fuel of the maximum fuel assembly reactivity must not exceed 0.95, at a 95 percent probability, 95 percent confidence level, if flooded with unborated water. If credit is taken for soluble boron, the k-effective of the spent fuel storage racks loaded with fuel of the maximum fuel assembly reactivity must not exceed 0.95, at a 95 percent probability, 95 percent confidence level, if flooded with borated water, and the k-effective must remain below 1.0 (subcritical), at a 95 percent probability, 95 percent confidence level, if flooded with unborated water.

(5) The quantity of SNM, other than nuclear fuel stored onsite, is less than the quantity necessary for a critical mass.

(6) Radiation monitors are provided in storage and associated handling areas when fuel is present to detect excessive radiation levels and to initiate appropriate safety actions.

(7) The maximum nominal U–235 enrichment of the fresh fuel assemblies is limited to five (5.0) percent by weight.

(8) The FSAR is amended no later than the next update which § 50.71(e) of this part requires, indicating that the licensee has chosen to comply with § 50.68(b).

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

The authority citation for 10 CFR part 70 continues to read as follows:

1. Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246, (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234).

Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

2. In § 70.24, paragraph (d) is revised to read as follows:

§ 70.24 Criticality accident requirements.

* * * * *

(d)(1) The requirements in paragraphs (a) through (c) of this section do not apply to a holder of a construction permit or operating license for a nuclear power reactor issued under part 50 of this chapter or a combined license issued under part 52 of this chapter, if the holder complies with the requirements of paragraph (b) of 10 CFR 50.68.

(2) An exemption from § 70.24 held by a licensee who thereafter elects to comply with requirements of paragraph (b) of 10 CFR 50.68 does not exempt that licensee from complying with any of the requirements in § 50.68, but shall be ineffective so long as the licensee elects to comply with § 50.68.

Dated at Rockville, Maryland this 28th day of October, 1998.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 98–30253 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–217–AD; Amendment 39–10880; AD 98–23–13]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model Viscount 744, 745, 745D, and 810 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all British Aerospace Model Viscount 700, 800, and 810 series airplanes, that currently requires repetitive inspections to detect cracks and corrosion in the inboard and outboard engine nacelle structures on the wings; replacement of any cracked fittings and mating struts; and treatment or replacement of any corroded fittings or struts. This amendment requires repetitive inspections to detect cracking or corrosion of the eye end fittings of the outboard engine lower support or of the bore of the taper pin holes, and repair, if necessary. This amendment also limits the applicability of the existing AD. This amendment is prompted by reports of cracked and separated lower eye end fittings. The actions specified by this AD are intended to detect and correct cracking of the eye end fittings of the outboard engine lower support, which could result in reduced structural integrity of the engine nacelle support structures.

DATES: Effective December 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of December 17, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft Limited, Chadderton Division, Engineering Support, Greengate, Middleton, Manchester M24 1SA, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 90–20–17, amendment 39–6744 (55 FR 38539, September 19, 1990), which is applicable to all British Aerospace Model Viscount 700, 800, and 810 series airplanes, was published in the Federal Register on September 8, 1998 (63 FR 47440). The action proposed to require new repetitive inspections to detect cracking or corrosion of the eye end fittings of the outboard engine lower support or of the bore of the taper pin holes, and repair, if necessary. The action also proposed to limit the applicability of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 29 airplanes of U.S. registry that will be affected by this AD.

The new eddy current inspections that are required in this AD take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $3,480, or $120 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6744 (55 FR 38539, September 19, 1990), and by adding a new airworthiness directive (AD), amendment 39–10880, to read as follows:

98–23–13 British Aerospace Regional Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited, Vickers-Armstrongs Aircraft Limited): Amendment 39–10880. Docket 98–NM–217–AD. Supersedes AD 90–20–17, amendment 39–6744.

Applicability: Model Viscount 744, 745, and 745D series airplanes, on which British Aerospace Modification D3227 has not been accomplished; and Model Viscount 810 series airplanes, on which British Aerospace Modification FG 2103 has not been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the eye end fittings of the outboard engine lower support, which could result in reduced structural integrity of the engine nacelle support structures, accomplish the following:

(a) Perform an eddy current inspection to detect cracking or corrosion of the eye end fittings of the outboard engine lower support, or of the bore of the taper pin holes, in accordance with the Accomplishment Instructions of British Aerospace Preliminary Technical Leaflet (PTL) No. 326, Issue 2, including Appendices 1 and 2, all dated December 1, 1994 (for Model Viscount 744, 745, and 745D series airplanes); or PTL 197, Issue 3, including Appendices 1 and 2, all dated November 20, 1993 (for Model Viscount 810 series airplanes); at the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD. Thereafter, repeat the inspection at intervals not to exceed 900 landings.

(1) For Model Viscount 744, 745, and 745D series airplanes: Inspect within 3 months after the effective date of this AD.

(2) For Model Viscount 810 series airplanes: Inspect within 900 landings after the last inspection performed in accordance with PTL 197, Issue 2, dated July 10, 1992; or within 3 months after the effective date of this AD; whichever occurs later.

(b) If any cracking is found during any inspection performed in accordance with paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent).

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(e) The inspections shall be done in accordance with the following British Aerospace Regional Aircraft Preliminary Technical Leaflets, which contain the specified effective pages:

Preliminary technical leaflet referenced and date	Page number shown on page	Revision level shown on page	Date shown on page
PTL 326, Issue 2, December 1, 1994	1–6	2	December 1, 1994.
	APPENDIX 1		
	1–6	2	December 1, 1994.
	APPENDIX 2		
	1–6	2	December 1, 1994.
PTL 197, Issue 3, November 20, 1993	1–8	3	November 20, 1993.
	APPENDIX 1		
	1–6	3	November 20, 1993.
	APPENDIX 2		
	1–7	Original	November 20, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft Limited, Chadderton Division, Engineering Support, Greengate, Middleton, Manchester M24 1SA, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 17, 1998.

Issued in Renton, Washington, on November 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30053 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–143–AD; Amendment 39–10879; AD 98–23–12]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all de Havilland Model DHC–7 series airplanes, that currently requires certain structural inspections, and repair, if necessary. This amendment requires an additional structural inspection. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking in certain significant structural areas, which could reduce the structural integrity of these airplanes.

DATES: Effective December 17, 1998.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of December 17, 1998.

The incorporation by reference of a certain other publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 21, 1997 (62 FR 12531, March 17, 1997).

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–06–08, amendment 39–9965 (62 FR 12531, March 17, 1997), which is applicable to all de Havilland Model DHC–7 series airplanes, was published in the **Federal Register** on September 3, 1998 (63 FR 46925). The action proposed to continue to require certain structural inspections, and repair, if necessary. The action also proposed to require an additional structural inspection.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 50 airplanes of U.S. registry that will be affected by this AD.

The inspections that are currently required by AD 97–06–08, and retained in this AD, take approximately 15 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on

U.S. operators is estimated to be $45,000, or $900 per airplane, per inspection cycle.

The new inspection that is required by this AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new inspection required by this AD on U.S. operators is estimated to be $9,000, or $180 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9965 (62 FR 12531, March 17, 1997), and by adding a new airworthiness directive (AD), amendment 39–10879, to read as follows:

98–23–12 De Havilland Inc.: Amendment 39–10879. 98–NM–143–AD. Supersedes AD 97–06–08, Amendment 39–9965.

Applicability: All Model DHC–7 series airplanes, 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 as indicated, unless accomplished previously.

To ensure the continued structural integrity of these airplanes, accomplish the following:

Restatement of Requirements of AD 97–06–08, Amendment 39–9965:

(a) Within 6 months after April 21, 1997 (the effective date of AD 97–06–08, amendment 39–9965), incorporate into the FAA-approved maintenance inspection program the inspections and inspection intervals defined in DHC–7 Maintenance Manual, Product Support Manual (PSM) 1–7–2, Chapter 5–60–00, Temporary Revision TR 5–84, dated June 15, 1994; and inspect the significant structural items prior to the thresholds specified in TR 5–84 of PSM 1–7–2. Repeat the inspections thereafter at the intervals specified in TR 5–84 of PSM 1–7–2.

(b) Prior to further flight, repair any discrepancies detected during any inspection required by paragraph (a) of this AD in accordance with one of the following:

(1) The DHC–7 Maintenance Manual; or

(2) The DHC–7 Structural Repair Manual; or

(3) Other data meeting the certification basis of the airplane approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate; or

(4) Data meeting the certification basis of the airplane approved by Transport Canada Aviation.

New Requirements of this AD

(c) Incorporate into the FAA-approved maintenance inspection program the inspections and inspection intervals defined in the de Havilland Inc. DASH 7 Maintenance Manual, Chapter 5, Section 5–60–00, Product Support Manual (PSM) 1–7–2, Supplementary Inspection Program (SIP), Temporary Revision TR 5–99, dated December 22, 1997, at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD; and inspect the significant structural items prior to the thresholds specified in TR 5–99 of PSM 1–7–2. Thereafter, repeat the inspection at the intervals specified in TR 5–99 of PSM 1–7–2.

(1) For airplanes that have accumulated 38,000 or more total flight cycles as of the effective date of this AD: Incorporate within 2,000 flight cycles after the effective date of this AD.

(2) For airplanes that have accumulated fewer than 38,000 total flight cycles as of the effective date of this AD: Incorporate prior to the accumulation of 40,000 total flight cycles.

(d) Incorporate into the FAA-approved maintenance inspection program the inspections and inspection intervals as defined in the de Havilland Inc. DASH 7 Maintenance Manual, Chapter 5, Section 5–60–00, PSM 1–7–2, Supplementary Inspection Program (SIP), Temporary Revision TR 5–97, dated December 22, 1997, at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD; and inspect the significant structural items prior to the thresholds specified in TR 5–97 of PSM 1–7–2. Thereafter, repeat the inspection at the intervals specified in TR 5–99 of PSM 1–7–2.

(1) For airplanes that have accumulated 19,000 or more total flight cycles as of the effective date of this AD: Incorporate within 1,000 flight cycles after the effective date of this AD.

(2) For airplanes that have accumulated fewer than 19,000 total flight cycles as of the effective date of this AD: Incorporate prior to the accumulation of 20,000 total flight cycles.

(e) All inspection results, positive or negative, must be reported to de Havilland in accordance with "Introduction," paragraph 5, of de Havilland Inc. DASH 7 Maintenance Manual Chapter 5, Section 5–60–00, PSM 1–7–2, Temporary Revision TR 5–84, dated June 15, 1994. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

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

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

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

(h) The inspections shall be done in accordance with DHC–7 Maintenance Manual, Product Support Manual (PSM) 1–7–2, Chapter 5–60–00, Temporary Revision TR 5–84, dated June 15, 1994; de Havilland Inc. DASH 7 Maintenance Manual, Chapter 5, Section 5–60–00, Product Support Manual (PSM) 1–7–2, Supplementary Inspection Program (SIP), Temporary Revision TR 5–99, dated December 22, 1997; and de Havilland Inc. DASH 7 Maintenance Manual, Chapter 5, Section 5–60–00, PSM 1–7–2, Supplementary Inspection Program (SIP), Temporary Revision TR 5–97, dated December 22, 1997.

(1) The incorporation by reference of de Havilland Inc. DASH 7 Maintenance Manual, Chapter 5, Section 5–60–00, Product Support Manual (PSM) 1–7–2, Supplementary Inspection Program (SIP), Temporary Revision TR 5–99, dated December 22, 1997; and de Havilland Inc. DASH 7 Maintenance Manual, Chapter 5, Section 5–60–00, Product Support Manual (PSM) 1–7–2, Supplementary Inspection Program (SIP), Temporary Revision TR 5–97, dated December 22, 1997; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of DHC–7 Maintenance Manual, Product Support Manual (PSM) 1–7–2, Chapter 5–60–00, Temporary Revision TR 5–84, dated June 15, 1994, was approved previously by the Director of the Federal Register as of April 21, 1997 (62 FR 12531, March 17, 1997).

(3) Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–94–19R1, dated January 26, 1998.

(i) This amendment becomes effective on December 17, 1998.

Issued in Renton, Washington, on November 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30051 Filed 11–10–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–99–AD; Amendment 39–10877; AD 98–23–11]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–31 series airplanes, that requires a one-time visual inspection to determine if all corners of the forward service door doorjamb have been modified previously, various follow-on repetitive inspections, and modification, if necessary. This amendment is prompted by reports of fatigue cracks found in the fuselage skin and doubler at the corners of the forward service door doorjamb. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Effective December 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–31 series airplanes was published in the **Federal Register** on January 27, 1998 (63 FR 3852). That action proposed to require a one-time visual inspection to determine if all corners of the forward service door doorjamb have been modified previously, various follow-on repetitive inspections, and modification, if necessary.

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

Request to Allow Designated Engineering Representative (DER) Approval of Certain Repairs

One commenter requests that the FAA revise the proposed AD to permit repairs of cracked structure to be accomplished in accordance with the DER of The Boeing Company, Douglas Products Division, on a temporary basis, rather than in accordance with the Manager of the Los Angeles Aircraft Certification Office (ACO). The commenter states that such an approval would expedite the process for repair approval for a crack condition beyond the allowable repair limits (i.e., greater than 2 inches in length) and for existing repairs that are not accomplished in accordance with the DC–9 Structural Repair Manual (SRM) or Service Rework Drawing.

The FAA does not concur. While DER's are authorized to determine whether a design or repair method complies with a specific requirement, they are not currently authorized to make the discretionary determination as to what the applicable requirement is. However, the FAA has issued a notice (N 8110.72, dated March 30, 1998), which provides guidance for delegating authority to certain type certificate holder structural DER's to approve alternative methods of compliance for AD-required repairs and modifications of individual airplanes. The FAA is currently working with The Boeing Company, Douglas Products Division, to develop the implementation process for delegation of approval of alternative methods of compliance in accordance with that notice. Once this process is implemented, approval authority for alternative methods of compliance can be delegated without revising the AD.

Request To Revise Paragraph (e) of the Proposed AD

One commenter requests that paragraph (e) of the proposed AD be revised to read as follows:

"(e) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward doorjamb of the service door have been modified by FAA approved repairs other than the DC–9 SRM or Service Rework Drawing, prior to further flight, accomplish an initial Low Frequency Eddy Current inspection of the fuselage skin adjacent to the repair.

(e)(i) If no cracks are detected, within (6) months after the initial LFEC inspection, accomplish a repair approved by the Manager, Los Angeles ACO.

(e)(ii) If cracks are detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO."

This commenter states that, as paragraph (e) of the proposed AD is currently worded, it will cause an unnecessary operational impact since FAA-approved non-standard SRM or Service Rework Drawing repairs are known to exist for this area of the doorjamb. The commenter contends that obtaining approval for such repairs from the Los Angeles ACO, prior to further flight, will be time consuming and will result in an unwarranted extended ground time for the airplane.

The FAA does not concur with the commenter's request to revise paragraph (e) of the AD. The FAA, in conjunction with McDonnell Douglas, has conducted further analysis of this issue. The FAA has determined that, for doorjambs of the forward service door that are found to be modified previously, but not in accordance with the DC–9 SRM, an initial low frequency eddy current inspection of the fuselage skin adjacent to those existing repairs will not detect any cracking under the repairs. In light of this determination, no change to this final rule is necessary.

Request To Revise DC–9 Supplemental Inspection Document (SID)

One commenter requests that, prior to issuance of the final rule, the DC–9 SID be revised to incorporate the actions required by this proposed AD. The commenter states that such a revision will eliminate confusion between the DC–9 SID and the proposed AD. The FAA does not concur. The actions required by this AD are necessary to ensure inspection continuity for the affected Principal Structural Element (PSE). After issuance of the final rule, the manufacturer may revise the DC–9 SID.

Request To Revise Compliance Time for Low Frequency Eddy Current (LFEC) or X-ray Inspection

One commenter requests that the compliance time for the initial inspection (LFEC or x-ray) in paragraph (b) of the proposal be revised to correspond with those presently in the SID program—within three years after the effective date of the AD, or prior to 53,140 landings, whichever occurs later. The commenter points out that such a revision would permit its fleet to be inspected during major scheduled maintenance checks, which would reduce the burden of line maintenance and the number of line airplanes out of service as a result of any findings. The commenter agrees that the repetitive inspection interval should remain at 3,225 landings, as specified in the proposed rule.

The FAA does not concur with the commenter's request to revise the compliance time for the initial inspection specified in paragraph (b) of the AD. The commenter provided no technical justification for revising this interval. Fatigue cracking of the fuselage skin and doubler at the corners of the forward service door doorjamb is a significant safety issue, and the FAA has determined that the inspection threshold, as proposed, is warranted, based on the effectiveness of the inspection procedure to detect fatigue cracking. The FAA considered not only those safety issues in developing an appropriate compliance time for this action, but the recommendations of the manufacturer, and the practical aspect of accomplishing the required inspection within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. In light of these factors, the FAA has determined that the initial compliance time, as proposed, is appropriate.

Other Relevant Rulemaking

The FAA has revised the final rule to include a new paragraph (f). This new paragraph states that accomplishment of the inspection requirements of this AD constitutes terminating action for inspections of Principal Structural Element (PSE) 53.09.033 (reference McDonnell Douglas Model DC–9 Supplemental Inspection Document) required by AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996). Since this new paragraph is being added, the FAA has removed "NOTE 4," which is no longer necessary.

Conclusion

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

Cost Impact

There are approximately 64 McDonnell Douglas Model DC–9–31 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 51 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required one-time visual inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the one-time visual inspection required by this AD on U.S. operators is estimated to be $3,060, or $60 per airplane.

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

Should an operator be required to accomplish the LFEC or x-ray inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary LFEC or x-ray inspection is estimated to be $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the HFEC inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary HFEC inspection is estimated to be $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the modification, it would take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,800 per airplane. Based on these figures, the cost impact of any necessary modification is estimated to be $6,600 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–23–11 McDonnell Douglas: Amendment 39–10877. Docket 97–NM–99–AD.

Applicability: Model DC–9–31 series airplanes, as listed in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997, 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 (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the fuselage skin or doubler at the corners of the forward service door doorjamb, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

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

Note 3: The words "repair" and "modify/modification" in this AD and the referenced service bulletin are used interchangeably.

(a) Prior to the accumulation of 50,000 total landings, or within 3,225 landings after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if the corners of the forward service door doorjamb have been modified. Perform the inspection in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(b) For airplanes identified as Group 1 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have not been modified*, prior to further flight, perform a low frequency eddy current (LFEC) or x-ray inspection to detect cracks of the fuselage skin and doubler at all corners of the forward service door doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(1) Group 1, Condition 1. If no crack is detected during any LFEC or x-ray inspection required by paragraph (b) of this AD, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, in accordance with the service bulletin.

(i) *Option 1.* Repeat the LFEC inspection required by this paragraph thereafter at intervals not to exceed 3,225 landings, or the x-ray inspection required by this paragraph thereafter at intervals not to exceed 3,075 landings; or

(ii) *Option 2.* Prior to further flight, modify the corner skin of the forward service door doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform a high frequency eddy current (HFEC) inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(A) If no crack is detected on the skin adjacent to the modification during the HFEC required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Group 1, Condition 2. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is 2 inches or less in length: Prior to further flight, modify/repair the corners of the doorjamb of the forward service door in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the HFEC inspection required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(3) Group 1, Condition 3. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is greater than 2 inches in length: Prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(c) Group 2, Condition 1. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have been modified* previously in accordance with the McDonnell Douglas DC–9 Structural Repair Manual, using a steel doubler, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(1) *Option 1.* Prior to the accumulation of 6,000 landings after accomplishment of that modification, or within 3,225 landings after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the HFEC inspection required by paragraph (c)(1) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 3,000 landings.

(ii) If any crack is detected during any HFEC inspection required by paragraph (c)(1) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(2) *Option 2.* Prior to further flight, modify the corner skin of the forward service door doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during the HFEC required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(d) Group 2, Condition 2. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have been modified* previously in accordance with McDonnell Douglas DC–9 Structural Repair Manual, using an aluminum doubler, prior to the accumulation of 28,000 landings after accomplishment of that modification, or within 3,225 landings after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(1) If no crack is detected on the skin adjacent to the modification during the HFEC required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(e) Group 2, Condition 3. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have been modified* previously, but not in accordance with McDonnell Douglas Structural Repair Manual, prior to further flight, repair the corners in accordance with a method approved by the Manager, Los Angeles ACO.

(f) Accomplishment of the actions required by this AD constitutes terminating action for inspections of Principal Structural Element (PSE) 53.09.033 (reference McDonnell Douglas Model DC–9 Supplemental Inspection Document) required by AD 96–13–03, amendment 39–9671.

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

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

(h) 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.

(i) Except as provided by paragraphs (b)(1)(ii)(B), (b)(2)(ii), (b)(3), (c)(1)(ii), (c)(2)(ii), (d)(2), and (e) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on December 17, 1998.

Issued in Renton, Washington, on November 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30049 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–72–AD; Amendment 39–10876; AD 98–23–10]

RIN 2120–AA64

Airworthiness Directives; Burkhart GROB Luft-und Raumfahrt GmbH Model G 109B Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Burkhart GROB Luft-und Raumfahrt GmbH (Grob) Model G 109B gliders. This AD requires inspecting the engine mounting frame for paint scratches and damage (abrasions, notches, or chafing); and repairing any paint scratches, and repairing or replacing any engine mounting frame that is found damaged. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to detect and correct damage to the engine mounting frame, which could result in failure of the engine mount structure with consequent loss of the engine.

DATES: Effective December 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Grob-Werke GmbH & Co. KG, Unternehmensbereich, Burkhart Grob Flugzeugbau, Flugplatz Mattsies, 86874 Tussenhausen, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–72–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Grob Model G 109B gliders was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 2, 1998 (63 FR 46714). The NPRM proposed to require inspecting the engine mounting frame for paint scratches and damage (abrasions, notches, or chafing); and repairing any paint scratches, and repairing or replacing any engine mounting frame that is found damaged. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Grob Service Bulletin TM 817–45, dated July 27, 1995.

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

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

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 29 gliders in the U.S. registry will be affected by the

inspection, that it will take approximately 2 workhours per glider to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $3,480, or $120 per glider.

If damage is found on the engine mounting frame that is beyond certain limits specified in the service information, the FAA estimates that it will take approximately 13 workhours per glider to accomplish the repair or replacement, at an average labor rate of approximately $60 an hour. Parts cost $200 for repair and $750 for replacement. Based on these figures, the total cost impact of the repair, if necessary, is estimated to be $980 per glider. The total cost impact of the replacement, if necessary, is estimated to be $1,530 per glider.

Compliance Time of This AD

Although damage to the engine mounting frame occurs during flight, this unsafe condition is not a result of the number of times the glider is operated. The chance of this situation occurring is the same for a glider with 10 hours time-in-service (TIS) as it will be for a glider with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–23–10 Burkhart Grob Luft-und Raumfahrt GmbH: Amendment 39–10876; Docket No. 98–CE–72–AD.

Applicability: Model G 109B gliders, all serial numbers, certificated in any category.

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

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

To detect and correct damage to the engine mounting frame, which could result in failure of the engine mount structure with consequent loss of the engine, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, inspect the engine mounting frame for paint scratches and damage (abrasions, notches, or chafing) in accordance with the Action section of Grob Service Bulletin TM 817–45, dated July 27, 1995.

(b) If a paint scratch(es), but no damage, is found during the inspection required by paragraph (a) of this AD, prior to further flight, remove all flakes and dust from the area, degrease the tube and apply a protective anti-corrosion coat, and shorten the warm air duct or replace it if damaged. Accomplish the warm air duct modification or replacement in accordance with the maintenance manual.

(c) If a paint scratch(es) and damage are both found during the inspection required by paragraph (a) of this AD, accomplish the following:

(1) Prior to further flight, remove all flakes and dust from the area; and

(2) Perform the actions specified in paragraph (d) or (e) of this AD, as applicable. Accomplish these actions at the compliance times specified in the applicable paragraphs.

(d) If damage (abrasions, notches, or chafing) is found during the inspection required by paragraph (a) of this AD, and the damage is 0.7 millimeters (mm) or less in depth as specified in paragraph 3(b) of the Action section of Grob Service Bulletin TM 817–45, dated July 27, 1995, prior to further flight, degrease the tube and apply a protective anti-corrosion coat, and shorten the warm air duct or replace it if damaged. Accomplish the warm air duct modification or replacement in accordance with the maintenance manual. Within 6 calendar months after the inspection required by paragraph (a) of this AD, accomplish one of the following:

(1) Send the engine mounting frame to the manufacturer for repair at the address specified in paragraph (h) of this AD and accomplish the warm air duct modification or replacement specified in paragraph (b) of this AD. Do not operate the glider until the part is repaired, sent back, and re-installed on the glider; or

(2) Replace the engine mounting frame with a new part of the same design, or an FAA-approved part that has been inspected in accordance with the requirements of paragraph (a) of this AD and is found free of damage.

(e) If damage (abrasions, notches, or chafing) is found during the inspection required by paragraph (a) of this AD, and the damage is more than 0.7 mm in depth as specified in paragraph 3(c) of the Action section of Grob Service Bulletin TM 817–45, dated July 27, 1995, prior to further flight, accomplish one of the following:

(1) Send the engine mounting frame to the manufacturer for repair at the address specified in paragraph (h) of this AD and accomplish the warm air duct modification or replacement specified in paragraph (b) of this AD. Do not operate the glider until the part is repaired, sent back, and re-installed on the glider; or

(2) Replace the engine mounting frame with a new part of the same design, or an FAA-approved part that has been inspected in accordance with the requirements of paragraph (a) of this AD and is found free of damage. Accomplish the warm air duct modification or replacement specified in paragraph (b) of this AD.

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

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

forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(h) Questions or technical information related to Grob Service Bulletin TM 817–45, dated July 27, 1995, should be directed to Grob-Werke GmbH & Co. KG, Unternehmensbereich, Burkhart Grob Flugzeugbau, Flugplatz Mattsies, 86874 Tussenhausen, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) The inspection required by this AD shall be done in accordance with Grob Service Bulletin TM 817–45, dated July 27, 1995. 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 Grob-Werke GmbH & Co. KG, Unternehmensbereich, Burkhart Grob Flugzeugbau, Flugplatz Mattsies, 86874 Tussenhausen, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 95–362 Grob, dated September 27, 1995.

(j) This amendment becomes effective on December 17, 1998.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30048 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–28]

Amendment to Class E Airspace; Fairbury, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Fairbury, NE.

DATES: The direct final rule published at 63 FR 49282 is effective on 0901 UTC, January 28, 1999.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 15, 1998 (63 FR 49282). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on the date.

Issued in Kansas City, MO on October 26, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30244 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–25]

Amendment to Class E Airspace; Muscatine, IA

AGENCY: Federal Aviation Administration [FAA], DOT

ACTION: Final rule.

SUMMARY: This amendment revises the Class E airspace area at Muscatine, IA, to accommodate the Global Positioning System (GPS) Runway (RWY) 6 and VHF Omnidirectional Range (VOR) RWY 24 Standard Instrument Approach Procedures (SIAPs) at Muscatine Municipal Airport. This action will provide for additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) for Instrument Flight Rules (IFR) operations at Muscatine Municipal Airport, Muscatine, IA. A minor correction is also being made in the geographic position coordinates of Port City VOR/DME.

EFFECTIVE DATE: 0901 UTC January 28. 1999.

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

SUPPLEMENTARY INFORMATION:

History

On September 3, 1998, the FAA proposed to amend part 71 of the Federal Regulations (14 CFR part 71) by revising the Class E airspace area at Muscatine, IA (63 FR 46936). The proposed action would provide additional controlled airspace to accommodate the GPS RWY 6 and VOR RWY 24 SIAPs at the Muscatine Municipal Airport. A minor correction is also being made in the geographic position coordinates of the Port City VOR/DME.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Regulations (14 CFR part 71) amends the Class E airspace area at Muscatine, IA, by providing additional controlled airspace for aircraft executing the GPS RWY 6 and VOR RWY 24 SIAPs to the Muscatine Municipal Airport. This action also corrects the geographic position coordinates of the Port City VOR/DME.

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

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE IA E5 Muscatine, IA [Revised]

Muscatine Municipal Airport, IA
(Lat. 41°21′59″ N., long. 91°08′47″ W.)
Port City VOR/DME
(Lat. 41°22′10″ N., long. 91°08′36″ W.)
Muscatine NDB
(Lat. 41°21′44″ N., long. 91°08′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Muscatine Municipal Airport and within 2.6 miles each side of the 061° radial of the Port City VOR/DME extending from the 6.5-mile radius to 7 miles east of the airport and within 2.6 miles each side of the 248° bearing from the Muscatine NDB extending from the 6.5-mile radius to 7 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on October 7, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30243 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–35]

Amendment to Class E Airspace; Goodland, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Goodland, KS.

DATES: The direct final rule published at 63 FR 47153 is effective on 0901 UTC, December 3, 1998.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 4, 1998 (63 FR 47153). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 3, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 7, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 98–30242 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–46]

Amendment to Class E Airspace; Concordia, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Blosser Municipal Airport, Concordia, KS. The FAA has developed Global Positioning System (GPS) Runway (RWY) 17, GPS RWY 35, and Nondirectional Radio Beacon (NDB) NDB–A Standard Instrument Approach Procedures (SIAPs) to serve Blosser Municipal Airport, KS. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 17, GPS RWY 35, and NDB–A SIAPs in controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 17, GPS RWY 35, NDB–A SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, March 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before December 23, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–46, 601 East 12th Street, Kansas city, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

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

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 17, GPS RWY 35, and NDB–A SIAPs to serve the Blosser Municipal Airport, Concordia, KS. The amendment to Class E airspace at Concordia, KS, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will

be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ACE–46." The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

According, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE KS E5 Concordia, KS [Revised]

Concordia, Blosser Municipal Airport, KS
(Lat. 39°32'57" N., long. 97°39'08" W.)
Concordia NDB
(Lat. 39°33'12" N., long. 97°39'04" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Blosser Municipal Airport and within 2.5 miles each side of the 016° bearing from the Concordia NDB extending from the 6.4-mile radius to 7 miles northeast of the airport.

* * * * *

Issued in Kansas City, MO, on October 21, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30241 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740 and 742

[Docket No. 980918239–8239–01]

RIN 0694–AB78

Exports of High Performance Computers; Post-shipment Verification Reporting Procedures

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) (15 CFR parts 730–799) by revising the requirements for exports of high performance computers. This rule

revises post-shipment verification (PSV) reporting procedures originally implemented as a result of the National Defense Authorization Act (NDAA) for fiscal year 1998 (Pub L. 105–85, 111 Stat. 1629).

DATES: This rule is effective November 12, 1998.

FOR FURTHER INFORMATION CONTACT: William Arvin, Bureau of Export Administration, Telephone: (202) 482–5775.

SUPPLEMENTARY INFORMATION:

Background

The National Defense Authorization Act (NDAA) for Fiscal Year 1998 contained provisions regarding exports and reexports of high performance computers. The NDAA established requirements for advance notification of exports and reexports of high performance computers and post-shipment verifications of such exports. On February 3, 1998, BXA published in the **Federal Register** a rule amending the EAR to implement these provisions (63 FR 5448). This rule revises the post-shipment verification reporting procedures.

To address the volume of post-shipment verifications (PSVs) generated by the NDAA on high performance computer exports, BXA's Export Enforcement has created the High Performance Computer (HPC) Team. This rule directs PSV report submission to the HPC team. Rather than submit PSV reports within 30 days of export, as was previously required, exporters may now submit the reports no later than the last day of the month following the month in which the export took place. As part of the commodity description, reports must specify model number, serial number, and composite theoretical performance (CTP) in millions of theoretical operations per second (MTOPS) for each item. Exporters may no longer submit reports by facsimile.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 15, 1997 (62 FR 43629), and August 13, 1998 (63 FR 44121).

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694–0088, Multi-Purpose Application," which carries a burden hour estimate of 52.5 minutes per submission and control number 0694–0107, "National Defense Authorization Act," Advance Notifications and Post-Shipment Verification reports. Reports in support of Post-Shipment Verifications require 15 minutes per submission, whether the Post-Shipment Verification is conducted on an export authorized under a license or License Exception CTP.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this rule is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be sent to Hillary Hess, Director, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Foreign trade.

Accordingly, parts 740 and 742 of the Export Administration Regulations (15 CFR parts 730–799) are amended to read as follows:

PART 740—[AMENDED]

1. The authority citation for part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917 (1995); E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 61 FR 42527, 3 CFR, 1996 Comp., p. 298 (1997); Notice of August 13, 1997, 62 FR 43629, 3 CFR, 1997 Comp., p.306 (1998); Notice of August 13, 1998 (63 FR 44121, August 17, 1998); and P.L. 105–85, 111 Stat. 1629.

2. Section 740.7 is amended by revising paragraph (d)(4)(v) to read as follows:

§ 740.7 Computers (CTP).

* * * * *

(d) * * *

(4) *NDAA notification.* * * *

(v) *Post-shipment verification.* * * *

(A) *Information that must be included in each post-shipment report.* No later than the last day of the month following the month in which the export takes place, the exporter must submit the following information to BXA at the address listed in paragraph (d)(4)(v)(B) of this section:

(*1*) Exporter name, address, and telephone number;

(*2*) NDAA notification number;

(*3*) Date of export;

(*4*) End-user name, point of contact, address, telephone number;

(*5*) Carrier;

(*6*) Air waybill or bill of lading number;

(*7*) Commodity description, quantities—listed by model numbers, serial numbers, and CTP level in MTOPS; and

(*8*) Certification line for exporters to sign and date. The exporter must certify that the information contained in the report is accurate to the best of his or her knowledge.

(B) *Mailing address.* A copy of the post-shipment report[s] required under paragraph (d)(4)(v)(A) of this section shall be delivered to one of the following addresses. Note that BXA will not accept reports sent C.O.D.

(1) For deliveries by U.S. postal service:

Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044, Attn: HPC Team.

(2) For courier deliveries:

U.S. Department of Commerce, Office of the Assistant Secretary, For Export Enforcement, Room H3721, 14th Street and Constitution Ave. NW, Washington, DC 20230, Attn: HPC Team

* * * * *

PART 742—[AMENDED]

3. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179 (1979); E.O. 12851, 58 FR 33181, 3 CFR 1993 Comp., p. 608 (1994); E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917 (1995); E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950 (1995); E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 61 FR 42527, 3 CFR 1996 Comp., p. 298 (1997); Notice of August 13, 1997 62 FR 43629, 3 CFR, 1997 Comp., p. 306 (1998); Notice of August 13, 1998 (63 FR 44121, August 17, 1998); and P.L. 105–85, 111 Stat. 1629.

4. Section 742.12 is amended by revising paragraph (b)(3)(iv) to read as follows:

§ 742.12 High performance computers.

* * * * *

(b) * * *

(3) * * *

(iv) *Post-shipment verification.* * * *

(A) *Information that must be included in each post-shipment report.* No later than the last day of the month following the month in which the export takes place, the exporter must submit the following information to BXA at the address listed in paragraph (b)(3)(iv)(B) of this section:

(*1*) Exporter name, address, and telephone number;

(*2*) License number;

(*3*) Date of export;

(*4*) End-user name, point of contact, address, telephone number;

(*5*) Carrier;

(*6*) Air waybill or bill of lading number;

(*7*) Commodity description, quantities—listed by model numbers, serial numbers, and CTP level in MTOPS; and

(*8*) Certification line for exporters to sign and date. The exporter must certify that the information contained in the report is accurate to the best of his or her knowledge.

(B) *Mailing address.* A copy of the post-shipment report[s] required under paragraph (b)(3)(vi)(A) of this section shall be delivered to one of the following addresses. Note that BXA will not accept reports sent C.O.D.

(1) For deliveries by U.S. postal service:

Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044, Attn: HPC Team.

(2) For courier deliveries:

U.S. Department of Commerce, Office of the Assistant Secretary For Export Enforcement, Room H3721, 14th Street and Constitution Ave. NW, Washington, DC 20230, Attn: HPC Team.

* * * * *

Dated: November 4, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–30250 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 240, 249

[Release No. 34–40594A; File No. S7–30–97]

RIN 3235–AH16

OTC Derivatives Dealers; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final regulation.

SUMMARY: This document contains a correction to final regulations (34–40594), which were published Tuesday, November 3, 1998, (63 FR 59362). The regulations establish a new regulatory framework under the Securities Exchange Act of 1934 that tailor capital, margin, and other broker-dealer regulatory requirements to a class of registered dealers, called OTC derivatives dealers, that are active in over-the-counter derivatives markets.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Macchiaroli, Associate Director, at (202) 942–0132, Thomas K. McGowan, Assistant Director, at (202) 942–0177, or Christopher M. Salter, Attorney, at (202) 942–0148, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

The final regulations that are the subject of these corrections supersede Part IIB of Form X–17A–5 on the effective date and effect OTC derivatives dealers required to file Part IIB of Form X–17A–5 pursuant to Securities Exchange Act Rule 17a–12 (17 CFR 240.17a–12).

II. Need for Correction

As published the final regulations contain errors which may prove to be misleading and are in need of clarification.

III. Correction of Publication

Accordingly, the publication on November 3, 1998 of final regulations (34–40594), which were the subject of FR Doc. 98–29007, is corrected as follows:

Part IIB of Form X–17A–5 (referenced in § 249.617) which was published beginning on page 59407 and ending on page 59434 is corrected to read as follows:

* * * * *

Dated: November 5, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL
OMB Number: 3235-0498
Expires: March 31, 2001
Estimated average burden hours per response: 20

FORM X-17A-5

FOCUS REPORT

(Financial and Operational Combined Uniform Single Report)

PART IIB [11]

OTC DERIVATIVES DEALER

(PLEASE READ INSTRUCTIONS BEFORE PREPARING FORM.)

THIS REPORT IS BEING FILED PURSUANT TO (Check Applicable Block(s)):

1) Rule 17a-12 [16] 2) Rule 17a-11 [18] 3) Other [26]

[13] (Name of Dealer)

[14] (SEC File No.)

[20] (Address of Principal Place of Business (DO NOT USE P. O. Box No.))

[15] (Firm I.D. No.)

[21] (City) [22] (State) [23] (Zip Code)

[24] (For Period Beginning (MM/DD/YYYY))

[25] (For Period Ending (MM/DD/YYYY))

NAME AND TELEPHONE NO. OF PERSON TO CONTACT IN REGARD TO THIS REPORT:

[30] (Name)

[31] ((Area Code) - Telephone No.)

NAME(s) OF SUBSIDIARIES OR AFFILIATES CONSOLIDATED IN THIS REPORT:

OFFICIAL USE

[32] [33]

[34] [35]

[36] [37]

[38] [39]

[Does respondent carry its own customer accounts?] Yes [40] No [41]

Check here if respondent is filing an audited report: [42]

EXECUTION:

The registrant/dealer submitting this Form and its attachments and the person(s) by whom it is executed represent hereby that all information contained therein is true, correct and complete. It is understood that all required items, statements, and schedules are considered integral parts of this Form and that the submission of any amendment represents that all unamended items, statements and schedules remain true, correct and complete as previously submitted.

Dated the _____ day of _____ 19 ____

MANUAL SIGNATURES OF:

1) _____
(Principal Executive Officer or Managing Partner)

2) _____
(Principal Financial Officer or Partner)

3) _____
(Principal Operations Officer or Partner)

ATTENTION – Intentional misstatements or omissions of facts constitute Federal Criminal Violations. (See 18 U.S.C. 1001 and 15 U.S.C. 78:f(a))

FOR SEC USE ONLY

TO BE COMPLETED WITH THE ANNUAL AUDIT REPORT ONLY:

CERTIFIED PUBLIC ACCOUNTANT whose opinion is contained in this report:

70

((Name) If individual, give last, first, middle name)

71

((Address) DO NOT USE P. O. Box No.)

72 (City) 73 (State) 74 (Zip Code)

DO NOT WRITE UNDER THIS LINE

FOR SEC USE ONLY

WORK LOCATION 50	REPORT DATE (MM/DD/YYYY) 51	DOC. SEQ. NO. 52	CARD 53

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) N 2 [100]

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

Consolidated [198]
Unconsolidated [199]

As of (MM/DD/YYYY) [99]

(SEC File No.) [98]

ASSETS

Assets	Allowable	Non - Allowable	Total
1. Cash	$ [200]		$ [750]
2. Cash segregated in compliance with federal and other regulations	[210]		[760]
3. Receivable from brokers/dealers and clearing organizations:			
A. Failed to deliver	[230]		[770]
B. Securities borrowed	[250]		[780]
C. Omnibus accounts	[270]		[790]
D. Clearing organization	[290]		[800]
E. Contracts:			
1. Interest Rate	[291]		[801]
2. Currency & Foreign Exchange	[292]		[802]
3. Equity	[293]		[803]
4. Commodity	[294]		[804]
5. Other	[295]		[805]
F. Other	[300]	$ [550]	[810]
4. Receivable from customers:			
A. Securities accounts:			
1. Cash and fully secured accounts	[310]		
2. Partly secured accounts	[320]	[560]	
3. Unsecured accounts		[570]	
B. Commodity accounts	[330]	[580]	
C. Allowance for doubtful accounts	( ) [335]	( ) [590]	[820]

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

ASSETS (continued)

Assets	Allowable	Non - Allowable	Total
5. Receivables from non-customers:			
A. Cash and fully secured accounts	$ 340		
B. Partly secured and unsecured accounts	350	$ 600	$ 830
6. Securities purchased under agreements to resale	360	605	840
7. Securities and spot commodities owned at market value:			
A. Bankers acceptances, certificates of deposit and commercial paper	370		
B. U.S. and Canadian government obligations	380		
C. State and municipal government obligations	390		
D. Corporate obligations	400		
E. Stocks and warrants	410		
F. Options	420		
G. Arbitrage	422		
H. Other securities	424		
I. Spot commodities	430		850
8. Securities owned not readily marketable:			
A. At cost $ 130	440	610	860
9. Other investments not readily marketable:			
A. At cost $ 140			
B. At estimated fair value	450	620	870
10. Securities borrowed under subordination agreements and partners' individual and capital securities accounts at market value:			
A. Exempted securities $ 150			
B. Other $ 160	460	630	880

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

ASSETS (continued)

Assets		Allowable	Non - Allowable	Total
11. Secured demand notes - market value of collateral:				
A. Exempted securities	$ 170			
B. Other	$ 180	470	640	890
12. Investment in and receivables from affiliates, subsidiaries and associated partnerships		480	670	910
13. Property, furniture, equipment, leasehold improvements and rights under lease agreements:				
At cost (net of accumulated depreciation and amortization)		$ 490	$ 680	$ 920
14. Other Assets:				
A. Dividends and interest receivable		500	690	
B. Free shipments		510	700	
C. Loans and advances		520	710	
D. Miscellaneous		530	720	930
15. TOTAL ASSETS		$ 540	$ 740	$ 940

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

LIABILITIES AND OWNERSHIP EQUITY

Liabilities		Total
16. Bank loans payable:		$ 1470
17. Securities sold under repurchase agreement		1480
18. Payable to brokers/dealers and clearing organizations:		
A. Failed to receive:		1500
B. Securities loaned:		1520
C. Omnibus accounts:		1540
D. Clearing organization:		1560
E. Other		1570
19. Payable to customers:		
A. Securities accounts-including excess collateral of $ 950		1580
B. Commodities accounts		1590
20. Payable to non - customers:		
A. Securities accounts		1600
B. Commodities accounts		1610
21. Securities sold not yet purchased at market value- including arbitrage of $ 960		$ 1620
22. Accounts payable and accured liabilities and expenses:		
A. Drafts payable		1630
B. Accounts payable		1640
C. Income taxes payable		1650
D. Deferred income taxes		1660
E. Accured expenses and other liabilities		1670
F. Other		1680

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

LIABILITIES AND OWNERSHIP EQUITY (continued)

	Liabilities	Total
23. Notes and mortgages payable:		
A. Unsecured		1690
B. Secured		1700
24. Liabilities subordinated to claims of general creditors:		
A. Cash borrowings:		1710
1. from outsiders	$ 970	
2. Includes equity subordination (15c3-1d) of	$ 980	
B. Securities borrowings, at market value		1720
1. from outsiders	$ 990	
C. Pursuant to secured demand note collateral agreements:		1730
1. from outsiders	$ 1000	
2. Includes equity subordination (15c3-1d) of	$ 1010	
D. Accounts and other borrowings not qualified for net capital purposes		1750
25. TOTAL LIABILITIES		$ 1760

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YYYY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

LIABILITIES AND OWNERSHIP EQUITY (continued)

	Ownership Equity	Total	
26.	Sole proprietorship	$	1770
27.	Partnership-limited partners		1780
28.	Corporation:		
	A. Preferred stock		1791
	B. Common Stock		1792
	C. Additional paid-in capital		1793
	D. Retained earnings		1794
	E. Total		1795
	F. Less capital stock in treasury	( )	1796
29.	TOTAL OWNERSHIP EQUITY	$	1800
30.	TOTAL LIABILITIES AND OWNERSHIP EQUITY	$	1810

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

COMPUTATION OF NET CAPITAL AND NET CAPITAL REQUIRED
(Electing 15c3-1 Appendix F)

CAPITAL

Capital

1. Total Ownership Equity		$	3480
2. Deduct: Ownership Equity not Allowable for Net Capital		( )	3490
3. Total Ownership Equity Qualified for Net Capital			3500
4. Add: Subordinated Liabilities Approved for Net Capital			3520
5. Other Allowable Credits or Deductions			3525
6. Total Capital and Approved Subordinations			3530
7. Non-Allowable Assets	$ 3540		
8. Secured demand note deficiency	3590		
9. Other Deductions and Charges	3610		
10. Total Non-Allowable Assets, Other Deductions, and Charges (add lines 7 - 9)		( )	3620
11. Tentative Net Capital (Must equal or exceed $100,000,000)		$	3640

Computation of Net Capital Requirements and Excess Net Capital

12. Market Risk Exposure:			
A. Total Value At Risk	$ 3635		
Value At Risk Components:			
1. Fixed Income (VaR)	$ 3636		
2. Currency (VaR)	3637		
3. Commodities (VaR)	3638		
4. Equities (VaR)	3639		
NOTE: The sum of the value at risk components may not equal total value at risk.			
B. Multiplication Factor	X $ 3645		
C. Subtotal (If Line 12A is positive, multiply Line 12A by 12B)	3655		
D. Alternative Method for Equities under Appendix A of Rule 15c3-1 (If applicable)	3665		
E. Non - Marketable Securities	3675		
F. Residual Positions	3676		
13. Subtotal Market Risk Exposure (add Lines 12C and 12D)		$	3677

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YYYY)

COMPUTATION OF NET CAPITAL AND NET CAPITAL REQUIRED
(Electing 15c3-1 Appendix F)

CAPITAL (continued)

Capital

14. Credit Risk Exposure:			
A. Credit Risk Charge (Counterparty)	3678		
B. Concentration Charge	3650		
15. Subtotal Credit Risk Exposure (add Lines 14A and 14B)		$	3679
16. Net Capital (Line 11 less Lines 13 and 15)			3750
17. Minimum Capital Requirement		20,000,000	3758
18. Excess Net Capital (Line 16 less Line 17)		$	3770

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YYYY)

COMPUTATION OF NET CAPITAL AND NET CAPITAL REQUIRED
(Under (c)(3)(vi) of Rule 15c3-1)

Capital

1. Total Ownership Equity (from Statement of Financial Condition - Item 1800)	$		3480
2. Deduct: Ownership Equity not allowable for Net Capital		( )	3490
3. Total Ownership Equity Qualified for Net Capital			3500
4. Add: Subordinated Liabilities Approved for Net Capital			3520
5. Other Allowable Credits or Deductions			3525
6. Total Capital and Approved Subordinations	$		3530
7. Non-Allowable Assets		( )	3540
8. Other Deductions and/or Charges:		( )	4000
9. Secured demand note deficiency		( )	3590
10. Commodity futures contracts and spot commodities proprietrary capital charges		( )	3600
11. Other additions and/or allowable credits			
A. Credit add backs under 15c3-1(c)(15)			3631
B. Other			3632
12. Tentative Net Capital (must equal or exceed $100,000,000)	$		3640
13. Haircuts On Securities (computed pursuant to 15c3-1(c)(2)(vi)):			
A. Fixed Income	$	3636	
B. Currency		3637	
C. Commodities		3638	
D. Equities		3639	
14. Total deductions and/or charges		( )	4040
15. Undue Concentration		( )	3650
16. Other (List)		( )	3736
17. Credit Risk		( )	4051
18. Net Capital	$		4750
19. Minimum Net Capital	$	20,000,000	3758
20. Excess Net Capital	$		3770

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

For the Period (MM/DD/YYYY) from _____ 3932 to _____ 3933

_____ (Name of Dealer)

Number of months included in this statement 3931

STATEMENT OF INCOME (LOSS)

REVENUE

1. Contracts:		
A. Interest Rate/Fixed income Products	$	3921
B. Over-the-counter currency and foreign exchange products for Net Capital		3922
C. Equity products		3923
D. Commodity Products		3924
E. All other securities commissions		3925
F. Total securities commissions	$	3940
2. Gains or Losses on Firm Securities Trading Accounts:		
A. From market making in over-the-counter equity securities	$	3941
1. Includes gains or (losses) OTC market making in exchange listed equity securities	$ 3943	
B. From trading in debt securities		3944
C. From market making in options on a national securities exchange		3945
D. From all other trading		3949
E. Total gains or (losses)	$	3950
3. Gains or Losses on Firm Securities Investment Accounts:		
A. Includes realized gains (losses)	$ 4235	
B. Includes unrealized gains (losses)	4236	
C. Total realized and unrealised gains (losses)	$	3952
4. Other interest		3953
5. Fees for account supervision, investment advisory and administrative services		3975
6. Revenue from research services		3980
7. Commodities revenue		3990
8. Other revenue		3995
9. Total Revenue	$	4030

EXPENSES

10. Compensation	$	4110
11. Clerical and administrative employees' expenses		4040

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

For the Period (MM/DD/YYYY) from 3932 to 3933

(Name of Dealer)

Number of months included in this statement 3931

STATEMENT OF INCOME (LOSS)

EXPENSES (continued)

12. Salaries and other employment costs for general partners, and voting stockholder officers	$	4120
A. Includes interest credited to General and Limited Partners capital accounts	$ 4130	
13. Floor brokerage paid to certain brokers (see definition)		4050
14. Commissions and clearance paid to all other brokers (see definition)		4145
15. Clearance paid to non-brokers (see definition)		4135
16. Communications		4060
17. Occupancy and equipment costs		4080
18. Promotional costs		4150
19. Interest expense		4075
A. Includes interest on accounts subject to subordination agreements	4070	
20. Losses in error account and bad debts		4170
21. Data processing costs (including service bureau service charges)		4186
22. Non-recurring charges		4190
23. Regulatory fees and expenses		4195
24. Other expenses		4100
25. Total expenses	$	4200

NET INCOME

26. Income (loss) before Federal income taxes and items below (item 10 less item 26)	$	4210
27. Provision for Federal income taxes (for parent only)		4220
28. Equity in earnings (losses) of unconsolidated subsidiaries not included above		4222
A. After Federal income taxes of	4338	
29. Extraordinary gains (losses)		4224
A. After Federal income taxes of	4239	
30. Cumulative effect of changes in accounting principles		4225
31. Net income (loss) after Federal income taxes and extraordinary items		4230

MONTHLY INCOME

32. Income (current month only) before provision for Federal income taxes and extraordinary items	$	4211

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals, (as defined below), which have not been deducted in the computation of Net Capital.

Type of Proposed Withdrawal or Accrual (see below for code to enter)	Name of Lender or Contributor	Insider or Outsider? (In or Out)	Amount to be Withdrawn (cash amount and/or Net Capital Value of Securities)	Withdrawal or Maturity Date (MM/DD/YYYY)	Expect to Renew (Yes or No)
4600	4601	4602	$ 4603	4604	4605
4610	4611	4612	4613	4614	4615
4620	4621	4622	4623	4624	4625
4630	4631	4632	4633	4634	4635
4640	4641	4642	4643	4644	4645
4650	4651	4652	4653	4654	4655
4660	4661	4662	4663	4664	4665
4670	4671	4672	4673	4674	4675
4680	4681	4682	4683	4684	4685
4690	4691	4692	4693	4694	4695

Total $ 4699*

* To agree with the total on Recap (Item No. 4880)

OMIT PENNIES

WITHDRAWAL CODE:	DESCRIPTIONS
1	Equity Capital
2	Subordinated Liabilities
3	Accruals
4	15c3-1(c)(2)(iv) Liabilities

INSTRUCTIONS: Detail Listing must include the total of items maturing during the six month period following the report date, regardless of whether or not the capital contribution is expected to be renewed. The schedule must also include proposed capital withdrawals scheduled within the six month period following the report date including the proposed redemption of stock and payments of liabilities secured by fixed assets (which are considered allowable assets in the capital computation pursuant to Rule 15c-3-1(c)(2)(iv)), which could be required by the lender on demand or in less than six months.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

CAPITAL WITHDRAWALS

PART IIB

(Name of Dealer)	As of (MM/DD/YYYY)

Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals, which have not been deducted in the computation of net capital.

RECAP

1. Equity Capital			
A. Partnership Capital:			
1. General Partners	$		4700
2. Limited			4710
3. Undistributed Profits			4720
4. Other (describe below)			4730
5. Sole Proprietorship			4735
B. Corporation Capital:			
1. Common Stock	$		4740
2. Preferred Stock			4750
3. Retained Earings (Dividends and Other)			4760
4. Other (describe below)			4770
2. Subordinated Liabilities			
A. Secured Demand Notes	$		4780
B. Cash Subordinates			4790
C. Debentures			4800
D. Other (describe below)			4810
3. Other Anticipated Withdrawals			
A. Bonuses	$		4830
B. Voluntary Contributions to Pension or Profit Sharing Plans			4860
D. Other (describe below)			4870
4. Description of Other			
5. TOTAL			4880

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

CAPITAL WITHDRAWALS

PART IIB

(Name of Dealer)	As of (MM/DD/YYYY)

STATEMENT OF CHANGES IN OWNERSHIP EQUITY (SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)

1. Balance, beginning of period		$	4240
A. Net income (loss)			4250
B. Additions (includes non-conforming capital of	$ 4262		4260
C. Deductions	4272		4270
2. Balance, end of period (From item 1800)		$	4290

STATEMENT OF CHANGES IN LIABILITIES SUBORDINATED TO CLAIMS OF GENERAL CREDITORS

3. Balance, beginning of period		$	4300
A. Increases			4310
B. Decreases		( )	4320
4. Balance, end of period (From item 3520)		$	4330

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

FINANCIAL AND OPERATIONAL DATA

		VALUATION		NUMBER	
1.	Month end total number of stock record breaks unresolved over three business days				
	A. Breaks long	$	4890		4900
	B. Breaks short	$	4910		4920
2.	Is the firm in compliance with Rule 17a-13 regarding periodic count and verification of securities positions and locations at least once in each calendar quarter? (Check one)	Yes	4930	No	4940
3.	Personnel employed at end of reporting period:				
	A. Income producing personnel				4950
	B. Non-income producing personnel (all other)				4960
	C. Total				4970
4.	Actual number of tickets executed during current month of reporting period				4980
5.	Number of corrected customer confirmations mailed after settlement date				4990

	NO. OF ITEMS		DEBIT (Short Value)		NO. OF ITEMS		Credit (Long Value)	
6. Money differences		5000	$	5010		5020	$	5030
7. Security suspense accounts		5040	$	5050		5060	$	5070
8. Security difference accounts		5080	$	5090		5100	$	5110
9. Commodity suspense accounts		5120	$	5130		5140	$	5150
10. Open transactions with correspondents, other brokers, clearing organizations, depositories and interoffice and inter-company accounts which could result in a charge -- unresolved amounts over 30 calendar days		5160	$	5170		5180	$	5190
11. Bank account reconciliations -- unresolved amounts over 30 calendar days		5200	$	5210		5220	$	5230
12. Open transfers over 40 calendar days, not confirmed		5240	$	5250		5260	$	5270
13. Transactions in reorganization accounts -- over 60 calendar days		5280	$	5290		5300	$	5310
14. Total		5320	$	5330		5340	$	5350

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YYYY)

FINANCIAL AND OPERATIONAL DATA (continued)

	NO. OF ITEMS	Leger Amount	Market Value
15. Failed to deliver 11 business days or longer (21 business days or longer in the case of Municipal Securities)	5360	$ 5361	$ 5362
16. Failed to receive 11 business days or longer (21 business days or longer in the case of Municipal Securities)	5363	$ 5364	$ 5365
17. Security concentrations (See instructions in Part I):			
A. Proprietary positions			$ 5370
18. Total of personal capital borrowings due within six months			$ 5378
19. Maximum haircuts on underwriting commitments during the period			$ 5380
20. Planned capital expenditures for business expansion during next six months			$ 5382
21. Liabilities of other individuals or organizations guaranteed by respondent			$ 5384
22. Lease and rentals payable within one year			$ 5386
23. Aggregated lease and rental commitments payable for entire term of the lease			
A. Gross			$ 5388
B. Net			$ 5390

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART IIB

OTC Derivatives Dealer: as of _____

SCHEDULE I
CREDIT-CONCENTRATION REPORT FOR TWENTY LARGEST CURRENT NET EXPOSURES

Counterparty Identifier (1)	Country (2)	Industry Segment (3)	Rating (4)	Gross Replacement Value (5) Receivable (Gross Gain)	Gross Replacement Value (5) Payable (Gross Loss)	Net Replacement Value (6)	Current Net Exposure (7)	Total Credit Exposure (8)	Comments (9)
Totals									

(1) Identify counterparty by counterparty's corporate name.

(2) Identify country exposures by residence of main operating company.

(3) Report on a counterparty-by-counterparty basis by type of entity in accordance with ISDA guidelines (i.e., Primary ISDA Members, Non-Primary ISDA Members: Corporates, Financial Institutions, Government/Supranationals, or Other).

(4) Ratings are Nationally Recognized Statistical Rating Organization ("NRSRO") ratings or internal credit ratings as assigned by the firm. See Schedule IV for conversion of firm ratings into NRSRO equivalent ratings.

(5) Report gross replacement value (receivable and payable), excluding the effect of legally enforceable netting agreements and excluding the application of collateral.

(6) Report net replacement value, including the effect of legally enforceable netting agreements but excluding the application of collateral.

(7) Report current net exposure, including the effect of legally enforceable netting agreements and the application of collateral.

(8) Report the sum of the current net exposure and the potential additional credit exposure (calculated as the maximum credit exposure expected to be exceeded with a probability of one percent over a two-week period, less current net exposure).

(9) Provide additional relevant information (e.g., details on credit enhancements, type of contract, maturity, offsetting, significant additional exposures in affiliated entities, etc.).

OTC Derivatives Dealer:

as of _____

SCHEDULE II
PORTFOLIO SUMMARY OF OTC DERIVATIVES EXPOSURES

Credit Rating Category (1)	Industry Segment (2)	Current Net Exposure (3)	Net Replacement Value (4)	Gross Replacement Value (5) Receivable	Gross Replacement Value (5) Payable
XXX	Primary ISDA Member				
	Corporate				
	Financial Institutions				
	Government				
	Other				
	TOTAL				
XX	Primary ISDA Member				
	Corporate				
	Financial Institutions				
	Government				
	Other				
	TOTAL				
X	Primary ISDA Member				
	Corporate				
	Financial Institutions				
	Government				
	Other				
	TOTAL				
	GRAND TOTAL				

(1) See Note (4) on Schedule I.

(2) See Note (3) on Schedule I.

(3) See Note (7) on Schedule I.

(4) See Note (6) on Schedule I.

(5) See Note (5) on Schedule I.

OTC Derivatives Dealer:

as of _____

SCHEDULE III
GEOGRAPHIC DISTRIBUTION (1) OF OTC DERIVATIVES EXPOSURES

Country	Credit Rating Category (2)	Current Net Exposure (3)	Net Replacement Value (4)	Gross Replacement Value (5) Receivable	Gross Replacement Value (5) Payable
A	XXX				
	XX				
	X				
	YYY				
	YY				
	Y				
	Country A TOTAL				
B	XXX				
	XX				
	X				
	YYY				
	YY				
	Y				
	Country B TOTAL				
	GRAND TOTAL				

(1) Top 10 country exposures (by residence of main operating company).

(2) See Note (4) on Schedule I.

(3) See Note (7) on Schedule I.

(4) See Note (6) on Schedule I.

(5) See Note (5) on Schedule I.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART IIB

OTC Derivatives Dealer: as of _____

SCHEDULE IV
INTERNAL CREDIT RATING CONVERSION

Internal Credit Rating	Equivalent Ratings NRSRO 1	NRSRO 2
	Aaa	AAA
	Aa1	AA+
	Aa2	AA
	Aa3	AA-
	A1	A+
	A2	A
	A3	A-
	Baa1	BBB+
	Baa2	BBB
	Baa3	BBB-
	Ba1	BB+
	Ba2	BB
	Ba3	BB-
	B3	B+
	B2	B
	B1	B-
	CCC	CCC

OTC Derivatives Dealer:

as of _____

SCHEDULE V
NET REVENUES (1) FROM OTC DERIVATIVES AND RELATED ACTIVITIES

Product Category (2)	Quarter Ended [DATE]	Month Ended [MONTH 3]	[MONTH 2]	[MONTH 1]
Fixed Income Products				
OTC Options				
Swaps				
Dollar				
Non-Dollar				
Currency & Foreign Exchange Products				
Equity Products				
Commodity Products				
Other Products (specify)				
Total All Products				

(1) Report net revenues from OTC derivatives activities in the specified product category after taking into account related positions (including those that are not OTC derivatives), with net revenues defined as trading gains/losses plus interest and dividend income less dividend and interest expense (excluding all other expenses and allocable overhead).

(2) Product types should be organized by one or more principle market categories.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

SCHEDULE VI
AGGREGATE SECURITIES AND OTC DERIVATIVE POSITIONS

I. AGGREGATE SECURITIES AND COMMODITIES POSITIONS

Aggregate Securities and Commodities Positions	LONG		SHORT	
1. U.S. Treasury securities	$	6200	$	6201
2. U.S. Government agency	$	6210	$	6211
3. Securities issued by states and political subdivisions in the U.S.	$	6220	$	6021
4. Foreign securities:				
A. Debt securities	$	6230	$	6231
B. Equity securities	$	6235	$	6236
5. Banker's acceptances	$	6240	$	6241
6. Certificates of deposit	$	6250	$	6251
7. Commercial paper	$	6260	$	6261
8. Corporate obligations	$	6270	$	6271
9. Stocks and warrants (other than arbitrage positions)	$	6280	$	6281
10. Arbitrage:				
A. Index arbitrage and program trading	$	6290	$	6291
B. Risk arbitrage	$	6295	$	6296
C. Other arbitrage	$	6300	$	6301
11. Options:				
A. Market value of put options:				
1. Listed	$	6310	$	6311
2. Unlisted	$	6315	$	6316
B. Market value of call options:				
1. Listed	$	6320	$	6321
2. Unlisted	$	6325	$	6326
12. Spot commodities	$	6330	$	6331
13. Investments with no ready market:				
A. Equity	$	6340	$	6341
B. Debt	$	6345	$	6346
C. Other (include limited partnership interests)	$	6350	$	6351
14. Other securites or commodities	$	6360	$	6361

15. Summary of delta or similar analysis (if available) (attach analysis)

000's OMITTED

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

A. Securities	LONG		SHORT	
1. When-issued securities:				
A. Gross commitments to purchase	$	6400	$	6401
B. Gross commitments to sell	$	6405	$	6402
2. Written stock option contracts:				
A. Market value, and the value of the underlying securities, of call contracts:				
1. Listed				
a. Market value	$	6410	$	6411
b. Value of underlying securities	$	6415	$	6416
2. Unlisted				
a. Market value	$	6420	$	6421
b. Value of underlying securities	$	6425	$	6426
B. Market value, and the value of the underlying securities, of put contracts:				
1. Listed				
a. Market value	$	6430	$	6431
b. Value of underlying securities	$	6435	$	6436
2. Unlisted				
a. Market value	$	6440	$	6441
b. Value of underlying securities	$	6445	$	6446
C. Market value, and the value of the underlying securities, of naked call contracts:				
1. Listed				
a. Market value	$	6450	$	6451
b. Value of underlying securities	$	6455	$	6456
2. Unlisted				
a. Market value	$	6460	$	6461
b. Value of underlying securities	$	6465	$	6466
D. Market value, and the value of the underlying securities, of naked put contracts:				
1. Listed				
a. Market value	$	6470	$	6471
b. Value of underlying securities	$	6475	$	6476
2. Unlisted				
a. Market value	$	6480	$	6481
b. Value of underlying securities	$	6485	$	6486

000's OMITTED

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

	LONG	SHORT
3. Futures:		
A. U.S. Treasury and mortgage-backed securities futures	$ 6500	$ 6501
B. Other futures (specify)	$ 6505	$ 6506
4. Forwards:		
A. U.S. Treasury and mortgage-backed securities	$ 6510	$ 6511
1. Aggregate current cost of replacing contracts by counter-party.	$ 6512	$ 6513
2. Per counterparty breakdown where credit risk exceeds the (attach schedule)		
B. Other forwards (specify)	$ 6515	$ 6516
1. Aggregate current cost of replacing contracts by counter-party.	$ 6517	$ 6518
2. Per counterparty breakdown where credit risk exceeds the (attach schedule)		
B. Interest Rate Swaps		
1. U.S. dollar denominated swaps:		
A. Total notional or contractual amount	$ 6520	$ 6521
B. Aggregate current cost of replacing contracts by counter-party.	$ 6525	$ 6525
C. Per counterparty breakdown. (attach schedule)		
2. Cross currency swaps:		
A. Total notional or contractual amount	$ 6530	$ 6531
B. Aggregate current cost of replacing contracts.	$ 6535	$ 6536
C. Per counterparty breakdown. (attach schedule)		
C. Foreign exchange		
1. Swaps:		
A. Total notional or contractual amount	$ 6540	$ 6541
B. Aggregate cost of replacing contracts by counterparty.	$ 6545	$ 6546
C. Per counterparty breakdown. (attach schedule)		
2. Notional or contractual amounts of commitments to purchase foreign currencies and U.S. dollar exchange:		
A. Futures	$ 6550	$ 6551

000's OMITTED

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

	LONG		SHORT	
B. Forwards	$	6560	$	6561
1. Aggregate current cost of replacing contracts by counter-party.	$	6562	$	6563
2. Per counterparty breakdown. (attach schedule).				
3. Naked written option contracts:				
A. Contractual value	$	6570	$	6571
B. Value of the underlying instruments	$	6575	$	6576
D. All other swap agreements (specify type) (attach schedule if necessary)				
1. Total notional or contractual amount	$	6580	$	6581
2. Aggregate current cost of replacing contracts by counterparty.	$	6585	$	6586
3. Per counterparty breakdown. (attach schedule)				
E. Commodities				
1. Futures	$	6590	$	6591
2. Forwards	$	6595	$	6596
1. Aggregate current cost of replacing contracts by counter-party.	$	6600	$	6601
2. Per counterparty breakdown. (attach schedule).				
3. Sold option contracts (e.g., options on individual commodities and commodities indexes)				
A. Market value, and the value of the underlying instruments, of call contracts:				
1. Listed				
a. Market value	$	6610	$	6611
b. Value of underlying instruments	$	6612	$	6613
2. Unlisted				
a. Market value	$	6615	$	6616
b. Value of underlying instruments	$	6617	$	6618
B. Market value, and the value of the underlying instruments, of put contracts:				
1. Listed				
a. Market value	$	6620	$	6621
b. Value of underlying instruments	$	6622	$	6623

000's OMITTED

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

	LONG		SHORT	
2. Unlisted				
a. Market value	$	6625	$	6626
b. Value of underlying instruments	$	6627	$	6628
C. Market value, and the value of the underlying instruments, of naked call contracts:				
1. Listed				
a. Market value	$	6630	$	6631
b. Value of underlying instruments	$	6632	$	6633
2. Unlisted				
a. Market value	$	6635	$	6636
b. Value of underlying instruments	$	6637	$	6638
D. Market value, and the value of the underlying instruments, of naked put contracts:				
1. Listed				
a. Market value	$	6640	$	6641
b. Value of underlying instruments	$	6642	$	6643
2. Unlisted				
a. Market value	$	6645	$	6646
b. Value of underlying instruments	$	6647	$	6648

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[FR Doc. 98–30248 Filed 11–10–98; 8:45 am]
BILLING CODE 8010–01–C

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2704

Implementation of Amendments to the Equal Access to Justice Act in Commission Proceedings

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission is publishing final revisions to its rules providing for the award of attorney's fees and other expenses under the Equal Access to Justice Act (EAJA), 5 U.S.C. 504, applicable to eligible individuals and entities who are parties to administrative proceedings before the Commission. The revisions to the rules are in response to amendments to the EAJA, enacted pursuant to Pub. L. 104–121, 110 Stat. 862 (1996), and effective on March 29, 1996. The rules authorize fee awards under a newly-defined standard—when the Secretary of Labor's demand is substantially in excess of the decision of the Commission and is unreasonable when compared to that decision. The rules also expand the definition of a "party" eligible for an award under this new standard to include "a small entity" as defined by 5 U.S.C. 601. The maximum hourly rate for attorney's fees in all EAJA cases before the Commission is increased to $125.

In addition to the changes in the rules mandated by the EAJA amendments, the Commission is revising other EAJA rules in light of its experience under the present rules and in light of comments submitted during the comment period for the proposed rules. The procedure under the rules for increasing the maximum hourly rate for fees is modified to allow an applicant to request such an increase from an administrative law judge, subject to Commission review. The Commission is revising its rules to provide that parties submit EAJA applications directly to the Chief Administrative Law Judge instead of to the Chairman. Finally, the requirement in the present rules requiring Commission approval of the settlement of an EAJA claim that is resolved prior to the filing of an application is deleted, and the rule is modified to provide for notification of the Commission in the event that an EAJA claim is settled after an application is filed with the Commission.

DATES: Effective December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Norman M. Gleichman, General Counsel, Office of the General Counsel, 1730 K Street, NW, 6th Floor, Washington, DC 20006, telephone: 202–653–5610 (202–566–2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Commission's present rules, the EAJA applies to administrative adjudications, brought pursuant to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., in which an eligible party prevails over the Department of Labor's Mine Safety and Health Administration. 29 CFR 2704.100 and 2704.103. Prior to the enactment of Pub. L. 104–121, prevailing parties could receive awards if they met the EAJA's eligibility standards (which set ceilings on the net worth and number of employees) and if the government's position was not "substantially justified."

Pub. L. 104–121 creates an additional standard under which eligible parties can obtain fees in administrative adjudications. The EAJA amendments authorize an award when a government "demand" is both "substantially in excess of the decision of the adjudicative officer" and "unreasonable." *Id.* at 231(a). Under this standard, if the demand by the Secretary of Labor is substantially in excess of the amount finally obtained by the Secretary and is unreasonable when compared with that amount under the facts and circumstances of the case, the Commission shall award to the opposing party the fees and other expenses related to defending against the demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. *Id.*

Pub. L. 104–121 also establishes a separate definition of a "party" for fee awards under the new standard. Parties that are eligible to apply for awards include "small entit[ies] as defined in section 601 [of title 5]." *Id.* at 231(b)(2). Title 5 U.S.C. 601(6) provides that "small entity" has "the same meaning as the term[] 'small business'. . . ." In turn, a "small business" is defined at 5 U.S.C. 601(3) as a "small business concern" under section 3 of the Small Business Act (15 U.S.C. 632). Section 632(a) authorizes the Small Business Administration (SBA) to establish standards to specify when a business concern is "small." The SBA has recently issued updated size standards for various types of economic activity, categorized by the Standard Industrial Classification System. 13 CFR 121.105. In defining the standards for small businesses engaged in mining, the SBA regulations count either annual receipts or numbers of employees. The number of employees or annual receipts specified is the maximum allowed for a concern and its affiliates to be considered small. 13 CFR 121.201. The standards for the mining industry are as follows:

Division B-Mining:	
Major Group 10-Metal Mining	500 employees.
Major Group 12-Coal Mining	500 employees.
Major Group 14-Mining and Quarrying of Non-Metallic Minerals, Except Fuels	500 employees.
Except:	
1081 Metal Mining Services	$5 million.
1241 Coal Mining Services	$5 million.
1481 Nonmetallic Minerals Services, Except Fuels	$5 million.

13 CFR 121.201.

Pub. L. 104–121 also increases the maximum fee award of an attorney or agent from $75 to $125 per hour. *Id.* at 231(b)(1).

In addition to the changes mandated by the EAJA amendments, the Commission has the benefit of experience under its current rules and the comments of the Secretary and other parties who have practiced before it and has determined to revise its rules to handle EAJA applications in a more efficient manner. Accordingly, the Commission is modifying its rules to provide that applicants can file EAJA applications directly with the Chief Administrative Law Judge, that parties are not required to seek Commission approval for settlement of EAJA claims, and that applicants may seek an increase in the maximum rate for attorney's fees by filing a petition with the administrative law judge who is assigned to the EAJA application.

II. Analysis of the Regulations

The Commission published a proposed rule on December 19, 1996 (61 FR 66961). The Commission proposed to add language to the present language of § 2704.100 to provide that an eligible party may receive an award if a demand is made by the Secretary that is substantially in excess of the decision of the Commission and is unreasonable when compared with that decision, unless the applicant party has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust, as required by the EAJA amendments. For purposes of this part, a decision of the Commission includes not only a decision by the Commission but also a decision by an administrative law judge that becomes final by operation of law. The Commission did not receive any comments to its proposed rule. Accordingly, the Commission is publishing the rule, as proposed, with the exception of an editorial change in the language specifying the new grounds for recovery of fees and expenses in order to fully conform to the language of the statute.

The Commission proposed to change the present language of § 2704.102 to provide for a new subpart to specify that, where an applicant seeks an award based on the new standard for recovery in the EAJA amendments—substantially excessive and unreasonable demand of the Secretary—the adversary adjudication before the Commission must have commenced on or after March 29, 1996, the effective date of the amendments. There were no comments to the proposed rule, and the final rule is published as proposed.

In § 2704.104, as proposed, the Commission has added language to its present rule at paragraph (c) to refer to the new eligibility requirements in the EAJA amendments for the new standard of recovery. Paragraphs (c) through (g) in the present rule are redesignated in light of additions to the section.

The bulk of the comments submitted in reference to proposed § 2704.104 concerned the aggregation of net worth and number of employees of affiliated organizations, subjects currently addressed in the present paragraph (f),which will be redesignated as § 2704.104(b)(2). Several of the comments suggested that the Commission modify its present rule regarding the aggregation of affiliated companies. Another commenter asserts that majority ownership is not always the correct standard for determining control. However, the Commission's present approach to affiliated companies in its rules was based on the Model Rules, promulgated by the Administrative Conference of the United States ("ACUS"). Under the 1996 EAJA amendments, Congress adopted the definition of a "small business concern" of the SBA in the new class of claims eligible for relief, which is similar to the present approach in the Commission's rules in addressing affiliated companies. Accordingly, the Commission is not persuaded that its approach to aggregated companies that are prevailing parties should be changed. Further, the Commission believes that it has the flexibility to look at considerations other than majority ownership under its present rules.

The Commission proposed to delete any reference to a "unit of local government" in § 2704.104, which specifies those prevailing parties that are eligible for EAJA awards, because of the unlikelihood that they would be involved in Commission proceedings. However, one commenter pointed out a prior Commission proceeding involving such an entity. Accordingly, the reference to units of local government has been retained in § 2704.104(b)(4)(iii). Under the new EAJA grounds for recovery—an excessive and unreasonable demand by the Secretary—an applicant must be a small entity as defined in 5 U.S.C. 601. To qualify as a small business under 5 U.S.C. 601(3), the applicant must meet the requirements for a small mining business concern as set forth by the SBA at 13 CFR 121.104, 121.106 and 121.201. No commenter objected to the Commission's incorporation by reference, at § 2704.104(c), of the SBA's specification of annual receipts or number of employees that are specified at 13 CFR part 121.

As set forth in the proposed rules, § 2704.105(a) specifies the standard for an award based on prevailing party status and is unchanged except that it is revised to include the sentence regarding denial or reduction of an award because of unreasonable protraction in the proceedings or special circumstances that is presently in paragraph (b).

Section 2704.105(b) tracks the language of Pub. L. 104–121 at section 231(a) and provides that, if the demand of the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision, under the facts and circumstances of the case, the Commission shall award to an eligible applicant fees and expenses related to defending against the excessive demand. Nevertheless, an award may not be made if the applicant has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust. Whether the applicant has unduly or unreasonably protracted the underlying proceeding may also be considered.

In the proposed § 2704.105(b), it was specified that the burden of proof is on the applicant to show that the demand of the Secretary is substantially excessive and unreasonable. In response to the proposed rule, two commenters argued that it was at odds with EAJA to place on the applicant the burden of showing that a demand of the Secretary was excessive and unreasonable. Upon further consideration, the Commission has concluded that the burden of proof of showing the reasonableness of Secretary's demand is best borne by the Secretary, because she is in the best position to plead and prove the facts and circumstances leading to the formulation of her demand. As one of the commenters suggested, the showing of reasonableness of the Secretary's demand is analogous to the Secretary's burden of proving substantial justification. However, as stated in the proposed rules, the burden is on the applicant to establish that the Secretary's demand was excessive. Unlike reasonableness of the Secretary's demand, this threshold determination is based on objective facts ascertainable to the applicant.

Section 2704.105(b) defines "demand" by tracking language in the EAJA amendments, Pub. L. 104–121 at § 231(b)(5)(F).

In conformity with the EAJA amendments, the Commission proposed to amend § 2704.106(b) to provide that the maximum award for fees of an attorney or agent is $125 per hour. No comments were received in response to the proposed rule. An additional reference has been included in the final § 2704.106(b) to the revised procedure in § 2704.107(a), governing increases to the maximum rate.

As proposed, § 2704.107(a) is amended to reflect that the highest award for attorney's fees is $125 per hour. A number of commenters suggested that the Commission further amend its present procedure to authorize the administrative law judge assigned to an EAJA application to grant increases in the $125 per hour rate for fees in light of increases in the cost of living or other "special factors." The Commission has concluded that delegating to its judges the authority to authorize increases in the level of fees is a more efficient and expeditious way of implementing such increases. Further, authorization of higher fees because of "special circumstances" is,

by necessity, a matter determined by the unique facts and circumstances in an individual case. Therefore, the Commission has revised § 2704.107(a) to provide that requests for increases in fees are submitted to the administrative law judge assigned to the matter, subject to Commission review as specified in § 2704.308.

Section 2704.108 presently provides for awards to prevailing parties in cases where the Secretary's position is not substantially justified, the basis for recovery specified in § 2705.105(a). As proposed, the rule is amended to refer to the new basis for recovery in § 2704.105(b), which specifies that recovery under EAJA also includes an excessive and unreasonable demand by the Secretary. The rule provides that, if an applicant is entitled to an award under either standard in § 2704.105, the award shall be made by the Commission against the Department of Labor. At the suggestion of one commenter, a reference in the rule that the applicant must meet its burden of proof under § 2704.105 was deleted as unnecessary.

As proposed, § 2704.201 designates the Chief Administrative Law Judge as the Commission official to whom EAJA applications are submitted, revising the present procedure that requires submission of applications to the Chairman. The rule has been revised substantially to limit specification of the contents of an EAJA application to those matters common to all applications, whether based on prevailing party status or a substantially excessive and unreasonable demand by the Secretary. In addition to the revisions in the proposed rule, the final rule contains a new reference to the filing of a request for an increase in fees with the application, as provided for in § 2704.107.

Section 2704.202 specifies the contents of an EAJA application by a prevailing party, formerly covered in § 2704.201(a) and (b). Language from present § 2704.201(b) permitting a tax-exempt organization to omit a net-worth statement has not been retained because of the low likelihood that such an organization would ever be a party to a Commission EAJA proceeding.

Present § 2704.203 is redesignated as § 2704.205. Revised § 2704.203(a) specifies the new standard for recovery—whether the Secretary's demand was substantially in excess of the decision of the Commission and unreasonable. The subsection has also been revised, consistent with the changes to § 2704.105(b), to specify that application shall show that the Secretary's demand is excessive; further, the application shall allege the Secretary's demand that is deemed to be unreasonable. Revised § 2704.203(b) provides that the application must show that the applicant is a small entity as defined in 5 U.S.C. 601(6) and provides that the application shall include a statement of the applicant's annual receipts or number of employees, as appropriate, where the applicant seeks eligibility based on being a small business. Section 2704.203(b) also requires a brief description of the type and purpose of the applicant's organization or business. Because the EAJA amendments rely on the SBA's definition of "small business concern," and because the SBA has defined small business concerns engaged in mining in terms of annual receipts or number of employees and has set forth its methodology for calculating the annual receipts or number of employees (13 CFR 121.104 and 121.106), the Commission intends that parties be guided by those regulations in meeting the SBA's standards of annual receipts or number of employees to qualify as a "small business."

Present § 2704.204 is redesignated as § 2704.206. The new § 2704.204 is a redesignation of § 2704.202(b). The Commission has revised the language of the rule to regulate the public disclosure of financial information in the annual receipts exhibits under the new EAJA standard for recovery, in addition to the present coverage of net worth exhibits.

Section 2704.205 is a redesignation of present § 2704.203. The Commission did not propose to revise the content of the rule. However, one commenter suggested several modifications to the rule. It was recommended that the rule specify that the applicant file with its application a statement that it actually paid the fees to preclude an application when a mine operator or other ineligible party has paid the fees. The commenter further requested that an applicant be required to segregate out fees and expenses related to that application when there are multiple positions and parties. We agree with the commenter's concern that there must be an adequate segregation of claims and fees when there are multiple claims and issues present. However, we believe that the rules adequately address the problem. See §§ 2704.105(a), (b), 2704.202(a), and 2704.203(a). We also conclude that § 2704.205, as presently drafted, is adequate to ensure that the applicant has actually paid the expenses and fees claimed. ("The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed."). See also § 2704.104(e) (barring recovery of fees and expenses by an applicant who appears in a Commission EAJA proceeding on behalf of an entity that is ineligible). Accordingly, we have not adopted the suggested revisions.

Section 2704.206 is a redesignation of present § 2704.204. As proposed, paragraph (a) adds new language to provide for an application, as required by the EAJA amendments, when a demand by the Secretary is substantially in excess of the decision in the case and unreasonable. In addition, language has been added to provide for the filing of EAJA applications with the Commission 30 days after final disposition by a court in the event that an applicant wishes to file in light of the court's disposition. See *Dole* v. *Phoenix Roofing, Inc.*, 922 F.2d 1202,1206–07 (5th Cir. 1991). Cases that are remanded back to the Commission by the court of appeals, in which an applicant then becomes a prevailing party, are governed by the rule that an application must be filed no later than 30 days after the Commission's final disposition of the underlying proceeding.

Section 2704.206(b), which specifies that an application for fees is stayed in the event that review or reconsideration of the merits decision is sought, adds language to include the new standard for recovery. Section 2704.206(c) is revised to delete an inadvertent reference to section 105(a) of the Mine Act, 30 U.S.C. 815(a), in the definition of final Commission dispositions in the present rule; in addition, references to Commission decisions in §§ 2704.307 and 2704.308 are deleted because those provisions pertain to decisions on EAJA applications, rather than decisions on the merits.

The Commission is revising § 2704.305 to eliminate the reference to "prevailing" party status because an EAJA award is no longer limited to proceedings involving a prevailing party but includes those proceedings in which the Secretary has made a substantially excessive and unreasonable demand. In addition, the Commission proposed to eliminate a portion of the present rule requiring Commission approval of some, but not all, settlement agreements that resolve EAJA claims. In response to the proposed rule, one commenter noted that no provision in the Mine Act or EAJA requires Commission approval of such settlements. We agree. Accordingly, the Commission is revising the present rule to require only that parties notify the Commission if a case settles, after an EAJA application is filed, in order that the Commission can properly maintain its docket.

Because under the EAJA amendments, an EAJA award is no longer limited to

a prevailing party, the Commission proposed adding language to § 2704.307 to provide for the issuance of written findings and conclusions addressing whether the applicant has been subjected to a substantially excessive and unreasonable demand. The proposed rule further delineated between the specific findings depending on whether the application was filed pursuant to § 2704.105(a) (prevailing party) or (b) (excessive and unreasonable demand). The Commission received numerous comments to this rule and § 2704.308, which governs Commission review of EAJA decisions issued by its judges. The comments addressed none of the proposed changes but rather addressed the provisions in §§ 2704.307 and 2704.308, which reference Commission review of administrative law judge EAJA decisions. The commenters asserted that there is no provision for administrative review of decisions adverse to the government in EAJA or its amendments, nor was there mention of such review in its legislative history. Further, in the view of one commenter, such administrative review would have a "chilling effect" on the willingness of small businesses to challenge unreasonable actions of MSHA.

The Commission has fully addressed this issue in *Contractors Sand and Gravel, Inc.*, 20 FMSHRC 960, (Sept. 1998). As noted in that decision, provisions in EAJA and its legislative history support such administrative appellate review. Further, as we noted, such administrative review ensures a uniform body of caselaw in this area. None of the comments persuade us to change our view that the Commission should have the same ability to review judges' decisions on EAJA applications that it has with regard to judges' decisions under the Mine Act.

Finally, the Commission is revising § 2704.308(c) by eliminating the last two sentences of the present rule. The matter of when a Commission order can be appealed is beyond the scope of the Commission's rules and addressed by EAJA, 5 U.S.C. 504(c)(2), and federal rules of procedure. The finality of an unreviewed decision of an administrative law judge is addressed in § 2704.307.

III. Matters of Regulatory Procedure

The Commission has determined that these rules are not subject to Office of Management and Budget review under Executive Order 12866.

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601–612) that these rules, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because these rules do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 29 CFR Part 2704

Administrative practice and procedure, Equal access to justice.

For the reasons set out in the preamble, 29 CFR part 2704 is amended as follows:

PART 2704—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN COMMISSION PROCEEDINGS

1. The authority citation for part 2704 is revised to read as follows:

Authority: (5 U.S.C. 504(c)(1); Pub. L. 99–80, 99 Stat. 183; Pub. L. 104–121, 110 Stat. 862.

Subpart A—General Provisions

2. Section 2704.100 is revised to read as follows:

§ 2704.100 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before this Commission. An eligible party may receive an award when it prevails over the Department of Labor, Mine Safety and Health Administration (MSHA), unless the Secretary of Labor's position in the proceeding was substantially justified or special circumstances make an award unjust. In addition to the foregoing ground of recovery, an eligible party may receive an award if the demand of the Secretary is substantially in excess of the decision of the Commission and unreasonable, unless the applicant party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. The rules in this part describe the parties eligible for each type of award. They also explain how to apply for awards, and the procedures and standards that this Commission will use to make the awards.

3. Section 2704.102 is revised to read as follows:

§ 2704.102 Applicability.

Section 2704.105(a) applies to adversary adjudications before the Commission pending or commenced on or after August 5, 1984. Section 2704.105(b) applies to adversary adjudications commenced on or after March 29, 1996.

4. Section 2704.104 is amended by revising paragraphs (b) through (e) and removing paragraphs (f) and (g) to read as follows:

§ 2704.104 Eligibility of applicants.

* * * * *

(b) For purposes of awards under § 2704.105(a) for prevailing parties:

(1) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis;

(2) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part unless the administrative law judge determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the administrative law judge may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(3) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(4) The types of eligible applicants are as follows:

(i) An individual with a net worth of not more than $2 million;

(ii) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and employs not more than 500 employees;

(iii) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purposes of awards under § 2704.105(b), eligible applicants are small entities as defined in 5 U.S.C. 601, subject to the annual-receipts and number-of-employees standards as set forth by the Small Business Administration at 13 CFR Part 121.

(d) For the purpose of eligibility, the net worth, number of employees, or annual receipts of an applicant, as applicable, shall be determined as of the date the underlying proceeding was initiated under the Mine Act.

(e) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

5. Section 2704.105 is revised as follows:

§ 2704.105 Standards for awards.

(a) A prevailing applicant may receive an award of fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Secretary was substantially justified. The position of the Secretary includes, in addition to the position taken by the Secretary in the adversary adjudication, the action or failure to act by the Secretary upon which the adversary adjudication is based. The burden of proof that an award should not be made to a prevailing applicant because the Secretary's position was substantially justified is on the Secretary, who may avoid an award by showing that his position was reasonable in law and fact. An award will be reduced or denied if the applicant has unduly or unreasonably protracted the underlying proceeding or if special circumstances make the award unjust.

(b) If the demand of the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision, under the facts and circumstances of the case, the Commission shall award to an eligible applicant the fees and expenses related to defending against the excessive demand, unless the applicant has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust. The burden of proof is on the applicant to establish that the Secretary's demand was substantially in excess of the Commission's decision; the Secretary may avoid an award by establishing that the demand was not unreasonable when compared to that decision. As used in this section, "demand" means the express demand of the Secretary which led to the adversary adjudication, but does not include a recitation by the Secretary of the maximum statutory penalty—

(1) In the administrative complaint, or

(2) Elsewhere when accompanied by an express demand for a lesser amount.

6. Section 2704.106 is revised to read as follows:

§ 2704.106 Allowable fees and expenses.

* * * * *

(b) No award for the fee of an attorney or agent under this part may exceed $125 per hour, except as provided in § 2704.107. No award to compensate an expert witness may exceed the highest rate at which the Secretary of Labor pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item if the attorney, agent or witness ordinarily charges clients separately for such expenses.

* * * * *

7. Section 2704.107(a) is revised to read as follows:

§ 2704.107 Rulemaking on maximum rates for attorney's fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), attorney's fees may be awarded at a rate higher than $125 per hour. Any such increase in the rate for attorney's fees will be made only upon a petition submitted by the applicant, pursuant to § 2704.201, and only if the administrative law judge determines, in his or her discretion, that it is justified. Any such adjustment in fees is subject to Commission review as specified in § 2704.308.

* * * * *

8. Section 2704.108 is revised to read as follows:

§ 2704.108 Awards.

If an applicant is entitled to an award under § 2704.105(a) or (b), the award shall be made by the Commission against the Department of Labor.

9. Subpart B is revised to read as follows:

Subpart B—Information Required From Applicants

Sec.

2704.201 Contents of application—in general.
2704.202 Contents of application—where the applicant has prevailed.
2704.203 Contents of application—where the Secretary's demand is substantially in excess of the judgment finally obtained and unreasonable.
2704.204 Confidential financial information.
2704.205 Documentation of fees and expenses.
2704.206 When an application may be filed.

Subpart B—Information Required From Applicants

§ 2704.201 Contents of application—in general.

(a) An application for an award of fees and expenses under the Act shall be made to the Chief Administrative Law Judge of the Commission at 1730 K Street NW, 6th Floor, Washington, DC 20006. The application shall identify the applicant and the underlying proceeding for which an award is sought.

(b) The application shall state the amount of fees and expenses for which an award is sought. The application may also include a request that attorney's fees be awarded at a rate higher than $125 per hour because of an increase in the cost of living or other special factors.

(c) The application may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(d) The application should be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(e) Upon receipt of an application, the Chief Administrative Law Judge shall immediately assign it for disposition to the administrative law judge who presided over the underlying Mine Act proceeding.

§ 2704.202 Contents of application—where the applicant has prevailed.

(a) An application for an award under § 2704.105(a) shall show that the applicant has prevailed in a significant and discrete substantive portion of the underlying proceeding and identify the position of the Department of Labor in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application also shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants including their affiliates, as described in § 2704.104(b)(2) of this part).

(c) Each applicant must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as described in

§ 2704.104(b)(2) of this part) when the underlying proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The administrative law judge may require an applicant to file additional information to determine its eligibility for an award.

§ 2704.203 Contents of application—where the Secretary's demand is substantially in excess of the judgment finally obtained and unreasonable.

(a) An application for an award under § 2704.105(b) shall show that the Secretary's demand is substantially in excess of the decision of the Commission; the application shall further allege that the Secretary's demand is unreasonable when compared with the Commission's decision.

(b) The application shall show that the applicant is a small entity as defined in 5 U.S.C. 601(6), and the application must conform to the standards of the Small Business Administration at 13 CFR 121.201 for mining entities. The application shall include a statement of the applicant's annual receipts or number of employees, as applicable, in conformance with the requirements of 13 CFR 121.104 and 121.106. The application shall describe briefly the type and purpose of its organization or business.

§ 2704.204 Confidential financial information.

Ordinarily, the net-worth and annual-receipts exhibits will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of such exhibits and believes there are legal grounds for withholding the information from disclosure may submit that portion of the exhibit directly to the administrative law judge in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the Secretary of Labor against whom the applicant seeks an award, but need not be served on any other party to the proceeding. If the administrative law judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the established procedures under the Freedom of Information Act (29 CFR part 2702).

§ 2704.205 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the underlying proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 2704.206 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the underlying proceeding or in a significant and discrete substantive portion of that proceeding. An application may also be filed when a demand by the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision. In no case may an application be filed later than 30 days after the Commission's final disposition of the underlying proceeding, or 30 days after issuance of a court judgment that is final and nonappealable in any Commission adjudication that has been appealed pursuant to section 106 of the Mine Act, 30 U.S.C. 816.

(b) If review or reconsideration is sought or taken of a decision on the merits as to which an applicant has prevailed or has been subjected to a demand from the Secretary substantially in excess of the decision of the Commission and unreasonable when compared to that decision, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this part, final disposition before the Commission means the date on which a decision in the underlying proceeding on the merits becomes final under sections 105(d) and 113(d) of the Mine Act (30 U.S.C. 815(d), 823(d)).

Subpart C—Procedures for Considering Applications

10. Section 2704.305 is revised to read as follows:

§ 2704.305 Settlement.

In the event that counsel for the Secretary and an applicant agree to settle an EAJA claim after an application has been filed with the Commission, the applicant shall timely notify the Commission of the settlement and request dismissal of the application.

11. Section 2704.307 is revised to read as follows:

§ 2704.307 Decision of administrative law judge.

The administrative law judge shall issue an initial decision on the application within 75 days after completion of proceedings on the application. In all decisions on applications, the administrative law judge shall include written findings and conclusions on the applicant's eligibility, and an explanation of the reasons for any difference between the amount requested and the amount awarded. As to applications filed pursuant to § 2704.105(a), the administrative law judge shall also include findings on the applicant's status as a prevailing party and whether the position of the Secretary was substantially justified; if at issue, the judge shall also make findings on whether the applicant unduly protracted or delayed the underlying proceeding or whether special circumstances make the award unjust. As to applications filed pursuant to § 2704.105(b), the administrative law judge shall include findings on whether the Secretary made a demand that is substantially in excess of the decision of the Commission and unreasonable when compared with that decision; if at issue, the judge shall also make findings on whether the applicant has committed a willful violation of the law or otherwise acted in bad faith or whether special circumstances make the award unjust. Under either paragraph, the decision shall include, if at issue, detailed findings and conclusions on whether an increase in the cost of living or any other special factor justifies a higher fee than the $125 per hour fee set forth in

the statute. The initial decision by the administrative law judge shall become final 40 days after its issuance unless review by the Commission is ordered under § 2704.308 of this part.

12. Section 2704.308(c) is revised to read as follows:

§ 2704.308 Commission review.

* * * * *

(c) If review of the initial decision of the administrative law judge is granted by the Commission, the Commission shall, after allowing opportunity for presentation of views by opposing parties, review the case and issue its own order affirming, modifying or vacating in whole or in part the initial decision or directing other appropriate relief.

Issued this 30th day of October, 1998 at Washington, D.C.

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 98–29680 Filed 11–10–98; 8:45 am]

BILLING CODE 6735–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4011 and 4022

Disclosure to Participants; Benefits Payable In Terminated Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the appendix to the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 1999. This rule also amends Appendix B to the PBGC's regulation on Disclosure to Participants by adding information on 1999 maximum guaranteed benefit amounts. The amendment is necessary because the maximum guarantee amount changes each year, based on changes in the contribution and benefit base under section 230 of the Social Security Act. The effect of the amendment is to advise plan participants and beneficiaries of the increased maximum guarantee amount for 1999.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4022(b) of the Employee Retirement Income Security Act of 1974 provides for certain limitations on benefits guaranteed by the PBGC in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations, set forth in section 4022(b)(3)(B), is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant (in the form of a life annuity beginning at age 65) by the PBGC. The ceiling is equal to "$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200]." This formula is also set forth in § 4022.22(b) of the PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022). The appendix to Part 4022 lists, for each year beginning with 1974, the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in that year.

Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of ERISA section 4022(b)(3)(B). Each year the Social Security Administration determines, and notifies the PBGC of, the contribution and benefit base to be used by the PBGC under these provisions, and the PBGC publishes an amendment to the appendix to Part 4022 to add the guarantee limit for the coming year.

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act, $53,700 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 1999. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 4022.22(b) is: $750 multiplied by $53,700/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 1999 is $3,051.14 per month in the form of a life annuity beginning at age 65. This amendment updates the appendix to Part 4022 to add this maximum guaranteeable amount for plans that terminate in 1999. (If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount is the actuarial equivalent of $3,051.14 per month.)

Section 4011 of ERISA requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits of the PBGC's guarantee. The PBGC's regulation on Disclosure to Participants (29 CFR Part 4011) implements the statutory notice requirement. This rule amends Appendix B to the regulation on Disclosure to Participants by adding information on 1999 maximum guaranteed benefit amounts. Plan administrators may, subject to the requirements of that regulation, include this information in participant notices.

Because the maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and these amendments make no change in its method of calculation but simply list 1999 maximum guaranteeable benefit amounts for the information of the public, general notice of proposed rulemaking is not required.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects

29 CFR Part 4011

Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR parts 4011 and 4022 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

. The authority citation for Part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. The appendix to part 4022 is amended by adding a new entry to the table to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

Appendix to Part 4022—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 4022.22(b) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
* * * * *	
1999	3,051.14

PART 4011—DISCLOSURE TO PARTICIPANTS

3. The authority citation for Part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1311.

4. Appendix B to part 4011 is amended by adding a new entry to the table to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

APPENDIX B TO PART 4011.—TABLE OF MAXIMUM GUARANTEED BENEFITS

If a plan terminates in—	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:							
	Age 65		Age 62		Age 60		Age 55	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
*	*	*	*	*	*	*	*	*
1999	$3,051.14	$36,613.68	$2,410.40	$28,924.80	$1,983.24	$23,798.88	$1,373.01	$16,476.12

Issued in Washington, D.C., this 5th day of November, 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–30188 Filed 11–10–98; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting new Table I–99 in place of existing Table I–98 in appendix D. Table I–99 applies to any plan being terminated either in a distress termination or involuntarily by the PBGC with a valuation date falling in 1999, and is used to determine expected retirement ages for plan participants. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974. Under ERISA section 4041(c), guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with part 4044, subpart B. In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA Section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b), early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach "unreduced retirement age" (*i.e.*, the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, etc.

Tables II–A, II–B, and II–C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I–98 with Table I–99 in order to provide an updated correlation, appropriate for calendar year 1999, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–99 will be used to value benefits in plans with valuation dates during calendar year 1999.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For

that purpose, if a plan has a valuation date in 1999, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 1999.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—[AMENDED]

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. Appendix D to part 4044 is amended by removing Table I–98 and adding in its place Table I–99 to read as follows:

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

TABLE I–99—SELECTION OF RETIREMENT RATE CATEGORY

[For Plans with valuation dates after December 31, 1998, and before January 1, 2000]

Participant reaches URA in year—	Participant's retirement rate category is—			
	Low[1] if monthly benefit at URA is less than—	Medium[2] if monthly benefit at URA is		High[3] if monthly benefit at URA is greater than—
		From	To	
2000	423	423	1,784	1,784
2001	433	433	1,825	1,825
2002	443	443	1,867	1,867
2003	453	453	1,910	1,910
2004	464	464	1,954	1,954
2005	474	474	1,999	1,999
2006	485	485	2,045	2,045
2007	496	496	2,092	2,092
2008	508	508	2,140	2,140
2009 or later	519	519	2,189	2,189

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

* * * * *

Issued in Washington, D.C., this 5th day of November, 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–30189 Filed 11–10–98; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–98–156]

Drawbridge Operation Regulations: Harlem River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The District Commander, First Coast Guard District has issued a temporary deviation from the regulations listed under 33 CFR 117.789, governing the operation of the Broadway Bridge, mile 6.8, across the Harlem River in New York City. This deviation allows the bridge owner, the New York City Department of Transportation (NYCDOT), to keep the bridge in the closed position from October 21, 1998 to November 30, 1998, to facilitate repairs. Vessels which can pass under the bridge without a bridge opening may do so at any time.

DATES: This deviation is effective from October 21, 1998 through November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Yee, Project Manager, Bridge Branch at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Broadway Bridge, mile 6.8, over the Harlem River has a vertical clearance of 24 feet at mean high water (MHW) and 29 feet at mean low water (MLW) in the closed position.

The City of New York requested a temporary deviation from the operating regulations for the Broadway Bridge because the bridge is presently unable to open as a result of a start up transformer and contacts failure. The parts necessary to perform the repairs are no longer stock items and must be custom manufactured from specifications. Vessels that can pass under the bridge without an opening may do so at all times during this closed period.

This deviation to the operating regulations will allow the bridge to remain in the closed position from October 21, 1998 to November 30, 1998. This deviation from the normal operating regulations is authorized under 33 CFR 117.35.

Dated: October 27, 1998.

R.M. Larrabee,

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

[FR Doc. 98–30209 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–070]

Drawbridge Operating Regulation; Gulf Intracoastal Waterway, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117.5 governing the operation of the FM 457 pontoon drawbridge across the Gulf Intracoastal Waterway, mile 418.0, west of Harvey Locks, near Sargent, Matagorda County, Texas. This deviation allows the Texas Department of Transportation to close the bridge from 6 a.m. until 10 p.m. on Tuesday, December 1, 1998. This temporary deviation is issued to allow for scheduled maintenance to the swing span and its mechanical components.

DATES: This deviation is effective from 6 a.m. until 10 p.m. on December 1, 1998.

FOR FURTHER INFORMATION CONTACT:

Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The FM 457 pontoon bridge across the Gulf Intracoastal Waterway, mile 418.0, west of Harvey Locks, near Sargent, Matagorda County, Texas, has no vertical clearance in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels, and other recreational craft. The Texas Department of Transportation sent a letter to the Coast Guard requesting a temporary deviation from the normal operation of the bridge in order to accommodate the maintenance work. This work is essential for the continued operation of the draw span.

This deviation allows the draw of the FM 457 pontoon bridge across the Gulf Intracoastal Waterway, mile 418.0, west of Harvey Locks, near Sargent to remain in the closed-to-navigation position between 6 a.m. and 10 p.m., on Tuesday, December 1, 1998.

This deviation will be effective from 6 a.m. until 10 p.m. on December 1, 1998. Presently, the draw opens on signal at any time.

Dated: November 2, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 98–30208 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA44–1–7365; FRL–6168–5]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The EPA is revising the format of 40 Code of Federal Regulations (CFR) part 52, subpart T for materials submitted by Louisiana that are incorporated by reference (IBR) into the State Implementation Plans (SIPs). The regulations affected by this format change have all been previously submitted by the respective State agency and approved by EPA. This format revision will primarily affect the "Identification of plan" sections of CFR 52.970, as well as the format of the SIP materials that will be available for public inspection at the EPA Region 6 office, the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC., and the Office of the Federal Register. The sections of 40 CFR 52.970 pertaining to provisions promulgated by EPA or State-submitted materials not subject to IBR review and 40 CFR 52.971 through 52.995 remain unchanged.

EFFECTIVE DATE: This action is effective November 12, 1998.

ADDRESSES: The SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733;

Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, SW, Room M1500, Washington, DC 20460; and

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L) at the above Region 6 address or at (214) 665–7354.

SUPPLEMENTARY INFORMATION:

Background

Each State is required by section 110(a)(1) of the Clean Air Act (ACT), to have a SIP that contains the control measures and strategies which will be used to attain and maintain the national ambient air quality standards. The SIP is extensive, containing such elements as emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms. The control measures and strategies must be formally adopted by each State after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures are approved by EPA pursuant to 110(k) of the Act, after notice and comment, they are incorporated into the SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), 40 CFR. The actual State regulations which are approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are "incorporated by reference," which means that the citation of a given State regulation with a specific effective date has been approved by EPA. This format allows both EPA and the public to know which measures are contained in a given SIP and ensures that the State is enforcing the regulations. It also allows EPA to take enforcement action or the public to bring citizen suits, should a State not enforce its SIP-approved regulations.

The SIP is an active or changing document which can be revised by the State as necessary to address the unique air pollution problems in the State as long as changes are not contrary to Federal law. Therefore, EPA, from time to time, must take action to incorporate into the SIP, revisions of the state program which may contain new and/or revised regulations. Regulations approved into the SIP are then incorporated by reference into part 52. As a result of consultations between EPA and the Office of Federal Register, EPA revised the procedures on May 22, 1997 (62 FR 27968), for incorporating by reference federally-approved SIPs and began the process of developing pursuant to 110(h)(1) of the Act: 1) a revised SIP document for each State that would be incorporated by reference under the provisions of 1 CFR part 51; 2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and 3) a revised format of the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

Content of Revised IBR Document

The new SIP compilations contain the federally-approved portion of state regulations and source specific permits submitted by each State agency. These regulations and source-specific permits have all been approved by EPA through previous rulemaking actions in the **Federal Register**. The SIP compilations are stored in 3-ring binders and will be updated primarily on an annual basis.

If no significant changes are made for any state to the SIP during the year, an update will not be made during that year. If significant changes occur during the year, an update could be done on a more frequent basis, as applicable. Typically, only the revised sections of the compilation will be updated. Complete resubmittals of a state SIP compilation will be done on as needed basis.

Each compilation contains two parts. Part 1 contains the regulations and Part 2 contains the source-specific permits that have been approved as part of the SIP. Each part has a table of contents identifying each regulation or each source specific permit. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for these states. The regional EPA offices have the primary responsibility for ensuring accuracy and updating the compilations. The Region 6 EPA Office developed and will maintain the compilations for Louisiana. A copy of the full text of the State's current compilation will also be maintained at the Office of Federal Register and EPA's Air Docket and Information Center.

The EPA is beginning the phasing in of SIP compilations for individual states, and expects to complete the conversion of the revised "Identification of plan" format and IBR documentation for all states by May 1999. This revised format is consistent with the SIP compilation requirements of section 110(h)(1) of the Act.

Revised Format of the "Identification of Plan" Sections in Each Subpart

In order to better serve the public, EPA is revising the organization of the "Identification of plan" section of 40 CFR 52.970. The EPA is including additional information which will more clearly identify what provisions constitute the enforceable elements of the SIP.

The revised "Identification of plan" section will contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA approved source-specific permits, and (e) EPA approved nonregulatory provisions, such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

Enforceability and Legal Effect

This change to the procedures for incorporation by reference announced today will not alter in any way the enforceability or legal effect of approved SIP materials, including both those approved in the past or to be approved in the future. As of the effective date of the final rule approving a SIP revision, all provisions identified in the **Federal Register** document announcing the SIP approval will be federally enforceable, both by EPA under section 113 of the Act and by citizens under section 304 of the Act, where applicable. All revisions to the applicable SIP are federally enforceable as of the effective date of EPA approval even if they have not yet been incorporated by reference. To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA is retaining the original "Identification of Plan" section, previously appearing in the CFR as the first or second section of part 52 for each State subpart.

Notice of Administrative Change

Today's action constitutes a "housekeeping" exercise to ensure that federally approved state plans are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA Regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

The EPA has determined that today's rule falls under the "Good Cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" since the codification only reflects existing law. Immediate revision to the CFR benefits the public by removing outdated citations.

Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by

statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities, 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The regulations affected by this format change to 40 CFR part 52 have all been previously submitted by the respective State agency and approved by EPA. Therefore, the Regional Administrator certifies that there is no significant impact on any small entities affected.

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. § 804(2).

H. Judicial Review

The EPA has determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions approving each individual component of Louisiana SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to provide an additional opportunity for judicial review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides.

Dated: September 8, 1998.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart T—Louisiana

2. Section 52.970 is redesignated as § 52.999 and the heading and paragraph (a) are revised to read as follows:

§ 52.999 Original identification of plan section.

(a) This section identifies the original "The Louisiana Air Control Commission Implementation Plan" and all revisions submitted by Louisiana that were federally approved prior to July 1, 1998.

* * * * *

3. A new § 52.970 is added to read as follows:

§ 52.970 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan (SIP) for Louisiana under section 110 of the Clean Air Act, 42 U.S.C. 7410, and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c),(d) and (e) of this section with an EPA approval date prior to July 1, 1998, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c), (d) and (e) of this section with EPA approval dates after July 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 6 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of July 1, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Region 6 EPA Office at 1445 Ross Avenue, Suite 700, Dallas, Texas, 75202–2733; the EPA, Air and Radiation Docket and Information

Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460; or at the Office of Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(c) EPA approved regulations.

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Comments
LAC Title 33. Environmental Quality Part III. Air				
Chapter 1—General Provisions				
Section 101	Authority, Matter Incorporated by Reference, and Permit Fee System.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 103	Scope and Severability of Air Regulations.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 107	Procedure for Handling Investigations, Complaints and Confidentiality.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 109	Necessary Changes for Approval of Compliance Schedules and Annual Report Requirements.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 111	Definitions under the Louisiana Air Regulations.	Aug. 1991, LR17:777	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Chapter 2—Rules and Regulations for the Fee System of the Air Quality Control Programs				
Section 223	Fee Schedule Listing	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Chapter 5—Permit Procedures				
Section 501	Authority	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 503	Procedures for Notification for Interstate Pollution.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 504	Nonattainment New Source Review Procedures.		10/10/97, 62 FR 52951	Ref 52.999(c)(68).
Section 505	For Emissions Below PSD de minimis Levels.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
			Correction 03/06/92, 57 FR 08076.	Ref 52.999(c)(58).
Section 507	Notification Requirement (for Emission Reduction).	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 509	Prevention of Significant Deterioration	Feb. 1995, LR21:170	10/15/96, 61 FR 53639	Ref 52.999(c)(69).
Chapter 7—Ambient Air Quality				
Section 701	Purpose and Information Regarding Standards for PM10, SO2, CO, Atmospheric Oxidants, NO_X and Pb.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 703	Scope of Ambient Air Quality Standards for PM10, SO2, CO, Ozone, NO_X, and Pb.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 705	Standards: Description of Ambient Air Quality Standards.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 707	Degradation of Ambient Air Having Higher Quality than Set Forth in these Sections Restricted.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 709	Measurement of Concentrations PM10, SO2, CO, Atmospheric Oxidants, NO_X, and Pb.	Jun. 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Table 1	Primary Ambient Air Quality Standards.	Jun. 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Table 1a	Secondary Ambient Air Quality Standards.	Jun. 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Table 2	Ambient Air—Methods of Contaminant Measurements.	Jun. 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Chapter 9—General Regulations on Control of Emissions and Emission Standards				
Section 901	Purpose	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 903	Scope	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 905	Control Facilities to be Installed When Feasible.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 907	Emission Resulting in Undesirable Levels Not Allowed (From Refuse Disposal).	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 909	Responsible Person to have Test Made.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).

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Section 911	Department May Make Tests	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 913	New Sources to Provide Sampling Ports.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 915	Emission Monitoring Requirements: Applicability, Special Considerations, Exemptions, and Circumvention.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 917	Variances	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 918	Recordkeeping and Annual Reporting	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 919	Emission Inventory	Oct. 1994, LR20:1102	01/06/95, 60 FR 02016	Ref 52.999(c)(65).
Section 921	Stack Heights	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 923	Maintenance of Pay	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 925	Mass Emission Rate Control Plan	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 927	Notification Required (Emergency Occurrences).	Dec. 1987, LR13:741	03/08/89, 54 FR 09795,	Ref 52.999(c)(49).
Section 929	Violation of Emission Regulation Cannot be Authorized.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 11—Control of Emissions From Smoke				
Section 1101	Control of Air Pollution from Smoke: Purpose and Control of Smoke.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 1103	Impairment of Visibility on Public Roads Prohibited.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 1105	Smoke from Flaring Shall be no Darker than No. 1 Ringelmann.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49)
Section 1107	Exemptions	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 1109	Control of Air Pollution from Outdoor Burning.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 1111	Exclusion: Variance, Unpopulated Areas and Water Vapor.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 13—Emission Standards for Particulate Matter				
Subchapter A	General			
Section 1301	Emission Standards for Particulate Matter.	Jun 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Section 1303	Provision Governing Specific Activities	Jun 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Section 1305	Control of Fugitive Emissions	Jun 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Section 1307	Degradation	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 1309	Measurements of Concentrations	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Subchapter B	Fluid Catalytic Cracking Units			
Section 1311	Emission Limits—Including Fluid Catalytic Cracking Units.	Jun 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Subchapter C	Fuel Burning Equipment			
Section 1313	Emissions from Fuel Burning Equipment.	Jun 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Section 1315	More Stringent Regulations may be Prescribed if Particulates are Toxic.	Jun 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Section 1317	Exclusions	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Subchapter D	Refuse Incinerators			
Section 1319	Refuse Incinerators: Purpose, Scope, Capacity, Approval of, Allowable Emissions, Disposal, and Restrictions.	Jun 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Subchapter E	Leadened Particulate Matter			
Section 1321	Emission Standards for Leaded Particulate Matter.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Table 3	Allowable Rate of Emissions Based on Process Weight Rate.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 14—Conformity				
Subchapter A	Determining Conformity of General Federal Actions to State or Federal Implementations Plans			
Section 1401	Purpose	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).

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Section 1402	Scope	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1403	Prohibition	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1404	Definitions	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section:				
1405	Applicability	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
1405.B		06/20/97, LR23:720	03/09/98, 63 FR 11372	Ref 52.999(c)(75)
Section 1406	Conformity Analysis	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1407	Reporting Requirements	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1408	Public Participation	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1409	Frequency of Conformity Determinations.	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1410	Criteria for Determining Conformity of General Federal Actions.	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1411	Procedures for Conformity Determinations of General Federal Actions.	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1412	Mitigation of Air Quality Impacts	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1413	Department Review	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1414	Enforcement Provisions	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1415	Savings Provision	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Chapter 15—Emission Standards for Sulfur Dioxide				
Section 1501	Degradation of Existing Emission Quality Restricted.	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Section 1503	Emission Limitations	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Section 1505	Variance	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Section 1507	Exceptions, Startup provisions, Online Operating Adjustments, and Bubble Concept.	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Section 1509	Reduced Sulfur Compounds (New and Existing Sources).	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Section 1511	Continuous Emissions Monitoring	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Section 1513	Recordkeeping and Reporting	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Table 4	Emissions—Methods of Contaminant Measurement.	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Chapter 17—Control of Emissions of Carbon Monoxide (New Sources)				
Subchapter A	General			
Section 1701	Degradation of Existing Emission Quality Restricted.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Subchapter B	Ferrous Metal Emissions			
Section 1703	Ferrous Metal Emissions	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Subchapter C	Petroleum Refinery Emissions			
Section 1705	Petroleum Refinery Emissions	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 19—Mobile Sources				
Subchapter B	Clean Fuel Fleet			
Section 1951	Purposes	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1953	General Provisions	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1955	Definitions	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1957	Exemptions	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1959	Emissions Standards	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1961	Credits Program	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1963	Emissions Reduction Credits Program—Reserved.	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1965	Recordkeeping	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1967	Conversion to Clean Fuel Vehicles—Reserved.	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1969	Fuel Provider Requirements	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1971	Enforcement	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1973	Fees	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Chapter 21—Control of Emissions of Organic Compounds				
Subchapter A	General			
Section 2101	Compliance Schedules	Nov. 1990, LR16:959	05/05/94, 59 FR 23166	Ref 52.999(c)(60).

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Section 2103	Storage of Volatile Organic Compounds (Large Tanks).	Dec. 1995, LR21:1333	10/22/96, 61 FR 54737	Ref 52.999(c)(71)(E)(F)(G).
Section 2105	Storage of Volatile Organic Components (Small Tanks).			NOT IN SIP.
Section 2107	Volatile Organic Compounds—Loading.	Apr. 1991, LR17:360	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2108	Marine Vapor Recovery	Nov. 1990, LR16:959	10/22/96, 61 FR 54737	Ref 52.999(c)(71)(A)(B).
Section 2109	Oil/Water—Separation	Oct. 1992, LR18:1122	07/25/96, 61 FR 38590	Ref 52.999(c)(64).
Section 2111	Pumps and Compressors	Apr. 1991, LR17:360	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2113	Housekeeping	Apr. 1991, LR17:360	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2115	Waste Gas Disposal and Exemptions	Mar. 1993, LR19:317	07/25/96, 61 FR 38590	Ref 52.999(c)(64).
Section 2117	Exemptions	Feb. 1990, LR16:116	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2119	Variances	Feb. 1990, LR16:116	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2121	Fugitive Emission Control	Jul. 1991, LR17:654	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2122	Fugitive Emission Control for Ozone Nonattainment Areas.	Nov. 1994, LR20:1269	10/22/96, 61 FR 54737	Ref 52.999(c)(71)(C)(D).
Subchapter B	Organic Solvents			
Section 2123	Organic Solvents	Oct. 1992, LR18:1122	07/25/96, 61 FR 38590	Ref 52.999(c)(64).
Subchapter C	Vapor Degreasers			
Section 2125	Vapor Degreasers	Oct. 1992, LR18:1122	07/25/96, 61 FR 38590	Ref 52.999(c)(64).
Subchapter D	Cutback Paving Asphalt			
Section 2127	Cutback Paving Asphalt	Apr. 1991, LR17:360	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Subchapter E	Perchloroethylene Dry Cleaning Systems			
Section 2129	Perchloroethylene Dry Cleaning Systems.	Nov. 1990, LR16:959	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Subchapter F	Gasoline Handling			
Section 2131	Filling of Gasoline Storage Vessels	Oct. 1992, LR18:1122	07/25/96, 61 FR 38590	Ref 52.999(c)(64).
Section 2132	Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities.	Jan. 1993, LR19:46	03/25/94, 59 FR 14114	Ref 52.999(c)(61).
Section 2133	Gasoline Bulk Plants	Jul. 1990, LR16:609	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2135	Bulk Gasoline Terminals	Oct.1992, LR18:1123	07/25/96, 61 FR 38590	Ref 52.999(c)(64).
Section 2137	Gasoline Terminal Vapor-Tight Control Procedure.	Jul. 1990, LR16:609	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Subchapter G	Petroleum Refinery Operations			
Section 2139	Refinery Vacuum Producing Systems	Jul. 1991, LR17:654	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2141	Refinery Process Unit Turnarounds.	Jul. 1991, LR17:654	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Subchapter H	Graphic Arts			
Section 2143	Graphic Arts (Printing) by Rotogravure and Flexographic Processes.	Oct. 1992, LR18:1123	07/25/96, 61 FR 38590	Ref 52.999(c)(64).
Subchapter I	Pharmaceutical Manufacturing Facilities			
Section 2145	Pharmaceutical Manufacturing Facilities.	Nov. 1990, LR16:959	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Subchapter J	Limiting Volatile Organic Compound (VOC) Emissions from Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry (SOCMI)			
Section 2147	Limiting VOC Emissions from SOCMI Reactor Process and Distillation Operations.	Apr. 1995, LR21:380	12/02/97, 62 FR 63658	Ref 52.999(c)(74).
Subchapter K	Limiting Volatile Organic Compound Emissions from Batch Processing			

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Section 2149	Limiting Volatile Organic Compound Emissions from Batch Processing.	Apr. 1995, LR21:387	12/02/97, 62 FR 63658	Ref 52.999(c)(74).
Subchapter L	Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing			
Section 2151	Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing.	Apr. 1995, LR21:391	12/02/97, 62 FR 63658	Ref 52.999(c)(74).
Table 8	Untitled [List of Synthetic Organic Chemicals].	Dec. 1987, LR13:741	05/05/94, 59 FR 23166	Ref 52.999(c) (49) and (60). Table approved at (c)(49) included CAS numbers. Table approved at (c)(60) did not include CAS numbers.
Chapter 23—Control of Emissions from Specific Industries				
Subchapter A	Chemical Woodpulping Industry			
Section 2301	Control of Emissions from the Chemical Woodpulping Industry.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Subchapter B	Aluminum Plants			
Section 2303	Standards for Horizontal Stud Soderberg Primary Aluminum Plants and Prebake Primary Aluminum Plants.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Subchapter C	Phosphate Fertilizer Plants			
Section 2305	Fluoride Emissions Standards for Phosphate Fertilizer Plants.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Subchapter D	Emission Standards for the Nitric Acid Industry			
Section 2307	Emission Standards for the Nitric Acid Industry.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 56—Prevention of Air Pollution Emergency Episodes				
Section 5601	Purpose	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 5603	Scope	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 5605	Episode Criteria and Air Pollution Forecast.	Dec. 1987, LR13:741	03/08/89 54 FR 09795	Ref 52.999(c)(49).
Section 5607	Administrative Authority Will Determine When Criteria Level Has Been Reached.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 5609	Preplanning Strategies Required: Alert Level, Warning Level, and Emergency Level.	Jun. 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Section 5611	Standby Plans to be Submitted When Requested by Administrative Authority.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Table 5	Emission Reduction Plans—Alert Level.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Table 6	Emission Reduction Plans—Warning Level.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Table 7	Emission Reduction Plans—Emergency Level.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 60—Test Methods—NSPS Division's Source Test Manual				
6001 to 6089	40 CFR 60, Appendix A NSPS Methods 1 to 41.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 61—Divisions Source Test Method				
Subchapter A	Method 43—Capture Efficiency Test Procedures			
Section 6121	Principle	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 6123	Definitions	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 6125	Applicability	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 6127	Specific Requirements	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).

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Section 6129	Recording and Reporting	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 6131	Procedures for Method 43	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
6131.A	Procedure F.1—Fugitive VOC Emissions from Temporary Enclosures.	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
6131.B	Procedure F.2—Fugitive VOC Emissions from Building Enclosures.	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
6131.C	Procedure G.1—Captured VOC Emissions.	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
6131.D	Procedure G.2—Captured VOC Emissions (Dilution Technique).	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
6131.E	Procedure L—VOC Input	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
6131.F	Procedure T—Criteria for Verification of a Permanent or Temporary Total Enclosure.	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Chapter 63—Test Methods—LESHAP Division's Source Test Manual				
6301 to 6401	40 CFR 61, Appendix B Test Methods	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 65—Rules and Regulations for the Fee System of the Air Quality Control Programs				
Section 6501	Scope and Purpose	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6503	Authority	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6505	Definitions	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6507	Application Fees	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6509	Annual Fees	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6511	Methodology	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6513	Determination of Fee	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6515	Method of Payment	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6517	Late Payment	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6519	Failure to Pay	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6521	Effective Date	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6523	Fee Schedule Listing	Nov. 1992, LR18:1256	03/25/94, 59 FR 14114	Ref 52.999(c)(61).

(d) EPA-approved State Source-specific requirements.

EPA-APPROVED LOUISIANA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State approval/effective date	EPA approval date	Comments
Lead SIP for Ethyl Corp. in Baton Rouge.	Compliance order	01/27/89	06/27/89, 54 FR 27002	Amended Compliance order dated 01/31/86. Modeling 05/27/88. State letter 01/27/89. Ref 52.999(c)(51).
Vulcan Materials Company Facility in Geiser, Ascension Parish.	1829T(M–2)	07/28/89	10/10/89, 54 FR 41444	Revision of Bubble Permit. Issued 03/24/83, amended 07/28/89. Ref 52.999(c)(52).
American Cyanamid Company Fortier Plant in Westwego, Jefferson Parish.	1896(M–2)	07/20/89	11/27/89, 54 FR 48743	Revision of Bubble Permit. Issued 10/17/84, amended 07/20/89. Ref 52.999(c)(53).
Vista Chemical Company Facility in Westlake, Louisiana.	1828(M–2)	09/25/86	02/02/90, 55 FR 03598	Bubble Permit. Submitted by Governor on 11/22/83, amended 09/25/86. Ref 52.999(c)(54).
Union Carbide Facility in Hahnville, Louisiana.	1836T(M–1)	05/05/90	07/18/90, 55 FR 29205	Revision of Bubble Permit. Submitted by Governor on 10/19/83, amended 04/23/87, revised 05/05/90. Ref 52.999(c)(55).
Dow Chemical Facility in Plaquemine, Iberville Parish.	1838T(M–2)	10/16/91	10/04/94, 59 FR 50500	Revision of Bubble Permit. Issued 7/28/83, amended 10/16/91. Ref 52.999(c)(62).
Exxon Compliance Date Extension, Baton Rouge Refinery.	N/A	09/12/97	05/11/98, 63 FR 25773	Extension of compliance date to LAC 33:III, 2103.D.4 Ref 52.999(c)(79).

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

EPA Approved Louisiana Statutes in the Louisiana SIP

State citation	Title/subject	State approval/ effective date	EPA approval date	Comments
LA. R.S. of 1950. Title 40, Chapter 12. The Louisiana Air Control Law, Part 1, Louisiana Air Control Commission				
40:2201	Citation	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2202	Definition	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2203	Commission created; domicile; membership; tenure; meetings.	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2204	Powers and Duties of Commission	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2205	Powers and Duties of Technical Secretary	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2206	Approval of rules and regulations; public hearings; difference.	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2207	Validity of rules or regulations; declaratory judgement.	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2208	Investigations; complaints; hearings; recommendations.	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2209	Procedure at hearings	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:1077	Secret processes or methods as confidential	01/01/80	06/09/82, 47 FR 25013	Ref 52.999(c)(39) Old section name 2210.
40:2211	Variances	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2212	Failure to act on petition for variance	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2213	Judicial review	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2214	Injunction; penalties for violations of orders of the commission.	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2215	Actions inuring to benefit the state	Apr. 1979	02/14/80 45 FR 09909	Ref 52.999(c)(15).
40:2216	Act as exclusive means of control; nuisances	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
LA. R.S. of 1992. Title 30 and 36, Subtitle II. Environmental Quality, Chapter 3. Louisiana Air Control Law				
30:2060 N.6	Toxic air pollution emission control program	10/22/92	06/23/94, 59 FR 32359	Ref 52.999(c)(63).
30:2061	Small Business Stationary Source Technical and Environmental Compliance Assistance Program.	10/22/92	06/23/94, 59 FR 32359	Ref 52.999(c)(63).
30:2062	Louisiana Small Business Compliance Advisory panel.	10/22/92	06/23/94, 59 FR 32359	Ref 52.999(c)(63).
36:239(H)	Transfer of agencies and functions to the Department of Environmental Quality.	10/22/92	06/23/94, 59 FR 32359	Ref 52.999(c)(63).

EPA Approved Control Measures in the Louisiana SIP

Control measures	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Comments
Federal Hydrocarbon Standards	Region 106, SE LA–SE TX AQCR	03/30/73	06/22/73 38 FR 16565	Ref 52.999(c)(04).
PM Strategy	Region 106, SE LA–SE TX AQCR	01/02/73	07/19/77, 42 FR 37000	Ref 52.999(c)(06).
Air Quality Maintenance Area for PM	Shreveport, LA	12/09/77	08/18/78, 43 FR 36628	Ref 52.999(c)(09).
Air Quality Surveillance Network	New Orleans, LA	04/03/78	01/29/79, 44 FR 05601	Ref 52.999(c)(10). Change of sampling site location.
Louisiana Ozone SIP	Nonattainment areas, AQCR 022 and 106.	04/30/79	02/14/80, 45 FR 09909	Ref 52.999(c)(15). Part D requirement.
Evidence of Notice and Public Hearing.	Statewide	06/20/79	02/10/82, 47 FR 06017	Ref 52.999(c)(16).
Emission Inventory	Nonattainment areas	08/28/78	02/14/80, 45 FR 09909	Ref 52.999(c)(17).
Air Quality Surveillance Network	Statewide	01/10/80	08/06/81, 46 FR 40006	Ref 52.999(c)(20). Final Revisions to ambient monitoring.
Lead SIP	Baton Rouge, LA	10/31/83	05/01/84, 49 FR 18485	Ref 52.999(c)(40).
NSR and Visibility Monitoring	Class I Federal Areas in LA	10/14/85	06/10/86, 51 FR 20969	Ref 52.999(c)(44).
Small Business Program	Statewide	10/22/92	06/23/94, 59 FR 32359	Ref 52.999(c)(63).
Redesignation Request and Maintenance Plan.	Pointe Coupe Parish	12/20/95	01/06/97, 61 FR 00648	Ref 52.999(c)(70).
Revision to SIP, 15% ROP Plan	Nonattainment areas	12/15/95	10/22/96, 61 FR 54737	Ref 52.999(c)(71).
VOC RACT Negative Declarations	Baton Rouge nonattainment area	12/15/95	10/30/96, 61 FR 55894	Ref 52.999(c)(72).
Redesignation Request and Maintenance Plan.	Calcasieu Parish	12/20/95	05/02/97, 62 FR 24036	Ref 52.999(c)(73).

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–6185–4]

RIN 2060–ZA03

Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates (adopts) a Federal plan to implement emission guidelines for MWC units located in areas not covered by an approved and currently effective State plan. The Federal plan is an interim action because on the effective date of an approved State plan, the Federal plan will no longer apply to MWC units covered by the State plan. This MWC Federal plan includes the same required elements as a State plan as specified in 40 CFR part 60, subpart B. These elements are: identification of legal authority; identification of mechanisms for implementation; inventory of affected facilities; emission inventory; emission limits; compliance schedules; public hearing requirements; reporting and recordkeeping requirements; and public progress reports.

On December 19, 1995, EPA adopted emission guidelines for existing municipal waste combustor (MWC) units. Section 129 of the Clean Air Act (Act) requires States with existing MWC units subject to the guidelines to submit plans to EPA that implement and enforce the emission guidelines. The State plans were due on December 19, 1996. States without MWC units subject to the emission guidelines must submit a negative declaration letter. Following receipt of a State plan, EPA has up to 6 months to approve or disapprove the plan. If a State with existing MWC units does not submit an approvable plan within 2 years after promulgation of the guidelines (i.e., December 19, 1997), the Act requires EPA to develop, implement, and enforce a Federal Plan for MWC units in that State. This MWC Federal plan was proposed on January 23, 1998 (63 FR 3509).

EFFECTIVE DATE: The effective date of this MWC Federal plan is December 14, 1998. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 14, 1998.

Judicial Review. This section 111(d)/129 rule for municipal waste combustors was proposed on January 23, 1998 (63 FR 3509). This notice promulgating a rule for municipal waste combustors constitutes final administrative action concerning that proposal. Under section 307(b)(1) of the Act, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 11, 1999. Under section 307(d)(7)(B) of the Act, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the Act, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by the EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket numbers A–89–08, A–90–45, and A–97–45 contain the supporting information for this promulgated rule and the supporting information for EPA's promulgation of emission guidelines for existing MWC units. Public comments on the proposed rule for this action were received in docket number A–97–45. The dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For procedural and implementation information regarding this Federal Plan, contact Ms. Julie Andresen McClintock at (919) 541–5339, Program Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For technical information regarding State plans, contact Mr. Walt Stevenson at (919) 541–5264, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For State-specific information regarding the implementation of this Federal plan, contact the appropriate Regional Office (table 2) as shown in section I of **SUPPLEMENTARY INFORMATION.**

The following outline shows the organization of the **SUPPLEMENTARY INFORMATION** section of this preamble.

I. Background of MWC Regulations and Affected Facilities
  A. Background of MWC Regulations
  B. MWC Federal Plan and Affected Facilities
  C. Status of State Plans
II. Required Elements of the MWC Federal Plan
III. Changes Since Proposal
  A. Final Control Plan Requirements
  B. Dates for Increments of Progress
  C. Options 1, 2, and 3 and Site-specific Compliance Schedules
  D. Compliance Dates Already Achieved
  E. Subpart Cb Amended Emission Limits
IV. Summary of Federal Plan Emission Limits and Requirements
V. Implementation of Federal Plan and Delegation
  A. Background of Authority
  B. Delegation of the Federal Plan
  C. Mechanisms for Transferring Authority
VI. Title V
VII. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Executive Order 12866
  D. Unfunded Mandates Reform Act of 1995
  E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996
  F. Submission to Congress and the General Accounting Office
  G. National Technology Transfer and Advancement Act
  H. Executive Order 12875
  I. Executive Order 13084
  J. Executive Order 13045

SUPPLEMENTARY INFORMATION:

I. Background of MWC Regulations and Affected Facilities

A. Background of MWC Regulations

On February 11, 1991 (56 FR 5488), EPA promulgated in the **Federal Register** emission guidelines for existing MWC units (40 CFR part 60, subpart Ca) under authority of section 111 of the Act as amended in 1977. On September 20, 1994, EPA proposed revised emission guidelines for MWC units (40 CFR part 60, subpart Cb) under sections 111 and 129 of the Act as amended in 1990. On December 19, 1995, EPA issued final emission guidelines applicable to small and large categories of MWC units.[1] *See* 60 FR 65387. On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subpart Cb as it applies to MWC units with an individual capacity to combust less than or equal to 250 tons per day

[1] The small category comprised all MWC units located at facilities with total capacity to combust between 35 mg/day (40 tons per day), and 225 mg/day (250 tons per day) of MSW. The large category comprised all MWC units located at facilities with total capacity to combust greater than 250 tons per day of MSW.

of municipal solid waste (MSW) (small MWC units), and all cement kilns combusting MSW, consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), amended, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subpart Cb applies to MWC units with an individual capacity to combust more than 250 tons per day of MSW per unit (large MWC units). On August 25, 1997 (62 FR 45116), EPA published changes to the emission guidelines to address the court decision. Those changes went into effect on October 24, 1997 and State plans incorporating those changes were due on August 25, 1998.

States with existing large MWC units subject to the emission guidelines were required to submit to EPA a plan that implements and enforces the guidelines within 1 year after promulgation of the guidelines, or by December 19, 1996. As stated in the proposal preamble, the court's order that vacated the applicability of the guidelines to small MWC units and cement kilns did not affect the due date or the required content of State plans for Large MWC units. The due date for State plans remained December 19, 1996. Section 129(b)(3) of the Act requires EPA to develop, implement, and enforce a Federal plan for large units located in States that have not submitted an approvable plan within 2 years after promulgation of the guidelines, or by December 19, 1997.

Today's action adopts a Federal plan for MWC units that are not yet covered by an approved State plan. The elements of the Federal plan are summarized in section II of this preamble. This MWC Federal plan was proposed in the **Federal Register** on January 23, 1998 (63 FR 3509). Comment letters were received through March 24, 1998. An opportunity for public hearing was offered, but no requests were received and a public hearing was not held. The public comments and EPA's responses are also documented in "Municipal Waste Combustion: Background Information Document for Federal Plan—Public Comments and Responses" (EPA–456/R–98–005), docket A–97–45, item III–B–1. The EPA's responses to the public comments and changes to the regulation are also summarized in section III of this preamble.

B. MWC Federal Plan and Affected Facilities

This MWC Federal plan affects all MWC units with a combustion capacity greater than 250 tons per day of municipal solid waste (large MWC units) that commenced construction on or before September 20, 1994 that are not covered by an EPA approved and currently effective State or Tribal plan. This Federal plan, or portions thereof, also applies to each affected facility in any State whose approved State plane is subsequently vacated in whole or in part.

Section 129 of the Act specifies that the Federal plan applies to MWC units located in any State that has not submitted an "approvable" State plan by December 19, 1997. The EPA received several State plans before December 19, 1997 and those plans were approved; five more plans were approved by August 15, 1998. Any MWC units covered by plans submitted after December 19, 1997 are covered by the Federal plan until the State plan is approved and becomes effective. An approved State plan is a State plan that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cb. The State plan is effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

Today's adoption of this MWC Federal plan does not preclude a State from submitting a State plan later. If a State submits a State plan after today's publication of the MWC Federal plan, EPA will review and approve or disapprove the State plan. If EPA approves the State plan, then the Federal plan no longer applies as of the effective date of the State plan. (See the discussion in *State Submits A State Plan After Large MWC Units in the State Are Subject to the Federal Plan* in section V of this preamble.)

Sections 62.14100 and 62.14102 of subpart FFF describe the MWC units included and excluded from the Federal plan. The exclusion table in § 62.14102 of subpart FFF lists those units, by State, to which the MWC Federal plan currently does not apply. The exclusion table is provided as a matter of convenience and is not controlling in determining whether a large MWC unit is subject to the Federal plan. Any large MWC unit not covered by an approved and currently effective State plan is subject to the Federal plan. As State plans are approved, EPA will periodically amend the exclusion table in § 62.14102 of subpart FFF to identify MWC units covered in EPA-approved and currently effective State plans.

If a large MWC unit was overlooked by a State and the State submitted a negative declaration letter, the large unit would be subject to this Federal plan. Also, the EPA believes that no large MWC units are located in Indian country. In the unlikely event that a large MWC unit is located in Indian country, then the unit would be covered by the Federal plan, unless it is covered by an approved and currently effective Tribal plan. The tribal Authority Rule authorizes eligible Tribal governments to submit to EPA a section 129/111(d) State plan for MWCs (63 FR 7254, February 12, 1998). The Tribal Authority Rule also contains a discussion on the EPA's authority to implement Clean Air Act programs in Indian country. See also the preamble discussion in the Federal Operating Permits Program proposed rule published on March 21, 1997, 62 FR 13747.

C. Status of State Plans

Many States are making significant progress on their State plans. Twenty-four States have large MWC units and require State plans. The EPA has approved the State plans for Florida (62 FR 36995), Georgia (63 FR 27494), Illinois (62 FR 67570), Minnestoa (63 FR 43080), New York (63 FR 41427), Oregon (62 FR 36995), South Carolina (63 FR 40046), and Tennessee[2] and the MWC units covered in those State plans are not covered by the MWC Federal plan, as of the effective date specified in the **Federal Register** notice announcing EPA's approval of the State plan. The EPA expects more State plans to be approved in the next few months. Table 1 summarizes the status of States without State plans. The table is based on information received from EPA Regional Offices (A–97–45, IV–J–2). The status of States without State plans as of July 27, 1998 is as follows:

- The EPA has received a negative declaration letter from States listed in section I of table 1 stating that there are no large MWC units in these States; thus EPA is not expecting a State plan to be submitted from these States. However, in the unlikely event that there are large MWC units located in any of these States, this Federal plan would automatically apply to them;
- The EPA has received a State plan from States listed in section II of table 1 and the State plans currently are being reviewed by EPA. The Federal plan covers large MWC units in these States until these State plans are approved by EPA and become effective;
- The EPA has received a State plan or a negative declaration letter from the States listed in section III of table 1. The large MWC

[2] Program approval of the State plan has been signed by the Regional Administrator, but not yet published in the **Federal Register**. If the approval of the State plan occurs in a timely fashion, the State plan and not the Federal plan will apply. However, if approval is delayed for reasons such as receipt of adverse comments, the Federal plan will apply for the short period until the State plan is approved. Any delay in the approval of a State plan will be announced in the **Federal Register**.

units in these States are subject to the MWC Federal plan until a State plan applicable to large MWC units is approved by EPA and become effective.

TABLE 1.—STATUS OF STATES WITHOUT AN APPROVED STATE PLAN [a]

State	Status [c]
I. Negative Declaration Submitted to EPA	
Region I:	
Rhode Island	A
Vermont	A
Region II:	
Puerto Rico	A
Virgin Islands	A
Region III [b]:	
Delaware	A
District of Columbia	A
West Virginia	A
Region IV:	
Kentucky	A
Mississippi	A
North Carolina	A
Region V:	
Wisconsin	A
Region VI:	
Arkansas	A
Louisiana	A
New Mexico	A
Texas	A
Region VII:	
Iowa	A
Kansas	A
Missouri	A
Nebraska	A
Region VIII:	
Colorado	A
Montana	A
North Dakota	A
South Dakota	A
Utah	A
Wyoming	A
Region IX:	
American Samoa	A
Arizona	A
Nevada	A
Northern Mariana Islands	A
Region X:	
Alaska	A
Idaho	A
II. State plan submitted to EPA	
Region I:	
Maine	B
Region III:	
Maryland	C
Pennsylvania	C
Region VI:	
Oklahoma	B
III. Neither a State plan nor a negative declaration letter submitted to EPA	
Region I:	
Connecticut	D
New Hampshire	D
Massachusetts	D
Region II:	
New Jersey	D
Region III:	
Virginia	D
Region IV:	
Alabama	D
Region V:	
Indiana	D
Michigan	D
Ohio	D
Region IX:	
California	D
Guam	D
Hawaii	D
Region X:	
Washington	D

[a] Any large MWC units in these States are covered by the Federal plan.

[b] The City of Philadelphia and Allegheny County, Pennsylvania submitted documentation stating that they have no municipal waste combustors that would be subject to the emission guidelines; however, the Pennsylvania Department of Environmental Protection submitted a State plan.

[c] Status codes.

A=Negative declaration submitted. No State plan is expected. However, in the unlikely event that large MWC units are located in any of these States, this Federal plan would automatically apply to them.

B=State plan has been submitted and is being received by EPA. If the plan is approved and becomes effective, MWC units covered by the State plan would not be subject to the promulgated Federal plan.

C=State plan has been submitted, but is incomplete.

D=State plan or negative declaration submittal has not been received.

Regulated Entities

Entities regulated by this action are existing MWC units with the capacity to combust greater than 250 tons per day of MSW unless the unit is subject to a section 111(d)/129 State plan that has been approved by EPA and is in effect. Today's MWC Federal plan will affect MWC units in 15 States. However, many State plans are expected to be approved in the next few months. Based on a 1997 MWC inventory and recent information from EPA Regional Offices (A–97–45, IV–J–2), this Federal plan is expected to affect MWC units in 16 States. Regulated categories and entities include:

Category	Examples of regulated entities
Industry and Local Government Agencies	Waste-to-energy plants that generate electricity or steam from the combustion of garbage by feeding municipal waste into large furnaces. Incinerators that combust trash but do not recover energy from the waste.

The foregoing table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this MWC Federal plan. For specific applicability criteria, see §§ 62.14100 and 62.14102 of subpart FFF.

Regional Office Contracts

For information regarding the implementation of the MWC Federal Plan, contact the appropriate EPA Regional Office as shown in table 2.

TABLE 2.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS

Regional contact	Phone No.	Fax No.
John Courcier, U.S. EPA, Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), John F. Kennedy Federal Bldg., Boston, MA 02203–0001	(617) 565–9462	(617) 565–4940
Christine DeRosa, U.S. EPA, Region II (New Jersey, New York, Puerto Rico, Virgin Islands), 290 Broadway, New York, NY 10007–1866	(212) 637–4022	(212) 637–3901
James B. Topsale, U.S. EPA/3AP22, Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), 1650 Arch Street, Philadelphia, PA 19103–2029	(215) 814–2190	(215) 814–2134
Scott Davis, U.S. EPA/APTMD, Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), 345 Courtland St., N.E., Atlanta, GA 30365	(404) 562–9127	(404) 562–9095

TABLE 2.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS—Continued

Regional contact	Phone No.	Fax No.
Douglas Aburano (MN)	(312) 353–6960	(312) 886–5824
Mark Palermo (IL, IN, OH)	(312) 886–6082	
Victoria Hayden (MI)	(312) 886–4023	
Charles Hatten (WI)	(312) 886–6031	
U.S. EPA/AT18J, Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), 77 W. Jackson Blvd., Chicago, IL 60604		
Mick Cote, U.S. EPA, Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 1445 Ross Ave., Suite 1200, Dallas, TX 75202–2733	(214) 665–7219	(214) 665–7263
Wayne Kaiser, U.S. EPA, Region VII (Iowa, Kansas, Missouri, Nebraska), 726 Minnesota Ave., Kansas City, KS 66101	(913) 551–7603	(913) 551–7065
Mike Owens, U.S. EPA, Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th Street, Suite 500, Denver, CO 80202–2466	(303) 312–6440	(303) 312–6064
Patricia Bowlin, U.S. EPA/Air 4, Region IX (American Samoa, Arizona, California, Guam, Hawaii, Northern Mariana Islands, Nevada), 75 Hawthorne Street, San Francisco, CA 94105	(415) 744–1188	(415) 744–1076
Catherine Woo, U.S. EPA, Region X (Alaska, Idaho, Oregon, Washington), 1200 Sixth Ave., Seattle, WA 98101	(206) 553–1814	(206) 553–0404

II. Required Elements of the MWC Federal Plan

Sections 111(d) and 129 of the Act, as amended, 42 U.S.C. 7411(d) and 7429(b)(2), require States to develop and implement State plans for MWC units to implement and enforce the promulgated emission guidelines. Subparts B and Cb of 40 CFR part 60 require States to submit State plans that include specified elements. Because this Federal plan is being adopted in lieu of State plans, it includes the same essential elements: (1) Identification of legal authority, (2) identification of mechanisms for implementation, (3) inventory of affected facilities, (4) emissions inventory, (5) emission limits, (6) compliance schedules, (7) public hearing requirements, (8) reporting and recordkeeping requirements, and (9) public progress reports. Each State plan element was discussed in detail as it relates to the Federal plan in the preamble to the proposed rule (63 FR 3509). The following table (Table 3) identifies each element and identifies where it is located or codified. The EPA received public comments on the emission limits, compliance schedules, and reporting presented in section III of this preamble.

TABLE 3.—REQUIRED ELEMENTS AND LOCATION

Require element of the MWC Federal plan	Where located
1. Identification of legal authority	Section 129(b)(3) of the Act.
2. Identification of mechanisms for implementation	Section V of this preamble.
3. Inventory of affected facilities	Docket A–97–45, item II–B–1.
4. Emissions inventory	Docket A–97–45, item II–B–1.
5. Emission limits	40 CFR 62.14103, 62.14106, and 62.14107 of subpart FFF.
6. Compliance schedules	40 CFR 62.14108 of subpart FFF.
7. Public hearing requirements	63 FR 3517, January 23, 1998.
8. Reporting and recordkeeping requirements	40 CFR 62.14109 of subpart FFF.
9. Public progress reports	63 FR 3517, January 23, 1998.

III. Changes Since Proposal

This section of the preamble discusses the changes to the MWC Federal plan resulting from public comments. The public comments received on the proposed Federal plan are summarized and addressed in the promulgation background information document (EPA–456/R–98–005, docket A–97–45, III–B–1).

A. Final Control Plan Requirements

The proposed MWC Federal plan included specific requirements for the final control plan, which must be submitted to meet the first of five increments of progress toward retrofitting air pollution control equipment. Commenters indicated that the detailed requirements, including a requirement to prepare engineering drawings and specifications, go beyond the requirements in 40 CFR part 60, subparts B and Cb and EPA's State plan guidance document (EPA–456/R–96–003, docket A–97–45, II–A–7). Commenters requested that EPA revise the definition of final control plan to maintain consistency with subparts B and Cb and the State plan guidance document. This would allow owners and operators to better meet the increment 1 date and would be consistent with their efforts to prepare the same material for the State plan. In response to these comments, EPA revised the definition of final control plan to be consistent with 40 CFR part 60, subparts B and Cb and the State plan guidance document. The final rule requires a control plan, which can be a letter or brief document, that describes the controls or process changes that the source will use to comply with the emission limits and other requirements. The EPA recognizes the importance of maintaining consistency between the Federal plan and previous rules and guidance. By maintaining this consistency, MWC owners and operators will be preparing the same final control plan whether they are subject to the Federal plan or a subsequently approved State plan, unless the approved State plan contains requirements that are more stringent than those in the Federal plan. The EPA's goal is to allow owners and operators sufficient time to select a control technology, award contracts, and begin construction to achieve compliance by December 19, 2000.

B. Dates for Increments of Progress

The proposed MWC Federal plan included a generic compliance schedule with five increments of progress toward retrofitting air pollution control equipment. The proposed Federal plan would have required an owner or operator to submit the final control plan (increment 1) by September 21, 1998, award contracts (increment 2) by May 18, 1999, begin construction (increment 3) by November 14, 1999, finish construction (increment 4) by November 19, 2000, and achieve final compliance (increment 5) by December 19, 2000. The EPA received requests either to delay the increment 1 compliance date or "float" the increment dates relative to publication of the final rule in the Federal Register (i.e., each date would fall a certain number of months after publication). Commenters suggested that floating the dates would provide flexibility that would assist in achieving final compliance.

To respond to these comments, EPA delayed the increment 1 compliance date to allow sufficient notice and a reasonable amount of time for owners and operators to submit their control plans after the Federal plan rule is adopted. The revised increment 1 date is 60 days after today's publication of the Federal plan, which is about 2 months later than the proposed date of September 21, 1998. This will allow an owner or operator adequate time to prepare the final control plan, which is less detailed than would have been required in the proposal.

The remaining dates (increments 2 through 5) in the generic compliance schedule remain the same as in the proposal. These dates were retained for two reasons. First, these dates are achievable and they are necessary for MWC owners and operators to stay on track to complete retrofits by December 19, 2000. Second, if alternative dates are needed, an owner or operator may request alternative dates for increments 2, 3, and 4 as discussed in the next section of this preamble.

The EPA maintains that each date in the generic compliance schedule is achievable for MWC units. The generic schedule is based on four retrofit studies, which give a realistic estimate of the time required for an owner or operator to retrofit control equipment and reach final compliance. To provide maximum flexibility, the first three Federal plan increments are based on the maximum time required by any of the cases studied. The fourth increment was established to provide the maximum time to retrofit and still meet the final compliance date. The fifth and final increment is dictated by the Act. If the State or owners or operators wish to differ from the generic compliance schedule, they have the option of submitting alternative dates for increments 2 through 4, as described below. Because EPA is allowing this flexibility, EPA is not floating the generic compliance dates in the final Federal plan and is maintaining the proposed compliance dates for increments 2 through 5.

The EPA also maintains that MWC owners and operators have had adequate notice to begin retrofits. MWC owners and operators have known that they would need to install controls by December 19, 2000 since the promulgation of the emission guidelines on December 19, 1995. In July of 1996, EPA published the EPA State plan guidance document (EPA–456/R–96–003) that clearly describes the increments of progress and the final compliance date. Thus, MWC owners and operators had adequate time to develop their final control plans, plan their increments, and begin retrofits.

C. Options 1, 2, and 3 and Site-specific Compliance Schedules

Commenters supported EPA's approach in providing options for establishing the dates for the five increments of progress and EPA is retaining the proposed approach in the final Federal plan. The proposed Federal plan included three options for establishing the increment dates. Under option 1, a facility subject to the Federal plan would follow the generic compliance schedule developed by EPA. Under option 2, a State could submit alternative increment dates during the comment period that are consistent with the State plan. Under option 3, a State or the owner or operator could submit alternative dates for increments 2 through 4 on or before the date the final control plan is due under the generic compliance schedule. In all options, increment 1 and 5 dates must match increment 1 and 5 dates in the generic compliance schedule. In option 2, EPA reviewed the schedules submitted during the comment period and incorporated the approved schedules into the final Federal plan. In option 3, EPA would review the schedules before approving them and will periodically amend the site-specific table (table 6 of subpart FFF) to identify the MWC units with an EPA approved site-specific schedule.

The EPA is keeping these options to maintain consistency with State plans and offer flexibility on intermediate increments so long as the increment 1 and 5 dates are met. Many States exercised option 2 and submitted site-specific compliance schedules during the comment period. The EPA reviewed all schedules submitted by States to determine if the schedules met the increment 1 and 5 compliance dates. The EPA reviewed justification letters for increments 2, 3, and 4, if the dates were later than the generic schedule. Based on this review, EPA approved the site-specific schedules for various MWC facilities in the following States: California, Maine, Maryland, New Jersey, Pennsylvania, and Virginia. These approved site-specific schedules appear in table 6 of subpart FFF. The background information document (EPA–456/R–98–005, A–97–45, III–B–1) and a memorandum (A–97–45, IV–A–1) available in the docket provide details on the schedules submitted by the commenters and EPA's review process.

Note that under option 3, MWC owners or operators and States still have the opportunity to submit site-specific alternative dates for increments 2, 3, and 4 for approval at the time the final control plan is due. MWC owners or operators must submit the dates and a justification to EPA and must provide the State a copy. The EPA will review and approve or disapprove the alternative compliance dates in a timely manner. In order to facilitate EPA review, the site-specific schedule requests should include a justification for the site-specific schedule. The date for achieving final compliance for all schedules cannot be later than December 19, 2000.

D. Compliance Dates Already Achieved

At proposal, several States without approved State plans had submitted site-specific compliance schedules that included compliance dates that had already been achieved. To make it clear that these facilities must notify EPA when they meet an increment, EPA revised the format of the site-specific compliance schedule in the final rule. Rather than inserting "NA" (not applicable) for increment dates that have been achieved, EPA is inserting an increment compliance date that falls 60 days after publication of the final Federal plan. The owner or operator of an MWC unit that is not covered by an EPA approved and currently effective State plan must submit a notification to EPA stating that the increment was met. This is the same notification as required for all facilities subject to the Federal plan. The owner or operator must mail the (post-marked) notification to the applicable EPA Regional Office within 10 business days of the increment date defined in the Federal plan. For increments that have been achieved, the

due date for this notification is 70 days (60 days plus 10 days) after publication of this final rule. The EPA is requiring notification to ensure completion of increments so the facility will meet the final compliance deadline.

E. Subpart Cb Amended Emission Limits

This MWC Federal plan implements the emission guidelines (40 CFR part 60, subpart Cb) for MWC units not covered by an EPA approved and currently effective State plan. Because this Federal plan is being adopted in lieu of State plans, it contains the same elements required by 40 CFR part 60, subparts B and Cb. Each element is described in the Federal plan proposal (62 FR 3509, January 23, 1998), including the subpart Cb emission limits. Subpart Cb was amended on August 25, 1997 (62 FR 45116) to include revised emission limits for sulfur dioxide, hydrogen chloride, lead, and nitrogen oxides. States were required to incorporate the new limits in their State plans by August 25, 1998. The amended emission guidelines required final compliance with the amended emission limits no later than 5 years after promulgation (August 25, 2002), consistent with section 129 of the Act. The EPA incorporated these revised emission limits in the proposed MWC Federal plan but proposed final compliance by December 19, 2000.

One commenter requested that EPA stagger the compliance dates for the amended emission limits to August 25, 2002 to be consistent with the maximum time allowed by subpart Cb, as amended. The commenter was concerned that there may be a significant cost associated with requiring earlier compliance with the more strict standards. However, the commenter was not able to provide any specific cost information. The EPA maintains that requiring compliance with the revised limits by December 19, 2000 does not cause significant additional burden or costs to facilities. The same types of air pollution control technology served as the basis for both the 1995 limits and the 1997 amended limits: spray dryer/fabric filter or electrostatic precipitator (ESP), carbon injection, and selective non-catalytic reduction (SNCR) for non-refractory combustor types. Large municipal waste combustor units need to install controls by December 19, 2000 to meet the original limits. As soon as these controls are installed, the units will also meet the final, amended limits. The EPA's test data used to develop the emission guidelines show that these controls actually achieve emission levels well below the 1995 and 1997 emission limits (docket A–89–08 and A–90–45). The 1997 limits are only slightly different than the 1995 limits and will not require major operational changes or significantly increase costs. Section 129 of the Act and 40 CFR part 60, subpart B, require compliance "as expeditiously as practicable" and compliance with all limits by December 19, 2000 is practicable. Thus, EPA is not changing the proposed final compliance date for the amended 1997 limits from December 19, 2000.

IV. Summary of Federal Plan Emission Limits and Requirements

The MWC Federal plan (40 CFR part 62, subpart FFF), which implements the emission guidelines, includes emission limits, operating practice requirements, operator training and certification requirements, and compliance and performance testing requirements. These emission limits and requirements are the same as those in the emission guidelines (40 CFR part 60, subpart Cb), as amended. Table 4 summarizes the requirements of the Federal plan rule (40 CFR part 62, subpart FFF).

TABLE 4.—SUMMARY OF FEDERAL PLAN REQUIREMENTS FOR EXISTING MWCs [a] [b]

Applicability:

The Federal plan applies to existing MWC units with capacities to combust greater than 250 tons per day of municipal solid waste unless the unit is subject to a section 111(d)/129 State plan that has been approved by EPA and is currently effective.

Unit size (MSW combustion capacity)	Requirement
>250 tons per day (referred to as a large MWC unit)	Subject to provisions listed below.

Good Combustion Practices:

- A site-specific operator training manual is required to be developed and made available for MWC personnel.
- The EPA or a State MWC operator training course is required to be completed by the MWC chief facility operator, shift supervisors, and control room operators.
- The ASME (or State-equivalent) provisional and full operator certification is required to be obtained by the MWC chief facility operator (mandatory), shift supervisors (mandatory), and control room operators (optional).
- The MWC load level is required to be measured and not to exceed 100 percent of the maximum load level measured during the most recent dioxin/furan performance test.
- The maximum PM control device inlet flue gas temperature is required to be measured and not to exceed the temperature 17°C above the maximum temperature measured during the most recent dioxin/furan performance test.
- The CO level is required to be measured using a CEMS, and the concentration in the flue gas is required not to exceed the following:

MWC type	CO level	Averaging time
Modular starved-air and excess-air	50 ppmv	4-hour.
Mass burn waterwall and refractory	100 ppmv	4-hour.
Mass burn rotary refractory	100 ppmv	24-hour.
Fluidized-bed combustion	100 ppmv	4-hour.
Pulverized coal/RDF mixed fuel-fired	150 ppmv	4-hour.
Spreader stoker coal/RDF mixed fuel-fired	200 ppmv	24-hour.
RDF stoker	200 ppmv	24-hour.
Mass burn rotary waterwall	250 ppmv	24-hour.

MWC Organic Emissions (measured as total mass dioxins/furans):

- Dioxins/furans (performance test by EPA Reference Method 23).

MWC units utilizing an ESP-based air pollution control system	60 ng/dscm total mass (mandatory) or 15 ng/dscm total mass (optional to qualify for less frequent testing),[c].
MWC units utilizing a nonESP-based air pollution control system	30 ng/dscm total mass (mandatory) or 15 ng/dscm total mass (optional to qualify for less frequent testing),[c].

- Basis for dioxin/furan limits GCP and SD/ESP or GCP and SD/FF, as specified above.

MWC Metal Emissions:

- PM (performance test by EPA Reference Method 5).

27 mg/dscm (0.012 gr/dscf).
- Opacity (performance test by EPA Reference Method 9).
  10 percent (6-minute average).
- Cd (performance test by EPA Reference Method 29). 0.040 mg/dscm (18 gr/million dscf).
- Pb (performance test by EPA Reference Method 29).
  0.44 mg/dscm (200 gr/million dscf).
- Hg (performance test by EPA Reference Method 29).
  0.080 mg/dscm (35 gr/million dscf) or 85-percent reduction in Hg emissions.
- Basis for PM, opacity, Cd, Pb, and Hg limits GCP and SD/ESP/CI or GCP and SD/FF/CI.

MWC Acid Gas Emissions:
- SO_2 (performance test by CEMS).
  29 ppmv or 75-percent reduction in SO_2 emissions.
- HCl (performance test by EPA Reference Method 26).
  29 ppmv or 95-percent reduction in HCl emissions.
- Basis for SO_2 and HCl limits.
  See basis for MWC metals.

Nitrogen Oxides Emissions:
- NO_X (performance test by CEMS):
  - Mass burn waterwall ..... 205 ppmv.
  - Mass burn rotary waterwall ..... 250 ppmv.
  - Refuse-derived fuel combustor ..... 250 ppmv.
  - Fluidized bed combustor ..... 180 ppmv.
  - Mass burn refractory ..... No NO_X control requirement.
- Basis for NO_X limits:
  - MWC units except refractory ..... SNCR.
  - Refractory MWC units ..... No NO_X control requirement.

Fugitive Ash Emissions:
- Fugitive emissions (performance test by EPA Reference Method 22).
  Visible emissions 5 percent of the time from ash transfer systems except for maintenance and repair activities.
- Basis for fugitive emission limit ..... Wet ash handling or enclosed ash handling.

Performance Testing and Monitoring Requirements:
- Reporting frequency ..... Annual (semiannual if violation).
- Load, flue gas temperature ..... Continuous monitoring, 4-hour block arithmetic average.
- CO ..... CEMS, 4-hour block or 24-hour daily arithmetic average, as applicable.
- Dioxins/furans, PM, Cd, Pb, HCl, and Hg ..... Annual stack test.
- Opacity ..... COMS (6-minute average) and annual stack test.
- SO_2 ..... CEMS 24-hour daily geometric mean.

Fugitive ash emissions	Annual test
• NO_X	CEMS, 24-hour daily arithmetic average.

Compliance Schedule:
See Section III of this preamble and 40 CFR part 62, subpart FFF.

[a] All concentration levels in the table are converted to 7 percent O_2, dry basis.

[b] List of acronyms and abbreviations.
ASME—American Society of Mechanical Engineers.
C—Celsius.
Cd—cadmium.
CEMS—continuous emissions monitoring system.
CI—carbon injection.
CO—carbon monoxide.
COMS—continuous opacity monitoring system.
ESP—electrostatic precipitator.
FF—fabric filter.
gr/dscm—grains per dry standard cubic meter.
Hg—mercury.
MSW—municipal solid waste.
MWC—municipal waste combustor.
ng/dscm—nanograms per dry standard cubic meter.
NO_X—nitrogen oxides.
O_2—oxygen.
Pb—lead.
PM—particulate matter.
RDF—refuse-derived fuel.
SD—spray dryer.
SNCR—selective noncatalytic reduction.
TEQ—toxic equivalency.

[c] Although not part of the dioxin/furan limit, the dioxin/furan total mass limits of 30 ng/dscm and 60 ng/dscm are equal to about 0.3 to 0.8 ng/dscm TEQ and 0.7 to 1.4 ng/dscm TEQ, respectively. The optional reduced testing limit of 15 ng/dscm total mass is equal to about 0.1 to 0.3 ng/dscm TEQ.

V. Implementation of Federal Plan and Delegation

A. Background of Authority

Under sections 111(d) and 129 of the Act, the EPA is required to adopt emission guidelines that are applicable to existing solid waste incineration sources. The emission guidelines are not enforceable, however, until the EPA approves a State plan or adopts a Federal plan for implementing and enforcing them, and the State or Federal plan has become effective. In cases where a State has not submitted an approvable plan, the EPA must adopt a MWC Federal plan for sources in the State as an interim measure to

implement the emission guidelines until a State plan is approved and becomes effective. A few States may not submit a State plan at all.

Congress has determined that the primary responsibility for air pollution prevention and control rests with State and local agencies. (See section 101(a)(3) of the Act.) Consistent with that overall determination, Congress established sections 111 and 129 of the Act with the intent that the States and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved. Congress explicitly required that EPA establish procedures under section 111(d) that are similar to those under section 110(c) for State Implementation Plans. Congress has shown a consistent intent for the States and local agencies to hold the primary responsibility to implement and enforce the requirements of the emission guidelines. Congress has also required EPA to promulgate a Federal plan for States that fail to submit approvable State plans in time. Accordingly, EPA has strongly encouraged the States to submit approvable State plans on time, and for those States that are unable to submit approvable State plans on time, EPA strongly encourages them to request delegation of the Federal plan so that they can have the primary responsibility in their State, consistent with Congress' overarching intent.

The EPA believes, more specifically, that the State and local agencies have the responsibility to design, adopt, and implement the control programs needed to meet the requirements of the MWC rules and the MWC Federal plan. The EPA also believes that these agencies possess appropriate enforcement resources and other practical advantages to ensure the highest rates of actual compliance in the field. For these reasons, EPA seeks to employ all available mechanisms to expedite program transfer to State and local agencies, where requests for delegations can be granted. For example, the EPA has encouraged States to help determine compliance schedules and to provide operator training and certification requirements for this MWC Federal plan.

B. Delegation of the Federal Plan

For a State to request delegation of the Federal plan, the State must submit to the appropriate EPA Regional Administrator a written request for delegation of authority. The State must explain how the State meets the criteria for delegation. The minimum criteria include a demonstration that adequate resources and legal and enforcement authority to administer and enforce the program exist in the State requesting the delegation. If the State meets these criteria, EPA will approve the delegation of the Federal plan and will announce the approval of the delegation in a **Federal Register** notice. A Memorandum of Agreement between the appropriate EPA Regional Office and the State would set forth the terms and conditions of the delegation and would be used to transfer authority.

An MWC owner or operator not covered by a State plan can submit requests for approvals to EPA directly and should copy the State on the request until the Federal Plan is delegated to the State. Actions that cannot be delegated, such as the approval of requests for waivers of operator training, should be sent to EPA and copied to the State. The EPA would, in conjunction with the State, make efforts to ensure that affected units are aware that the State has been delegated responsibility for implementation of the Federal Plan. The status of Federal plan delegations to the States will be posted on the EPA TTN Web Website: http://www.epa.gov/ttn/oarpg, along with an up-to-date list of State plan submittals.

The EPA will continue to implement the Federal plan if a State does not qualify to take delegation. If a State fails to implement the delegated portion of the Federal plan, EPA will take responsibility for direct implementation and enforcement of the Federal rule. For all delegations, the EPA would still retain the authority to approve an alternative "as protective as" emission standard, major alternatives to test methods, major alternatives to monitoring or waiver of recordkeeping, or waiver of operator training and certification. Major alternatives include entirely new methods or alternative test methods or monitoring methods that use unproven technology or procedures. The EPA does not relinquish enforcement authority even when a State has received delegation.

C. Mechanisms for Transferring Authority

There are three mechanisms for transferring implementation responsibility to State and local agencies: (1) If EPA approves a State plan submitted to EPA after the Federal plan is adopted, the State would by definition have authority to enforce and implement its State plan in lieu of the Federal plan upon the effective date of EPA's approval; (2) if a State does not submit and/or obtain approval of a State plan, EPA can delegate the authority to the State to perform certain implementation responsibilities for the Federal plan to the extent requested by the State and allowed by State law; and (3) if a State plan is modified such that it is no longer as protective as the emission guidelines, and thus EPA does not approve these less protective provisions of the State plan, then EPA could encourage the State to request delegation of the MWC Federal plan. Each of these different options is described in more detail below.

1. State Submits a State Plan After Large MWC Units Located in the State Are Subject to the Federal Plan

After an MWC unit in a particular State becomes subject to this Federal plan, the State may still adopt and submit to EPA for approval a State plan which contains all the required elements of a State plan. The EPA will determine if the State plan is as protective as the emission guidelines. If EPA determines that the State plan is not as protective as the guidelines, EPA will disapprove the plan. Large MWC units covered in the State plan remain subject to the Federal plan. If EPA determines that the State plan is as protective as the emission guidelines, EPA will approve the State plan. The State will implement and enforce the State plan in lieu of the Federal plan. The approval of the State plan automatically conveys to a State the responsibility for the 1995 emission guidelines, as amended, through the State plan mechanism as intended by Congress.

The EPA will periodically amend the Federal plan exclusion table to identify State that have approved State plans. MWC units covered in those approved and effective State plans are not subject to the Federal plan. The State plan is effective on the date specified in the notice publsihed in the **Federal Register** announcing EPA's approval, whether or not the exclusion table has been revised.

2. State Takes Delegation of the Federal Plan

As a matter of convenience, States that do not have an approved State plan in effect can request responsibilities for implementing the Federal plan. The EPA believes that it is advantageous and the best use of resources for the State to agree to undertake administrative and substantive roles in implementing the Federal plan to the maximum extent allowed by law. These roles could include as a minimum: administration and oversight of compliance reporting and recordkeeping requirements, conduct of source inspections, and preparation of draft notices of violation. For some situations, the EPA could

retain primary responsibility for bringing enforcement actions against sources violating Federal plan provisions. These roles could include delegation of all substantive actions, including primary responsibility for enforcement of the requirements, as allowed by State law and approved by EPA.

3. An approved State Plan is No Longer as Protective as the Emission Guidelines

The EPA could also delegate portions of the Federal plan to a State for special circumstances. An example would be a State with an approved State plan that only contains the 1995 emission limits. This State plan must incorporate the revised emission limits by August 25, 1998. If a State plan does not incorporate the amended emission limits by that date, the State plan would no longer be as protective as the emission guidelines. Rather than withdrawing its approval of the entire State plan, the EPA could, to the extent authorized by State law, delegate that portion of the Federal plan containing the revised emission limits (from the August 25, 1997 amendments) to the State. The State would have responsibility for implementation and enforcement of all MWC requirements, including those in the partially delegated Federal Plan.

In the proposed Federal plan preamble EPA proposed another option for the delegation of the Federal plan in which a State adopts a State rule but does not submit a State plan. After considering all other proposed options, (e.g. the subsequent approval of a State plan, and the straight delegation of the Federal plan), EPA determined that this option was unnecessary, and could potentially result in the need to make equivalency determinations that would be resource intensive and complex to administer. The EPA believes that the preferred way to implement and enforce the emission guidelines after the State has adopted a State rule is for the State to submit a State plan that includes the State rule or other enforceable mechanism, as well as the other required elements of an approvable State plan. Upon EPA approval of the State plan that includes the enforceable mechanism, both the State and ETA are vested with full authority. Upon the effective date of EPA's approval of the State plan, the Federal plan will no longer apply to MWC units covered by the State plan.

VI. Title V

All MWC sources subject to this MWC Federal plan must obtain a title V permit. Title V permits issued to these sources must include all applicable requirements of this Federal plan. (See 40 CFR 70.2 and 71.2.) The permit must also contain all necessary terms and conditions to assure compliance with the applicable requirements.

If a source is subject to both State and Federal plan requirements due to, for example, the delegation options outlined above, then the source's permit must contain the applicable provisions from each plan. Given that a title V permit for a MWC source may contain both State and Federal provisions, it is especially important that each title V permit issued to a MWC source clearly state the basis for each requirement consistent with 40 CFR 70.6(a)(1)(i) and 71.6(a)(1)(i).

VII. Administrative Requirements

Since today's promulgated rule simply implements the MWC emission guidelines (40 CFR part 60, subpart Cb) promulgated on December 19, 1995 (60 FR 65387) and amended on August 25, 1997 (62 FR 45116) as they apply to large MWC units and does not impose any new requirements, much of the following discussion of administrative requirements refers to the documentation of applicable administrative requirements as discussed in the preamble to the 1995 rule.

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rule and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [see 42 U.S.C. 7607(d)(7)(A)]. Docket numbers A–89–08 and A–90–45 contain the supporting information for the December 19, 1995 and August 25, 1997 emission guidelines. Because this promulgated rule implements the emission guidelines, these same dockets also contain the supporting information for this rulemaking. Public comments received on the proposed rule for this rulemaking and additional supporting information are included in docket number A–97–45.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1847.01) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by e-mail at farmer.sand@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The information required under this rule is needed by the Agency to ensure that the MWC Federal plan requirements are implemented and are complied with on a continuous basis. Required records and reports are necessary to identify MWC units that may not be in compliance with the MWC Federal plan requirements. Based on reported information, EPA will decide which units should be inspected and what records or processes should be inspected. The records that owners and operators of units maintain will indicate whether MWC personnel are operating and maintaining control equipment properly.

The EPA based its ICR calculations on a 1997 MWC inventory (A–97–45, II–B–1) and information from EPA Regional Offices (A–97–45, IV–J–1). As of June 1998 when the ICR was submitted, the Federal plan was projected to affect 135 MWC units at 56 plants located in 19 States. The EPA expected that 12 additional State plans would be approved within the year following promulgation and four additional State plans will be approved within 2 years following promulgation. (Since June 1998, the EPA has approved 4 additional State plans.) When a State plan is approved and becomes effective, the Federal plan no longer applies to MWC units covered in that State plan; therefore, the estimated burden will continue to decrease. The estimated annual burden for industry averaged over the first 3 years after the implementation of the Federal plan is 16,907 hours annually at a cost of $6,285,923 (including $657,885 in labor costs) per year to meet the monitoring, recordkeeping, and reporting requirements. The estimated annual burden for the Agency averaged over the first 3 years would be 2,850 hours at a cost of $115,003 (including travel expenses) per year.

Burden means total time, effort, or financial resources expended by persons

to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR part 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are requested by December 14, 1998. Include the ICR number in any correspondence.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The EPA and OMB determine that this regulatory action is "not significant" under Executive Order 12866. This promulgated Federal plan simply implements the 1995 MWC emission guidelines (as amended in 1997) and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1995 MWC emission guidelines. The EPA considered the 1995 emission guidelines and standards to be significant and the rules were reviewed by OMB in 1995 (*see* 60 FR 65405).

D. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any rule where the estimated costs to State, local or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any 1 year. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. An unfunded mandates statement was prepared and published in the 1995 promulgation notice for the emission guidelines and standards (*see* 60 FR 65405 to 65412).

The EPA has determined that this promulgated Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1995 MWC emission guidelines. Therefore, the requirements of the Unfunded Mandates Act do not apply to this promulgated rule.

E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are defined as small businesses, small organizations, and small governments. During the 1995 MWC emission guidelines rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards, and therefore, a regulatory flexibility analysis was not required (*see* 60 FR 65413). This final Federal plan does not establish any new requirements. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA certifies that this Federal plan will not have a significant impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

F. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the Agency adopting the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Pub. L. No. 104–113, § 12(d) (15 U.S.C. 272 note), directs the 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 standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This promulgated MWC Federal plan does not establish any new requirements for MWC units. Therefore, the requirements of the NTTAA are not applicable to this final rule.

H. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued Executive Order 12875, entitled Enhancing the Intergovernmental Partnership, on October 26, 1993. Executive Order 12875 prohibits the EPA, to the extent feasible and permitted by the law, from promulgating any regulation that is not required by statute and creates a mandate upon a State, local, or Tribal government unless the Federal government provides the funds necessary to pay the direct costs incurred by the State, local, or Tribal government in complying with the mandate. If the mandate is unfunded, the EPA must provide the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, or Tribal governments, the nature of those entities' concerns, any written communications submitted to EPA by

such units of government and the EPA's position supporting the need to issue the regulation. Executive Order 12875 further requires EPA to develop an effective process to permit elected officials and other representatives of State, local, and Tribal governments, "to provide meaningful and timely input in the development of regulatory proposals containing the significant unfunded mandates."

The EPA has determined that this promulgated Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1995 MWC emissions guidelines. Accordingly, the requirements of Executive Order 12875 do not apply. However, to ensure a smoother transition for facilities that are initially covered by the Federal plan but are later covered by a State plan, EPA has involved State and local governments in the development of this rule. During development of the Federal plan, EPA worked with the Regional Offices to identify and address State issues. The EPA invited States to identify State operator training and certification to be incorporated in the Federal plan and is, as a result, incorporating the Connecticut and Maryland State certifications for MWC operators and the Connecticut State operator training course. In addition, EPA requested compliance schedules from States that want a schedule in the Federal plan consistent with the State plan until the State plan becomes effective. Nine States submitted compliance schedules. Also, the EPA received comments from ten States and local agencies and considered them in developing the final rule.

I. Executive Order 13084

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

The Federal plan adopted today does not significantly or uniquely affect communities of Indian tribal governments. As noted previously in this preamble, EPA believes that no large MWC units are located in Indian country. In addition, the EPA has determined that this promulgated Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1995 MWC emission guidelines. (See the discussion in Executive Order 12875 in this section.) Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, then EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Report and recordkeeping requirements, Incorporation by reference.

Dated: October 30, 1998.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Amend § 62.02 by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 62.02 Introduction.

(a) This part sets forth the Administrator's approval and disapproval of State plans for the control of pollutants and facilities under section 111(d), and section 129 as applicable, of the Act, and the Administrator's promulgation of such plans or portions of plans thereof. Approval of a plan or any portion of a plan is based on a determination by the Administrator that it meets the requirements of section 111(d), and section 129 as applicable, of the Act and provisions of part 60 of this chapter.

* * * * *

(g) Substitute plans promulgated by the Administrator for States that do not have approved plans are contained in separate subparts that appear after the subparts for States. These Federal plans include sections identifying the applicability of the plan, emission limits, compliance schedules, recordkeeping and reporting, performance testing, and monitoring requirements.

3. Amend subpart A by adding § 62.13 to read as follows:

§ 62.13 Federal plans.

The Federal plans apply to owners and operators of affected facilities that are not covered by an EPA approved and currently effective State or Tribal plan. This Federal plan, or portions thereof, also applies to each affected facility located in any State or portion of Indian country whose approved State or Tribal plan for that area is subsequently vacated in whole or in part. Affected facilities are defined in each Federal plan.

(a) The substantive requirements of the municipal waste combustor Federal plan are contained in subpart FFF of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

(b) The substantive requirements of the municipal solid waste landfills Federal plan are contained in subpart GGG of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

(c) Medical waste incinerator Federal plan. [Reserved]

4. Amend part 62 by adding and by reserving subparts DDD and EEE as follows:

Subpart DDD—[Reserved]

Subpart EEE—[Reserved]

5. Amend part 62 by adding subpart FFF consisting of §§ 62.14100 through 62.14109 to read as follows:

Subpart FFF—Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

Sec.

62.14100 Scope and delegation of authority.
62.14101 Definitions.
62.14102 Affected facilities.
62.14103 Emission limits for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.
62.14104 Requirements for municipal waste combustor operating practices.
62.14105 Requirements for municipal waste combustor operating training and certification.
62.14106 Emission limits for municipal waste combustor fugitive ash emissions.
62.14107 Emission limits for air curtain incinerators.
62.14108 Compliance schedules.
62.14109 Reporting and recordkeeping, and compliance and performance testing.
Table 1 of Subpart FFF—Units Excluded From Subpart FFF
Table 2 of Subpart FFF—Nitrogen Oxides Requirements for Affected Facilities
Table 3 of Subpart FFF—Municipal Waste Combustor Operating Requirements
Table 4 of Subpart FFF—Generic Compliance Schedules and Increments of Progress (Pre-1987 MWCs)
Table 5 of Subpart FFF—Generic Compliance Schedules and Increments of Progress (Post-1987 MWCs)
Table 6 of Subpart FFF—Site-specific Compliance Schedules and Increments of Progress

Subpart FFF—Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

§ 62.14100 Scope and delegation of authority.

(a) This subpart contains emission requirements and compliance schedules for the control of pollutants from certain municipal waste combustors in accordance with section 111(d) and section 129 of the Clean Air Act and 40 CFR part 60, subparts B and Cb. This municipal waste combustor Federal plan applies to each affected facility as defined in § 62.14102 that is not covered by an EPA approved and currently effective State or Tribal plan. This Federal plan, or portions thereof, also applies to each affected facility in any State whose approved State plan is subsequently vacated in whole or in part. This Federal plan, or portions thereof, also applies to each affected facility located in Indian country if the approved Tribal plan for that area is subsequently vacated in whole or in part.

(b) The following authorities shall be retained by the EPA Administrator and not transferred to the State upon delegation of authority to the State to implement and enforce the Federal plan:

(1) An alternative emission standard;
(2) Major alternatives to test methods;
(3) Major alternatives to monitoring;
(4) Waiver of recordkeeping; and
(5) Waiver of training requirement for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification on or before the effective date of this subpart, as provided in § 62.14105(d)(2) of this subpart.

§ 62.14101 Definitions.

Terms used but not defined in this subpart have the meaning given to them in the Clean Air Act and 40 CFR part 60, subparts A, B, and Eb.

Contract means a legally binding agreement or obligation that cannot be canceled or modified without substantial financial loss.

De-rate means to make a permanent physical change to the municipal waste combustor unit that reduces the maximum combustion capacity of the unit to less than or equal to 250 tons per day of municipal solid waste. A permit restriction or a change in the method of operation does not qualify as de-rating. (See the procedures specified in 40 CFR 60.58b(j) of subpart Eb for calculating municipal waste combustor unit capacity.)

EPA approved State plan means a State plan that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cb. An approved State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

Municipal waste combustor plant means one or more affected facilities (as defined in § 62.14102) at the same location.

Protectorate means American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, and the Virgin Islands.

State means any of the 50 United States and the protectorates of the United States.

State plan means a plan submitted pursuant to section 111(d) and section 129(b)(2) of the Clean Air Act and 40 CFR part 60, subpart B that implements and enforces 40 CFR part 60, subpart Cb.

Tribal plan means a plan submitted by a Tribal Authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 that implements and enforces 40 CFR part 60, subpart Cb.

§ 62.14102 Affected facilities.

(a) The affected facility to which this subpart applies is each municipal waste combustor unit with a capacity to combust greater than 250 tons per day of municipal solid waste for which construction was commenced on or before September 20, 1994, that is not regulated by an EPA approved and currently effective State or Tribal plan. Table 1 of this subpart lists those units regulated by an EPA approved State plan. Notwithstanding the exclusions in table 1 of this subpart, this subpart applies to affected facilities not regulated by an EPA approved and currently effective State or Tribal plan.

(b) A municipal waste combustor unit regulated by an EPA approved and currently effective State or Tribal plan is not regulated by this subpart.

(c) Any municipal waste combustor unit that has the capacity to combust more than 250 tons per day of municipal solid waste and is subject to a Federally enforceable permit limiting the maximum amount of municipal solid waste that may be combusted in the unit to less than 11 tons per day is not subject to this subpart if the owner or operator:

(1) Notifies the EPA Administrator of an exemption claim;

(2) Provides a copy of the Federally enforceable permit that limits the firing of municipal solid waste to less than 11 tons per day; and

(3) Keeps records of the amount of municipal solid waste fired on a daily basis.

(d) Physical or operational changes made to an existing municipal waste combustor unit primarily for the purpose of complying with the emission requirements of this subpart are not considered in determining whether the unit is a modified or reconstructed facility under 40 CFR part 60, subpart Ea or subpart Eb.

(e) A qualifying small power production facility, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy is not subject to this subpart if the owner or operator of the facility notifies the EPA Administrator of this exemption and provides data

documenting that the facility qualifies for this exemption.

(f) A qualifying cogeneration facility, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating, or cooling purposes, is not subject to this subpart if the owner or operator of the facility notifies the EPA Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(g) Any unit combusting a single-item waste stream of tires is not subject to this subpart if the owner or operator of the unit:

(1) Notifies the EPA Administrator of an exemption claim; and

(2) Provides data documenting that the unit qualifies for this exemption.

(h) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is not subject to this subpart.

(i) Any materials recovery facility (including primary or secondary smelters) that combusts waste for the primary purpose of recovering metals is not subject to this subpart.

(j) Any cofired combustor, as defined under 40 CFR 60.51b of subpart Eb that meets the capacity specifications in paragraph (a) of this section is not subject to this subpart if the owner or operator of the cofired combustor:

(1) Notifies the EPA Administrator of an exemption claim;

(2) Provides a copy of the Federally enforceable permit (specified in the definition of cofired combustor in this section); and

(3) Keeps a record on a calendar quarter basis of the weight of municipal solid waste combusted at the cofired combustor and the weight of all other fuels combusted at the cofired combustor.

(k) Air curtain incinerators, as defined under 40 CFR 60.51b, that meet the capacity specifications in paragraph (a) of this section, and that combust a fuel stream composed of 100 percent yard waste are exempt from all provisions of this subpart except the opacity standard under § 62.14107, and the testing procedures and the reporting and recordkeeping provisions under § 62.14109.

(l) Air curtain incinerators that meet the capacity specifications in paragraph (a) of this section and that combust municipal solid waste other than yard waste are subject to all provisions of this subpart.

(m) Pyrolysis/combustion units that are an integrated part of a plastics/rubber recycling unit (as defined in 40 CFR 60.51b) are not subject to this subpart if the owner or operator of the plastics/rubber recycling unit keeps records of the weight of plastics, rubber, and/or rubber tires processed on a calendar quarter basis; the weight of chemical plant feedstocks and petroleum refinery feedstocks produced and marketed on a calendar quarter basis; and the name and address of the purchaser of the feedstocks. The combustion of gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feestocks produced by plastics/rubber recycling units are not subject to this subpart.

(n) Cement kilns firing municipal solid waste are not subject to this subpart.

§ 62.14103 Emission limits for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.

(a) The emission limits for municipal waste combustor metals are specified in paragraphs (a)(1) through (a)(3) of this section.

(1) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain: particulate matter in excess of 27 milligrams per dry standard cubic meter, corrected to 7 percent oxygen; and opacity in excess of 10 percent (6-minute average).

(2) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain: cadmium in excess of 0.040 milligrams per dry standard cubic meter, corrected to 7 percent oxygen; and lead in excess of 0.44 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(3) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain mercury in excess of 0.080 milligrams per dry standard cubic meter or 15 percent of the potential mercury emission concentration (85-percent reduction by weight), corrected to 7 percent oxygen, whichever is less stringent.

(b) The emission limits for municipal waste combustor acid gases, expressed as sulfur dioxide and hydrogen chloride, are specified in paragraphs (b)(1) and (b)(2) of this section.

(1) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain sulfur dioxide in excess of 29 parts per million by volume or 25 percent of the potential sulfur dioxide emission concentration (75-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily geometric mean.

(2) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain hydrogen chloride in excess of 29 parts per million by volume or 5 percent of the potential hydrogen chloride emission concentration (95-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(c) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain municipal waste combustor organics, expressed as total mass dioxins/furans, in excess of the emission limits specified in either paragraph (c)(1) or (c)(2) of this section, as applicable.

(1) The emission limit for affected facilities that employ an electrostatic precipitator-based emission control system is 60 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(2) The emission limit for affected facilities that do not employ an electrostatic precipitator-based emission control system is 30 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(d) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides in excess of the emission limits listed in table 2 of this subpart for affected facilities. Table 2 of this subpart provides emission limits for the nitrogen oxides concentration level for each type of affected facility.

§ 62.14104 Requirements for municipal waste combustor operating practices.

(a) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain carbon monoxide in excess of the emission limits listed in table 3 of this subpart. Table 3 provides emission

limits for the carbon monoxide concentration level for each type of affected facility.

(b) The owner or operator of an affected facility must comply with the municipal waste combustor operating practice requirements listed in 40 CFR 60.53b(b) and (c) of subpart Eb. For calculating the steam (or feedwater) flow required under 40 CFR 60.58(i)(6)(i), proceed in accordance with ASME PTC 4.1–1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda). For design, construction, installation, calibration, and use of nozzles and orifices required in 40 CFR 60.58(i)(6)(ii), proceed in accordance with the recommendations in ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971). The Director of the Federal Register approves these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, Post Office Box 2900, Fairfield, NJ 07007. You may inspect a copy at the Office of Air Quality Planning and Standards Air Docket, EPA, Mutual Building, Room 540, 411 West Chapel Hill Street, Durham, NC 27701, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C.

§ 62.14105 Requirements for municipal waste combustor operator training and certification.

The owner or operator of an affected facility must comply with the municipal waste combustor operator training and certification requirements listed in paragraphs (a) through (g) of this section. For affected facilities, compliance with the municipal waste combustor operator training and certification requirements specified under paragraphs (a), (b), (d), and (g) of this section must be no later than 12 months after the effective date of this subpart.

(a) Each chief facility operator and shift supervisor must obtain and maintain a current provisional operator certification from either the American Society of Mechanical Engineers QRO–1–1994 or a State certification program in Connecticut and Maryland (if the affected facility is located in either of the respective States). If ASME certification is chosen, proceed in accordance with ASME QRO–1–1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, Post Office Box 2900, Fairfield, NJ 07007. You may inspect a copy at the Office of Air Quality Planning and Standards Air Docket, EPA, Mutual Building, Room 540, 411 West Chapel Hill Street, Durham, NC 27701 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(b) Each chief facility operator and shift supervisor must have completed full certification or must have scheduled a full certification exam with either the American Society of Mechanical Engineers QRO–1–1994 or a State certification program in Connecticut and Maryland (if the affected facility is located in either of the respective States). If ASME certification is chosen, proceed in accordance with ASME QRO–1–1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, Post Office Box 2900, Fairfield, NJ 07007. You may inspect a copy at the Office of Air Quality Planning and Standards Air Docket, EPA, Mutual Building, Room 540, 411 West Chapel Hill Street, Durham, NC 27701 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(c) The owner or operator of an affected facility must not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility: a fully certified chief facility operator; a provisionally certified chief facility operator who is scheduled to take the full certification exam no later than 12 months after the effective date of this subpart; a fully certified shift supervisor; or a provisionally certified shift supervisor who is scheduled to take the full certification exam no later than 12 months after the effective date of this subpart. If one of the persons listed in this paragraph must leave the affected facility during their operating shift. a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirement in this paragraph.

(d)(1) Each chief facility operator, shift supervisor, and control room operator at an affected facility must complete the EPA municipal waste combustor operator training course or the State municipal waste combustor operator training course in Connecticut (if the affected facility is located in Connecticut).

(2) The requirement specified in this paragraph does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the effective date of this subpart. The owner or operator of an affected facility may request that the EPA Administrator waive the requirement specified in this paragraph for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of this subpart.

(e) The owner or operator of an affected facility must develop and update on a yearly basis a site-specific operating manual that must, at a minimum, address the elements of municipal waste combustor unit operation specified in paragraphs (e)(1) through (e)(11) of this section.

(1) A summary of the applicable standards under this subpart;

(2) A description of basic combustion theory applicable to a municipal waste combustor unit;

(3) Procedures for receiving, handling, and feeding municipal solid waste;

(4) Procedures for municipal waste combustor unit startup, shutdown, and malfunction;

(5) Procedures for maintaining proper combustion air supply levels;

(6) Procedures for operating the municipal waste combustor unit within the standards established under this subpart;

(7) Procedures for responding to periodic upset or off-specification conditions;

(8) Procedures for minimizing particulate matter carryover;

(9) Procedures for handling ash;

(10) Procedures for monitoring municipal waste combustor unit emissions; and

(11) Reporting and recordkeeping procedures.

(f) The owner or operator of an affected facility must establish a training program to review the operating manual according to the schedule specified in paragraphs (f)(1) and (f)(2) of this section with each person who has responsibilities affecting the operation of an affected facility including, but not limited to, chief facility operators, shift supervisors, control room operators, ash

handlers, maintenance personnel, and crane/load handlers.

(1) Each person specified in paragraph (f) of this section must undergo initial training no later than the date specified in paragraph (f)(1)(i) or (f)(1)(ii) of this section, whichever is later.

(i) The date prior to the day the person assumes responsibilities affecting municipal waste combustor unit operation; or

(ii) The date 12 months after the effective date of this subpart.

(2) Annually, following the initial review required by paragraph (f)(1) of this section.

(g) The operating manual required by paragraph (e) of this section must be kept in a location readily accessible to each person required to undergo training under paragraph (f) of this section. The operating manual and records of training must be available for inspection by the EPA or its delegated enforcement agency upon request.

§ 62.14106 Emission limits for municipal waste combustor fugitive ash emissions.

(a) The owner or operator of an affected facility must not cause to be discharged to the atmosphere from that affected facility visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of 5 percent of the observation period (i.e., 9 minutes per 3-hour period), as determined by EPA Reference Method 22 observations as specified in 40 CFR 60.58b(k) of subpart Eb, except as provided in paragraphs (b) and (c) of this section.

(b) The emission limit specified in paragraph (a) of this section does not cover visible emissions discharged inside buildings or enclosures of ash conveying systems; however, the emission limit specified in paragraph (a) of this section does cover visible emissions discharged to the atmosphere from buildings or enclosures of ash conveying systems.

(c) The provisions specified in paragraph (a) of this section do not apply during maintenance and repair of ash conveying systems.

§ 62.14107 Emission limits for air curtain incinerators.

The owner or operator of an air curtain incinerator with the capacity to combust greater than 250 tons per day of municipal solid waste and that combusts a fuel feed stream composed of 100 percent yard waste and no other municipal solid waste materials must not (at any time) cause to be discharged into the atmosphere from that incinerator any gases that exhibit greater than 10-percent opacity (6-minute average), except that an opacity level of up to 35 percent (6-minute average) is permitted during startup periods during the first 30 minutes of operation of the unit.

§ 62.14108 Compliance schedules.

(a) The owner or operator of an affected facility must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) to retrofit air pollution control devices to meet the emission limits of this subpart. As specified in 40 CFR part 60, subpart B, the compliance schedules and increments of progress apply to each owner or operator of an affected facility who is taking longer than 1 year after the date of publication of this subpart FFF final rule to comply with the emission limits specified in this subpart.

(1) Submit a final control plan according to the requirements of § 62.14109(g).

(2) Award contract(s): Award contract(s) to initiate on-site construction, initiate on-site installation of emission control equipment, or incorporate process changes. The owner or operator must submit a signed copy of the contract(s) awarded according to the requirements of § 62.14109(h).

(3) Initiate on-site construction: Initiate on-site construction, initiate on-site installation of emission control equipment, or initiate process changes needed to meet the emission limits as outlined in the final control plan.

(4) Complete on-site construction: Complete on-site construction and installation of emission control equipment or complete process changes.

(5) Achieve final compliance: Incorporate all process changes or complete retrofit construction as designed in the final control plan and connect the air pollution control equipment or process changes with the affected facility identified in the final control plan such that if the affected facility is brought on line, all necessary process changes or air pollution control equipment are operating fully. Within 180 days after the date the affected facility is required to achieve final compliance, the initial performance test must be conducted.

(b) The owner or operator of an affected facility must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) of this section according to the schedule specified in paragraphs (b)(1) through (b)(4) of this section, except as provided in paragraphs (c), (d), and (e) of this section.

(1) The owner or operator of an affected facility that commenced construction, modification, or reconstruction on or before June 26, 1987 and will take longer than 1 year after the date of publication of this subpart FFF (or 1 year after a revised construction permit or a revised operating permit is issued, if a permit modification is required) to comply with the emission limits of this subpart must achieve the increments of progress according to the schedule in table 4 of this subpart, except for those affected facilities specified in paragraphs (b)(3) and (b)(4) of this section.

(2) The owner or operator of an affected facility that began construction, modification, or reconstruction after June 26, 1987 must achieve the increments of progress according to the schedule in table 5 of this subpart to comply with the emission limits of this subpart, except for those affected facilities specified in paragraphs (b)(3) and (b)(4) of this section.

(3) The owner or operator of each specified affected facility in table 6 of this subpart must achieve the increments of progress according to the schedule in table 6 of this subpart.

(4) For affected facilities that are subject to the schedule requirements of paragraph (b)(1) or (b)(2) of this section, the owner or operator (or the State air pollution control authority) may submit for approval alternative dates for achieving increments 2, 3, and 4. The owner or operator (or the State air pollution control authority) that is submitting these alternative dates must meet the reporting requirements of § 62.14109(m).

(c) The owner or operator of an affected facility that has ceased operation but will reopen prior to the applicable final compliance date specified in paragraphs (b)(1) through (b)(4) of this section must meet the same compliance dates and increments of progress specified in paragraphs (b)(1) through (b)(4) of this section.

(d) The owner or operator of an affected facility that has ceased or ceases operation of an affected facility and restarts the affected facility after the compliance dates specified in paragraphs (b)(1) through (b)(4) of this section must comply with the emission limits, requirements for combustor operating practices, and operator training and certification requirements of this subpart upon the date the affected facility restarts. The initial performance tests required by § 62.14109(c) must be conducted within 180 days after the date the unit restarts.

(e) The owner or operator of an affected facility that will be de-rated prior to the applicable final compliance date instead of complying with the

emission limits of this subpart must meet the same increments of progress and achieve the de-rating by the final compliance date (specified in paragraphs (b)(1) through (b)(4) of this section) that would be applicable to the affected facility if it did not de-rate. The owner or operator of an affected facility that will be de-rated must meet the reporting requirements of § 62.14109k. After de-rating is accomplished, the municipal waste combustor affected facility is no longer subject to this subpart.

§ 62.14109 Reporting and recordkeeping and compliance and performance testing.

(a) The owner or operator of an affected facility must comply with the reporting and recordkeeping provisions listed in 40 CFR 60.59b of subpart Eb, except as provided in paragraphs (a)(1) through (a)(3) of this section.

(1) The siting requirements under 40 CFR 60.59b(a), (b)(5), and (d)(11) of subpart Eb and the notification of construction requirements under 40 CFR 60.59b(b) and (c) of subpart Eb do not apply.

(2) 40 CFR 60.54b, 60.56b, and 60.58b(g)(5)(iii) of subpart Eb do not apply to this subpart (see §§ 62.14105 and 62.14107 of this subpart).

(b) The owner or operator of an affected facility must comply with the compliance and performance testing methods and procedures listed in 40 CFR 60.58b of subpart Eb, except as provided in paragraphs (c) and (d) of this section.

(c) The initial performance test must be completed within 180 days after the date of final compliance specified in § 62.14108, rather than the date for the initial performance test specified in 40 CFR 60.58b of subpart Eb.

(d) The owner or operator of an affected facility may follow the alternative performance testing schedule for dioxin/furan emissions specified in paragraph (d)(1) of this section.

(1) If all performance tests for all affected facilities at the MWC plant over a 2-year period indicate that dioxin/furan emissions are less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen for all affected facilities located within a municipal waste combustor plant, the owner or operator of the municipal waste combustor plant may elect to conduct annual performance tests for one affected facility (i.e., unit) per year at the municipal waste combustor plant. At a minimum, a performance test for dioxin/furan emissions shall be conducted annually (no more than 12 months following the previous performance test) for one affected facility at the municipal waste combustor plant. Each year a different affected facility at the municipal waste combustor plant shall be tested, and the affected facilities at the plant shall be tested in sequence (e.g., unit 1, unit 2, unit 3, as applicable). If each annual performance test continues to indicate a dioxin/furan emission level less than or equal to 15 nanograms per dry standard cubic meter (total mass), the owner or operator may continue conducting a performance test on only one affected facility per year. If any annual performance test indicates a dioxin/furan emission level greater than 15 nanograms per dry standrd cubic meter (total mass), performance tests thereafter shall be conducted annually on all affected facilities at the plant until and unless all annual performance tests for all affected facilities at the plant over a 2-year period indicate a dioxin/furan emission level less than or equal to 15 nanograms per dry standard cubic meter (total mass).

(2) The owner or operator who is following the alternative performance testing schedule for dioxin/furan emissions specified in paragraph (d)(1) of this section may choose an alternative testing sequence (e.g., unit 1, 3, 2, 4) for affected facilities at the municipal waste combustor plant. The owner or operator must submit a request to EPA for approval of the alternative testing sequence. After approval, the alternative testing sequence is effective until a different testing sequence is received and approved by EPA.

(e) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF final rule to comply with the emission limits of this subpart must submit notification to the EPA Regional Office within 10 business days of completing each increment. Each notification must indicate which increment of progress specified in § 62.14108(a)(1) through (a)(5) has been achieved. The notification must be signed by the owner or operator of the affected facility.

(f) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF to comply with the emission limits of this subpart who fails to meet any increment of progress specified in § 62.14108(a)(1) through (a)(5) according to the applicable schedule in § 62.14108 must submit notification to the EPA Regional Office within 10 business days of the applicable date in § 62.14108 that the owner or operator failed to meet the increment.

(g) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF to comply with the emission limits of this subpart must submit a final control plan by the date specified in § 62.14108(b) with the notification required by § 62.14109(e). The final control plan must, at a minimum, include a description of the air pollution control devices or process changes that will be employed for each unit to comply with the emission limits and other requirements of this subpart.

(h) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF to comply with the emission limits of this subpart must submit a signed copy of the contract or contracts awarded according to the requirements of § 62.14108(a)(2) with the notification required by § 62.14109(e).

(i) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF to comply with the emission limits of this subpart must keep on site a copy of the final control plan required by § 62.14109(g).

(j) The owner or operator of an affected facility that plans to cease operation of the affected facility on or before December 19, 2000 rather than comply with the emission limits of this subpart by the applicable compliance date specified in § 62.14208 must submit a notification by the date specified for the final control plan according to the schedule specified in paragraphs § 62.14108(b)(1) through (b)(4), as applicable. (Affected facilities that cease operation on or before December 19, 2000, rather than comply with the emission limits of this subpart by the compliance date specified in § 62.14108 are not required to submit a final control plan.) The notification must state the date by which the affected facility will cease operation. If the cease operation date is later than 1 year after the date of publication of this subpart FFF, the owner or operator must enter into a legally binding closure agreement with EPA by the date the final control plan is due. The agreement must specify the date by which operation will cease.

(k) The owner or operator of an affected facility that plans to de-rate the affected facility on or before December 19, 2000 rather than comply with the emission limits of this subpart by the compliance date specified in § 62.14108 must submit a final control plan as required by paragraph (g) of this section and submit notification of increments of progress as required by paragraphs (e)

and (f) of this section and § 62.14108(e) of this subpart.

(1) The final control plan must, at a minimum, include the information in paragraphs (k)(1)(i) and (k)(1)(ii) of this section rather than the information in paragraph (g) of this section.

(i) A description of the physical changes that will be made to accomplish the de-rating.

(ii) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the de-rating. (See the procedures specified in 40 CFR 60.58b(j) of subpart Eb for calculating municipal waste combustor unit capacity.)

(2) The owner or operator must submit a signed copy of the contract or contracts awarded to initiate the de-rating with the notification required by paragraph (e) of this section.

(l) The owner or operator of an affected facility that is ceasing operation more than 1 year following the date of publication of this subpart FFF must submit performance test results for dioxin/furan emissions conducted during or after 1990 for each affected facility by the date 1 year after the date of publication of this subpart FFF. The performance test shall be conducted according to the procedure in paragraph (b) of this section.

(m) The owner or operator (or the State air pollution control authority) that is submitting alternative dates for increments 2, 3, and 4 according to § 62.14108(b)(4) must submit the alternative dates by the date specified for the final control plan according to the schedule specified in paragraphs § 62.14108 (b)(1) and (b)(2), as applicable. The owner or operator (or the State air pollution control authority) must submit a justification if any of the alternative dates are later than the increment dates in tables 4 or 5 of this subpart. The owner or operator must also submit the alternative dates and justification to the State.

Tables to Subpart FFF

TABLE 1 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR UNITS (MWC UNITS) EXCLUDED FROM SUBPART FFF [1]

State	MWC units
Florida	Existing MWC units with capacity to combust more than 250 tons per day of municipal solid waste.
Georgia	Existing facilities with a MWC unit capacity greater than 250 tons per day of municipal solid waste at the following MWC sites: (a) Savannah Energy Systems Company, Savannah, Georgia.
Illinois	Existing MWC units located at Robbins Resource Recovery Center, Robbins, Illinois.
Minnesota	All MWC units with unit capacities greater than 93.75 million British thermal units per hour on a heat input basis (250 tons per day) located in Minnesota.
New York	Existing MWC units with capacity to combust more than 250 tons per day of municipal solid waste.
Oregon	Existing facilities at the following MWC sites: (a) Ogden Martin Systems, Marion County, Oregon. (b) Coos County, Coos Bay, Oregon.
South Carolina	Existing facilities with a MWC unit capacity greater than 250 tons per day of municipal solid waste at the following MWC sites: (a) Foster Wheeler Charleston Resource Recovery Facility, Charleston, South Carolina.
Tennessee	Existing MWC units with capacity to combust more than 250 tons per day of municipal solid waste.

[1] Notwithstanding the exclusions in table 1 of this subpart, this subpart applies to affected facilities not regulated by an EPA approved and currently effective State or Tribal plan.

TABLE 2 OF SUBPART FFF—NITROGEN OXIDES REQUIREMENTS FOR AFFECTED FACILITIES

Municipal waste combustor technology	Nitrogen oxides emission limit (parts per million by volume) [a]
Mass burn waterwall	205.
Mass burn rotary waterwall	250.
Refuse-derived fuel combustor	250.
Fluidized bed combustor	180.
Mass burn refractory combustors	No limit.

[a] Corrected to 7 percent oxygen, dry basis.

TABLE 3 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR OPERATING REQUIREMENTS

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume) [a]	Averaging time (hrs) [b]
Mass burn waterwall	100	4
Mass burn refractory	100	4
Mass burn rotary refractory	100	24
Mass burn rotary waterwall	250	24
Modular starved air	50	4
Modular excess air	50	4

TABLE 3 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR OPERATING REQUIREMENTS—Continued

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume) [a]	Averaging time (hrs) [b]
Refuse-derived fuel stoker	200	24
Bubbling fluidized bed combustor	100	4
Circulating fluidized bed combustor	100	4
Pulverized coal/refuse-derived fuel mixed fuel-fired combustor	150	4
Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor	200	24

[a] Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen, dry basis. Calculated as an arithmetic average.
[b] Averaging times are 4-hour or 24-hour block averages.

TABLE 4 OF SUBPART FFF—GENERIC COMPLIANCE SCHEDULE AND INCREMENTS OF PROGRESS (PRE-1987 MWCs) [a b]

Affected facilities	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance
Affected facilities that commenced construction, modification, or reconstruction on or before June 26, 1987 (All pollutants).	January 11, 1999	05/18/99	11/16/99	11/19/00	12/19/00

[a] Table 4 or 5 of this subpart applies to MWC units subject to the Federal plan except those with site-specific compliance schedules shown in Table 6 of this subpart.
[b] As an alternative to this schedule, the owner or operator may close the affected facility by December 19, 2000, complete the retrofit while the affected facility is closed, and achieve final compliance upon restarting. See §§ 62.14108(c), 62.14108(d), and 62.14109(i) of this subpart.

TABLE 5 OF SUBPART FFF—GENERIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS

[Post-1987 MWCs] [a, b]

Affected facilities	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance
Affected facilities that commenced construction modification, or reconstruction after June 26, 1987:					
1. Emission limits for Hg, dioxin/furan.	[c] NA	[c] NA	[c] NA	[c] NA	1 year after promulgation of this subpart or 1 year after permit issuance.[d]
2. Emission limits for SO_2, HCl, PM, Pb, Cd, opacity CO, NO_X.	January 11, 1999	05/18/99	11/16/99	11/19/00	12/19/00.

[a] Table 4 or 5 of this subpart applies to MWC units subject to the Federal plan except those with site-specific compliance schedules shown in Table 6 of this subpart.
[b] As an alternative to this schedule, the unit may close by December 19, 2000, complete retrofit while closed, and achieve final compliance upon restarting. See §§ 62.14108(c), 62.14108(d), and 62.14109(i) of this subpart.
[c] Because final compliance is achieved in 1 year, no increments of progress are required.
[d] Permit issuance is issuance of a revised construction permit or revised operating permit, if a permit modification is required to retrofit controls.

TABLE 6 OF SUBPART FFF—SITE-SPECIFIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS [a]

Affected facilities at the following MWC sites	City, State	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance
Stanislaus Resource Recovery Facility.	Crows Landing, California.	January 11, 1999	01/19/02	05/19/00	11/19/00	12/19/00
Southeast Resource Recovery Facility.	Long Beach, California.	January 11, 1999	04/30/99	10/31/99	04/30/00	12/19/00
All large MWC units	Maine	January 11, 1999	01/01/99	07/01/99	09/01/00	12/19/00
Baltimore Resco	Baltimore, Maryland	January 11, 1999	January 11, 1999	January 11, 1999	09/01/00	12/19/00
All large MWC units	New Jersey [b]	January 11, 1999	05/18/99	11/14/99	11/19/00	12/19/00
American Ref-Fuel	Delaware County, Pennsylvania.	11/01/98	05/18/99	11/14/99	11/19/00	12/19/00
Montenay Energy Resource.	Montgomery County, Pennsylvania.	11/01/98	05/18/99	11/14/99	11/19/00	12/19/00

TABLE 6 OF SUBPART FFF—SITE-SPECIFIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS [a]—Continued

Affected facilities at the following MWC sites	City, State	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance
I–95 Energy/Resource Recovery Facility.	Lorton, Virginia	January 11, 1999	10/15/99	03/01/00	11/19/00	12/19/00

[a] These schedules have been reviewed and determined to be acceptable by EPA.
[b] This schedule applies to HC1 SO_2, PM, Pb, Cd, CO, and NO_X. However, owners and operators of large MWC units in New Jersey have the option of reserving the portion of their control plan that addresses NO_X. Owners and operators must submit the reserved portion to EPA by December 15, 1999.

[FR Doc. 98–29967 Filed 11–10–98; 8:45 am]
BILLING CODE 6560–50–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1827 and 1852

Reportable Item Definition

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule to conform the two NASA FAR Supplement (NFS) definitions of "reportable item".

DATES: This rule is effective November 12, 1998.

ADDRESSES: Tom O'Toole, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

The NFS has two definitions of "reportable item"—in section 1827.301, Definitions, and the clause at 1852.227–70, New Technology. These definitions vary slightly, and this rule will conform these definitions by using the version at 1827.301 as a baseline. Other minor adjustments are made to cite appropriate USC titles and add examples of reportable items. A proposed rule was published in the August 13, 1998 **Federal Register** (63 FR 43362). NASA received one public comment that suggested the scope of the revised definition was unnecessarily broad in that it would now apply to all copyrightable data. NASA disagrees. The revised definition only intended to clarify that all inventions and innovations, including computer programs, should be reported without regard to potential patentability under Title 35 and/or copyrightability under Title 17 of the U.S. Code. However, to optimize clarity and preclude the potential misconception that reporting is required for all data produced under the contract, NASA has restructured the definition to focus more explicitly the U.S.C. references.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) since the changes are editorial clarifications and do not impose any new requirements on offerors or contractors. The rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1827 and 1852

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1827 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1827 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1827—PATENTS, DATA, AND COPYRIGHTS

2. Section 1827.301 is amended by revising the definition of "reportable item" to read as follows:

1827.301 Definitions.

* * * * *

Reportable item, as used in this subpart, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectible under Title 17 of the United States Code.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.227–70 is amended by revising the clause date and the definition of "reportable item" in paragraph (a) of the clause to read as follows:

1852.227–70 New technology.

* * * * *

New Technology November 1998

(a) * * *

Reportable item, as used in this clause, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable

or otherwise protectible under Title 17 of the United States Code.

* * * * *

[FR Doc. 98–30265 Filed 11–10–98; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–121; Notice–5]

RIN 2137–AD05

Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Further response to petitions for reconsideration on pressure testing within terminals and tank farms.

SUMMARY: This document announces that, while RSPA continues to review requirements for pressure testing older piping within terminals and tank farms, it will not enforce those requirements provided the terminals and tank farms are designed and operated at lower stress levels than the main line. RSPA is evaluating comments received on pressure testing within these areas and is considering modifying the current requirements. The enforcement policy maintains the status quo (that is, no testing required) until a decision is made.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, or e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this document, or Jenny Donohue, (202) 366–4046, for copies of this document or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1994, RSPA issued a final rule requiring certain older hazardous liquid and carbon dioxide pipelines to be pressure tested. The American Petroleum Institute (API) and Williams Pipe Line Company (Williams) filed petitions for reconsideration of pressure testing requirements for older terminal and tank farm piping on the grounds that pressure testing would be costly and disruptive in the terminals and that such piping is of lower risk since terminals and tank farms are generally operated at reduced pressures. To explore this issue further, RSPA invited comments in a **Federal Register** notice published February 10, 1998 [63 FR 6677].

RSPA received five comments, including one from API. Four of five commenters expressed that terminal/tank farm piping should be exempt from testing requirements because they are designed and operated so that stress level can never exceed 20% SMYS, therefore, there is low possibility of failure. Commenters also argued that compliance would be a difficult task because of many fittings, valves, tanks, and instrumentation. Commenters also suggested that the benefit would be questionable, but the costs would be substantially higher. API suggested that RSPA consider separate rulemaking on testing of terminal/tank piping, excluding them from the current rule. One commenter suggested that leak detection and a volumetric system should be used as a direct substitute for a pressure test.

API also suggested developing a testing/monitoring protocol for evaluating piping within terminals and tank farms that would provide equivalent levels of safety for those facilities. Given the great variety of conditions that exist in terminals and tank farms and the benefits of identifying alternative ways of addressing pipeline risks, development of such a protocol has merit. RSPA will work cooperatively with API on its protocol. RSPA anticipates using the protocol in our evaluation of the pressure testing requirement for terminals and tank farm piping.

Compliance dates for the 1994 rule requiring pressure testing had been extended to allow completion of rulemaking to allow a risk-based alternative to pressure testing. [62 FR 54591]. That rulemaking, which did not address alternatives for terminal and tank farm piping, has just been published. [63 FR 59475; November 4, 1998]. Absent some agency action, operators of older terminals and tank farms would have to complete the pressure testing requirements for piping in their terminals prior to RSPA's reconsideration of these requirements. In order to preserve the status quo, RSPA will not enforce the pressure testing requirements with respect to older piping located in terminals or tank farms that are designed and operated so that they do not experience stress levels of 20 percent or greater.

Issued in Washington, DC on November 5, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–30210 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN1018–AE16

Changes in the List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) regulates international trade in certain animals and plants. Species or other taxa for which such trade is controlled are listed in Appendices I, II, and III to CITES. The countries participating in this treaty, including the United States, adopted amendments to Appendices I and II at the tenth meeting of the Conference of the Parties (COP10) in June, 1997. The United States did not enter a reservation against any of the adopted amendments. This document incorporates all these amendments into the U.S. Fish and Wildlife Service's (Service) informational list of CITES species. It also incorporates a small number of additional changes to the list of CITES-protected animal and plant taxa (50 CFR 23.23) unrelated to decisions of the Parties at COP10 and serving only to clarify taxonomy, common names, or geographic ranges of animal and plant taxa and populations already listed. None of these additional changes affects the biological entity listed by the CITES parties.

DATES: This rule is effective November 12, 1998. With the exception of the new listings of sturgeon species at COP10 (which had the effective date of April 1, 1998), the amendments set forth in this rule entered into effect on September 18, 1997, under the terms of CITES.

ADDRESSES: Please send correspondence concerning this document to Chief, Office of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, room 750; Arlington, Virginia, 22203; fax 703–358–2276. Materials received will be available for public inspection by appointment, from 8:00 a.m. to 4:00 p.m. Monday through Friday at the above address in Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Lieberman, Chief, Office of Scientific Authority, U.S. Fish and Wildlife Service, telephone 703–358–1708.

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, re-export, and introduction from the sea of certain animal and plant species. Species for which the trade is controlled are included in three Appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties to control trade.

Any CITES Party may propose amendments to Appendices I and II for consideration either at meetings of the Conference of the Parties held about every 2½ years or, occasionally, by a postal vote process. The text of proposals must be communicated to the CITES Secretariat at least 150 days before such a meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate responses to all Parties no later than 30 days before the meeting. Amendments are adopted by consensus or a two-thirds majority of the Parties present and voting.

Actions of the Parties

The tenth meeting of the Conference of the Parties to CITES was held June 9–20, 1997, in Harare, Zimbabwe. Decisions of the Parties on 62 different animal proposals and 13 different plant proposals to amend the Appendices I and II were reported in the proposed rule published in the **Federal Register** on August 22, 1997 (62 FR 44627).

The August 22, 1997, proposed rule (62 FR 44627) requested comments from the public on whether the United States should enter reservations against any of the listing amendments. If the United States were to enter a reservation, it would be treated as a country not party to CITES with respect to trade in that particular species. However, because of the requirements of other Parties, the U.S. Lacey Act Amendments of 1981, and relevant CITES resolutions, the effect of a reservation would be limited. More comprehensive discussions of any practical effects of entering a reservation and reasons for or against entering reservations can be found in the November 8, 1994 and January 3, 1995 **Federal Register** notices (59 FR 55617 and 60 FR 73, respectively).

Related Considerations

During the public comment period pursuant to the proposed rule of August 22, 1997, only one organization submitted comments. The Humane Society of the United States (HSUS) submitted comments on a number of issues. The HSUS opposed the taking of reservations by the United States; the Service concurs, and has recommended no reservations. Regarding the alligator snapping turtle, the HSUS noted that endemism is not a reason to not list a species in the CITES Appendices. The Service agrees, and notes that whether or not a species qualifies for inclusion in Appendix II under the CITES listing criteria (Resolution Conf. 9.24) is independent of its degree of endemism. The Service will continue to monitor the status of and trade in this species, and work with the states where the species is native in order to reach the best possible conservation solution for the species. The HSUS requested that the United States include the species in Appendix III; that option is currently being explored. If the Service decides to recommend such a listing in Appendix III, a notice will be published in the **Federal Register** inviting public comments. The HSUS also discussed the annotated transfer of certain African elephant populations to Appendix II, noting that live elephants may not be imported for commercial purposes. The HSUS is incorrect, in that live elephants from Namibia only are restricted to non-commercial purposes; those from Zimbabwe and Botswana can be imported for any purpose. Since these populations are in Appendix II, no U.S. import permit is required under CITES, and the decision on commerciality and suitability of destinations will be made by the exporting country. However, if any of the three countries affected consult the United States prior to issuance of an export permit, the Service will respond to any inquiry about any proposed facility. The HSUS recommended that the Service discuss other aspects of the annotated downlisting of the African elephant populations with members of the Standing Committee. The Service continues to discuss aspects of the downlisting, and practical implementation concerns, with many different governments, including those on the Standing Committee. The HSUS also requested that the United States include map turtles and bigleaf mahogany in CITES Appendix II. The Service is currently reviewing which proposals it may submit for consideration at CITES COP11, and published a notice of information requesting public comments in the **Federal Register** on January 30, 1998 (63 FR 4613).

Procedural Requirements

This **Federal Register** notice amends the informational list of CITES species in 50 CFR 23.23 to accurately reflect the changes in the list of species in the CITES appendices that have already been made by the Conference of the Parties at their tenth meeting, and that the United States is bound to accept unless it entered reservations. The Service does not believe that implementation of any of these adopted amendments would be contrary to the interests or laws of the United States. The period of time during which the United States could have entered a reservation against any of the amendments ended on September 18, 1997. The Service did not recommend the entry of any reservations, and none were taken by the United States. Therefore, except for the newly adopted sturgeon listings having an effective date of April 1, 1998, these amendments to the CITES Appendices have been in effect for the United States since September 18, 1997.

This notice brings the information in 50 CFR 23.23 into agreement with the current species listings in the CITES appendices. Earlier **Federal Register** notices informed the public about these amendments and provided opportunity for comment on them, including announced public meetings. Since these CITES amendments became effective on September 18, 1997, and April 1, 1998, this amendment to 50 CFR Part 23 is effective upon its date of publication.

In addition to reflecting the amendments to the Appendices adopted at COP10, this notice also incorporates certain other minor changes into the list of CITES-protected animal and plant taxa (50 CFR 23.23) unrelated to decisions of the Parties at COP10 and serves only to clarify taxonomy, common names, or geographic ranges of animal and plant taxa and populations already listed. None of these additional changes affects the biological entity listed by the CITES parties. In the amendatory section below, all entries in the current CFR list that will be either modified or deleted by this rule are treated as deletions and presented in a list of deletions. This is followed by a list of additions, which includes not

only new taxa or populations resulting from amendments adopted at COP10, but also all modifications of current CFR listings.

Note: The Department has determined that amendments to CITES Appendices, which result from actions of the CITES Parties, do not require the preparation of Environmental Assessments as defined under the authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). These amendments are simply notifications of actions taken by the CITES Parties and therefore, this notice does not constitute a "rule" for purposes of the Administrative Procedures Act (5 U.S.C. 551(4)). Accordingly, the provisions of Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601) and the Small Business Regulatory Enforcement Fairness Act of 1996 do not apply. The adjustments to the list in 50 CFR 23.23 presented below are solely informational to provide the public with accurate data on the species covered by CITES. All non-sturgeon listings adopted by the Parties took effect on September 18, 1997, under the terms of CITES. The sturgeon listings took effect April 1, 1998. This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This document was prepared by Marshall Howe and Timothy Van Norman, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.* and 87 Stat. 884, as amended).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

Regulation Promulgation

Accordingly, for the reasons set out in the preamble of this document, Part 23 of Title 50, Code of Federal Regulations, is amended as follows:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

2. § 23.23(d) is revised to read as follows:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(d) Subject to the regulations of this part are all living or dead animals or plants in Appendix I, II or III, and all their readily recognizable parts and derivatives except for specified parts or derivatives of particular Appendix III animal species as excluded in the particular listing and the following categorically excluded or exempted parts or derivatives of certain plants:

(1) For Appendix II and Appendix III plants and artificially propagated hybrids of Appendix I plants: Seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers; and

(2) For Appendix II and Appendix III plants: Seeds (other than the seeds of Mexican Cactaceae originating from Mexico, which are included in the Appendices), spores, pollen (including pollinia), and artificially propagated cut flowers; and

(3) For artificially propagated hybrids of Appendix I plants: seeds and pollen (including pollinia) and cut flowers; and

(4) For artificially propagated or naturalized Appendix II Cactaceae species: fruits and their parts and derivatives; for Opuntia subgenus Opuntia species, separate stem joints (pads) and their parts and derivatives.

(5) For Orchidaceae species: in Appendix I, seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers; in Appendix II, for artificially propagated Vanilla species, the fruits and their parts and derivatives.

* * * * *

2. § 23.23(f) is amended by removing the following taxa or populations as follows:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(f) * * *

Species	Common name	Appendix	First listing date (month/day/year)
CLASS MAMMALIA:	MAMMALS: Kangaroos, Wombats, Wallabies, Cuscuses, Rat-kangaroos, etc.:		
Burramys parvus	Mountain pygmy possum	II	7/1/75
Dendrolagus bennettianus	Bennett's tree kangaroo, Dusky tree kangaroo.	II	6/28/79
D. lumholtzi	Lumholtz's tree kangaroo	II	6/28/79
Order Primates:	Primates: Monkeys, Apes, etc.:		
All species except those in App. I or with earlier date in App. II.		II	2/4/77
Phaner sp.	Fork mouse lemur, Fork-marked mouse lemur.	I	7/1/75
Order Cetacea:	Whales, Porpoises, Dolphins:		
All species except those in App. I or with earlier date in App. II.		II	6/28/79
Order Carnivora:	Carnivores: Cats, Bears, etc.:		
Nasua narica (=*nasua*)	Common coati, Coatimundi	III (Honduras)	4/13/87
Ursus arctos (all European populations except Italian population and former USSR populations).	European Brown Bear	II	7/29/83
U. arctos (Italian population)	European Brown bear	II	7/1/75
U. arctos (all Asian populations, including populations of Iran, Iraq, Syria, and Turkey, except former USSR populations and populations and subspecies listed in App. I).	Brown bear	II	1/18/90
U. arctos (=*U. arctos pruinosus*) (populations of Bhutan, China, and Mongolia).	Tibetan blue bear	I	7/1/75
U. arctos (all North American populations except Mexican population).	Brown bear, Grizzly	II	7/1/75
U. arctos (=*U. a. nelsoni*) (Mexican population)	Mexican grizzly bear	I	7/1/75
U. arctos isabellinus	Red bear	I	6/28/79

Species	Common name	Appendix	First listing date (month/day/year)
Order Proboscidea:	Elephants:		
Loxodonta africana	African elephant	I	2/4/77
Order Artiodactyla:	Even-toed ungulates:		
Bison bison athabascae	Woods bison	I	7/1/75
Bos mutus	Wild yak	I	7/1/75
Ovis vignei	Shapo	I	7/1/75
Pecari tajacu (except populations of the United States)	Collared peccary	II	10/22/87
Vicugna vicugna (except populations listed below)	Vicuna	I	7/1/75
V. vicugna (populations of Paranicota Province, Ia. Region of Tarapaca in Chile and all populations of Peru) (export limited to cloth products, wool sheared from live animals, and the Peruvian stock of 3249 kg. extant in November, 1994).	Vicuna	II	7/1/75
CLASS AVES:	BIRDS:		
Order Falconiformes:	Hawks, Falcons, Vultures, Eagles:		
All species except Cathartidae and those species in App. I or with earlier date in App. II.	All species except New World vultures	II	6/28/79
Order Gruiformes:	Cranes, Rails, Bustards:		
Gallirallus australis hectori	Eastern weka rail	II	7/1/75
Pedionomus torquatus	Collared hemipode, Plains wanderer	II	6/28/79
Turnix melanogaster	Black-breasted button-quail	II	6/28/79
Order Psittaciformes:	Parrots, Parakeets, Macaws, Lories:		
All species in order except those in App. I or with earlier date in App. II, and except *Melopsittacus undulatus*, *Nymphicus hollandicus*, and *Psittacula krameri*. However, the latter is listed separately in App. III.	All Parrots, Parakeets, Macaws and Lories (not including the Budgerigar, Cockatiel, and Rose-ringed parakeet).	II	6/6/81
Order Strigiformes:	Owls:		
All species except those in App. I or with earlier date in App. II.		II	6/28/79
Order Passeriformes:	Perching birds, Songbirds:		
Gracula religiosa	Hill myna	III (Thailand)	6/11/92
CLASS REPTILIA:	REPTILES:		
Order Crocodylia:	Crocodiles, Alligators, Caimans, Gavials:		
Alligatoridae spp. (all species in family except those in App. I or with earlier date in App. II).	Alligators, Caimans	II	2/4/77
Caiman latirostris	Broad-snouted caiman	I	7/1/75
Crocodylidae spp. (all species in family except those in App. i or with earlier date in App. II).	Crocodiles	II	2/4/77
Crocodylus niloticus (populations of Madagascar and Uganda subject to export quotas described by the Secretariat).	Nile crocodile	II	7/1/75
C. niloticus (populations of Botswana, Ethiopia, Kenya, Malawi, Mozambique, South Africa, Zambia, and Zimbabwe subject to ranching provisions).	Nile crocodile	II	7/1/75
C. niloticus (population of Tanzania subject to ranching provisions and annual quotas described by the Secretariat).	Nile crocodile	II	7/1/75
Melanosuchus niger (population of Ecuador, subject to zero export quotas in 1995 and 1996, followed by annual quotas described by the Secretariat).	Black caiman	II	7/1/75
Order Serpentes:	Snakes:		
Boidae spp. (all species except those in App. I or with earlier date in App. II).	Boa constrictors, Pythons	II	2/4/77
CLASS OSTEICHTHYES:	BONY FISHES:		
Order Acipenseriformes:	Sturgeons:		
PHYLUM ARTHROPODA:	ARTHROPODS:		
CLASS Insecta:	Insects:		
Ornithoptera spp. (all species except those in App. I or with earlier date in App. II).	Birdwing butterflies	II	2/16/79
PHYLUM MOLLUSCA:	MOLLUSCS:		
CLASS Pelecypoda (=*Bivalvia*):	Clams, Mussels:		
Fusconaia subrotunda	Long solid mussel	II	7/1/75
Lampsilis brevicula	Ozark lamp pearly mussel	II	7/1/75
Lexingtonia dolabelloides	Slab-side pearly mussel	II	7/1/75
CLASS Gastropoda:	Snails:		
Paryphanta spp. (New Zealand species only)	New Zealand amber snails	II	7/1/75
PLANT KINGDOM:	PLANTS:		
Family Agavaceae:	Agave family:		
Agave victoriae-reginae	Queen Victoria agave	II	7/29/83
Family Apocyanaceae:	Dogbane family:		
Pachypodium brevicaule (and its natural hybrids; no export of adult plants before tenth Conference of the Parties, ca. March, 1997).		II	7/1/75

Species	Common name	Appendix	First listing date (month/day/year)
Family Araliaceae:	Ginseng family:		
Panax quinquefolius	American ginseng	II	7/1/75
Family Cactaceae:	Cactus family:		
All species except those in App. I	Cacti	II	7/1/75
Coryphantha werdermannii	Jabali pincushion cactus	I	7/1/75
Echinocereus (=*Wilcoxia*) *schmollii*	Lamb's-tail cactus	I	7/1/75
Escobaria minima	Nellie's corycactus	I	7/1/75
E. sneedii	Sneed pincushion cactus	I	7/1/75
Pachycereus (=*Backebergia*) *militaris*	Teddy-bear cactus, Military cap	I	7/1/75
Pediocactus (=*Toumeya*) *knowltonii*	Knowlton's cactus	I	7/1/75
P. (=*Toumeya*) *papyracanthus* (see *Sclerocactus papyracanthus*).			
P. paradinei	Houserock Valley cactus	I	7/1/75
P. peeblesianus (=*Toumeya fickeisenii*, =*T. peeblesiana*)	Peebles' Navajo cactus	I	7/1/75
P. sileri	Siler's pincushion cactus	I	7/1/75
Pelecyphora spp. (includes *Encephalocarpus* sp.)	Hatchet cactus, Pinecone cactus, Peyotillo.	I	7/1/75
Sclerocactus brevihamatus subsp. *tobuschii* (=*Ancistrocactus tobuschii*, =*Echinocactus tobuschii*).	Tobusch fishhook cactus	I	7/1/75
S. (=*Echinomastus*, =*Neolloydia*) *erectocentrus*		I	7/1/75
S. glaucus	Uinta Basin hookless cactus	I	7/1/75
S. papyracanthus	Grama-grass cactus	I	7/1/75
Strombocactus disciformis	Disc cactus, Top cactus	I	7/1/75
Family Cycadaceae:	Cycas family:		
Family Euphorbiaceae:	Spurge family:		
Euphorbia spp. (excluding non-succulent species) (all species except those in App. I).	Euphorbias	II	7/1/75
E. decaryi (including var. *capsaintemariensis*, *E. capsaintemariensis*) (and its natural hybrids).		I	7/1/75
Family Leguminosae (=Fabaceae):	Pea family:		
Pericopsis elata (including saw-logs, sawn wood, and veneers, but no other parts or derivatives, i.e., products).	Afrormosia	II	6/11/92
Family Magnoliaceae:	Magnolia family:		
Talauma hodgsonii		III (Nepal)	11/16/75
Family Meliaceae:	Mahogany family:		
Swietenia macrophylla (populations in the Americas, including saw-logs, sawn wood, and veneers, but no other parts or derivatives, e.g., products).	Bigleaf mahogany	III (Costa Rica)	11/16/95
S. mahagoni (including saw-logs, sawn wood, and veneers, but no other parts or derivatives, i.e., products).	Caribbean mahogany	II	6/11/92
Family Orchidaceae (= Apostasiaceae, Cypripediaceae):	Orchid family:		
Family Portulacaceae:	Portulaca family:		
Anacampseros spp.		II	7/1/75
Lewisia tweedyi	Tweedy's lewisia	II	7/29/83
Family Primulaceae:	Primrose family:		
Cyclamen spp.	Cyclamens	II	7/1/75
Family Proteaceae:	Protea family:		
Orothamnus zeyheri	Marsh-rose	I	7/1/75
Protea odorata	Ground-rose	I	7/1/75
Family Theaceae:	Tea family:		
Camellia chrysantha	Yellow-flowered camellia, Jinhuacha	II	8/1/85

3. § 23.23(f) is amended by adding the following taxa or populations to read as follows:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(f) * * *

Species	Common name	Appendix	First listing date (month/day/year)
CLASS MAMMALIA:	MAMMALS:		
* * *	* * * *		
Order Primates (formerly including order Scandentia, above): All species of primates except those in App. I or with earlier date in App. II.	Primates: Monkeys, Apes, etc.: A4/77..		

Species	Common name	Appendix	First listing date (month/day/year)
* * *	* * * *		
Phaner sp.	Fork-marked mouse lemurs	I	7/1/75
* * *	* * * *		
Order Xenarthra:	Anteaters, Sloths, Armadillos:		
* * *	* * * *		
Chaetophractus nationi (subject to a zero export quota)	Hairy armadillo	II	9/18/97
* * *	* * * *		
Order Cetacea:	Whales, Porpoises, Dolphins:		
All species except those in App. I or with earlier date in App. II.	All whales, porpoises, and dolphins not listed below.	II	6/28/79
* * *	* * * *		
Order Carnivora:	Carnivores: Cats, Bears, etc.:		
* * *	* * * *		
Nasua narica	Common coati, Coatimundi	III (Honduras)	4/13/87
* * *	* * * *		
U. arctos (all Asian populations, including populations of Iran, Iraq, Syria, Turkey, and the former USSR, except populations and subspecies listed in App. I).	Brown bear	II	1/18/90
U. arctos (all European populations except Italian population and former USSR populations).	European brown Bear	II	7/29/83
Ursus arctos (all North American populations except *U. a. nelsoni*).	Brown bear, Grizzly bear	II	7/1/75
U. arctos (all populations of Bhutan, Mongolia, and China except subspecies with earlier date).	Brown bear	I	1/18/90
U. arctos (Italian population)	European brown bear	I	7/1/75
U. arctos isabellinus	Red bear	I	6/28/79
U. arctos nelsoni	Mexican grizzly bear	I	7/1/75
U. arctos pruinosus	Tibetan blue bear	I	7/1/75
* * *	* * * *		
Order Proboscidea:	Elephants:		
* * *	* * * *		
Loxodonta africana (except the populations of Botswana, Namibia, and Zimbabwe).	African elephant	I	2/4/77
L. africana [only the populations of Botswana, Namibia, and Zimbabwe, to allow: (1) export of hunting trophies for non-commercial purposes; (2) export of live animals to appropriate and acceptable destinations (Namibia: for non-commercial purposes only); (3) export of hides (Zimbabwe only); (4) export of leather goods and ivory carvings for non-commercial purposes (Zimbabwe only). No international trade in ivory is permitted before 18 months after the transfer to Appendix II comes into effect (i.e., March 18, 1999). Thereafter, under experimental quotas for raw ivory not exceeding 25.3 tons (Botswana), 13.8 tons (Namibia) and 20 tons (Zimbabwe), raw ivory may be exported only to Japan, subject to the conditions established in Decision of the Conference of the Parties regarding ivory No. 10.1. Specimens not meeting any of the above conditions shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly].	African elephant	II	2/4/77
* * *	* * * *		
Order Artiodactyla:	Even-toed ungulates:		
* * *	* * * *		
Bison bison athabascae	Wood bison	II	7/1/75
* * *	* * * *		
Bos mutus (excluding domestic forms)	Wild yak	I	7/1/75

Species	Common name	Appendix	First listing date (month/day/year)
* * *	* * * *		
Ovis ammon nigrimontana	Kara Tau argali	I	7/1/75
* * *	* * * *		
O. vignei vignei	Shapo	I	7/1/75
* * *	* * * *		
Pecari tajacu (except populations of the United States and Mexico).	Collared peccary	II	10/22/87
* * *	* * * *		
Vicugna vicugna (except populations listed below, under the conditions specified).	Vicuña	I	7/1/75
V. vicugna [Argentina: wild populations of the Province of Jujuy and the semi-captive populations of the Provinces of Jujuy, Salta, Catamarca, La Rioja and San Juan (export limited to wool sheared from live animals and to cloth and items made thereof, including luxury handicrafts and knitted articles; the reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the Convenio para la Conservación y Manejo de la Vicuña and the words, "VICUÑA-ARGENTINA"; all specimens not meeting any of the above conditions shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly)].	Vicuña	II	7/1/75
V. vicugna [Bolivia: populations of the Conservation Units of Mauri-Desaguadero, Ulla Ulla and Lipez-Chichas (export limited to wool sheared from live animals and to cloth and items made thereof, including luxury handicrafts and knitted articles, but with a zero annual export quota; the reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the Convenio para la Conservación y Manejo de la Vicuña and the words, "VICUÑA-BOLIVIA"; all specimens not meeting any of the above conditions shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly)].	Vicuña	II	7/1/75
V. vicugna [Chile: populations of Paranicota Province, 1a. Region of Tarapaca (export limited to wool sheared from live animals and to cloth and items made thereof, including luxury handicrafts and knitted articles; the reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the Convenio para la Conservación y Manejo de la Vicuña and the words, "VICUÑA-CHILE"; all specimens not meeting any of the above conditions shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly)].	Vicuña	II	7/1/75
V. vicugna [Peru: all populations (export limited to the stock of 3249 kg. extant in November, 1994, to wool sheared from live animals, and to cloth and items made thereof, including luxury handicrafts and knitted articles; the reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the Convenio para la Conservación y Manejo de la Vicuña and the words, "VICUÑA-PERU"; all specimens not meeting any of the above conditions shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly)].	Vicuña	II	7/1/75*
* * *	* * * *		
CLASS AVES	BIRDS		
* * *	* * * *		
Order Falconiformes:	Hawks, Falcons, Vultures, Eagles:		
All species except those in App. I, or with earlier date in App. II, and except Cathartidae species not specifically listed below.	All species except New World vultures not specifically listed below.	II	6/28/79

Species	Common name	Appendix	First listing date (month/day/year)
• • •	• • • •		
Order Psittaciformes:	Parrots, Parakeets, Macaws, Lories, Cockatoos, etc.:		
All species in order except those in App. I or with earlier date in App. II, and except *Melopsittacus undulatus*, *Nymphicus hollandicus*, and *Psittacula krameri*. However, the latter is listed separately in App. III.	All Parrots, Parakeets, Macaws, Lories, Cockatoos, etc. not listed below (not including the Budgerigar, Cockatiel, and Rose-ringed parakeet).	II	6/6/81
• • •	• • • •		
Amazona viridigenalis	Red-crowned (= Green-cheeked) parrot	I	6/6/81
• • •	• • • •		
Vini ultramarina	Ultramarine lorikeet	I	6/6/81
• • •	• • • •		
Order Strigiformes:	Owls:		
All species except those in App. I or with earlier date in App. II.	All Owls not listed below	II	6/28/79
• • •	• • • •		
Order Passeriformes:	Perching birds, Songbirds:		
• • •	• • • •		
Amandava formosa	Green avadavat	II	9/18/97
• • •	• • • •		
Gracula religiosa	Hill myna	II	6/11/92
• • •	• • • •		
Leiothrix argentaurius	Silver-eared mesia	II	9/18/97
L. lutea	Pekin robin	II	9/18/97
• • •	• • • •		
Liocichla omeiensis	Omei Shan liocichla	II	9/18/97
• • •	• • • •		
Padda oryzivora	Java sparrow	II	9/18/97
• • •	• • • •		
Pycnonotus zeylanicus	Straw-headed bulbul	II	9/18/97
• • •	• • • •		
Tangara fastuosa	Seven-colored tanager	II	9/18/97
• • •	• • • •		
CLASS REPTILIA	REPTILES		
Order Testudinata:	Turtles, Tortoises:		
• • •	• • • •		
Callagur borneoensis	Painted terrapin	II	9/18/97
• • •	• • • •		
Order Crocodylia:	Crocodiles, Alligators, Caimans, Gavials:		
Alligatoridae spp. (all species in family except those in App. I or with earlier date in App. II).	All Alligators and Caimans not listed below.	II	2/4/77
• • •	• • • •		
Caiman latirostris (except population of Argentina)	Broad-snouted caiman	I	7/1/75
• • •	• • • •		
Crocodylidae spp. (all species in family except those in App. I or with earlier date in App. II).	All Crocodiles not listed below	II	2/4/77
• • •	• • • •		
Crocodylus niloticus (populations of Botswana, Kenya, Malawi, South Africa, Zambia, and Zimbabwe, subject to ranching provisions).	Nile crocodile	II	7/1/75
C. niloticus (population of Ethiopia, Madagascar, Mozambique, Tanzania, and Uganda, subject to an annual export quota).	Nile crocodile	II	7/1/75

Species	Common name	Appendix	First listing date (month/day/year)
* * *	* * * *		
Melanosuchus niger (population of Ecuador, subject to a zero annual export quota until a different quota has been approved by the Secretariat).	Black caiman	II	7/1/75
* * *	* * * *		
Order Serpentes:	Snakes:		
* * *	* * * *		
Boidae spp. (all species except those in App. I or with earlier date in App. II).	All Boa constrictors, Pythons not listed below.	II	2/4/77
* * *	* * * *		
Naja kaouthia (see *Naja naja*)			
* * *	* * * *		
Naja oxiana (see *Naja naja*)			
* * *	* * * *		
CLASS OSTEICHTHYES	BONY FISHES		
* * *	* * * *		
Order Acipenseriformes (all species except those in App. I or with earlier date in App. II)	All Sturgeons and Paddlefish not listed below.	II	4/1/98
* * *	* * * *		
PHYLUM ARTHROPODA CLASS Insecta:	ARTHROPODS Insects:		
* * *	* * * *		
Ornithoptera spp. (all species except those in App. I or with earlier date in App. II).	All Birdwing butterflies not listed below	II	2/16/79
* * *	* * * *		
PLANT KINGDOM (NOTE GENERAL EXCLUSIONS AND EXCEPTIONS IN INTRODUCTORY TEXT): Family Agavaceae:	PLANTS Agave family:		
* * *	* * * *		
Agave victoriae-reginae (=*A. ferninandi-regis*)	Queen Victoria agave	II	7/29/83
* * *	* * * *		
Family Apocynaceae:	Dogbane family:		
* * *	* * * *		
Pachypodium brevicaule (and its natural hybrids)		II	7/1/75
* * *	* * * *		
Family Araliaceae: *Panax quinquefolius* (whole and sliced roots and parts of roots, excluding manufactured parts or derivatives such as powders, pills, extracts, tonics, teas, and confectionery).	Ginseng family: American ginseng	II	7/1/75
* * *	* * * *		
Family Cactaceae (note general exclusions and exceptions in introductory text): All species except those in App. I, and except artificially propagated specimens of the following hybrids and/or cultivars: (1) *Hatiora* × *graeseri* (=*H. gaertneri* × *H. rosea*); (2) *Schlumbergera* (=*Zygocactus*) *truncata* cultivars and its hybrids with *S. opuntoides* (=*S.*× *exotica*), *S. orssichiana*, and *S. russelliana* (=*S.*× *buckleyi*); (3) *Gymnocalycium mihanovichii* cultivars lacking chlorophyll, grafted on *Hatiora* "Jusbertii", *Hylocereus trigonus* or *H. undatus*; and (4)*Opuntia microdasys*.	Cactus family: Cacti	II	7/1/75
* * *	* * * *		
Coryphantha werdermannii (=*C. densispina; Mammillaria w.*)	Jabali pincushion cactus	I	7/1/75
* * *	* * * *		
Echinocereus (=*Cereus*, =*Wilcoxia*) *schmollii*	Lamb's-tail cactus	I	7/1/75

Species	Common name	Appendix	First listing date (month/day/year)
* * *	* * * *		
Escobaria minima (=*Coryphantha m.*, not *Mammillaria m.*; =*C. nelliae, E. n.*, =*Mammillaria n.*).	Nellie's corycactus	I	7/1/75
E. sneedii, including *E. s.* var. *leei* (=*Coryphantha s.* var. *l.*, =*E. leei*, =*Mammillaria l.*) and *E. s.* var. *sneedii* (=*Coryphantha s.*, =*Mammillaria s.*).	Sneed pincushion cactus	I	7/1/75
* * *	* * * *		
Pachycereus militaris (=*Backebergia m.*, =*Cephalocereus m.*, =*Mitrocereus m.*, =*Pachycereus chrysomallus*).	Teddy-bear cactus, Military cap	I	7/1/75
* * *	* * * *		
Pediocactus knowltonii (=*P. bradyi* var. *k.*, =*Toumeya k.*)	Knowlton cactus	I	7/1/75
* * *	* * * *		
P. paradinei (=*Pilocanthus p.*)	Houserock Valley cactus	I	7/1/75
P. peeblesianus, including *P. p.* var. *fickeiseniae* (=*Navajoa f.*, =*Toumeya f.*) and *P. p.* var. *peeblesianus* (=*Echinocactus p.*, =*Navajoa p.*, =*Toumeya p.*, =*Utahia p.*).	Fickeisen Navajo cactus, Peeble's Navajo cactus.	I	7/1/75
P. sileri (=*Echinocactus s.*, =*Utahia s.*)	Siler's pincushion cactus	I	7/1/75
* * *	* * * *		
Pelecyphora (=*Encephalocarpus*) spp.	Hatchet cactus, Pinecone cactus, Peyotillo.	I	7/1/75
Sclerocactus brevihamatus subsp. *tobuschii* (=*Ancistrocactus t.*, =*Echinocactus t.*, =*Ferocactus t.*, =*Mammillaria t.*).	Tobusch fishhook cactus	I	7/1/75
S. erectocentrus (=*Echinocactus e.*, =*Echinomastus e.*, =*Neolloydia e.*, =*Thelocactus e.*; =*Echinomastus acunensis*, =*Echinomastus e.* var *a.*, =*Neolloydia e.* var *a.*; =*Echinocactus krausei*, =*Echinomastus k.*).	Redspine fishhook cactus	I	7/1/75
S. glaucus (=*S. franklinii*, =*Echinocactus g.*, =*Ferocactus g.*, =*Pediocactus g.*, =*S. whipplei* var. *g.*; =*E. subglaucus*; =*S. wetlandicus*; =*S. w.* var. *ilseae*).	Uinta Basin hookless cactus	I	7/1/75
* * *	* * * *		
S. papyracanthus (=*Echinocactus p.*, =*Mammillaria p.*, =*Pediocactus p.*, =*Toumeya p.*).	Grama-grass cactus	I	7/1/75
* * *	* * * *		
Strombocactus spp. (=*S. disciformis* in broad sense)	Disc cactus, Top cactus	I	7/1/75
* * *	* * * *		
Family Cycadaceae:	Old World cycad family (see families Stangeriaceae and Zamiaceae for other cycads):		
* * *	* * * *		
Family Euphorbiaceae:	Spurge family:		
Euphorbia spp., except those species in App. I, and excluding non-succulent species and artificially propagated specimens of *Euphorbia trigona* cultivars.	Euphorbias	II	7/1/75
* * *	* * * *		
E. capsaintemariensis (= *E. decaryi* var. *c.*) (and its natural hybrids).		I	7/1/75
* * *	* * * *		
E. decaryi (and its natural hybrids) (see also *E. capsaintemariensis*, formerly included in *E. decaryi*).		I	7/1/75
* * *	* * * *		
Family Leguminosae (=Fabaceae):	Pea family:		
* * *	* * * *		
Pericopsis elata (including logs, sawn wood, and veneer sheets, but not other parts or derivatives).	Afrormosia	II	6/11/92

Species	Common name	Appendix	First listing date (month/day/year)
* * *	* * * *		
Family Magnoliaceae:	Magnolia family:		
Magnolia (=*Talauma*) *hodgsonii*		III (Nepal)	11/16/75
Family Meliaceae:	Mahogany family:		
* * *	* * * *		
Swietenia macrophylla (populations in the Americas, including logs, sawn wood, and veneer sheets, but not other parts or derivatives).	Bigleaf mahogany	III (Costa Rica)	11/16/95
S. mahagoni (including logs, sawn wood, and veneer sheets, but not other parts or derivatives).	Caribbean mahogany	II	6/11/92
* * *	* * * *		
Family Orchidaceae (= Apostasiaceae, Cypripediaceae) (note general exclusions and exceptions in introductory text):	Orchid family:		
* * *	* * * *		
Family Portulacaceae:	Portulaca family:		
Anacampseros spp. (including *A.* [= *Grahamia*] *australiana*, *A.* [=*G.*] *kurtzii*).		II	7/1/75
Avonia spp. (formerly a part of *Anacampseros* spp.)		II	7/1/75
* * *	* * * *		
Family Primulaceae:	Primrose family:		
Cyclamen spp., excluding artificially propagated specimens of the cultivars of *Cyclamen persicum* (except when traded as dormant tubers).	Cyclamens	II	7/1/75
Family Proteaceae:	Protea family:		
Orothamnus zeyheri	Marsh-rose	II	7/1/75
Protea odorata	Ground-rose	II	7/1/75
Family Ranunculaceae:	Buttercup family:		
Hydrastis canadensis (whole and sliced roots and parts of roots, excluding manufactured parts or derivatives such as powders, pills, extracts, tonics, teas, and confectionery).	Goldenseal	II	9/18/97
* * *	* * * *		
Family Scrophulariaceae:	Figwort family:		
Picrorhiza kurrooa (whole and sliced roots and parts of roots, excluding manufactured parts or derivatives such as powders, pills, extracts, tonics, teas, and confectionery).	Kutki	II	9/18/97
Family Stangeriaceae:	Stangeria family:		
Bowenia spp. (formerly in Zamiaceae)	Bipinnate cycads	II	2/4/77
* * *	* * * *		
Family Valerianaceae:	Valerian family:		
Nardostachys grandiflora (=*Nardostachys jatamansi* misapplied) (whole and sliced roots and parts of roots, excluding manufactured parts or derivatives such as powders, pills, extracts, tonics, teas, and confectionery).	Himalayan nard or spikenard	II	9/18/97
* * *	* * * *		

Dated: September 8, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–29849 Filed 11–10–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 110598A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the 1998 total allowable catch (TAC) of Atka mackerel in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 7, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (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 CFR part 679.

The Final 1998 Harvest Specifications of Groundfish for the BSAI established the initial TAC of Atka mackerel in the Western Aleutian District as 22,950 mt, and, through the apportionment of reserve allocated an additional 2,025 mt for a total of 24,975 mt (63 FR 12689, March 16, 1998). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC for Atka mackerel in the Western Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 23,975 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1998 TAC of Atka mackerel for the Western Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to public interest. Further delay would only result in overharvest. 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: November 5, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30229 Filed 11–6–98; 3:46 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 218
Thursday, November 12, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40643; File No. S7–26–98]

RIN 3235–AH04

Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Reproposed rule; extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending the comment period for a release reproposing books and records requirements for broker-dealers under the Securities Exchange Act of 1934 (Release No. 34–40518) which was published in the **Federal Register** on October 9, 1998 (63 FR 54404). The comment period for Release No. 34–40518, is being extended to December 9, 1998.

DATES: Comments must be received on or before December 9, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission ("Commission"), 450 Fifth Street, N.W., Mail Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rulecomments@sec.gov. Comment letters should refer to File No. S7–26–98; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, (202) 942–0131; Thomas K. McGowan, Assistant Director, (202) 942–4886; or Deana A. La Barbera, Attorney, (202) 942–0734, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On October 2, 1998, the Commission issued for comment Release No. 34–40518 soliciting comment on reproposed amendments to the Commission's books and records rules, Rules 17a–3 and 17a–4 under the Securities Exchange Act of 1934. Specifically, the reproposed amendments are designed to clarify and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. The reproposed amendments also specify the books and records that broker-dealers would have to make available at their local offices. The reproposed books and records rules are specifically designed to assist securities regulators when conducting sales practice examinations.

The Commission originally requested that comments on this reproposal be received by November 9, 1998. The Commission has recently received requests to extend the comment period and believes that extending the comment period is appropriate in order to give the public additional time to comment on the matters 1 addressed by the release. Therefore, the Commission is extending to December 9, 1998 the comment period for Release No. 34–40518 (Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934).

Dated: November 5, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30249 Filed 11–10–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, and 892

[Docket No. 98N–0009]

Medical Devices; Exemption From Premarket Notification and Reserved Devices; Class I

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its classification regulations to designate class I devices that are exempt from the premarket notification requirements, subject to certain limitations, and to designate those class I devices that remain subject to premarket notification requirements under the new statutory criteria for premarket notification requirements. The devices FDA is proposing to designate as exempt do not include class I devices that have been previously exempted by regulation from the premarket notification requirements. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDA is taking this action in order to implement a requirement of FDAMA.

DATES: Written comments by January 26, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Device and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the act (21 U.S.C. 360c), FDA must classify devices

into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the 1976 amendments (Pub. L. 94–295), as amended by the SMDA (Pub. L. 101–629), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to ensure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device, or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, part 807 (21 CFR part 807), require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is substantially equivalent within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval. Unless exempted from premarket notification requirements, persons may not market a new device under section 510(k) of the act, unless they receive a substantial equivalence order from FDA or an order reclassifying the device into class I or class II, under section 513(f) of the act.

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115). Section 206 of FDAMA, in part, added a new section 510(l) to the act. Under section 206 of the FDAMA, new section 510(l) of the act became effective on February 19, 1998. New section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. This document refers to these devices that FDA believes meet these criteria as "reserved." FDA has evaluated all class I devices to determine which device types should be subject to premarket notification requirements.

In developing the list of reserved devices, the agency considered its experience in reviewing premarket notifications for these device types, focusing on the risk inherent with the device and/or the disease being treated or diagnosed. FDA believes that the devices listed as reserved are intended for a use that is of substantial importance in preventing impairment of human health or present a potential unreasonable risk of illness or injury.

In the **Federal Register** of February 2, 1998 (63 FR 5387), FDA published a list of devices it considered reserved and that require premarket notification and a list of devices it believed met the exemption criteria in FDAMA. FDA invited comments on the February 2, 1998, notice. Responses to these comments are addressed in this document.

FDA is now proceeding to designate which devices require premarket notification, and which are exempt, subject to limitations, under notice and comment rulemaking proceedings under new section 510(l). The devices FDA is proposing to designate as requiring premarket notification include five devices that are currently exempt from premarket notification because FDA believes they meet the reserved criteria: *Quinine test system* § 862.3750 (21 CFR 862.3750), *Sulfonamide test system* § 862.3850 (21 CFR 862.3850), *Cardiopulmonary bypass accessory equipment* § 870.4200 (21 CFR 870.4200), *Ophthalmic eye shield* § 886.4750 (21 CFR 886.4750) (when made of other than plastic or aluminum), and *Electrode cable* § 890.1175 (21 CFR 890.1175). FDA also is proposing to modify the limitations language for all class I devices that are currently exempt.

II. Limitations on Exemptions

FDA believes that the generic types of class I devices listed herein, in addition to a vast majority of class I devices previously exempted, should be exempt from the premarket notification requirements under section 510(l) of the act. FDA further believes, however, that these generic device categories should be exempt only to the extent that they have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices (IVD's), for which a misdiagnosis as a result of using the device, would not be associated with high morbidity or mortality. FDA believes that certain changes to devices within a generic device type that is generally exempt may make the device intended for a use that is of substantial importance in preventing impairment of human health or may make the device present a potential unreasonable risk of illness or injury. Accordingly, devices changed in this manner would fall within the reserved criteria under section 510(l) of the act and would require premarket notification.

FDA believes that devices that have different intended uses than legally marketed devices in that generic device type present a potential unreasonable risk of illness or injury because their safety and effectiveness characteristics are unknown. Moreover, FDA believes that IVD's that are intended for a use for which a misdiagnosis, as a result of using the device, could result in high morbidity or mortality, either are intended for a use that is of substantial importance in preventing impairment of human health or present a potential unreasonable risk of illness or injury.

Accordingly, because FDA believes that devices incorporating the characteristics described previously fit within the reserved criteria under section 510(l) of the act, FDA considers any class I device to be subject to premarket notification requirements if the device: (a) Has an intended use that is different from the intended use of a legally marketed device in that generic type of device (e.g., the device is intended for a different medical purpose, or the device is intended for lay use instead of use by health care professionals); or (b) operates using a different fundamental scientific technology than that used by a legally marketed device in that generic type of device (e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an IVD detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization or amplification technology rather than culture or immunoassay technology); or (c) is an in vitro device that is intended: (1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical

devices; (2) for use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism; (3) for measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy; (4) to assess the risk of cardiovascular diseases; (5) for use in diabetes management; (6) to identify or infer the identity of a microorganism directly from clinical material; (7) for detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma; (8) for noninvasive testing as defined in § 812.3(k) (21 CFR 812.3(k); and (9) for near patient testing (point of care).

FDA is proposing to revise §§ 862.9, 864.9, and 866.9 (21 CFR 862.9, 864.9, and 866.9) to incorporate the revised limitations on exemptions for IVD's as set forth previously. FDA believes that these limitations, for the reasons described previously, are appropriate for IVD's.

FDA is also proposing to amend all current limitations on exemptions sections (21 CFR 862.9, 864.9, 866.9, 868.9, 870.9, 872.9, 874.9, 876.9, 878.9, 880.9, 882.9, 884.9, 886.9, 888.9, 890.9, and 892.9) in two ways. First the proposed limitations language clarifies that these limitations apply to class II, as well as class I devices. On January 21, 1998 (63 FR 3142), FDA published a list of exempted class II devices, subject to certain limitations. Under section 510(m)(1), as added by FDAMA, FDA was provided the authority to exempt these class II devices upon issuance of a notice. FDA intends to codify these exemptions, including the limitations described in the January 21, 1998, **Federal Register** notice, by issuance of a final rule in the near future.

The limitations language that is proposed in this document for class I devices is identical to those limitations for class II devices that became effective on January 21, 1998. Accordingly, the proposed limitations sections state that the scope of these limitations apply to class II, as well as class I devices.

Second, FDA is proposing to amend the limitations language to state that premarket notifications must be submitted for class I exempt devices if the intended use is different than the "legally marketed devices in that generic type." Currently, the limitations in § _____.9 of each classification regulation part (e.g., §§ 862.9, 864.9, etc.) states that manufacturers must submit premarket notifications for class I exempt devices when "[t]he device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent;".

FDA believes that devices that have an intended use that differs from any legally marketed device should not be exempt because those devices present a potential unreasonable risk of illness or injury because their safety and effectiveness characteristics are unknown. Manufacturers of such devices should submit a premarket notification and the agency will determine if they are substantially equivalent to other legally marketed devices in that generic device type.

In addition to the general limitations on exemptions that FDA considers applicable to all class I devices that are described previously, FDA also considers certain devices within a generic class to remain subject to the premarket notification requirements because they either are intended for a use that is of substantial importance in preventing impairment of human health or they present a potential unreasonable risk of illness or injury. For example, elsewhere in this document, FDA states that it considers liquid bandages generally to be exempt from the premarket notification requirements, but considers a subcategory of those devices, those intended for treatment of burns and other open wounds, to remain subject to the premarket notification requirements. FDA believes that liquid bandages intended for burns and other open wounds should remain subject to this requirement because they are of substantial importance in preventing impairment of human health by helping to prevent infections.

FDA also advises that an exemption from the requirement of premarket notification does not mean that the device is exempt from any other statutory or regulatory requirements, unless such exemption is explicitly provided by order or regulation.

III. Analysis of Comments to the February 2, 1998, Notice

1. One comment proposed that general purpose instruments (21 CFR 862.2140, 862.2150, 862.2160, 862.2170, 862.2250, 862.2260, 862.2300, 862.2400, 862.2500, 862.2540, 862.2560, 862.2680, 862.2700, 862.2730, and 862.2750) designed to perform clinical testing that provide results that are intended to be of "substantial importance in preventing impairment of human health, or presents a potential risk of illness or injury" should not be exempt.

If these devices are not subject to the proposed limitations in § 862.9, FDA does not believe that premarket notification is necessary because these devices do not meet the reserved criteria. Laboratory instruments, like other devices, should be regulated according to risk and the risk associated with any device is related to intended use and indications for use. As general purpose instruments, these devices make no specific claims and their safety and effectiveness can be reasonably assured by using other general controls, including design controls (if the instrument includes computer automation). If the labeling includes indications for specific analytes on the general purpose instrument, the devices would not meet the reserved criteria. Under proposed § 862.9, these devices would be subject to the limitations on exemptions and, therefore, would be not be exempt from premarket notification. Review of the system and its indications by FDA would be required through a new premarket notification.

2. One comment stated that general purpose instruments should not be exempt from premarket notification because they could be used in a physician's office or near patient testing (point of care) by nonlaboratory trained individuals resulting in major threats to patient health.

FDA believes that these concerns are addressed by the limitations on exemptions. Under § 862.9(c), devices that are "for near patient testing (point of care)" would be excluded from exemption from premarket notification.

3. One comment stated that in vitro devices "intended for use in screening or diagnosis of familial and acquired genetic disorders including inborn errors of metabolism" (21 CFR 862.1330, 862.1335, 862.1560, 862.1595, and 862.1650) and test markers for endocrine disorders (21 CFR 862.1075, 862.1080, 862.1200, 862.1245, 862.1250, 862.1260, 862.1265, 862.1270, 862.1275, 862.1280, 862.1285, 862.1300, 862.1370, 862.1385, 862.1390, 862.1395, and 862.1620) should be subject to premarket notification.

FDA agrees that the manufacturer of the IVD's described by the comment may continue to be required to submit 510(k)'s under the proposed limitations on exemptions. Proposed limitations in § 862.9 would assure that these products will be subject to premarket notification requirements if intended for use in screening or diagnosis of familial or

acquired genetic disorders or endocrine disorders and will not be subject to these requirements where the same device is not intended for these specific high risk indications. FDA, therefore, believes that these devices should be exempt from premarket notification, subject to the limitation.

4. One comment suggested that premarket notifications and review should be required for devices and tests designed to "identify or infer the identity of a microorganism directly from clinical materials," including devices classified under §§ 866.3145, 866.3375, 866.3405, 866.3480, 866.3500 and 866.3740.

FDA agrees. The comment has described one of the limitations on exemptions in the proposed rule. That limitation would apply to a number of classifications, including those cited by this comment.

5. One comment suggested that:

> Quality control material—(assayed and unassayed) ([21 CFR] 862.1660), must continue to be reviewed so that the FDA oversight function may continue to identify those manufacturers of quality control reagents whose manufacturing or testing practices could fail to ensure a product of appropriate accuracy, stability, and reliability.

FDA agrees that quality control materials are of critical importance in laboratory operations. The agency intends to continue to review assayed quality control materials because it believes they meet the reserved criteria. FDA believes unassayed quality control materials, other than those used for donor screening, are appropriate for exemption from premarket review. Unlike unassayed quality control materials, assayed quality control materials have specifically labeled performance levels that are reviewed. The performance of unassayed quality control materials that are not labeled is not assessed in the 510(k) process and is assessed by the laboratory rather than the manufacturer. Issues such as stability and reliability for unassayed quality control materials are adequately addressed by the new quality systems requirements of current good manufacturing practices. Unassayed quality control materials for donor screening, however, should not be exempt because FDA should review the labeling to ensure no specific performance claims are made.

6. One comment indicated that there is an inconsistency between the exemptions of the free tyrosine test system (21 CFR 862.1730) and the galactose test system (21 CFR 862.1310), and the limitations on exemptions that apply to a device that "(c) is a in-vitro device that is intended: * * * (2) for use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism," because all free tyrosine test systems and galactose test systems are for those uses. Another comment stated that they were confused about the exemption from premarket notification of free tyrosine test systems and the limitations on exemptions, as noted previously.

FDA agrees there was an inconsistency. Because the devices are used for screening and diagnosis of genetic disorders and are related to significant morbidity and mortality associated with the disease entities identified by abnormalities in tyrosine and galactose metabolism, FDA believes these devices fit within the reserved criteria and should be added to the list of reserved class I devices that will continue to require premarket notification submissions.

7. The Health Care Financing Administration (HCFA) raised concerns about the effect that exemptions may have on HCFA's implementation of the Clinical Laboratory Improvements Amendments (CLIA). HCFA subsequently commented that they believed that their concerns could be addressed without affecting the exemption process.

FDA intends to continue to meet with the HCFA staff to address these concerns, which relate to inspection procedures in laboratories.

8. One comment stated that FDA had previously exempted the unscented menstrual pad § 884.5435 (21 CFR 884.5435), from premarket notification, except for intralabial pads and reusable menstrual pads. The comment pointed out that the February 2, 1998, notice did not state whether these devices were reserved or exempted. The comment believes that FDA meant to exempt them and asked for clarification.

FDA has evaluated the use of intralabial pads and reusable menstrual pads and believes that they do meet the reserved criteria of FDAMA. These devices may present a potential unreasonable risk of illness or injury due to the risk of vaginal laceration, ulceration, vaginal microflora changes, and other possible adverse effects. FDA is, therefore, proposing to continue to designate the intralabial pads and reusable menstrual pads (§ 884.5435) as devices that require premarket notification.

9. One comment stated that FDA should exempt calipers because they do not meet the class I reserved criteria of FDAMA.

FDA concurs and notes that calipers were exempted on April 5, 1989 (54 FR 13826), under 21 CFR 878.4800 (manual surgical instrument for general use), subject to 21 CFR 878.9 limitations of exemptions from section 510(k) of the act.

10. Two comments expressed support for FDA's interpretation of section 510(l) of FDAMA and the agency's conclusion that devices identified in 21 CFR 874.3300(b)(1), air conduction hearing aids, meet the exemption criteria. One comment stated that "a device will lose its exemption if its intended use differs, or if it operates with a different fundamental scientific technology." The other comment added that the society he represented had concerns regarding FDA's "vigilance in insisting on adherence to FDA regulation governing the labeling and conditions for sale of hearing aids."

FDA agrees with the one comment on the scope of the limitations on exemptions. As far as FDA regulations governing the labeling, the agency believes that general controls are sufficient to regulate air-conduction hearing aids and that trade complaints will keep the agency well informed. The proposed regulation on conditions of sale of hearing aids is moving toward publication.

11. One comment responded to the February 2, 1998, notice by submitting a request for classification under section 513(g) of the act, requesting information regarding the requirements applicable to a dental water filter system with a treated filter/waterline under 21 CFR 872.6640.

FDA considers this comment a section 513(g) of the act request and will respond to the submitter in an individual response.

12. One comment requested that the 510(k) the comment submitted for a class I device classified under § 884.1040 (21 CFR 884.1040) *Viscometer for cervical mucus*, be found to be exempt from the section 510(k) requirements of the act. The comment stated that "the device is not intended for a use which is of substantial importance in preventing impairment of human health and does not present a potential unreasonable risk of illness or injury ("reserved criteria")" and should not be placed under the reserved criteria found in section 206 of FDAMA.

FDA agrees that, generally, viscometers for cervical mucus (§ 884.1040) do not meet the "reserved" criteria under FDAMA and did place this classification regulation on the list of exempted devices in the February 2, 1998, notice. Consistent with the February 2, 1998, notice, FDA is proposing to designate viscometers for cervical use exempt from 510(k) requirements. The comment's device,

however, would use a new matrix for this device. FDA believes that this represents a different intended use that would make this device subject to the limitations on exemptions and, therefore, ineligible for exemption.

13. One comment questioned the limitations on exemptions stated in the February 2, 1998, notice, particularly the limitations applicable to IVD's that are noninvasive tests. The comment criticized the use of the words "noninvasive testing" as being overly broad.

FDA disagrees with this comment. FDA believes that the limitations are necessary to assure that devices are not marketed that are significantly different from the devices exempted from premarket notification, particularly in the area of IVD's where devices are often subject to changes in intended use and conditions of use. Noninvasive testing devices should not be exempt because they almost always involve novel matrices and novel technologies. However, FDA is clarifying the phrase, "noninvasive testing," by citing the definition of "noninvasive" found in § 812.3(k) in the proposed limitations on exemptions.

14. One comment suggested that FDA should review the exemptions and reservations in existing classifications to assure that the present lists are consistent with those listed in the February 2, 1998, notice.

FDA has reviewed the existing regulations again and is proposing to reserve five currently exempted device classifications (§§ 862.3750, 862.3850, 870.4200, 886.4750, and 890.1175).

15. One comment suggested that FDA reserve 11 class I devices that FDA stated it considered exempt class I devices in the February 2, 1998, **Federal Register** notice and subject them to section 510(k) of the act requirements, including: *Cultured animal and human cells* (21 CFR 864.2280); *Microorganism differentiation and identification device* (21 CFR 866.2660); *Coxsackievirus serological reagents* (21 CFR 866.3145); *Echinococcus spp. serological reagents* (21 CFR 866.3200); *Equine encephalomyelitis virus serological reagents* (21 CFR 866.3240); *Lymphocytic choriomeningitis virus serological reagents* (21 CFR 866.3360); *Mumps virus serological reagents* (21 CFR 866.3380); *Poliovirus serological reagents* (21 CFR 866.3405); *Trichinella spiralis serological reagents* (21 CFR 866.3850); *Rickettsia serological reagents* (21 CFR 866.3500); and *Streptococcus spp. serological reagents* (21 CFR 866.3740).

FDA does not agree with the comment that these devices meet the reserved criteria. FDA notes the limitations on exemptions are specifically designed to maintain premarket review for devices used in "screening, diagnosis, or monitoring life threatening diseases" or "to infer the identity of a microorganism directly from clinical material." While section 510(k) of the act exemptions would apply to devices marketed for uses the agency would consider lower risk, such as determination of immune status or for epidemiological uses of these devices, they would not apply to devices with diagnostic claims for use in life-threatening disease states or for direct detection of a microorganism using clinical material. Therefore, FDA is proposing to designate these 11 devices as exempt from section 510(k) of the act requirements subject to the limitations on exemptions.

16. One comment suggested that the limitations on exemptions are unnecessary, confusing, and difficult to apply, especially to IVD's. This comment additionally notes "we question the basis for FDA's broad restrictions in such a specific category of devices."

FDA does not agree that the language is unnecessary, confusing, or difficult to apply. The limitations language that was in the February 2, 1998, **Federal Register** notice, and that is proposed for all class I devices modifies the limitations on exemptions currently found in § _____.9 of each device classification regulation part (e.g., §§ 862.9, 864.9, etc.) only in three ways. First, FDA has referenced class II devices to reflect that both class I and class II devices may be exempted in accordance with new section 510(l) and (m). Second, the limitations language modifies current limitations language by stating that devices are to be compared to "any legally marketed device in that generic type of device" rather than a device on the market "before May 28, 1976" or a "preamendments device to which it has been determined substantially equivalent." Third, the limitations language adds specific language relating to IVD's. The agency cannot predict all possible different intended uses or changes in fundamental scientific technologies that may significantly affect safety and effectiveness; limitations on exemptions are, therefore, in the best interest of the public health because they ensure that devices incorporating such changes will be reviewed for safety and effectiveness by the agency before they go to market.

In order to efficiently allocate review resources, the agency has developed a risk-based approach toward use of the limitations on exemptions to ensure that high-risk devices remain subject to premarket review. The limitations on exemptions continue to take into account two critical risk elements—intended use and novelty of technology.

Furthermore, FDA believes that in vitro diagnostic devices are unique because their safety and effectiveness relates primarily to the information generated by these devices rather than the direct interaction between device and patient. FDA has more fully discussed the need for these limitations earlier in this document.

17. One comment believed the limitations on exemptions required clarification as follows:

> With regard to the first limitation ("has an intended use that is different from the intended use of a legally marketed device in that generic type"), we believe that current law is clear that if a device has an intended use different than that expressed in the definition contained in the Code of Federal Regulations (CFR), such device would not be the same as the exempted device. The exemption would simply not apply to that device. However, "intended use" can encompass many different concepts that go beyond the general intended use statements that comprised the CFR definitions. There has been some controversy, for instance, over the extent to which indications for use can change intended use. Our position is that any indication for use that has been included in a previous 510(k) order of classification identifies the scope of the intended use for each exempt type of device. Minor variances of indications for use within the intended use of an exempt type of device should have no effect on the status of a 510(k) exemption.

FDA has interpreted § _____.9(a) in the limitations on exemptions under the current regulations to mean that any legally marketed device (as defined in 21 CFR 807.92(a)(3)) within a device classification regulation may serve as a predicate for another manufacturer's device and the other manufacturer's device may be exempt. FDA believes that any additional indication for use for an exempt classification device type (i.e., an indication not previously cleared) is considered a different intended use and does not meet the limitations on exemptions, and therefore, requires a new premarket notification. FDA agrees that minor variances in indications would not affect the exemption status of the classification. FDA notes that in its guidance entitled "Deciding When to Submit a 510(k) for a Change to an Existing Device," FDA states, in regard to minor variances in indications of closely related populations, "If the expansion is to a population with similar demographics, diagnosis, prognosis, comorbidity and potential for complications as the original, then a new 510(k) is not ordinarily expected."

18. On its own initiative, FDA is proposing to require premarket notification for five devices that are currently exempt from premarket notification: Quinine test system (§ 862.3750), sulfonamide test system (§ 862.3850), cardiopulmonary bypass accessory equipment (§ 870.4200), electrode cable (§ 890.1175), and ophthalmic eye shield (when made of other than plastic or aluminum) (§ 886.4750).

IV. FDA Proposal to Revoke Exemptions

A. Quinine Test System (§ 862.3750) and Sulfonamide Test System (§ 862.3850)

On June 8, 1988 (53 FR 21447), FDA published a final rule exempting the quinine test system and the sulfonamide test system from premarket notification requirements. FDA stated that it was exempting these products because it believed that premarket notification was not necessary to protect the public health.

The quinine test system is used to measure quinine, a fever-reducing and pain-relieving drug used to treat malaria, in the serum or urine. Measurements obtained by this device are used in the diagnosis and treatment of quinine overdose and malaria. If this device fails, persons who have malaria may suffer serious life-threatening consequences by not receiving the appropriate amount of quinine. Similarly, the sulfonamide test system is intended to measure sulfonamide levels which are used to treat life-threatening bacterial infections. The failure of this device may also result in the improper treatment of a life-threatening disease.

Given that these devices are used in determining the treatments for life-threatening diseases, and an inaccurate measurement of the treatment drug could result in life-threatening consequences, FDA does not believe that its previous determinations to exempt these devices from premarket notification were correct. Accordingly, FDA believes that premarket review is necessary to assure the safety and effectiveness of these devices. Moreover, FDA believes that these products meet the reserved criteria for premarket review under section 510(l), in that they are intended for a use which is of substantial importance in preventing impairment of human health, and present a potential unreasonable risk of illness or injury. Therefore, FDA is proposing to require manufacturers of these products to submit premarket notifications.

B. Ophthalmic Eye Shields (§ 886.4750)

On September 2, 1987 (52 FR 33366), FDA published a final rule classifying ophthalmic eye shields as class I devices. This generic type of device is described in § 886.4750 as "a device that consists of a plastic or aluminum eye covering intended to protect the eye or retain dressing materials in place." Plastic or aluminum eye shields rest over the forehead and cheek and do not contact the eye.

Since that classification, FDA has found eye shields that are made of collagen substantially equivalent to eye shields made out of plastic or aluminum in § 886.4750. Collagen eye shields, unlike aluminum and plastic eye shields, come in direct contact with the cornea and are indicated for relief of discomfort from post-surgical, traumatic and nontraumatic corneal conditions. Unlike aluminum and plastic eye shields, there are toxicological concerns relating to biocompatibility and dissolving time for collagen materials. In premarket reviews, FDA has examined biocompatibility and dissolving issues in determining the substantial equivalence of collagen eye shields to plastic and aluminum eye shields.

On December 7, 1994 (59 FR 63005), FDA published a final rule exempting this classification from premarket notification requirements, and quality systems requirements, except 21 CFR 820.198, with respect to complaint files. FDA erred in not amending the codified language at that time to retain premarket review and quality system requirements for collagen eye shields that had been placed in that classification. Despite the exemption language, FDA has continued to receive and review premarket notifications for eye shields made out of collagen.

Because the toxicological issues cause the product to meet the reserved criteria in that the devices are intended for a use which is of substantial importance in preventing impairment of human health or present a potential unreasonable risk of illness or injury, FDA is proposing to amend the codified text to state that collagen eye shields are not exempt from premarket notification requirements.

C. Cardiopulmonary Bypass Accessory Equipment (§ 870.4200) and Electrode Cable (§ 890.1175)

On June 12, 1989 (54 FR 25042), FDA published a final rule exempting electrode cables (§ 890.1175) and cardiopulmonary bypass accessory equipment (§ 870.4200) from premarket notification requirements. FDA received numerous reports of deaths and injuries associated with unprotected patient cables and lead wires. To address the risk of patient exposure to macro shock or electrocution due to the inappropriate connection of a patient connected cable or electrode lead wire to an alternating current power source, in the **Federal Register** of May 9, 1997 (62 FR 25477), FDA published a final rule establishing a performance standard for cables and leads. In the preamble of that final rule, FDA announced that it intended to reclassify electrode cables (§ 890.1175) and cardiopulmonary bypass accessory equipment (§ 870.4200) to class II to subject them to this performance standard. In the meantime, FDA is proposing to subject these devices to premarket review to assure that they are safe and effective, pending the rulemaking to reclassify them into class II.

V. Proposed Designation of Devices

In the **Federal Register** of February 2, 1998 (63 FR 5387), FDA issued a notice of its intent to propose to exempt a list of class I (general controls) devices from the requirement of premarket notification, subject to the limitations of exemptions. FDA has reviewed that list and other devices in light of the comments received in response to the February 2, 1998, notice and other information that has come to FDA's attention. As a result, FDA is proposing to designate as exempt certain devices that were not listed as exempt in the February 2, 1998, notice and to designate as reserved devices certain devices that were not designated as reserved in the February 2, 1998, notice or that were previously exempted by regulation.

The following devices are devices that FDA believes meet the reserved criteria in section 206 of FDAMA and, therefore, FDA is proposing to designate that they remain subject to premarket notification under new section 510(l) added to the act:

TABLE 1.—PROPOSED DESIGNATIONS OF RESERVED CLASS I DEVICES

21 CFR Section	Name of Device
862.1065	Ammonia test system
862.1113	Bilirubin (total and unbound) in the neonate test system
862.1310	Galactose test system
862.1410	Iron (non-heme) test system
862.1415	Iron-binding capacity test system
862.1495	Magnesium test system
862.1580	Phosphorous (inorganic) test system
862.1660	Quality control material (assayed and unassayed)[1]
862.1680	Testosterone test system
862.1730	Free tyrosine test system
862.1775	Uric acid test system
862.3050	Breath-alcohol test system
862.3110	Antimony test system
862.3120	Arsenic test system
862.3220	Carbon monoxide test system
862.3240	Cholinesterase test system
862.3280	Clinical toxicology control material (assayed and unassayed)[1]
862.3600	Mercury test system
862.3750	Quinine test system
862.3850	Sulfonamide test system
864.7040	Adenosine triphosphate release assay
864.8950	Russell viper venom reagent
864.9050	Blood bank supplies
864.9125	Vacuum-assisted blood collection system[2]
864.9195	Blood mixing devices and blood weighing devices[2]
866.2390	Transport culture medium
866.2560	Microbial growth monitor[3]
866.2850	Automated zone reader
866.2900	Microbiological specimen collection and transport device
866.3110	Campylobacter fetus serological reagents
866.3120	Chlamydia serological reagents
866.3235	Epstein-Barr virus serological reagents
866.3370	Mycobacterium tuberculosis immunofluorescent reagents
866.3870	Trypanosoma spp. serological reagents
870.4200	Cardiopulmonary bypass accessory equipment
872.3700	Dental mercury
872.4200	Dental handpiece and accessories
872.6250	Dental chair and accessories[4]
872.6640	Dental operative unit and accessories[5]
872.6710	Boiling water sterilizer
876.5160	Urological clamps for males[6]
878.4460	Surgeon's glove
880.5090	Liquid bandage[7]
880.5680	Pediatric position holder
880.6250	Patient examination glove
880.6375	Patient lubricant
880.6760	Protective restraint
882.1030	Ataxiagraph
882.1420	Electroencephalogram (EEG) signal spectrum analyzer
882.4060	Ventricular cannula[8]
882.4545	Shunt system implantation instrument[9]
884.2980(a)	Telethermographic system[10]
884.2982(a)	Liquid crystal thermographic system[11]
884.5435	Unscented menstrual pads (intralabial pads and reusable menstrual pads)
886.4070	Powered corneal burr[12]
886.4300	Intraocular lens guide[13]
886.4370	Keratome
886.4750	Ophthalmic eye shield (when made of other than plastic or aluminum)
888.1500	Goniometer
890.1175	Electrode cable
890.3850	Mechanical wheelchair
890.5710	Hot or cold disposable pack[14]
892.1100	Scintillation (gamma) camera
892.1110	Positron camera

[1] Meets reserved criteria for all assayed and only the unassayed when used for donor screening.
[2] Meets reserved criteria when automated.
[3] Meets reserved criteria when automated blood culturing systems.
[4] Meets reserved criteria when dental chair with the operative unit.
[5] Meets reserved criteria when it is not an accessory to the unit.
[6] Meets reserved criteria when devices are for internal use or are used for females.
[7] Meets reserved criteria for uses other than as a skin protectant.
[8] Meets reserved criteria if not made of surgical grade stainless steel.

[9] Meets reserved criteria if not made of surgical stainless steel.
[10] Meets reserved criteria if an adjunct use system.
[11] Meets reserved criteria if nonelectrically powered and AC-powered adjunctive system.
[12] Meets reserved criteria if for use other than for removing rust rings.
[13] Meets reserved criteria if used as folders and injectors for soft or foldable intraocular lenses (IOL's).
[14] Meets reserved criteria if indicated for use on infants.

FDA is proposing to amend the regulations to designate the following devices as exempt from premarket notification because FDA believes that they do not meet the reserved criteria under section 206 of the FDAMA that adds new section 510(l) of the act:

TABLE 2.—PROPOSED DESIGNATIONS OF EXEMPTED CLASS I DEVICES

21 CFR Section	Name of Device
862.1030	Alanine amino transferase (ALT/SGPT) test system
862.1040	Aldolase test system
862.1060	Delta-aminolevulinic acid test system
862.1075	Androstenedione test system
862.1080	Androsterone test system
862.1095	Ascorbic acid test system
862.1115	Urinary bilirubin and its conjugates (nonquantitative) test system
862.1130	Blood volume test system
862.1135	C-peptides of proinsulin test system
862.1165	Catecholamines (total) test system
862.1175	Cholesterol (total) test
862.1180	Chymotrypsin test system
862.1185	Compound S (11-deoxycortisol) test system
862.1195	Corticoids test system
862.1200	Corticosterone test system
862.1240	Cystine test system
862.1245	Dehydroepiandrosterone (free and sulfate) test system
862.1250	Desoxycorticosterone test system
862.1260	Estradiol test system
862.1265	Estriol test system
862.1270	Estrogens (total, in pregnancy) test system
862.1275	Estrogens (total, nonpregnancy) test system
862.1280	Estrone test system
862.1285	Etiocholanolone test system
862.1300	Follicle-stimulating hormone test system
862.1325	Gastrin test system
862.1330	Globulin test system
862.1335	Glucagon test system
862.1360	Gamma-glutamyl transpeptidase and isoenzymes test system
862.1370	Human growth hormone test system
862.1375	Histidine test system
862.1385	17-Hydroxycorticosteroids (17-ketogenic steroids) test system
862.1390	5-Hydroxyindole acetic acid/serotonin test system
862.1395	17-Hydroxyprogesterone test system
862.1400	Hydroxyproline test system
862.1405	Immunoreactive insulin test system
862.1430	17-Ketosteroids test system
862.1435	Ketones (nonquantitative) test system
862.1450	Lactic acid test system
862.1460	Leucine aminopeptidase test system
862.1465	Lipase test system
862.1475	Lipoprotein test system
862.1485	Luteinizing hormone test system
862.1500	Malic dehydrogenase test system
862.1505	Mucopolysaccharides (nonquantitative) test system
862.1510	Nitrite (nonquantitative) test system
862.1520	5'-Nucleotidase test system
862.1530	Plasma oncometry test system
862.1535	Ornithine carbamyl transferase test system
862.1540	Osmolality test system
862.1542	Oxalate test system
862.1550	Urinary pH (nonquantitative) test system
862.1560	Urinary phenylketones (nonquantitative) test system
862.1570	Phosphohexose isomerase test system
862.1590	Porphobilinogen test system
862.1595	Porphyrins test system
862.1605	Pregnanediol test system
862.1610	Pregnanetriol test system
862.1615	Pregnenolone test system
862.1620	Progesterone test system
862.1625	Prolactin (lactogen) test system

TABLE 2.—PROPOSED DESIGNATIONS OF EXEMPTED CLASS I DEVICES—Continued

21 CFR Section	Name of Device
862.1630	Protein (fractionation) test system
862.1645	Urinary protein or albumin (nonquantitative) test system
862.1650	Pyruvate kinase test system
862.1655	Pyruvic acid test system
862.1660	Quality control material (assayed and unassayed)[1]
862.1705	Triglyceride test system
862.1725	Trypsin test system
862.1780	Urinary calculi (stones) test system
862.1785	Urinary urobilinogen (nonquantitative) test system
862.1790	Uroporphyrin test system
862.1795	Vanilmandelic acid test system
862.1805	Vitamin A test system
862.1820	Xylose test system
862.2140	Centrifugal chemistry analyzer for clinical use
862.2150	Continuous flow sequential multiple chemistry analyzer for clinical use
862.2160	Discrete photometric chemistry analyzer for clinical use
862.2170	Micro chemistry analyzer for clinical use
862.2250	Gas liquid chromatography system for clinical use
862.2260	High pressure liquid chromatography system for clinical use
862.2270	Thin-layer chromatography system for clinical use
862.2300	Colorimeter, photometer, or spectrophotometer for clinical use
862.2400	Densitometer/scanner (integrating, reflectance, TLC, or radiochromatogram) for clinical use
862.2500	Enzyme analyzer for clinical use
862.2540	Flame emission photometer for clinical use
862.2560	Fluorometer for clinical use
862.2680	Microtitrator for clinical use
862.2700	Nephelometer for clinical use
862.2730	Osmometer for clinical use
862.2750	Pipetting and diluting system for clinical use
862.2850	Atomic absorption spectrophotometer for clinical use
862.2860	Mass spectrometer for clinical
862.2900	Automated urinalysis system
862.3280	Clinical toxicology control material (assayed and unassayed)[1]
864.2280	Cultured animal and human cells
864.3250	Specimen transport and storage container
864.5240	Automated blood cell diluting apparatus
864.6150	Capillary blood collection tube
864.9125	Vacuum-assisted blood collection system[2]
864.9185	Blood grouping view box
864.9195	Blood mixing devices and blood weighing devices[2]
864.9225	Cell-freezing apparatus and reagents for in vitro diagnostic use
864.9275	Blood bank centrifuge for in vitro diagnostic use
864.9320	Copper sulphate solution for specific gravity determinations
864.9750	Heat-sealing device
866.2660	Microorganism differentiation and identification device
866.3040	Aspergillus spp. serological reagents
866.3140	Corynebacterium spp. serological reagents
866.3145	Coxsackievirus serological reagents
866.3200	Echinococcus spp. serological reagents
866.3240	Equine encephalomyelitis virus serological reagents
866.3355	Listeria spp. serological reagents
866.3360	Lymphocytic choriomeningitis virus serological reagents
866.3375	Mycoplasma spp. serological reagents
866.3380	Mumps virus serological reagents
866.3405	Poliovirus serological reagents
866.3480	Respiratory syncytial virus serological reagents
866.3500	Rickettsia serological reagents
866.3600	Schistosoma spp. serological reagents
866.3680	Sporothrix schenckii serological reagents
866.3740	Streptococcus spp. serological reagents
866.3850	Trichinella spiralis serological reagents
866.5060	Prealbumin immunological test system
866.5065	Human allotypic marker immunological test system
866.5160	Beta-globulin immunological test system
866.5200	Carbonic anhydrase B and C immunological test
866.5330	Factor XIII, A, S, immunological test system[3]
866.5400	Alpha-globulin immunological test system
866.5420	Alpha-1-glycoproteins immunological test system
866.5425	Alpha-2-glycoproteins immunological test system
866.5430	Beta-2-glycoprotein I immunological test system
866.5440	Beta-2-glycoprotein III immunological test system

TABLE 2.—PROPOSED DESIGNATIONS OF EXEMPTED CLASS I DEVICES—Continued

21 CFR Section	Name of Device
866.5560	Lactic dehydrogenase immunological test system
866.5570	Lactoferrin immunological test system
866.5590	Lipoprotein X immunological test system
866.5715	Plasminogen immunological test system
866.5735	Prothrombin immunological test system[4]
866.5765	Retinol-binding protein immunological test system
866.5890	Inter-alpha trypsin inhibitor immunological test system
868.1910	Esophageal stethoscope
868.5620	Breathing mouthpiece
868.5640	Medicinal nonventilatory nebulizer (atomizer)
868.5675	Rebreathing device
868.5700	Nonpowered oxygen tent
868.6810	Tracheobronchial suction catheter
872.3275(a)(1)	Dental cement (zinc oxide-eugenol)
872.3400(b)(1)	Karaya and sodium borate with or without acacia denture adhesive (less than 12 percent sodium borate by weight)
872.3540(b)(1)	OTC denture cushion or pad[5]
872.6300	Rubber dam[6]
872.6390	Dental floss
874.1070	Short increment sensitivity index (SISI) adapter
874.1100	Earphone cushion for audiometric testing
874.1500	Gustometer
874.1800	Air or water caloric stimulator
874.1925	Toynbee diagnostic tube
874.3300(b)(1)	Hearing aid[6]
874.3540	Prosthesis modification instrument for ossicular replacement surgery
874.4100	Epistaxis balloon
874.4420	Ear, nose, and throat manual surgical instrument
874.5300	Ear, nose, and throat examination and treatment unit
874.5550	Powered nasal irrigator
874.5840	Antistammering device
876.5160	Urological clamp for males[7]
876.5210	Enema kit
876.5250(b)(2)	Urine collector and accessories[8]
876.5980(b)(2)	Gastrointestinal tube and accessories[9]
878.3250	External facial fracture fixation appliance
878.3910	Noninflatable extremity splint
878.3925	Plastic surgery kit and accessories
878.4040	Surgical apparel[10]
878.4100	Organ bag
878.4200	Introduction/drainage catheter and accessories
878.4320	Removable skin clip
878.4680	Nonpowered, single patient, portable suction apparatus
878.4760	Removable skin staple
878.4820	Surgical instrument motors and accessories/attachments
878.4960	Operating tables and accessories and operating chairs and accessories
880.5090	Liquid bandage[11]
880.5270	Neonatal eye pad
880.5420	Pressure infusor for an I.V. bag
882.1200	Two-point discriminator
882.1500	Esthesiometer
882.1750	Pinwheel
882.4060	Ventricular cannula[12]
882.4545	Shunt system implantation instrument[13]
882.4650	Neurosurgical suture needle
882.4750	Skull punch[14]
884.1040	Viscometer for cervical mucus
886.1780	Retinoscope[15]
886.1940	Tonometer sterilizer
886.4070	Powered corneal burr[16]
886.4300	Intraocular lens guide[17]
886.5850	Sunglasses (nonprescription
890.5180	Manual patient rotation bed
890.5710	Hot or cold disposable pack[18]
892.1300	Nuclear rectilinear scanner
892.1320	Nuclear uptake probe
892.1330	Nuclear whole body scanner
892.1350	Nuclear scanning bed
892.1410	Nuclear electrocardiograph synchronizer
892.1890	Radiographic film illuminator
892.1910	Radiographic grid
892.1960	Radiographic intensifying screen

TABLE 2.—PROPOSED DESIGNATIONS OF EXEMPTED CLASS I DEVICES—Continued

21 CFR Section	Name of Device
892.1970	Radiographic ECG/respirator, synchronizer
892.2010	Medical image storage device
892.2020	Medical image communication device
892.5650	Manual radionuclide applicator system
892.6500	Personnel protective shield

[1] Exemption is limited to unassayed material, except when used in conjunction with donor screening tests.
[2] Exemption is limited to manual devices.
[3] This exemption should not be confused with 21 CFR 864.7290.
[4] This exemption should not be confused with 21 CFR 864.5425 or 864.7750.
[5] This exemption does not apply to class III OTC denture cushion as described in 21 CFR 872.3540(b)(2).
[6] Exemption does not include rubber dam intended for use in preventing transmission of sexually transmitted diseases through oral sex. Those devices are classified as condoms in § 884.5300.
[7] Exemption is limited to air-conduction hearing aids.
[8] Exemption does not include devices for internal use or devices used for females.
[9] Exemption does not include class II devices for a urine collector and accessories intended to be connected to an indwelling catheter as described in 21 CFR 876.5250(b)(1).
[10] Exemption is limited to dissolvable nasogastric feed tube guide for the nasogastric tube in § 876.5980(b)(2) (21 CFR 876.5980(b)(2)). Exemption does not include class II devices as described in § 876.5980(b)(1).
[11] Exemption is limited to class I category other than surgical gowns and surgical masks.
[12] Exemption is limited to uses as a skin protectant.
[13] Exemption is limited to devices made of surgical grade stainless steel.
[14] Exemption is limited to devices made of surgical grade stainless steel.
[15] Exemption should not be confused with 21 CFR 882.4305.
[16] Exemption is limited to class I battery-powered devices.
[17] Exemption is limited to rust ring removal.
[18] Exemption does not apply if used as folders and injectors for soft or foldable IOL's.

VI. Differences Between the February 2, 1998, List of Exempt and Reserved Devices, and List of Exempt and Reserved Devices Proposed Herein

As stated previously, FDA issued a notice on February 2, 1998, in the **Federal Register** that listed the devices that it considered exempt from 510(k) requirements (exempt), and those it considered subject to 510(k) requirements (reserved) under new section 510(l). This document proposes to designate the reserved and exempt lists by notice and comment rulemaking. Although most of the device categories listed in the February 2, 1998, notice, and the device categories listed in this proposal are identical, there are a few differences. These differences are described in the following lists:

TABLE 3.—PROPOSED RESERVED DEVICES THAT ARE CURRENTLY EXEMPTED BY REGULATION

21 CFR Section	Name of Device
862.3750	Quinine test system
862.3850	Sulfonamide test system
870.4200	Cardiopulmonary bypass accessory equipment
886.4750	Ophthalmic eye shield (when made of other than plastic or aluminum)
890.1175	Electrode cable

TABLE 4.—ADDITIONAL PROPOSED RESERVED DEVICES NOT CONSIDERED RESERVED UNDER THE FEBRUARY 2, 1998, FEDERAL REGISTER NOTICE

21 CFR Section	Name of Device
862.3050	Breath alcohol test system
872.3700	Dental Mercury
884.5435	Unscented menstrual pads (intralabial pads and reusable menstrual pads)

TABLE 5.—ADDITIONAL PROPOSED EXEMPTED DEVICES NOT CONSIDERED EXEMPTED IN THE FEBRUARY 2, 1998, FEDERAL REGISTER NOTICE

21 CFR Section	Name of Device
864.3250	Specimen transport and storage container (OTC)
864.6150	Capillary blood collection tube
872.3275(a)(1)	Dental cement (zinc oxide-eugenol)
872.3540(b)(1)	OTC dental cushion or pad (wax impregnated cotton cloth)
872.6300	Rubber dam
874.1100	Earphone cushion for audiometric testing
874.3540	Prosthesis modification instrument for ossicular replacement surgery
874.4420	Ear, nose, and throat manual surgical instrument
876.5980(b)(2)	Gastrointestinal tube and accessories (dissolvable nasogastric feed tube guide for the nasogastric tube)

TABLE 5.—ADDITIONAL PROPOSED EXEMPTED DEVICES NOT CONSIDERED EXEMPTED IN THE FEBRUARY 2, 1998, FEDERAL REGISTER NOTICE—Continued

21 CFR Section	Name of Device
878.3250	External facial fracture appliance
878.3910	Noninflatable extremity splint
878.3925	Plastic surgery kit and accessories
878.4100	Organ bag
882.1200	Two point discriminator
882.1500	Esthesiometer
882.1750	Pinwheel
892.1350	Nuclear scanning bed
892.2010	Medical image storage device
892.2020	Medical image communication device
892.6500	Personnel protective shield

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that these proposed actions are of a type that do not individually or cumudatave a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages distributive impacts and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires, if a rule has a significant impact on a substantial number of small entities, agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. In most cases, the proposed rule would reduce a regulatory burden by exempting manufacturers of devices subject to the rule from the requirements of premarket notification.

FDA is proposing to require premarket notification for 5 devices that were previously exempt from premarket notification. These devices are as follows:

A. Cardiopulmonary Bypass Accessory Equipment (§ 870.4200) and Electrode Cable (§ 890.1175).

In the **Federal Register** of May 9, 1997 (62 FR 25477), FDA published a final rule to establish a performance standard for electrode lead wires and patient cables. In the preamble to that rule (62 FR 25485), FDA noted that three unprotected cable and electrode lead wire systems are included in class I devices, and, as such, are not subject to a mandatory performance standard. These include the two devices listed previously and the AC-powered goniometer (21 CFR 888.1500). FDA further stated that, because of the degree of health risk, the agency intended to reclassify the devices into class II so that they would be subject to the mandatory performance standard. The cardiopulmonary bypass accessory equipment and the electrode cable were already exempt from premarket notification; the AC-powered goniometer was not. Because of the degree of health risk, FDA believes that these devices should be designated as reserved devices.

FDA also included in the preamble of the May 9, 1997, rule an assessment of the economic impact of imposition of the standard including an assessment of its effect on small businesses. In this assessment, FDA included the three class I devices to which the rule would later apply. FDA concluded that the rule would not have a significant economic impact on a substantial number of small entities. This rule would only impose the additional requirement of submitting a premarket notification for these devices. Because the premarket notification would consist primarily of a certification of compliance with the cables and leads standard, FDA believes that this requirement will not be a significant burden.

B. Ophthalmic Eye Shield (When Made of Other than Plastic or Aluminum) (§ 886.4750).

There are six manufacturers of ophthalmic eye shields other than those made of plastic or aluminum registered with FDA. FDA anticipates that any premarket notifications that are necessary for these devices would be simple. FDA would be primarily interested in the biocompatibility of the devices. FDA estimates that preparation of such a premarket notification would cost no more than $5,000.

C. Quinine Test System (§ 862.3750) and Sulfonamide test system (§ 862.3850).

At this time, there are no firms registered for manufacture of these devices.

In light of the previous discussion under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Comments

Interested persons may, on or before January 26, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Parts 862, 868, 870, 872, 874, 876, 878, 880, 882, 884, 888, and 890

Medical devices.

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

21 CFR Part 866

Biologics, Laboratories, Medical devices.

21 CFR Part 886

Medical devices, Ophthalmic goods and services.

21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA is proposing to amend 21 CFR parts 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, and 892 as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

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

2. Section 862.9 is revised to read as follows:

§ 862.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

3. Section 862.1030 is amended by revising paragraph (b) to read as follows:

§ 862.1030 Alanine amino transferase (ALT/SGPT) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

4. Section 862.1040 is amended by revising paragraph (b) to read as follows:

§ 862.1040 Aldolase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

5. Section 862.1060 is amended by revising paragraph (b) to read as follows:

§ 862.1060 Delta-aminolevulinic acid test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

6. Section 862.1075 is amended by revising paragraph (b) to read as follows:

§ 862.1075 Androstenedione test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

7. Section 862.1080 is amended by revising paragraph (b) to read as follows:

§ 862.1080 Androsterone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

8. Section 862 1095 is amended by revising paragraph (b) to read as follows:

§ 862.1095 Ascorbic acid test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

9. Section 862.1115 is amended by revising paragraph (b) to read as follows:

§ 862.1115 Urinary bilirubin and its conjugates (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

10. Section 862.1130 is amended by revising paragraph (b) to read as follows:

§ 862.1130 Blood volume test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

11. Section 862.1135 is amended by revising paragraph (b) to read as follows:

§ 862.1135 C-peptides of proinsulin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

12. Section 862.1165 is amended by revising paragraph (b) to read follows:

§ 862.1165 Catecholamines (total) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

13. Section 862.1175 is amended by revising paragraph (b) to read as follows:

§ 862.1175 Cholesterol (total) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

14. Section 862.1180 is amended by revising paragraph (b) to read as follows:

§ 862.1180 Chymotrypsin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

15. Section 862.1185 is amended by revising paragraph (b) to read as follows:

§ 862.1185 Compound S (11-deoxycortisol) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

16. Section 862.1195 is amended by revising paragraph (b) to read as follows:

§ 862.1195 Corticoids test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

17. Section 862.1200 is amended by revising paragraph (b) to read as follows:

§ 862.1200 Corticosterone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

18. Section 862.1240 is amended by revising paragraph (b) to read as follows:

§ 862.1240 Cystine test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

19. Section 862.1245 is amended by revising paragraph (b) to read as follows:

§ 862.1245 Dehydroepiandrosterone (free and sulfate) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

20. Section 862.1250 is amended by revising paragraph (b) to read as follows:

§ 862.1250 Desoxycorticosterone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

21. Section 862.1260 is amended by revising paragraph (b) to read as follows:

§ 862.1260 Estradiol test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

22. Section 862.1265 is amended by revising paragraph (b) to read as follows:

§ 862.1265 Estriol test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

23. Section 862.1270 is amended by revising paragraph (b) to read as follows:

§ 862.1270 Estrogens (total, in pregnancy) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

24. Section 862.1275 is amended by revising paragraph (b) to read as follows:

§ 862.1275 Estrogens (total, nonpregnancy) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

25. Section 862.1280 is amended by revising paragraph (b) to read as follows:

§ 862.1280 Estrone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

26. Section 862.1285 is amended by revising paragraph (b) to read as follows:

§ 862.1285 Etiocholanolone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

27. Section 862.1300 is amended by revising paragraph (b) to read as follows:

§ 862.1300 Follicle-stimulating hormone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

28. Section 862.1325 is amended by revising paragraph (b) to read as follows:

§ 862.1325 Gastrin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

29. Section 862.1330 is amended by revising paragraph (b) to read as follows:

§ 862.1330 Globulin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

30. Section 862.1335 is amended by revising paragraph (b) to read as follows:

§ 862.1335 Glucagon test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in

subpart E of part 807 of this chapter subject to § 862.9.

31. Section 862.1360 is amended by revising paragraph (b) to read as follows:

§ 862.1360 Gamma-glutamyl transpeptidase and isoenzymes test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

32. Section 862.1370 is amended by revising paragraph (b) to read as follows:

§ 862.1370 Human growth hormone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

33. Section 862.1375 is amended by revising paragraph (b) to read as follows:

§ 862.1375 Histidine test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

34. Section 862.1385 is amended by revising paragraph (b) to read as follows:

§ 862.1385 17-Hydroxycorticosteroids (17-ketogenic steroids) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

35. Section 862.1390 is amended by revising paragraph (b) to read as follows:

§ 862.1390 5-Hydroxyindole acetic acid/serotonin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

36. Section 862.1395 is amended by revising paragraph (b) to read as follows:

§ 862.1395 17-Hydroxyprogesterone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

37. Section 862.1400 is amended by revising paragraph (b) to read as follows:

§ 862.1400 Hydroxyproline test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

38. Section 862.1405 is amended by revising paragraph (b) to read as follows:

§ 862.1405 Immunoreactive insulin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

39. Section 862.1430 is amended by revising paragraph (b) to read as follows:

§ 862.1430 17-Ketosteroids test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

40. Section 862.1435 is amended by revising paragraph (b) to read as follows:

§ 862.1435 Ketones (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

41. Section 862.1450 is amended by revising paragraph (b) to read as follows:

§ 862.1450 Lactic acid test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

42. Section 862.1460 is amended by revising paragraph (b) to read as follows:

§ 862.1460 Leucine aminopeptidase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

43. Section 862.1465 is amended by revising paragraph (b) to read as follows:

§ 862.1465 Lipase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

44. Section 862.1475 is amended by revising paragraph (b) to read as follows:

§ 862.1475 Lipoprotein test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

45. Section 862.1485 is amended by revising paragraph (b) to read as follows:

§ 862.1485 Luteinizing hormone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

46. Section 862.1500 is amended by revising paragraph (b) to read as follows:

§ 862.1500 Malic dehydrogenase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

47. Section 862.1505 is amended by revising paragraph (b) to read as follows:

§ 862.1505 Mucopolysaccharides (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

48. Section 862.1510 is amended by revising paragraph (b) to read as follows:

§ 862.1510 Nitrite (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

49. Section 862.1520 is amended by revising paragraph (b) to read as follows:

§ 862.1520 5'-Nucleotidase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

50. Section 862.1530 is amended by revising paragraph (b) to read as follows:

§ 862.1530 Plasma oncometry test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

51. Section 862.1535 is amended by revising paragraph (b) to read as follows:

§ 862.1535 Ornithine carbamyl transferase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

52. Section 862.1540 is amended by revising paragraph (b) to read as follows:

§ 862.1540 Osmolality test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

53. Section 862.1542 is amended by revising paragraph (b) to read as follows:

§ 862.1542 Oxalate test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

54. Section 862.1550 is amended by revising paragraph (b) to read as follows:

§ 862.1550 Urinary pH (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

55. Section 862.1560 is amended by revising paragraph (b) to read as follows:

§ 862.1560 Urinary phenylketones (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

56. Section 862.1570 is amended by revising paragraph (b) to read as follows:

§ 862.1570 Phosphohexose isomerase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

57. Section 862.1590 is amended by revising paragraph (b) to read as follows:

§ 862.1590 Porphobilinogen test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

58. Section 862.1595 is amended by revising paragraph (b) to read as follows:

§ 862.1595 Porphyrins test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

59. Section 862.1605 is amended by revising paragraph (b) to read as follows:

§ 862.1605 Pregnanediol test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

60. Section 862.1610 is amended by revising paragraph (b) to read as follows:

§ 862.1610 Pregnanetriol test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

61. Section 862.1615 is amended by revising paragraph (b) to read as follows:

§ 862.1615 Pregnenolone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

62. Section 862.1620 is amended by revising paragraph (b) to read as follows:

§ 862.1620 Progesterone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

63. Section 862.1625 is amended by revising paragraph (b) to read as follows:

§ 862.1625 Prolactin (lactogen) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

64. Section 862.1630 is amended by revising paragraph (b) to read as follows:

§ 862.1630 Protein (fractionation) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

65. Section 862.1645 is amended by revising paragraph (b) to read as follows:

§ 862.1645 Urinary protein or albumin (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

66. Section 862.1650 is amended by revising paragraph (b) to read as follows:

§ 862.1650 Pyruvate kinase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

67. Section 862.1655 is amended by revising paragraph (b) to read as follows:

§ 862.1655 Pyruvic acid test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

68. Section 862.1660 is amended by revising paragraph (b) to read as follows:

§ 862.1660 Quality control material (assayed and unassayed).

* * * * *

(b) *Classification.* Class I (general controls). Except when used in donor screening tests, unassayed material is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

69. Section 862.1705 is amended by revising paragraph (b) to read as follows:

§ 862.1705 Triglyceride test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

70. Section 862.1725 is amended by revising paragraph (b) to read as follows:

§ 862.1725 Trypsin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

71. Section 862.1780 is amended by revising paragraph (b) to read as follows:

§ 862.1780 Urinary calculi (stones) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

72. Section 862.1785 is amended by revising paragraph (b) to read as follows:

§ 862.1785 Urinary urobilinogen (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

73. Section 862.1790 is amended by revising paragraph (b) to read as follows:

§ 862.1790 Uroporphyrin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

74. Section 862.1795 is amended by revising paragraph (b) to read as follows:

§ 862.1795 Vanillmandelic acid test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

75. Section 862.1805 is amended by revising paragraph (b) to read as follows:

§ 862.1805 Vitamin A test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

76. Section 862.1820 is amended by revising paragraph (b) to read as follows:

§ 862.1820 Xylose test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

77. Section 862.2140 is amended by revising paragraph (b) to read as follows:

§ 862.2140 Centrifugal chemistry analyzer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

78. Section 862.2150 is amended by revising paragraph (b) to read as follows:

§ 862.2150 Continuous flow sequential multiple chemistry analyzer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

79. Section 862.2160 is amended by revising paragraph (b) to read as follows:

§ 862.2160 Discrete photometric chemistry analyzer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

80. Section 862.2170 is amended by revising paragraph (b) to read as follows:

§ 862.2170 Micro chemistry analyzer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

81. Section 862.2250 is amended by revising paragraph (b) to read as follows:

§ 862.2250 Gas liquid chromatography system for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

82. Section 862.2260 is amended by revising paragraph (b) to read as follows:

§ 862.2260 High pressure liquid chromatography system for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

83. Section 862.2270 is amended by revising paragraph (b) to read as follows:

§ 862.2270 Thin-layer chromatography system for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9. Particular components of TLC systems, i.e., the thin-layer chromatography apparatus, TLC atomizer, TLC developing tanks, and TLC ultraviolet light, are exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

84. Section 862.2300 is amended by revising paragraph (b) to read as follows:

§ 862.2300 Colorimeter, photometer, or spectrophotometer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

85. Section 862.2400 is amended by revising paragraph (b) to read as follows:

§ 862.2400 Densitometer/scanner (integrating, reflectance, TLC, or radiochromatogram) for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

86. Section 862.2500 is amended by revising paragraph (b) to read as follows:

§ 862.2500 Enzyme analyzer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

87. Section 862.2540 is amended by revising paragraph (b) to read as follows:

§ 862.2540 Flame emission photometer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

88. Section 862.2560 is amended by revising paragraph (b) to read as follows:

§ 862.2560 Fluorometer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

89. Section 862.2680 is amended by revising paragraph (b) to read as follows:

§ 862.2680 Microtitrator for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

90. Section 862.2700 is amended by revising paragraph (b) to read as follows:

§ 862.2700 Nephelometer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

91. Section 862.2730 is amended by revising paragraph (b) to read as follows:

§ 862.2730 Osmometer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

92. Section 862.2750 is amended by revising paragraph (b) to read as follows:

§ 862.2750 Pipetting and diluting system for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

93. Section 862.2850 is amended by revising paragraph (b) to read as follows:

§ 862.2850 Atomic absorption spectrophotometer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

94. Section 862.2860 is amended by revising paragraph (b) to read as follows:

§ 862.2860 Mass spectrometer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

95. Section 862.2900 is amended by revising paragraph (b) to read as follows:

§ 862.2900 Automated urinalysis system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

96. Section 862.3280 is amended by revising paragraph (b) to read as follows:

§ 862.3280 Clinical toxicology control material.

* * * * *

(b) *Classification.* Class I (general controls). Except when used in donor screening, unassayed material is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

97. Section 862.3750 is amended by revising paragraph (b) to read as follows:

§ 862.3750 Quinine test system.

* * * * *

(b) *Classification.* Class I.

98. Section 862.3850 is amended by revising paragraph (b) to read as follows:

§ 862.3850 Sulfonamide test system.

* * * * *

(b) *Classification.* Class I.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

99. The authority citation for 21 CFR part 864 continues to read as follows:

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

100. Section 864.9 is revised to read as follows:

§ 864.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

101. Section 864.2280 is amended by revising paragraph (b) to read as follows:

§ 864.2280 Cultured animal and human cells.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

102. Section 864.3250 is amended by revising paragraph (b) to read as follows:

§ 864.3250 Specimen transport and storage container.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter

subject to § 864.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

103. Section 864.5240 is amended by revising paragraph (b) to read as follows:

§ 864.5240 Automated blood cell diluting apparatus.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

104. Section 864.6150 is amended by revising paragraph (b) to read as follows:

§ 864.6150 Capillary blood collection tube.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

105. Section 864.9125 is amended by revising paragraph (b) to read as follows:

§ 864.9125 Vacuum-assisted blood collection system.

* * * * *

(b) *Classification.* Class I (general controls). The manual device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

106. Section 864.9185 is amended by revising paragraph (b) to read as follows:

§ 864.9185 Blood grouping view box.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

107. Section 864.9195 is amended by revising paragraph (b) to read as follows:

§ 864.9195 Blood mixing devices and blood weighing devices.

* * * * *

(b) *Classification.* Class I (general controls). The manual device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

108. Section 864.9225 is amended by revising paragraph (b) to read as follows:

§ 864.9225 Cell-freezing apparatus and reagents for in vitro diagnostic use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

109. Section 864.9275 is amended by revising paragraph (b) to read as follows:

§ 864.9275 Blood bank centrifuge for in vitro diagnostic use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

110. Section 864.9320 is amended by revising paragraph (b) to read as follows:

§ 864.9320 Copper sulfate solution for specific gravity determinations.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

111. Section 864.9750 is amended by revising paragraph (b) to read as follows:

§ 864.9750 Heat-sealing device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

112. The authority citation for 21 CFR part 866 continues to read as follows:

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

113. Section 866.9 is revised to read as follows:

§ 866.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

114. Section 866.2660 is amended by revising paragraph (b) to read as follows:

§ 866.2660 Microorganism differentiation and identification device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

115. Section 866.3040 is amended by revising paragraph (b) to read as follows:

§ 866.3040 Aspergillus spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

116. Section 866.3140 is amended by revising paragraph (b) to read as follows:

§ 866.3140 Corynebacterium spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

117. Section 866.3145 is amended by revising paragraph (b) to read as follows:

§ 866.3145 Coxsackievirus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

118. Section 866.3200 is amended by revising paragraph (b) to read as follows:

§ 866.3200 Echinococcus spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

119. Section 866.3240 is amended by revising paragraph (b) to read as follows:

§ 866.3240 Equine encephalomyelitis virus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

120. Section 866.3355 is amended by revising paragraph (b) to read as follows:

§ 866.3355 Listeria spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

121. Section 866.3360 is amended by revising paragraph (b) to read as follows:

§ 866.3360 Lymphocytic choriomeningitis virus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

122. Section 866.3375 is amended by revising paragraph (b) to read as follows:

§ 866.3375 Mycoplasma spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

123. Section 866.3380 is amended by revising paragraph (b) to read as follows:

§ 866.3380 Mumps virus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

124. Section 866.3405 is amended by revising paragraph (b) to read as follows:

§ 866.3405 Poliovirus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

125. Section 866.3480 is amended by revising paragraph (b) to read as follows:

§ 866.3480 Respiratory syncytial virus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

126. Section 866.3500 is amended by revising paragraph (b) to read as follows:

§ 866.3500 Rickettsia serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

127. Section 866.3600 is amended by revising paragraph (b) to read as follows:

§ 866.3600 Schistosoma spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

128. Section 866.3680 is amended by revising paragraph (b) to read as follows:

§ 866.3680 Sporothrix schenckii serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

129. Section 866.3740 is amended by revising paragraph (b) to read as follows:

§ 866.3740 Streptococcus spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

130. Section 866.3850 is amended by revising paragraph (b) to read as follows:

§ 866.3850 Trichinella spiralis serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

131. Section 866.5060 is amended by revising paragraph (b) to read as follows:

§ 866.5060 Prealbumin immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

132. Section 866.5065 is amended by revising paragraph (b) to read as follows:

§ 866.5065 Human allotypic marker immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

133. Section 866.5160 is amended by revising paragraph (b) to read as follows:

§ 866.5160 Beta-globulin immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

134. Section 866.5200 is amended by revising paragraph (b) to read as follows:

§ 866.5200 Carbonic anhydrase B and C immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

135. Section 866.5330 is amended by revising paragraph (b) to read as follows:

§ 866.5330 Factor XIII, A, S, immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9. This exemption does not apply to factor deficiency tests classified under § 864.7290 of this chapter.

136. Section 866.5400 is amended by revising paragraph (b) to read as follows:

§ 866.5400 Alpha-globulin immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

137. Section 866.5420 is amended by revising paragraph (b) to read as follows:

§ 866.5420 Alpha-1-glycoproteins immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

138. Section 866.5425 is amended by revising paragraph (b) to read as follows:

§ 866.5425 Alpha-2-glycoproteins immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

139. Section 866.5430 is amended by revising paragraph (b) to read as follows:

§ 866.5430 Beta-2-glycoprotein I immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

140. Section 866.5440 is amended by revising paragraph (b) to read as follows:

§ 866.5440 Beta-2-glycoprotein III immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

141. Section 866.5560 is amended by revising paragraph (b) to read as follows:

§ 866.5560 Lactic dehydrogenase immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

142. Section 866.5570 is amended by revising paragraph (b) to read as follows:

§ 866.5570 Lactoferrin immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

143. Section 866.5590 is amended by revising paragraph (b) to read as follows:

§ 866.5590 Lipoprotein X immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

144. Section 866.5715 is amended by revising paragraph (b) to read as follows:

§ 866.5715 Plasminogen immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

145. Section 866.5735 is amended by revising paragraph (b) to read as follows:

§ 866.5735 Prothrombin immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9. This exemption does not apply to multipurpose systems for in vitro coagulation studies classified under § 864.5425 of this chapter or prothrombin time tests classified under § 864.7750 of this chapter.

146. Section 866.5765 is amended by revising paragraph (b) to read as follows:

§ 866.5765 Retinol-binding protein immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

147. Section 866.5890 is amended by revising paragraph (b) to read as follows:

§ 866.5890 Inter-alpha trypsin inhibitor immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

PART 868—ANESTHESIOLOGY DEVICES

148. The authority citation for 21 CFR part 868 continues to read as follows:

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

149. Section 868.9 is revised to read as follows:

§ 868.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific

technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

150. Section 868.1910 is amended by revising paragraph (b) to read as follows:

§ 868.1910 Esophageal stethoscope.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

151. Section 868.5620 is amended by revising paragraph (b) to read as follows:

§ 868.5620 Breathing mouthpiece.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

152. Section 868.5640 is amended by revising paragraph (b) to read as follows:

§ 868.5640 Medicinal nonventilatory nebulizer (atomizer).

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

153. Section 868.5675 is amended by revising paragraph (b) to read as follows:

§ 868.5675 Rebreathing device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

154. Section 868.5700 is amended by revising paragraph (b) to read as follows:

§ 868.5700 Nonpowered oxygen tent.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

155. Section 868.6810 is amended by revising paragraph (b) to read as follows:

§ 868.6810 Tracheobronchial suction catheter.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

PART 870—CARDIOVASCULAR DEVICES

156. The authority citation for 21 CFR part 870 continues to read as follows:

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

157. Section 870.9 is revised to read as follows:

§ 870.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

158. Section 870.4200 is amended by revising paragraph (b) to read as follows:

§ 870.4200 Cardiopulmonary bypass accessory equipment.

* * * * *

(b) *Classification.* Class I.

PART 872—DENTAL DEVICES

159. The authority citation for 21 CFR part 872 continues to read as follows:

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

160. Section 872.9 is revised to read as follows:

§ 872.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

161. Section 872.3275 is amended by revising paragraph (a)(2) to read as follows:

§ 872.3275 Dental cement.

(a) * * *

(2) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

* * * * *

162. Section 872.3400 is amended by revising paragraph (b)(1) to read as follows:

§ 872.3400 Karaya and sodium borate with or without acacia denture adhesive.

* * * * *

(b) *Classification.* (1) Class I (general controls) if the device contains less than 12 percent by weight of sodium borate. The class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

* * * * *

163. Section 872.3540 is amended by revising paragraph (b)(1) to read as follows:

§ 872.3540 OTC denture cushion or pad.

* * * * *

(b) *Classification.* (1) Class I if the device is made of wax-impregnated cotton cloth that the patient applies to the base or inner surface of a denture before inserting the denture into the mouth. The device is intended to be discarded following 1 day's use. The class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

* * * * *

164. Section 872.6300 is amended by revising paragraph (b) to read as follows:

§ 872.6300 Rubber dam and accessories.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

165. Section 872.6390 is amended by revising paragraph (b) to read as follows:

§ 872.6390 Dental floss.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

166. Section 872.6640 is amended by revising paragraph (b) to read as follows:

§ 872.6640 Dental operative unit and accessories.

* * * * *

(b) *Classification.* Class I (general controls). Except for dental operative unit, accessories are exempt from premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

PART 874—EAR, NOSE, AND THROAT DEVICES

167. The authority citation for 21 CFR part 874 continues to read as follows:

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

168. Section 874.9 is revised to read as follows:

§ 874.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within

that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

169. Section 874.1070 is amended by revising paragraph (b) to read as follows:

§ 874.1070 Short increment sensitivity index (SISI) adapter.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

170. Section 874.1100 is amended by revising paragraph (b) to read as follows:

§ 874.1100 Earphone cushion for audiometric testing.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

171. Section 874.1500 is amended by revising paragraph (b) to read as follows:

§ 874.1500 Gustometer.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

172. Section 874.1800 is amended by revising paragraph (b) to read as follows:

§ 874.1800 Air or water caloric stimulator.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

173. Section 874.1925 is amended by revising paragraph (b) to read as follows:

§ 874.1925 Toynbee diagnostic tube.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

174. Section 874.3300 is amended by revising paragraph (b) to read as follows:

§ 874.3300 Hearing aid.

* * * * *

(b) *Classification.* (1) Class I (general controls) for the air-conduction hearing aid. The air-conduction hearing aid is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

(2) Class II for the bone-conduction hearing aid.

175. Section 874.3540 is amended by revising paragraph (b) to read as follows:

§ 874.3540 Prosthesis modification instrument for ossicular replacement surgery.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

176. Section 874.4100 is amended by revising paragraph (b) to read as follows:

§ 874.4100 Epistaxis balloon.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

177. Section 874.4420 is amended by revising paragraph (b) to read as follows:

§ 874.4420 Ear, nose, and throat manual surgical instrument.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

178. Section 874.5300 is amended by revising paragraph (b) to read as follows:

§ 874.5300 Ear, nose, and throat examination and treatment unit.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

179. Section 874.5550 is amended by revising paragraph (b) to read as follows:

§ 874.5550 Powered nasal irrigator.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

180. Section 874.5840 is amended by revising paragraph (b) to read as follows:

§ 874.5840 Antistammering device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

181. The authority citation for 21 CFR part 876 continues to read as follows:

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

182. Section 876.9 is revised to read as follows:

§ 876.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

183. Section 876.5160 is amended by revising paragraph (b) to read as follows:

§ 876.5160 Urological clamp for males.

* * * * *

(b) *Classification.* Class I (general controls). Except when intended for internal use or use on females, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9.

184. Section 876.5210 is amended by revising paragraph (b) to read as follows:

§ 876.5210 Enema kit.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9. The device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

185. Section 876.5250 is amended by revising paragraph (b)(2) to read as follows:

§ 876.5250 Urine collector and accessories.

* * * * *

(b) * * *

(2) Class I (general controls) for a urine collector and accessories not intended to be connected to an indwelling catheter. The class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to the general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

186. Section 876.5980 is amended by revising paragraph (b)(2) to read as follows:

§ 876.5980 Gastrointestinal tube and accessories.

* * * * *

(b) * * *

(2) Class I (general controls) for the dissolvable nasogastric feed tube guide for the nasogastric tube. The class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9.

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

187. The authority citation for 21 CFR part 878 continues to read as follows:

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

188. Section 878.9 is revised to read as follows:

§ 878.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or

effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

189. Section 878.3250 is amended by revising paragraph (b) to read as follows:

§ 878.3250 External facial fracture fixation appliance.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

190. Section 878.3910 is amended by revising paragraph (b) to read as follows:

§ 878.3910 Noninflatable extremity splint.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

191. Section 878.3925 is amended by revising paragraph (b) to read as follows:

§ 878.3925 Plastic surgery kit and accessories.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

192. Section 878.4040 is amended by revising paragraph (b) to read as follows:

§ 878.4040 Surgical apparel.

* * * * *

(b) *Classification.* (1) Class II (special controls) for surgical gowns and surgical masks.

(2) Class I (general controls) for surgical apparel other than surgical gowns and surgical masks. The class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

193. Section 878.4100 is amended by revising paragraph (b) to read as follows:

§ 878.4100 Organ bag.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

194. Section 878.4200 is amended by revising paragraph (b) to read as follows:

§ 878.4200 Introduction/drainage catheter and accessories.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

195. Section 878.4320 is amended by revising paragraph (b) to read as follows:

§ 878.4320 Removable skin clip.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

196. Section 878.4680 is amended by revising paragraph (b) to read as follows:

§ 878.4680 Nonpowered, single patient, portable suction apparatus.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

197. Section 878.4760 is amended by revising paragraph (b) to read as follows:

§ 878.4760 Removable skin staple.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

198. Section 878.4820 is amended by revising paragraph (b) to read as follows:

§ 878.4820 Surgical instrument motors and accessories/attachments.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

199. Section 878.4960 is amended by revising paragraph (b) to read as follows:

§ 878.4960 Operating tables and accessories and operating chairs and accessories.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

200. The authority citation for 21 CFR part 880 continues to read as follows:

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

201. Section 880.9 is revised to read as follows:

§ 880.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS); chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

202. Section 880.5090 is amended by revising paragraph (b) to read as follows:

§ 880.5090 Liquid bandage.

* * * * *

(b) Classification. Class I (general controls). When used only as a skin protectant, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

203. Section 880.5270 is amended by revising paragraph (b) to read as follows:

§ 880.5270 Neonatal eye pad.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

204. Section 880.5420 is amended by revising paragraph (b) to read as follows:

§ 880.5420 Pressure infusor for an I.V. bag.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

PART 882—NEUROLOGICAL DEVICES

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

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

206. Section 882.9 is revised to read as follows:

§ 882.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

207. Section 882.1200 is amended by revising paragraph (b) to read as follows:

§ 882.1200 Two-point discriminator.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

208. Section 882.1500 is amended by revising paragraph (b) to read as follows:

§ 882.1500 Esthesiometer.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

209. Section 882.1750 is amended by revising paragraph (b) to read as follows:

§ 882.1750 Pinwheel.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9.

210. Section 882.4060 is amended by revising paragraph (b) to read as follows:

§ 882.4060 Ventricular cannula.

* * * * *

(b) *Classification.* Class I (general controls). When made only of surgical grade stainless steel, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9.

211. Section 882.4545 is amended by revising paragraph (b) to read as follows:

§ 882.4545 Shunt system implantation instrument.

* * * * *

(b) *Classification.* Class I (general controls). When made only of surgical grade stainless steel, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9.

212. Section 882.4650 is amended by revising paragraph (b) to read as follows:

§ 882.4650 Neurosurgical suture needle.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9.

213. Section 882.4750 is amended by revising paragraph (b) to read as follows:

§ 882.4750 Skull punch.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9. This exemption does not apply to powered compound cranial drills, burrs, trephines, and their accessories classified under § 882.4305.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

214. The authority citation for 21 CFR part 884 continues to read as follows:

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

215. Section 884.9 is revised to read as follows:

§ 884.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

216. Section 884.1040 is amended by revising paragraph (b) to read as follows:

§ 884.1040 Viscometer for cervical mucus.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 884.9.

PART 886—OPHTHALMIC DEVICES

217. The authority citation for 21 CFR part 886 continues to read as follows:

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

218. Section 886.9 is revised to read as follows:

§ 886.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

219. Section 886.1780 is amended by revising paragraph (b) to read as follows:

§ 886.1780 Retinoscope.

* * * * *

(b) *Classification.* (1) Class II (special controls) for the AC-powered device.

(2) Class I (general controls) for the battery-powered device. The class I battery-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9. The battery-powered device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

220. Section 886.1940 is amended by revising paragraph (b) to read as follows:

§ 886.1940 Tonometer sterilizer.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

221. Section 886.4070 is amended by revising paragraph (b) to read as follows:

§ 886.4070 Powered corneal burr.

* * * * *

(b) *Classification.* Class I (general controls). When intended only for rust ring removal, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

222. Section 886.4300 is amended by revising paragraph (b) to read as follows:

§ 886.4300 Intraocular lens guide.

* * * * *

(b) *Classification.* Class I (general controls). Except when used as folders or injectors for soft or foldable intraocular lenses, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

223. Section 886.4750 is amended by revising paragraph (b) to read as follows:

§ 886.4750 Ophthalmic eye shield.

* * * * *

(b) *Classification.* Class I (general controls). When made only of plastic or aluminum, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9. When made only of plastic or aluminum, the devices are exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

224. Section 886.5850 is amended by revising paragraph (b) to read as follows:

§ 886.5850 Sunglasses (nonprescription).

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

PART 888—ORTHOPEDIC DEVICES

225. The authority citation for 21 CFR part 888 continues to read as follows:

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

226. Section 888.9 is revised to read as follows:

§ 888.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the

device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

PART 890—PHYSICAL MEDICINE DEVICES

227. The authority citation for 21 CFR part 890 continues to read as follows:

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

228. Section 890.9 is revised to read as follows:

§ 890.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

229. Section 890.1175 is amended by revising paragraph (b) to read as follows:

§ 890.1175 Electrode cable.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9. The devices are exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

230. Section 890.5180 is amended by revising paragraph (b) to read as follows:

§ 890.5180 Manual patient rotation bed.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9.

231. Section 890.5710 is amended by revising paragraph (b) to read as follows:

§ 890.5710 Hot or cold disposable pack.

* * * * *

(b) *Classification.* Class I (general controls). Except when intended for use on infants, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9.

PART 892—RADIOLOGY DEVICES

232. The authority citation for 21 CFR part 892 continues to read as follows:

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

233. Section 892.9 is revised to read as follows:

§ 892.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

234. Section 892.1300 is amended by revising paragraph (b) to read as follows:

§ 892.1300 Nuclear rectilinear scanner.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

235. Section 892.1320 is amended by revising paragraph (b) to read as follows:

§ 892.1320 Nuclear uptake probe.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

236. Section 892.1330 is amended by revising paragraph (b) to read as follows:

§ 892.1330 Nuclear whole body scanner.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

237. Section 892.1350 is amended by revising paragraph (b) to read as follows:

§ 892.1350 Nuclear scanning bed.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

238. Section 892.1410 is amended by revising paragraph (b) to read as follows:

§ 892.1410 Nuclear electrocardiograph synchronizer.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

239. Section 892.1890 is amended by revising paragraph (b) to read as follows:

§ 892.1890 Radiographic film illuminator.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

240. Section 892.1910 is amended by revising paragraph (b) to read as follows:

§ 892.1910 Radiographic grid.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

241. Section 892.1960 is amended by revising paragraph (b) to read as follows:

§ 892.1960 Radiographic intensifying screen.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

242. Section 892.1970 is amended by revising paragraph (b) to read as follows:

§ 892.1970 Radiographic ECG/respirator synchronizer.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

243. Section 892.2010 is amended by revising paragraph (b) to read as follows:

§ 892.2010 Medical image storage device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

244. Section 892.2020 is amended by revising paragraph (b) to read as follows:

§ 892.2020 Medical image communications device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

245. Section 892.5650 is amended by revising paragraph (b) to read as follows:

§ 892.5650 Manual radionuclide applicator system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

246. Section 892.6500 is amended by revising paragraph (b) to read as follows:

§ 892.6500 Personnel protective shield.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

Dated: October 14, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–29855 Filed 11–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA NUMBER 137E]

RIN 1117–AA31

Exemption of Chemical Mixtures

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed Rule; Extension of Comment Period.

SUMMARY: The DEA is extending the comment period on the **Federal Register** notice of proposed rulemaking entitled "Exemption of Chemical Mixtures" published on September 16, 1998 (63 FR 49506).

DATES: The period for public comment that was to close on November 16, 1998 will be extended to February 15, 1999.

SUPPLEMENTARY INFORMATION: The DEA published a notice of proposed rulemaking (63 FR 49506) to implement those portions of the Domestic Chemical Diversion Control Act of 1993 [Pub. L. 103–200] that exempt from regulation under the Controlled Substances Act certain chemical mixtures that contain regulated chemicals. The proposed regulations identified those mixtures, or categories of mixtures, that will be automatically exempt from regulation and defined an application process that can be used to exempt chemical mixtures that do not meet the criteria for automatic exemption. On October 15, 1998, Hyman, Phelps & McNamara, P.C. submitted a formal request that the comment period be extended. Upon consideration of this request, an extension is provided that allows ample time for interested persons to evaluate and consider all aspects of this proposal and respond accordingly. Therefore, the comment period for the proposed rule is extended to February 15, 1999. Comments must be received by the DEA on or before this date.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Acting Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

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

Dated: November 5, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–30283 Filed 11–10–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI63

Eligibility Criteria for the Montgomery GI Bill—Active Duty and Other Miscellaneous Issues

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). The proposed amendments reflect statutory changes which set forth new eligibility criteria that will allow additional individuals to establish eligibility for educational assistance under the Montgomery GI Bill—Active Duty (MGIB); and also reflect statutory provisions concerning the approval of courses leading to alternative teacher certification. This document also would make changes for the purpose of clarification.

DATES: Comments must be received on or before January 11, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AI63." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: This document proposes to amend subparts D, G, K, and L of 38 CFR part 21, which concern educational assistance under various educational programs administered by VA. The proposed amendments would implement provisions of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201) and various provisions of the Veterans' Benefits Improvements Act of 1996 (Pub. L. 104–275).

Formerly, officers could not participate in the Montgomery GI Bill—Active Duty (MGIB) if they were commissioned after December 31, 1976, under a program of educational assistance under 10 U.S.C. 2107 (Senior Reserve Officer Training Corps (SROTC) Scholarship Program). A provision of Pub. L. 104–201 states that this restriction no longer applies to an individual who enters active duty after September 30, 1996, and received no more than $2,000 for each year of participation in the SROTC program of educational assistance. The regulations governing eligibility for the MGIB would be revised to reflect the new statutory provision.

Individuals who entered active duty during the period from January 1, 1977, through June 30, 1985, were given the opportunity to participate in the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). Provisions of Pub. L. 104–275 permitted certain VEAP participants on active duty to elect to participate in the MGIB instead. The military pay of an individual who made the election will be reduced by $1,200, or, if not so reduced, VA will collect the amount from the individual. The regulations governing eligibility for the MGIB would be revised to reflect the new statutory provisions, including our view that the applicable statutory provisions require that an individual who made an election to participate in

the MGIB would not become entitled until he or she has provided the Government the $1,200.

Certain full-time, Active Guard Reserve (AGR) service and full-time National Guard service by a member of the Army National Guard or the Air National Guard in the member's status as a member of the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard qualifies as active duty for purposes of establishing eligibility to participate in the MGIB. Before the enactment of Pub. L. 104–275, the MGIB statute required that, in order to participate, the individual must have first performed qualifying active duty after November 29, 1989. A provision of Pub. L. 104–275 permitted certain members of the Army National Guard and the Air National Guard to elect to become entitled to the MGIB based on AGR or ADS service first performed after June 30, 1985. The regulations governing eligibility for the MGIB would be revised to reflect the new statutory provision.

Since neither of the groups of individuals may receive benefits until the required $1,200 is collected, the regulations governing the effective dates of awards of educational assistance would be amended to establish effective dates for benefits based on elections to receive benefits and receipt of the $1,200 and of any other evidence necessary to establish a valid election.

An individual is prohibited by statute (38 U.S.C. 3033(c)) from using the same period of service to establish eligibility for both the MGIB and the Montgomery GI Bill—Selected Reserve (MGIB–SR). Some of those individuals now eligible to elect to become entitled to the MGIB by having certain AGR and ADS service qualify as active duty, may have previously used that service to establish eligibility for the MGIB–SR. If such an individual received educational assistance under the MGIB–SR and now makes such an election, he or she would have no service to support the educational assistance previously received under the MGIB–SR. Consequently, it is necessary for VA to terminate that assistance retroactively to the first date of training for which the individual received educational assistance. VA is proposing to revise 38 CFR 21.7635 accordingly. The procedures for repayment of amounts paid under the MGIB–SR are set forth at 38 CFR 1.900 through 1.994.

Beginning in November 1994, a pilot program was authorized by statute that required certain entities offering alternative teacher certification courses to be considered to be educational institutions. Since courses must be offered by educational institutions in order to be approved by State approving agencies for VA training, this provision allowed State approving agencies to approve these courses. This program was scheduled to expire on September 30, 1996. Pub. L. 104–275 made the pilot program permanent. Various regulations that indicated that the pilot program was scheduled to end on September 30, 1996, would be revised accordingly.

This document would make other changes for the purpose of clarity.

The restatements of statute and statutory interpretations contained in this proposed rule would be applied from the effective dates of the statutory provisions. The dates of application for the provisions covered by this document would be as follows:

October 1, 1996: 38 CFR 21.7020(b)(1), new § 21.7042(f)(3) and newly redesignated § 21.7042(f)(4)

October 9, 1996: §§ 21.4135(b); 21.5021(d)(3); 21.5058(b); 21.5130(d); 21.7020(b)(29); all changes to § 21.7042 except new § 21.7042(f)(3) and newly redesignated § 21.7042(f)(4); §§ 21.7045; 21.7050; 21.7131; 21.7520(b); and 21.7635

The Department of Defense (DOD) is issuing this proposed rule jointly with VA insofar as it relates to VEAP. This program is funded by DOD and administered by VA. DOD, the Department of Transportation (Coast Guard), and VA are jointly issuing this proposed rule insofar as it relates to the Montgomery GI Bill—Selected Reserve. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this proposed rule is issued solely by VA.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), a collection of information is set forth in the proposed 38 CFR 21.7131(l) and (m). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to the Office of Management and Budget (OMB) for its review of the proposed collection of information.

OMB assigns a control number to each collection of information it approves. VA 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.

Comments on the proposed collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AI63."

Title: Evidence Submitted to Validate an Election to Receive Educational Assistance under the Montgomery GI Bill—Active Duty.

Summary of collection of information: The proposed § 21.7131(l) and (m) would provide that a veteran may be required to submit evidence to validate an election to receive educational assistance under the MGIB and that the date of VA's receipt of the evidence may have an effect on the effective date of an award of educational assistance. The type of evidence submitted would be copies of records that most individuals would keep, such as a discharge certificate or a document that shows that $1,200 was withheld from military pay. There would be no recordkeeping requirement.

Description of need for information and proposed use of information: VA and DOD conduct a computer match that allows VA access to data contained in the Defense Manpower Data Center (DMDC) about applicants for the MGIB. Those data are necessary to establish their eligibility for educational assistance. Normally, the information contained in DMDC records would be sufficient for VA to decide if an individual who claims to have become eligible for educational assistance under the proposed § 21.7042(a)(7), 21.7042(b)(10), or 21.7045(d) is, in fact, eligible. However, VA realizes that there may be an occasional error in entering the pertinent data into the computer records, so that it may appear that an individual is ineligible when he or she is actually eligible. The proposed § 21.7131(l) and (m) recognize this by allowing for the possibility that an individual may have to submit additional evidence to show that he or she is eligible for educational assistance. VA will use the evidence submitted to validate an individual's eligibility for educational assistance under the MGIB.

Description of likely respondents: Individuals seeking to establish eligibility for educational assistance under the MGIB.

Estimated number of respondents: 56 per year.

Estimated frequency of responses: Once per respondent.

Estimated average burden per collection: 20 minutes. This is VA's estimate of the average time it would take for respondents to find or obtain, if necessary, this additional evidence, and to copy and mail this evidence to VA.

Estimated total annual reporting and recordkeeping burden: 19 hours.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to submit comments to VA on the proposed rule.

Regulatory Flexibility Act

The Secretary of Defense, Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Adoption of this proposed rule would not cause educational institutions to make changes in their activities and would have minuscule monetary effects, if any. Pursuant to 5 U.S.C. 605(b), this proposed rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs affected by this proposed rule are 64.117, 64.120, and 64.124. This proposed rule would also affect the Montgomery GI Bill—Selected Reserve program, which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 12, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Normand G. Lezy,

Lieutenant General, USAF

Deputy Assistant Secretary (Military Personnel Policy), Department of Defense.

Approved: July 28, 1998.

T. J. Barrett, RADM, USCG,

Assistant Commandant for Human Resources, Acting.

For the reasons set forth above, 38 CFR part 21 (subparts D, G, K, and L) is proposed to be amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. In § 21.4135, paragraph (b) is added to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(b) *Election to receive educational assistance under the Montgomery GI Bill—Active Duty.* If a veteran makes a valid election, as provided in § 21.7045(d), to receive educational assistance under the Montgomery GI Bill—Active Duty in lieu of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program, the discontinuance date of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program shall be the date on which the election was made pursuant to procedures described in § 21.7045(d)(2).

(Authority: 38 U.S.C. 3018C(c)(1))

* * * * *

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

3. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a), ch. 32, unless otherwise noted.

§ 21.5021 [Amended]

4. In § 21.5021, paragraph (d)(3) is amended by removing "during the period beginning on November 2, 1994, and ending on September 30, 1996,".

5. In § 21.5058, the authority citation for paragraph (b) is revised to read as follows:

§ 21.5058 Resumption of participation.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3018A, 3018B, 3018C, 3202(l), 3222)

§ 21.5130 [Amended]

6. In § 21.5130, paragraph (b) is amended by removing "(except paragraph (b))".

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

7. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

8. In § 21.7020, paragraph (b)(29)(iii) is amended by removing "during the period beginning on November 2, 1994, and ending on September 30, 1996,"; the authority citation for paragraph (b)(29) is revised; paragraph (b)(1)(iv) is added immediately after the authority citation for paragraph (b)(1)(iii); and paragraph (b)(44) is added immediately after the authority citation for paragraph (b)(43), to read as follows:

§ 21.7020 Definitions.

* * * * *

(b) * * *

(1) * * *

(iv) When referring to individuals who, before June 30, 1985, had never served on active duty (as that term is defined by § 3.6(b) of this chapter) and who made the election described in § 21.7042(a)(7) or (b)(10), the term *active duty* when used in this subpart includes full-time National Guard duty under title 32, U.S. Code first performed after June 30, 1985, by a member of the Army National Guard of the United States or the Air National Guard of the United States for the purpose of organizing, administering, recruiting, instructing, or training the National Guard.

(Authority: 38 U.S.C. 3002(7); sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

(29) * * *

(Authority: 38 U.S.C. 3002(8), 3452(c))

* * * * *

(44) *Date of election.* The term *date of election* means:

(i) For an election that must be made in the form and manner determined by the Secretary of Defense, the date determined by the Secretary of Defense; and

(ii) For an election that must be submitted to VA, the date VA receives the written election.

(Authority: 38 U.S.C. 3018C(a)(5); sec. 107(b), Pub. L. 104–275, 110 Stat. 3329–3330)

9. In § 21.7042, paragraph (f)(3) is redesignated as paragraph (f)(4); newly redesignated paragraph (f)(4) is amended by removing "Paragraph (f)(2) of this section does" and adding, in its place, "Paragraphs (f)(2) and (f)(3) of this section do", by removing "Coast" and adding, in its place, "United States Coast", and by removing "Reserve" and adding, in its place, "Senior Reserve"; paragraph (a)(7) is added immediately after the authority citation for paragraph (a)(6); paragraph (b)(10) is added immediately after the authority citation for paragraph (b)(9); new paragraph (f)(3) and paragraph (g)(5) are added; and paragraphs (f)(2), (g)(1), and (g)(4) are revised to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(a) * * *

(7) An individual whose active duty meets the definition of that term found in § 21.7020(b)(1)(iv), and who wishes to become entitled to basic educational assistance, must have elected to do so before July 9, 1997. For an individual electing while on active duty, this election must have been made in the manner prescribed by the Secretary of Defense. For individuals not on active duty, this election must have been submitted in writing to VA.

(Authority: Sec. 107(b), Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

(b) * * *

(10) An individual whose active duty meets the definition of that term found in § 21.7020(b)(1)(iv), and who wishes to become entitled to basic educational assistance, must have elected to do so before July 9, 1997. For an individual electing while on active duty, this election must have been made in the manner prescribed by the Secretary of Defense. For individuals not on active duty, this election must have been submitted in writing to VA.

(Authority: Sec. 107(b), Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

(f) * * *

(2) Except as provided in paragraph (f)(4) of this section, an individual is not eligible for educational assistance under 38 U.S.C. chapter 30 if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces upon graduation from:

(i) The United States Military Academy;

(ii) The United States Naval Academy;

(iii) The United States Air Force Academy; or (iv) The United States Coast Guard Academy.

(3) Except as provided in paragraph (f)(4) of this section, an individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon completion of a program of educational assistance under 10 U.S.C. 2107 is not eligible for educational assistance under 38 U.S.C. chapter 30, if the individual enters on active duty—

(i) Before October 1, 1996; or

(ii) After September 30, 1996, and while participating in that program received more than $2,000 for each year of participation.

(Authority: 38 U.S.C. 3011(c), 3012(d))

* * * * *

(g) *Reduction in basic pay.* (1) Except as elsewhere provided in this paragraph, the basic pay of any individual described in paragraph (a), (b), or (c) of this section shall be reduced by $100 for each of the first 12 months that the individual is entitled to basic pay. If the individual does not serve 12 months, it shall be reduced by $100 for each month that the individual is entitled to basic pay.

* * * * *

(4) The individual who makes the election described in either paragraph (a)(7) or (b)(10) of this section shall have his or her basic pay reduced by $1,200 in a manner prescribed by the Secretary of Defense. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, VA will collect from the individual an amount equal to the difference between $1,200 and the total amount of the reductions described in this paragraph. If the basic pay of an individual is not reduced and/or VA does not collect from the individual an amount equal to the difference between $1,200 and the total amount of the pay reductions, that individual is ineligible for educational assistance.

(Authority: Sec. 107(b)(3), Pub. L. 104–275, 110 Stat. 3329–3330)

(5) If through administrative error, or other reason—

(i) The basic pay of an individual described in paragraph (a)(1) through (a)(6), (b)(1) through (b)(9), (c), or (d) of this section is not reduced as provided in paragraph (g)(1) or (g)(2) of this section, the failure to make the reduction will have no effect on his or her eligibility, but will negate or reduce the individual's entitlement to educational assistance under 38 U.S.C. chapter 30 determined as provided in § 21.7073 for an individual described in paragraph (c) of this section;

(ii) The basic pay of an individual, described in paragraph (a)(7) or (b)(10) of this section, is not reduced as described in paragraph (g)(4) of this section and/or VA does not collect from the individual an amount equal to the difference between $1,200 and the total amount of the pay reductions described in paragraph (g)(4) of this section, that individual is ineligible for educational assistance. If the failure to reduce the individual's basic pay and/or the failure to collect from the individual was due to administrative error on the part of the Federal government or any of its employees, the individual may be considered for equitable relief depending on the facts and circumstances of the case. See § 2.7 of this chapter.

(Authority: 38 U.S.C. 3002, 3011, 3012, 3018)

10. In § 21.7045, the heading and introductory text are revised; and paragraph (d) is added, to read as follows:

§ 21.7045 Eligibility based on involuntary separation, voluntary separation, or participation in the Post-Vietnam Era Veterans' Educational Assistance Program.

An individual who fails to meet the eligibility requirements found in § 21.7042 or § 21.7044 nevertheless will be eligible for educational assistance as provided in this subpart if he or she meets the requirements of paragraphs (a) and (b) of this section; paragraphs (a) and (c) of this section; or paragraph (d) of this section.

* * * * *

(d) *Alternate eligibility requirements for participants in the Post-Vietnam Era Veterans' Educational Assistance Program.*—(1) *Making an election.* To receive educational assistance under the authority of paragraph (d) of this section, a veteran or servicemember must—

(i) Have elected to do so before October 9, 1997;

(ii) Have been a participant (as that term is defined in § 21.5021(e)) in the Post-Vietnam Era Veterans' Educational Assistance Program on October 9, 1996;

(iii) Have been on active duty on October 9, 1996; and

(iv) Receive an honorable discharge.

(2) *Election.* The election to receive educational assistance payable under this subpart in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program is irrevocable. The election must have been made before October 9, 1997, pursuant to procedures provided by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or provided by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(3) *$1,200 collection.* An individual who has made the election described in paragraph (d)(2) of this section shall have his or her basic pay reduced by $1,200 in a manner prescribed by the Secretary of Defense. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, VA will collect from the individual an amount equal to the difference between $1,200 and the total amount of the reductions. Reduction in basic pay by $1,200 or collection of $1,200 is a precondition to establishing eligibility.

(4) *Educational requirement.* Before applying for benefits that may be payable as the result of making a valid election, an individual must have—

(i) Completed the requirements of a secondary school diploma (or equivalency certificate); or

(ii) Successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree.

(Authority: 38 U.S.C. 3018C)

11. In § 21.7050, paragraph (a)(1) is amended by removing "paragraph (b)" and adding, in its place, "paragraphs (b) and (c)", and by removing "of this part"; paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively; the authority citation for paragraph (b) is revised; and a new paragraph (c) is added to read as follows:

§ 21.7050 Ending dates of eligibility.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3031(e))

(c) *Time limit for some members of the Army and Air National Guard.* (1) If a veteran or servicemember establishes eligibility for the educational assistance payable under this subpart by making the election described in § 21.7042(a)(7) or (b)(10), VA will not provide basic educational assistance or supplemental educational assistance to that veteran or servicemember beyond 10 years from the later of:

(i) The date determined by paragraph (a) or (b) of this section, as appropriate; or

(ii) The effective date of the election described in § 21.7042(a)(7) or (b)(10), as appropriate.

(2) The effective date of election is the date on which the election is made pursuant to the procedures described in § 21.7045(d)(2).

(Authority: Sec. 107(b)(3), Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

12. In § 21.7131, paragraphs (l) and (m) are added to read as follows:

§ 21.7131 Commencing dates.

* * * * *

(l) *Eligibility established under § 21.7042(a)(7) or (b)(10).* This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under either § 21.7042(a)(7) or (b)(10). The commencing date of an award of educational assistance for such a veteran or servicemember is the latest of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section;

(2) The date of election provided that—

(i) The servicemember initiated the $1,200 reduction in basic pay required by § 21.7042(g)(4) and the full $1,200 was collected through that pay reduction;

(ii) Within one year of the date of election VA both collected from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay, as provided in § 21.7042(g)(4), and received from the veteran any other evidence necessary to establish a valid election; or

(iii) VA received from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay and any other evidence necessary to establish a valid election within one year of the date VA requested the money and/or the evidence.

(3) If applicable, the date VA collected the difference between $1,200 and the amount by which the servicemember's military pay was reduced, if the provisions of paragraph (l)(2)(ii) or (l)(2)(iii) of this section are not met; or

(4) If applicable, the date VA collected $1,200, if the provisions of paragraph (l)(2)(ii) or (l)(2)(iii) of this section are not met.

(Authority: 38 U.S.C. 5113; sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

(m) *Eligibility established under § 21.7045(d).* This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under § 21.7045(d). The commencing date of an award of educational assistance for such a veteran or servicemember is the latest of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section;

(2) The date of election provided that—

(i) The servicemember initiated the $1,200 reduction in basic pay required by § 21.7045(d)(3) and the full $1,200 was collected through that pay reduction;

(ii) Within one year of the date of election VA both collected from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay, as provided in § 21.7045(d)(3), and received from the veteran any other evidence necessary to establish a valid election; or

(iii) VA received from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay and any other evidence necessary to establish a valid election within one year of the date VA requested the money and/or the evidence.

(3) If applicable, the date VA collected the difference between $1,200 and the amount by which the servicemember's military pay was reduced, if the provisions of paragraph (m)(2)(ii) or (m)(2)(iii) of this section are not met; or

(4) If applicable, the date VA collected $1,200, if the provisions of paragraph (m)(2)(ii) or (m)(2)(iii) of this section are not met.

(Authority: 38 U.S.C. 3018C(a), (b), 5113)

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

13. The authority citation for part 21, subpart L continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35 36, unless otherwise noted.

14. In § 21.7520, paragraph (b)(23)(iv) is amended by removing "during the period beginning on November 2, 1994, and ending on September 30, 1996,"; and the authority citation for paragraph (b)(23) is revised to read as follows:

§ 21.7520 Definitions.

* * * * *

(b) * * *
(23) * * *

(Authority: 10 U.S.C. 16131(a), (c); 38 U.S.C. 3002, 3452)

* * * * *

15. In § 21.7635, paragraph (y) is redesignated as paragraph (z); and a new paragraph (y) is added, to read as follows:

§ 21.7635 Discontinuance dates.

* * * * *

(y) *Election to receive educational assistance under 38 U.S.C. chapter 30.* VA shall terminate educational assistance effective the first date for which the reservist received educational assistance when—

(1) The service that formed a basis for establishing eligibility for educational assistance under 10 U.S.C. chapter 1606 included a period of active duty as described in § 21.7020(b)(1)(iv); and

(2) The reservist subsequently made an election, as described in § 21.7042(a)(7) or (b)(10), to become entitled to basic educational assistance under 38 U.S.C. chapter 30.

(Authority: Sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

[FR Doc. 98–30287 Filed 11–10–98; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[DA 98–2231; IB Docket No. 98–172; RM–9005, RM–9118]

Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the Ka-band, and the Allocation of Additional Spectrum for Broadcast Satellite Service Use

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Notice of Proposed Rulemaking in this proceeding set due dates for filing comments and reply comments. At the request of several parties to this proceeding, those due dates are hereby extended.

DATES: Comments due November 19, 1998; reply comments due December 21, 1998.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Chuck Magnuson, FCC International Bureau, Planning and Negotiations Division, at (202) 418–2159.

SUPPLEMENTARY INFORMATION: This proposed rulemaking, 63 FR 54100, October 8, 1998, concerns redesignation of the 17.7–19.7 GHz frequency band, blanket licensing of satellite earth stations in the 17.7–20.2GHz and 27.5–30.0 GHz frequency bands, and the allocation of additional spectrum in the 17.3–17.8 and 24.75–25.25 GHz frequency bands for broadcast satellite service use.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30219 Filed 11–10–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 98–4673; Notice 1]

RIN 2127–AG87

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Federal motor vehicle safety standard on lighting to reorganize the sections relating to headlighting. A notice proposing reorganization of the sections relating to other lamps is planned for later in 1998. This action is taken to remove inconsistencies and to facilitate reference to the standard in an effort to improve its comprehensibility.

DATES: Comments are due on the proposal February 10, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590 (Docket hours are from 10:00 a.m. to 5:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Safety Performance Standards (202–366–6346).

SUPPLEMENTARY INFORMATION:

I. The Reason for This Rulemaking

Federal Motor Vehicle Safety Standard No. 108 specifies performance requirements for lamps, reflective devices and associated equipment on new motor vehicles, as well as their location. The standard also covers replacement lighting equipment. Its present version represents 31 years of accumulated amendments and the incorporation of numerous industry consensus standards. In many cases, the incorporated versions are no longer in print. Requirements concerning a particular lighting device are sometimes found at different places within the standard or are partially contained in SAE standards which are themselves incorporated by reference. As printed at 49 CFR 571.108, revised as of October 1, 1997, Standard No. 108 occupies 73 pages, by far the longest of the Federal motor vehicle safety standards. The agency responds to approximately 150 letters annually from domestic and foreign manufacturers of vehicles and equipment, state agencies, vehicle owners, and inventors of lighting devices asking for interpretations of Standard No. 108, and even more inquiries by telephone. The agency believes that this heavy demand may be due in part to difficulties that interested parties may have in finding the applicable provisions in the standard and in gaining confidence that they are aware of all requirements.

Therefore, NHTSA has decided to issue two notices proposing amendments intended to make the standard easier to understand. The amendments are not intended to change the requirements of the standard, except in a few minor instances which will be clearly identified in this preamble and the preamble of the second proposal. This NPRM proposes amendments to only those sections of Standard No. 108 applying to headlamp systems. Revised regulatory language for other lamps will be proposed for amendment in a future notice. The principal change in the organization of headlamp requirements is the elimination of the separate section devoted to sealed beam headlamps. They are treated in this proposal as a type of integral beam headlamp which have additional requirements to assure interchangeability.

II Drafting Guidelines

The following drafting guidelines have been followed in this proposal and will be followed in the subsequent proposal to the extent possible where the agency believes that adherence to them improves the clarity of the standard:

(a) All requirements directly affecting a specific type of lamp or reflector will be consolidated in the same section to avoid scattered requirements. Requirements common to more than one lamp or reflector will be repeated in each lamp or reflector section if they are brief, or they will be referenced in subsequent sections if they are too lengthy.

(b) Lighting requirements should be contained within the text of Standard No. 108 rather than incorporated by reference. Users should be relieved of the burden of searching incorporated SAE standards for the possibility of additional requirements. Ideally, the required performance of a lamp or reflector would be described fully within the text of Standard No. 108, but the details of the test method would be specified by incorporation of industry standard test methods developed by SAE and other consensus bodies. In other instances where lighting requirements are unavoidably established by incorporation of an industry standard, the citation should include mention of the types of requirements found in the standard. A reader of Standard No. 108 should be able to determine at least the existence of all lighting requirements without prior knowledge of the content of industry standards incorporated by reference.

(c) Titles will be used for subparagraphs and higher level paragraphs. Subparagraph titles will form an index to this lengthy standard in the manner of the proposed interim index of headlamp requirements attached to S7. Paragraph names will impose a logical order on the requirements that will assist writers of future amendments in preserving the value of the index and assist readers in locating provisions of interest.

(d) In general, the existing wording of requirements will be preserved to avoid unintended effects on regulatory burdens, but the desire for clarity will call for occasional edits. A review of past interpretation letters will be used to identify particular instances where editing may be beneficial.

(e) References to SAE standards will be updated to current versions unless a revision would result in significant burden without compensatory safety benefits or unless NHTSA believes that the older version is better for motor vehicle safety.

(f) Two different numbering systems are used within the existing paragraphs of the standard. In the most frequently used system, letters and numbers follow a prescribed hierarchy. This has led to some unwieldy constructions where it is difficult to identify and cite a specific requirement. For example, in the requirements for replaceable bulb headlamp systems, Standard No. 108 presently contains a paragraph S7.5(d)(2)(i)(A)(1). The second system is similar to SAE practice in which subparagraphs are given numbers. For example, the subparagraphs of S7.8.5 are S7.8.5.1, S7.8.5.2, and S7.8.5.3 rather than S7.8.5(a), (b), and (c). Even in this instance, the first system is followed thereafter in these subparagraphs, such as S7.8.5.2(a)(1)(i). One way to address the problem is to rewrite and simplify the text to minimize the number of subparagraphs, which NHTSA has done. After this point, the clearest system appears to be one that uses a numerical hierarchy for all paragraphs above the lowest level and reserves the lowest level for letters (e.g., S7.4.1.1(a)). The NPRM contains no subparagraphs beyond this initial alphabetical level.

(g) References to past effective dates of provisions will be eliminated. They have been kept until now as a guide to compliance with replacement equipment specifications.

III. Amendments Proposed for Specific Parts of Standard No. 108

S4 Definitions. The definition of "integral beam headlamp" would be expanded to include sealed beam headlamps. The definitions of both integral and "replaceable bulb headlamps" would be edited to state expressly that headlamps that are visually/optically aimable or that incorporate a vehicle headlamp aiming device may be designed for removable lenses. The definition of "replaceable light source headlamps" would be amended to delete an unnecessary restriction on the number of light sources in a headlamp of that type.

Definitions of "two-headlamp systems" and "four-headlamp systems would be added.

S7 Headlighting requirements. All subparagraphs and most of the lower level paragraphs in S7 would be given titles, and the provisions of the proposed regulatory language would be rearranged as required to conform to the structure imposed by the paragraph titles. An index of all headlamp provisions now contained in Paragraphs 7, 8, 9 and 10 of the present standard has been added. When the rest of Standard No. 108 is reorganized, this partial index would become part of an index of the whole standard to be located at the beginning.

S7.1. The mounting location requirements of Tables II and IV would be added to the text of the standard. The language prohibiting grills, covers and other headlamp obscurations would be moved from S7.8.5 to this paragraph. References to past effective dates would be eliminated.

S7.2. This paragraph would be devoted to general requirements involving headlamp lens marking and replaceable lenses. Present S7.2.1(d), dealing with photometric test procedure, would be moved to S7.4.2 and S7.5.2 where other photometric test requirements are contained. The text of S5.8.2 and S5.8.11, dealing with replacement lenses and lens marking of certain replacement headlamps, would be moved to S7.2.

S7.3. The present S7.3 specifying sealed beam headlamp performance would be eliminated. Sealed beam headlamps would be regulated as a type of integral beam headlamp with photometric limitations in some instances to preserve their interchangeability. In many four headlamp systems, the upper beam is produced by the combined operation of the upper beam lamp and one or more filaments in the lower beam lamp. The standard recognizes several photometry options developed for sealed beam headlamps in which the dual headlamps of each side of a vehicle combine their light output in different ways to achieve an upper beam. Manufacturers would be required to continue the use of the present beam patterns for the various types of interchangeable sealed beam headlamps so that the intended upper beam pattern is maintained when the consumer replaces a single lamp. Systems using only two headlamps do not pose a similar concern. Accordingly, no extra limitations would be placed on sealed beam headlamps in two headlamp systems.

Present S7.9 containing motorcycle headlamp requirements would be moved to S7.3 with several amendments. The incorporation by reference of SAE J584 would continue to be the source of several requirements for motorcycle headlamps, but a parenthetical note would be added telling the reader what types of requirements are to be found in SAE J584. The incorporated version of SAE J584 would remain that of 1964 because the agency concluded in a recent rulemaking (61 FR 6616) that it would be inappropriate to use the 1993 version of the standard in its entirety. Instead, only the photometric performance and the aiming method of the newer version of J584 were included. The reference in the present text to SAE J566 1960 would be eliminated by including its brief provisions directly in S7.3.

S7.4. The present requirements for integral beam lamps would be used also to regulate sealed beam headlamps with a few special provisions. Since integral beam headlamps are those without replaceable light sources, sealed beam headlamps are simply a category of integral beam headlamps designed to interchangeability standards rather than particular to a given vehicle model. Paragraph S7.4 would restrict standard sealed beam headlamps, designated by SAE types, to the beam patterns presently specified for those types and to the visually/optically aimable version of those beam patterns. However, the visually/optically aimable versions would be required to retain the aiming pads specified by the SAE standards for the attachment of external aimers. This would be required because it is necessary to mount external aimers on both sides of a vehicle even if only one headlamp requires external aiming.

References to SAE J1383, regarding specifications of sealed beam headlamp types and photometric test procedure, have been updated to the DEC96 version. The incorporated provisions of the updated SAE J1383 appear to be substantially identical to those of the presently cited APR85 version, except with respect to photometric performance in the region of the beam pattern above 10 degrees up. The latest SAE revision measures only the area 45 degrees to the right and left of the driver (rather than +/−90 degrees), and small regions of brightness exceeding the regional maximum of 175 cd. would be permitted if confined to a 2- degree conical angle. This requirement protects drivers from annoying reflections of headlamp light in rain and snow, while recognizing that stray light beams of insignificant breadth do not pose a problem. Paragraph S7.4.2 of the proposed revision would adopt the approach taken by SAE J1383 DEC96 to the beam pattern above 10 degrees.

The photometric requirements for lamps comprised of multiple beam contributors, presently in S7.4(a)(3), would be restated in terms of beam contributors per beam rather than beam contributors per vehicle to improve clarity. Present S7.4(b) and (c) would be combined in S7.4.5 and simplified in expression. The provision that visually/optically aimable headlamps and headlamps with VHADs may be designed with replaceable lenses has been moved into S7.4 and S7.5 rather than being conveyed only by the definitions of integral beam and replaceable bulb headlamps. In this way, the definitions are provided only to clarify the terms used in the requirements, not to become additional sources of regulatory provisions where they may escape the user's notice.

Currently Standard No. 108 requires the lower beam in a four-lamp headlighting system to be provided by the uppermost lamp (if the lamps are arranged vertically), or outermost (if they are arranged horizontally). This presupposes that the two headlamps on a side share a common vertical or horizontal axis. With the advent of projector beam headlamps, there may be no common axis of light sources within a headlamp.

The proposed language of S7.4.5 and S7.5.3 establishes that the most important safety aspect of headlamp arrangement is the marking of the full width of the vehicle by the operation of the lower beam. It would set a priority of outermost over uppermost for lower beam headlamps, reflectors or light sources, and it would permit arrangements in which the uppermost headlamps are upper beams as long as the outermost headlamps are lower beams. It would permit the arrangement of upper and lower beams in a two headlamp system to be based on either the locations of the outer lighted edges of separate upper and lower beam reflectors or the position of the light sources. Only where the outer edges of headlamps or headlamp reflectors or light sources in a two headlamp system are arranged exactly vertically (i.e., in the same vertical longitudinal plane) would the lower beam be required to be the uppermost lamp.

The proposed language of S7.4.5 and S7.5.3 also anticipates future headlamp designs with an array of light sources or remote light sources with multiple light paths to the headlamp reflector. It would require only that the outermost light source be activated on the lower beam to mark the full width of the vehicle, rather than to "provide" the lower beam, and it would view the outermost light path of a remote light source as equivalent to the outermost light source of a conventional design in regard to marking vehicle width.

Proposed S7.4.8.8 *Exposure resistance* would apply to plastic material for headlamp lenses the requirements of SAE J576 JUL91 Plastic materials for use in optical parts such as lenses and reflectors of motor vehicle lighting devices, which would be incorporated by reference. This amendment would clarify the agency's intent that Standard No. 108 and SAE J576 JUL91 require the same level of haze resistance for materials for headlamp lenses, namely that they show no deterioration in a visual inspection after a three-year outdoor exposure test. The amendment would supersede a statement in a previous interpretation (sent on December 7, 1994, to Brian J. Williams) applying a 30 percent haze limit after the outdoor exposure test to plastic materials for headlamp lenses. The statement was a literal interpretation of the word "lamp" in S5.1.2. However, the reasons for the agency's establishment in 1975 of the 30 percent haze limit for material for "lamp" lenses were applicable only for signal and license plate lamps. In 1975, the only lamps known to use plastic materials were signal lamps and license plate lamps. Headlamps at that time were required to be sealed beams with glass lenses.

By way of explanation, originally, Standard No. 108 cited SAE J576b (1966) which required that "exposed samples, when compared with the unexposed control samples, shall not show . . . haze." The requirement referred to an inspection with the naked eye of plastic samples after outdoor exposure tests in Florida and Arizona. In 1974, General Electric (GE) petitioned the agency to relax the haze requirement for signal lamp lenses, but not for reflex reflectors. GE provided a large body of data on various signal lamps with a degree of surface haze representative of highly weathered polycarbonate plastic lenses without protective coatings. It concluded that haze did not make signal lamps less visible, although it altered the distribution of light output among the photometric test points for the various lamps and could actually have the effect of causing the lamp to appear larger. The agency agreed with GE and amended the standard to include as an exception to J576 (which was updated to J576c May 1970 at that time) the following:

> After the outdoor exposure test, the haze and loss of surface luster of plastic materials used for lamp lenses shall not be greater than 30 percent as measured by ASTM 1003–61 * * *.

The reason given by the agency for proposing the amendment (39 FR 35179) was:

> In GE's view, deglossing to haze levels of 50 percent does not appear to significantly affect the overall photometric performance and *signaling* effectiveness of the lamp. The effect of haze is to scatter light from the point of maximum intensity to the wider angle test points, resulting in a diminution of light output at the former, and an increase at the latter. In accordance with GE's test data and suggestion, the NHTSA is proposing that haze levels should not exceed 30 percent. [italic added]

NHTSA believes that it is clear from the original petition that the only lenses to which a haze limit as high as 30 percent should apply were those on

signal and license plate lamps. To repeat, at the time of that rulemaking, all headlamps manufactured for sale in the United States were sealed beams with glass lenses. None of the information and assertions in GE's petition pertained to lenses for headlamps, and the agency's stated conclusion in that rulemaking about the effect of haze on lamp lenses shows that haze is antithetical to the objectives of headlamp design. Headlamps are designed to maintain a difficult balance between providing enough light to guide the driver and limiting light that causes glare for other drivers. A hazed headlamp lens both diminishes the light needed by the driver and simultaneously increases the glare to other drivers. While the effect of haze is insignificant for signal lamps, the same is not true for headlamps.

When Standard No. 108 was amended to allow plastic headlamp lenses, the lenses were required to demonstrate resistance to abrasion. Compliance was achieved through coatings. In a 1993 NPRM (58 FR 13042) proposing a haze limit of 7 percent for reflex reflector material, NHTSA asked for comments on whether all abrasion-resistant coatings also prevented haze on headlamp lenses exceeding 7 percent (the approximate equivalent of haze just discernable to the naked eye). Ford Motor Company commented that, in its experience with plastic headlamp lenses, all such coatings would prevent haze exceeding 7 percent. NHTSA is concerned that some contemporary hard coatings may no longer provide this level of haze protection though capable of providing sufficient abrasion resistance. A final rule based on this proposal would successfully address this possibility.

The provision of J576 allowing a 25-percent reduction in luminous transmittance of plastic material as a result of outdoor exposure is specifically excluded from application to headlamp lenses in SAE J1383 Performance Requirements for Motor Vehicle Headlamps, but that part of SAE J1383 has not been incorporated in Standard No. 108. The agency agrees with SAE that the 25-percent loss in transmittance permitted by SAE J576 is another provision suitable for signal lamp lenses rather than headlamp lenses, but it would prefer to adopt a more appropriate transmittance-loss limit for headlamp lens material rather than simply to eliminate the reference. The agency believes that suitable hard coatings which protect against abrasion and haze currently limit transmittance loss to much less than 25 percent.

Accordingly, NHTSA asks readers to comment on the actual performance of coated plastic samples of current headlamp lens materials in the J576 outdoor exposure tests.

Paragraph S5.1.2 contains other potential ambiguities that will be addressed when the requirements for signal lamps and reflex reflectors are reorganized in a future notice. For example, the measured haze limits for reflex reflectors and signal lamps are listed in paragraphs introduced as exceptions to J576 JUL91. However, the haze limits are the same as those in J576 JUL91; the exception is that Standard No. 108 cites a more recent update of the ASTM haze measurement method than does J576 JUL91.

The reference to SAE J580 Sealed Beam Headlamp Assembly would be eliminated from the present S7.4(g) and the remaining text designated S7.4.9. The SAE canceled SAE J580 in 1992 and its pertinent provisions were moved to SAE J1383. However, the connector resistance test of SAE J580, which was referenced in S7.4(g), was rejected by SAE for inclusion in J1383. The rationale given by SAE was that the connector resistance is not important because the photometric performance requirement assures correct current flow at the headlamp terminal and connector, and the resistance requirement would not permit the use of stainless steel and other higher resistance material for terminals. The agency agrees that the design resistance of a new headlamp terminal and connector is not important if it provides complying photometric performance, but it believes that Standard No. 108 should continue to require that the resistance of terminals not be subject to significant degradation as a consequence of corrosion. Therefore, the corrosion resistance requirement for terminals of S7.4(h)(3) would be retained in S7.4.8.3. A new Figure 11, illustrating the measurement of current flow at headlamp terminals, would be added to Standard No. 108 and referenced in S9.4 of the new text to eliminate a reference to a figure in SAE J580.

S7.5. The present text concerning replaceable bulb headlamps is very difficult to follow, due in part to the need for many paragraphs and the lack of paragraph titles. The proposed text is extensively rewritten to parallel the simpler organization of S7.4. Paragraph S7.5 would be renamed "Replaceable light source headlamps" because replaceable light sources other than incandescent bulbs have been permitted. The adoption of the proposed text would have no effect on the requirements for replaceable light source headlamps with one exception.

The present text requires a lens marking for replaceable bulb headlamps identifying the type of replaceable light source, unless it uses a type HB1 bulb. The exception for type HB1 bulbs has been removed from the proposed text. At an earlier time when only one or two types of bulbs were in use, it may have been acceptable to designate one type with the absence of a mark. But it no longer appears to be a reasonable practice, now that a large number of types of replaceable light sources are in use. The agency believes that type HB1 bulbs are not used on vehicles in current production, and therefore no burdens would be imposed by the change. However, if future vehicles were to be produced using type HB1 bulbs, their headlamps would require the same kind of marking as required for all other types of replaceable light sources. The purpose of the mark is to assist the vehicle owner in choosing the correct light source with which to repair a burned out headlamp.

Finally, a headlamp system using replaceable light sources would be allowed to combine them with fixed light sources (such as high intensity discharge sources (HIDs)), while adhering to the same beam patterns and requirements of replaceable light source headlamps.

S7.6. The present S7.6 on combination headlighting systems would be eliminated. Its purpose was to address headlamps combining HID light sources and replaceable bulbs. Formerly, HID light sources were permitted only in the form of integral beam headlamps (which are integrated from the 12.8 volt receptical inward), so that their use in combination with a replaceable bulb created a distinct class of headlamp. Now, HID light sources may be used in a replaceable form, and the resulting headlamps are simply the replaceable light source headlamps covered in S7.5. Paragraph S7.5 would also be amended to recognize a headlamp system using standardized replaceable light sources (e.g., HB3, HB4) combined with fixed light sources which need not be standardized, including high voltage HID light sources.

The text presently contained in S7.7 Replaceable light sources would be moved to S7.6. The text would be given paragraph titles and arranged in a different order but otherwise remain unchanged. The present S9 Deflection test for replaceable light sources would be moved to S7.6.3 to make the light source section self-contained.

S7.7. The special wiring requirement paragraphs pertaining to headlamp systems would be moved from S5.5 to S7.7 in the interest of consolidating the headlamp requirements. The brief manual headlamp beam switching requirements of J564a would be written directly in the text rather than continuing to be incorporated by reference to a 1964 document. A switch without "dead spots" as expressed in the 1964 standard is clarified as a switch of the make-before-break type.

The agency proposes to update SAE J565 Semi-automatic headlamp beam switching from the 1969 version to the most recent revision of 1989. It is unknown if the update would impose new burdens, but it seems unlikely that a 1969 standard continues to have relevance in the area of automatic controls which has since been revolutionized by electronic technology. In the case of SAE J565 JUN89, it would not be necessary to place its requirements directly in Standard No. 108 because it represents a self-contained treatment of a distinct wiring option which is sufficiently identified by its title.

The language of S7.7.4 would be amended to add an exception to the prohibition in S7.7.3 against simultaneous activation of upper and lower headlamp beams. The purpose of this requirement is to prevent glare. Ford Motor Company wrote NHTSA asking for an interpretation that this provision would not apply to its Auto Low Beam backup system, intended for a two-headlamp system. Under Ford's system, if an upper beam fails, the lamp automatically switches to the lower beam for use as a reserve upper beam headlamp. The agency has informed Ford that the extinction of an upper beam results in a noncomplying headlamp system, and that there is no prohibition against use of the remaining beam in the headlamp to supplement the other headlamp. Because of the potential for glare, however, the agency has not extended this interpretation to the converse, that is, allowing an upper beam to substitute for a lower beam when the lower beam has become inoperative. In NHTSA's view, this would be an instance in which a manufacturer "made inoperative" the glare protection provisions of Standard No. 108, within the meaning of 49 U.S.C. 30122. A reduced intensity upper beam is a possible solution as a backup for an extinguished lower beam but NHTSA would not propose to permit it until researching the glare issue.

The rest of the provisions are unchanged, except for paragraph titles and some rearrangement of sentence order. S5.5.10 (b) and (c) were repeated in S7.7.5 and S7.7.6, rather than moved, because S5.5.10 seen in its entirety is an important example of agency policy on flashing lamps—namely, that no required or auxiliary lamps other than those listed in S5.5.10 are permitted to flash.

S8. The text of the present S8 would be moved to S9 (vacated by the move of the light source deflection test to S7.6), and the new S8 would be dedicated to the present text of S7.8 Aimability performance requirements. With the recent addition of a visual/optical aim option, the aimability material has become much lengthier than other areas of the standard. Further, the subject is sufficiently self-contained to form a complete entity. The reduction of paragraph levels accomplished by the move and the increased use of paragraph titles in the proposed text would improve clarity.

S8.2. This paragraph would be the same as the present S7.8.1 with the addition of a title and an updated reference to SAE J1383, consistent with references in the proposed S7 text.

S8.3. This paragraph would contain the present text of S7.8.2 through S7.8.4, with paragraph titles and some reordering of paragraph levels. Part of the present S7.8.5 would be included as an introductory sentence in S8, and the part dealing with headlamp covers and obstructions would be moved to general installation requirements that would be contained in S7.1.

S8.4. Paragraph S8.3 would contain the present text of S7.8.5.1 on external aim, reducing by two the levels of paragraph numbering. The reference to SAE J602 would be updated to the DEC89 version which includes specifications for an additional 92 x 150 mm locating plate for the external headlamp aiming device, permitting deletion of Figure 16. A sentence informing the reader of the purpose of the torque deflection and inward force tests would be added. The text of S8.3.1 would be amended to define that the torque value specified in the test is that measured with respect to a horizontal axis in the aiming reference plane. The present omission of a torque reference axis was the subject of an interpretation (letter to Tolley, June 8, 1995). A sentence would also be added stating that sealed beam headlamp mounts would be tested with the standard deflectometers and adaptors specified in SAE J1383 DEC96. In addition, paragraph titles would be added.

S8.5. The text of S7.8.5.2 on vehicle headlamp aiming devices (VHADs) would be moved to S8.4 unchanged except for the order of a few phrases and shorter paragraph numbers.

S8.6. The text of S7.8.5.3 on visual/optical aim, added in 1997, would be moved to S8.5 with references to SAE J1383 and J575 updated.

S8.7. This would be a new paragraph setting aiming system requirements for replacement headlamps. It assures that all combinations of original and replacement headlamps are aimable.

S9. The agency considered the alternative of citing various SAE headlamp test procedures rather than maintaining detailed test procedures in Standard No. 108. However, the alternative was not consistent with the goal of making the present requirements of the standard more accessible to the reader. Some of the SAE test procedures require reference to multiple SAE standards which does not favor accessability. Also, the applicable SAE test procedures are not identical to the procedures of the standard.

Some of the differences in test procedures are clearly significant. For example, the SAE abrasion test is a test of materials, while the abrasion test of Standard No. 108 is a test of headlamps. Also, the SAE corrosion test does not include tests of the reflector and electrical connector as does Standard No. 108. Other SAE test procedures contain differences whose effects are uncertain, such as differences in the amount of light blockage during the internal heat test and differences in the humidity cycle and soak time in the humidity test. While there may be merit in adopting some test procedures in the most current SAE form, the changes would be considered for technical reasons, rather than to reduce the size of paragraphs in the standard. Since the clarity of Standard No. 108 would suffer from references to the SAE test procedures accompanied by exceptions, the present brief test procedures are retained in the text of paragraph S9.

A new Figure 11, illustrating the measurement of current flow at headlamp terminals, would be included in Standard No. 108 and referenced in S9.4 of the new text to eliminate a reference to a figure in obsolete SAE J580.

Standard No. 108 has maintained a reference to the 1970 version of SAE J575 for the vibration test because the agency believed the vibration test of later versions of SAE J575 was insufficient. However, it is undesirable to cite two versions of an SAE standard, especially when one is so old that it may be hard to locate. The current SAE standard for tests of heavy truck lamps, SAE J2139 JAN94, uses the same vibration test as the 1970 SAE J575.

Therefore, SAE J2139 JAN94 would be substituted for SAE 575e to describe the vibration test of S9.8.

S10. The general requirements in the present text of S10 concerning simultaneous aim photometry tests of integral beam headlamps would be moved to S7.4.4, and the material particular to type F sealed beams would be eliminated. The present text of S12 on headlamp concealment devices would be redesignated as S10 so that all headlamp material would appear in contiguous sections.

S11. The title of S11 would be changed to clarify that it pertains to daytime running lights (DRLs) rather than to headlamps. It should be moved into a section devoted to DRLs when the requirements for other lamps are reorganized.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available to inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date and it is recommended that interested persons continue to examine the docket for new material.

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

Effective Date: Since the purpose of the amendments is to clarify existing requirements, the agency believes that a final rule would not impose any additional burden with one exception. The amended language regarding haze resistance of plastic headlamp lens material would supersede a December 1994 interpretation and may cause some headlamp manufacturers to reinstate the coating materials and products generally in use before that time. Therefore, the proposed amendment would become effective 180 days after publication, to allow time for potential production changes for plastic headlamp lenses.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking actions was not reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The effect of the rulemaking action would be to clarify existing requirements. It would not impose any additional burden upon any person, except that a truck or multipurpose passenger vehicle equipped with a four-lamp headlamp system in which the lamps are arranged vertically would have to switch the relative positions of the lamps on vehicles manufactured on and after September 1, 2000. Impacts of the proposed rule are, therefore, so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. Sec. 601 *et seq.* I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The final rule affects manufacturers of motor vehicles and motor vehicle headlamps. According to the size standards of the Small Business Association (at 13 CFR Part 121.601), manufacturers of lamps and reflective devices would be considered manufacturers of "Motor Vehicle Parts and Accessories" (SIC Code 3714). The size standard for SIC Code 3714 is 750 employees or fewer. The size standard for manufacturers of "Motor Vehicles and Passenger Car Bodies" (SIC Code 3711) is 1,000 employees or fewer. This NPRM would have no significant economic impact of a small business in these industries because, if made final, the rule would make no substantive change to requirements currently specified in Standard No. 108.

Further, small organizations and governmental jurisdictions will not be significantly affected as no price increases are expected as a result of this rulemaking. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action would not have a significant effect upon the environment as it does not affect the present method of manufacturing motor vehicle lighting equipment.

Civil Justice Reform

This rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

1. The authority citation would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 would be amended by:

(a) adding two new definitions, "Four-headlamp system" and "Two-headlamp system," in alphabetical order to S4,

(b) revising the definitions of "Integral beam headlamp" and "Replaceable bulb headlamp," in S4,

(c) revising S5.5.10(c) and S5.510(d),

(d) removing S7 through S12.5,

(e) adding new S7 through S11,

(f) removing Figures 11 through 14, 16, 18, 21 and 22; and

(g) adding new Figure 11, to read as follows:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S4. *Definitions.*

* * * * *

Four-headlamp system means a headlamp system with two independent headlamps on each side of a vehicle which may be used singly or in combination to provide lower and upper beams.

* * * * *

Integral Beam Headlamp means a headlamp (including a sealed beam headlamp listed in SAE J1383 DEC96 but not a replaceable bulb headlamp) comprising an integral and indivisible optical assembly including lens, reflector, and light source, except that a visually/optically aimable headlamp or one incorporating a vehicle headlamp aiming device may have a lens designed to be replaceable.

* * * * *

Replaceable bulb headlamp means a headlamp comprising a bonded lens reflector assembly and one or two replaceable headlamp light sources, except that a visually/optically aimable headlamp or one incorporating a vehicle headlamp aiming device may have a lens designed to be replaceable.

* * * * *

Two-headlamp system means a headlamp system with one headlamp on each side of a vehicle, each of which provides a lower and upper beam.

* * * * *

S5.5.10 * * *

(c) A motorcycle headlamp may be wired to allow either its upper beam or its lower beam, but not both, to modulate from a higher intensity to a lower intensity in accordance with S7.3;

(d) All other lamps, including all lamps not required by this standard, shall be wired to be steady burning.

* * * * *

S7. *Headlamp and replaceable light source requirements.*

S7.0 *Table of Contents.* The following is a table of contents of the requirements for headlamps and replaceable light sources.

S7.1 General Installation Requirements
S7.2 Lens Marking and Replacement Lens Requirements
S7.3 Motorcycle Headlamps
S7.4 Integral Beam Headlamp Systems
S7.5 Replaceable Light Source Headlamp Systems
S7.6 Replaceable Light Sources
S7.7 Special Wiring Requirements

S7.1 *General installation requirements.*

(a) Each passenger car, multipurpose passenger vehicle, truck, and bus shall be equipped with a headlighting system designed to conform to the requirements of S7.4 or S7.5. The headlamps shall be mounted on the front of the vehicle symmetrically disposed about its vertical centerline, with each lower beam headlamp at the same height and as far apart as practicable, and with each upper beam headlamp at the same height. With the vehicle at curb weight, the center of each headlamp shall be not less than 560 mm (22 in) and not more than 1370 mm (54 in) above the road surface.

(b) Each motorcycle shall be equipped with a headlighting system designed to conform with the requirements of S7.3. A single headlamp shall be mounted on the front vertical centerline of the motorcycle, or if two headlamps are used, they shall be symmetrically disposed about its vertical centerline. With the vehicle at curb weight, the center of each headlamp shall be not less than 560 mm (22 in) and not more than 1370 mm (54 in) above the road surface.

(c) When activated in a steady-burning state, headlamps shall not have any styling ornament or other feature, such as a translucent cover or grill, in front of the lens. Headlamp wipers may be used in front of the lens, provided that the headlamp system is designed to conform with all applicable photometric requirements with the wiper stopped in any position in front of the lens.

S7.2 *Lens marking and replacement lens requirements.*

S7.2.1 *Lens marking requirements.*

(a) The lens of each original and replacement equipment headlamp and of each original equipment and replacement equipment beam contributor, and each replacement headlamp lens, shall be marked with the symbol "DOT," either horizontally or vertically, which shall constitute the certification required by 49 U.S.C. 30115.

(b) Each headlamp lens and each beam contributor to which S7.2.1(a) applies shall be marked with the name and/or trademark registered with the U.S. Patent and Trademark Office of the manufacturer of such headlamp, replacement lens or beam contributor, or of its importer, or of any manufacturer of a vehicle equipped with such headlamp or beam contributor. Each replacement headlamp lens shall also be marked with the manufacturer and the part or trade number of the headlamp for which it is intended. Nothing in this paragraph shall be construed to authorize the marking of any such name and/or trademark by one who is not the owner, unless the owner has consented to it.

(c) Each headlamp and beam contributor to which S7.2.1(a) applies shall be marked with its voltage and with its part or trade number.

(d) Headlamps designed to interchange with types C and D sealed beam headlamps, specified by SAE Standard J1383 DEC96, may be marked "1" and "2" rather than "1C1" and "2C1", respectively and "TOP" or "2" rather than "2D1".

S7.2.2 *Replacement lens requirements.*

(a) A replacement lens for a headlamp that is not required to have a bonded lens shall be provided with a replacement seal in a package that includes instructions for the removal and replacement of the lens, the cleaning of the reflector, and the sealing of the replacement lens to the reflector assembly.

(b) Each replacement headlamp lens when installed on a headlamp with a replacement seal, according to the lens manufacturer's instructions, shall not cause the headlamp to fail to comply with any of the requirements of this standard.

S7.3 *Motorcycle headlamps.* Each motorcycle shall be equipped with a headlighting system designed to conform to the following requirements.

S7.3.1 *Photometric requirements and applicable SAE standard.* Each motorcycle may be equipped with—

(a) A headlighting system designed to conform to SAE Standard J584 *Motorcycle Headlamps* April 1964 (which includes requirements for

photometry, focus, color and resistance to vibration, moisture, dust and corrosion) using the photometric specifications of Figure 32 and the upper beam aimability specifications of S7.3.2 rather than the SAE J584 photometry requirements, or

(b) If manufactured on or before September 1, 2000, a headlighting system designed to conform to SAE Standard J584 April 1964; or

(c) One half of any headlighting system specified in S7.4 or S7.5 which provides both a full upper beam and full lower beam. Where more than one lamp must be used, the lamps shall be mounted vertically, with the lower beam as high as practicable. When installed on a motorcycle, such half systems need not meet the aiming requirements of S8.

S7.3.2 *Aimability.*

S7.3.2.1 *Photoelectric aim using upper beam.* The upper beam of a multiple beam headlamp designed to conform to the photometric requirements of Figure 32 shall be aimed photoelectrically during the photometric test in the manner prescribed in SAE Standard J584 OCT93, *Motorcycle Headlamps.*

S7.3.2.2 *Headlamp mounting.* Headlamps and headlamp mountings shall be so designed and constructed that:

(a) The axis of the light beams may be adjusted to the left, right, up or down from the designed setting, the amount of adjustability to be determined by practical operating conditions and the type of equipment.

(b) The adjustments may be conveniently made by one person with tools ordinarily available.

(c) When the headlamps are secured, the aim will not be disturbed under ordinary conditions of service.

S7.3.3 *Motorcycle headlamp modulation system.*

S7.3.3.1 A headlamp on a motorcycle may be wired to modulate either the upper beam or the lower beam from its maximum intensity to a lesser intensity, provided that:

(a) The rate of modulation shall be 240±40 cycles per minute.

(b) The headlamp shall be operated at maximum power for 50 to 70 percent of each cycle.

(c) The lowest intensity at any test point shall be not less than 17 percent of the maximum intensity measured at the same point.

(d) The modulator switch shall be wired in the power lead of the beam filament being modulated and not in the ground side of the circuit.

(e) Means shall be provided so that both the lower beam and upper beam remain operable in the event of a modulator failure.

(f) The system shall include a sensor mounted with the axis of its sensing element perpendicular to a horizontal plane. Headlamp modulation shall cease whenever the level of light emitted by a tungsten filament light operating at 3000 degrees Kelvin is either less than 270 lux (25 foot-candles) of direct light for upward pointing sensors or less than 60 lux (5.6 foot-candles) of reflected light for downward-pointing sensors. The light is measured by a silicon cell type light meter that is located at the sensor and pointing in the same direction as the sensor. A Kodak Gray Card (Kodak R–27) is placed at ground level to simulate the road surface in testing downward pointing sensors.

(g) When tested in accordance with the test profile shown in Figure 9, the voltage drop across the modulator when the lamp is on at all test conditions for 12-volt systems and 6-volt systems shall not be greater than 0.45 volt. The modulator shall meet all the provisions of the standard after completion of the test profile shown in Figure 9.

(h) Means shall be provided so that both the lower and upper beam function at design voltage when the headlamp control switch is in either the lower or upper beam position when the modulator is off.

S7.3.3.2(a) Each motorcycle headlamp modulator not intended as original equipment shall comply with S7.3.3.1(a) through (g) when connected to a headlamp of the maximum rated power and a headlamp of the minimum rated power, and shall provide means so that the modulated beam functions at design voltage when the modulator is off.

(b) Instructions, with a diagram, shall be provided for mounting the light sensor including location on the motorcycle, distance above the road surface, and orientation with respect to the light.

S7.3.4 *Marking.* (a) Each replaceable bulb headlamp that is designed to meet the photometric requirements of S7.3.1(a) or S7.3.2(a) and that is equipped with a light source other than a replaceable light source meeting the requirements of S7.7, shall have the word "motorcycle" permanently marked on the lens in characters not less than 3 mm (0.114 in) in height.

(b) Each motorcycle headlamp modulator not intended as original equipment, or its container, shall be labeled with the maximum wattage, and the minimum wattage appropriate for its use.

S7.4 *Integral beam headlamp systems.* An integral beam headlamp system shall be designed to conform to the following requirements:

S7.4.1 *Photometric requirements.* The system shall provide in total not more than two upper beams and two lower beams. The color of any headlamp beam shall be white as specified in SAE J578 JUN95.

S7.4.1.1 *Four-headlamp systems.* Except as provided in S7.4.1.1(d), each upper beam headlamp and each lower beam headlamp in a four-headlamp system shall be designed to conform to the photometrics specified in its respective column of one of the following:

(a) Figure 15, or

(b) Figure 15 except that the upper beam test value at 2.5 D–V and 2.5 D–12R and 12L, shall apply to the lower beam headlamp and not to the upper beam headlamp, and the upper beam test point value at 1.5D–9R and 9L shall be 1000, or

(c) Figure 28;

(d) Headlamps designed to interchange with types A, C and G sealed beam headlamps shall conform to the photometrics of Figure 28 only; headlamps designed to interchange with type F sealed beam headlamps shall conform to the photometrics of Figure 15 only; headlamps designed to interchange with type J sealed beam headlamps shall conform to the photometric specification of S7.4.1.3, and type 55x135 sealed beam headlamps shall conform to the photometric specification of S7.4.1.1(b). The cited types of sealed beam headlamps are those specified by SAE Standard J1383 DEC96 *Performance Requirements for Motor Vehicle Headlamps.*

(e) Headlamp systems using the photometry of Figures 15–1 or 28–1 shall comply with the mechanical aim requirements of S8.3 or S8.4.

S7.4.1.2 *Two-headlamp systems.* (a) Each headlamp shall be designed to conform to the photometrics of either Figure 17 or Figure 27.

(b) Headlamp systems using the photometry of Figures 17–1 or 27–1 shall comply with the mechanical aim requirements of S8.3 or S8.4.

S7.4.1.3 *Headlamp systems using lamps comprised of multiple beam contributors.* In a headlamp system in which there is more than one beam contributor providing each lower beam, and/or more than one beam contributor providing each upper beam, each beam contributor in the system shall be designed to meet only the photometric performance requirements of Figure 15 based upon the following mathematical expression: conforming test point value = (Figure 15 test point value)/total

number of beam contributors for each lower or upper beam, as appropriate). The system shall be designed to use the Vehicle Headlamp Aiming Device (VHAD) as specified in S8.4.

S7.4.2 *Photometric test procedure.* Each integral beam headlamp system shall be designed to conform to the applicable photometric performance requirements of S7.4.1 (rather than Table 3 of SAE J1383 DEC96) when tested in accordance with the test procedures of Paragraphs 5.1 and 5.1.4 of SAE Standard J1383 DEC96. Unless stated otherwise, a tolerance of +/− ¼ degree is permitted during photometric performance tests for any headlamp or beam contributor. The test points 10U–90U shall be measured in a horizontal range 45R to 45L from the normally exposed surface of the lens face. Luminous intensities in this upper region may exceed the limits contained in S7.4.1 if they are confined within a 2-degree conical angle and do not exceed 438 cd. The term "aiming plane" means "aiming reference plane," or an appropriate vertical plane defined by the manufacturer as required in S8.1.

S7.4.3 *Assemblies allowing simultaneous aim of multiple lamps.* A headlamp or beam contributor designed to meet S7.4.1.1 or 7.4.1.3, and S8.3, except a type A, C or G sealed beam headlamp, may be mounted in an assembly to permit simultaneous aiming of the beam(s) contributors, provided that with any complying contributor the assembly complete with all lamps meets the appropriate photometric requirements when tested in accordance with S7.4.4.

S7.4.4 *Photometric test procedure for simultaneous aim assemblies.* The assembly used for simultaneously aiming more than one integral beam headlamp, at each side of a vehicle, shall be placed on a test fixture on a goniometer located not less than 18.3 m (60 ft) from the photometer. The assembly shall be aimed by centering the geometric center of the lower beam lens(es) on the photometer axis and by aligning the photometer axis to be perpendicular to the aiming reference plane or appropriate vertical plane defined by the manufacturer of any lower beam contributor. Photometric compliance of a lower beam shall be determined with all lower beam contributors illuminated and in accordance with the test procedures of paragraphs 5.1 and 5.1.4 of SAE Standard J1383 DEC96 using the test points and photometric requirements of Figure 15. The assembly shall then be moved in a plane parallel to the established aiming plane of the lower beam until the assembly is located with the geometric center of the upper lens(es) on the photometer axis. Photometric compliance for an upper beam shall now be determined using the figure and procedure specified for the lower beam. During photometric testing, a ¼ degree reaim is permitted in any direction at any test point.

S7.4.5 *Arrangement and marking of upper and lower beams.*

(a) The reflector with the most outboard lighted edge or the most outboard light source within a headlamp in a two-headlamp system, or the most outboard headlamp in a four-headlamp system shall provide all or part of the lower beam. If the light sources or the outboard lighted edges of reflectors or headlamps are arranged along the same vertical longitudinal plane, the upper light source, reflector or headlamp shall provide all or part of the lower beam. For purposes of this paragraph, the location within the headlamp reflector of the light path from a remote light source shall be considered the location of the light source.

(b) In a four-headlamp system, the lower beam headlamp lens shall be permanently marked with the letter "L" or the number "2" before the type designation letter of types A, C and G sealed beam headlamps, and the upper beam headlamp lens shall be permanently marked with the letter "U" or the number "1" before the type designation letter of types A, C and G sealed beam headlamps.

S7.4.6 *Aimability.* The system shall be aimable in accordance with the requirements of S8. A system that incorporates any headlamp or beam contributor that does not have a VHAD as an integral and indivisible part of the headlamp or beam contributor shall be designed so that the appropriate photometrics are met when any correctly aimed and photometrically conforming headlamp or beam contributor is removed from its mounting and aiming mechanism, and is replaced without reaim by any conforming headlamp or beam contributor of the same type. A visually/optically aimable sealed beam headlamp interchangeable with a mechanically aimable sealed beam headlamp shall be manufactured with the aiming pads specified for it in SAE J1383 DEC96.

S7.4.7 *Replaceable lenses.* Headlamps that are visually/optically aimable in accordance with S8.5 or that incorporate a vehicle headlamp aiming device conforming to S8.4 may be designed to have a replaceable lens.

S7.4.8 *Other performance requirements.* When tested according to any of the procedures indicated in S9, each headlamp or beam contributor shall meet the appropriate requirement:

S7.4.8.1 *Abrasion.* After an abrasion test conducted in accordance with S9.2, the headlamp shall meet the photometric requirements applicable to the headlamp system under test.

S7.4.8.2 *Chemical resistance.* After the chemical resistance tests of S9.3 and S9.10.1, the headlamp shall have no surface deterioration, coating delamination, fractures, deterioration of bonding or sealing materials, color bleeding or color pickup visible without magnification, and the headlamp shall meet the photometric requirements applicable to the headlamp system under test.

S7.4.8.3 *Corrosion resistance.* After a corrosion test conducted in accordance with S9.4, there shall be no evidence of external or internal corrosion or rust visible without magnification. After a corrosion test conducted in accordance with S9.10.2, there shall be no evidence of corrosion or rust visible without magnification on any part of the headlamp reflector that receives light from a headlamp light source, on any metal light or heat shield assembly, or on a metal reflector of any other lamp not sealed from the headlamp reflector. Loss of adhesion of any applied coating shall not occur more than 3.2 mm (0.125 in.) from any sharp edge on the inside or outside. Corrosion may occur on terminals only if the current produced during the test of S9.4(c) is not less than 9.7 amperes.

S7.4.8.4 *Dust resistance.* After a dust test conducted in accordance with S9.5, the headlamp shall meet the photometric requirements applicable to the headlamp system under test.

S7.4.8.5 *Heat resistance.* The headlamp shall first meet the requirements of S7.4.8.5(a) and then those of S7.4.8.5(b).

(a) After a temperature cycle test conducted in accordance with S9.6.1, the headlamp shall show no evidence of delamination, fractures, entry of moisture or deterioration of bonding material, color bleeding, warpage or deformation visible without magnification or lens warpage greater than 3 mm (0.118 in) measured parallel to the optical axis at the point of intersection of the axis of each light source with the exterior surface of the lens, and it shall meet the photometric requirements applicable to the headlamp system under test.

(b) After an internal heat test conducted in accordance with S9.6.2, there shall be no lens warpage greater than 3 mm (0.118 in) when measured parallel to the optical axis at the point of intersection of the axis of each light

source with the exterior surface of the lens, and it shall meet the photometric requirements applicable to the headlamp system under test.

S7.4.8.6 *Humidity resistance.* After a humidity test conducted in accordance with S9.7, the inside of the headlamp shall show no evidence of delamination or moisture, fogging or condensation visible without magnification.

S7.4.8.7 *Vibration resistance.* After a vibration test conducted in accordance with S9.8, there shall be no evidence of loose or broken parts, other than filaments, visible without magnification.

S7.4.8.8 *Exposure resistance.* After a three-year outdoor exposure test conducted in accordance with SAE J576 JUL91, plastic materials used for headlamp lenses shall:

(a) Have no loss of luminous transmittance of more than 25 percent of the luminous transmittance of the unexposed control sample when tested according to ASTM E 308–66 using CIE Illuminant A (2856K);

(b) Continue to conform to the color specification of achromatic lens material contained in SAE J578 JUN95 for samples having the thickness of the headlamp lens or greater;

(c) Show no deterioration regarding haze when evaluated visually, and

(d) Show no physical changes affecting performance such as color bleeding, delamination, crazing or cracking when compared visually to unexposed samples.

S7.4.9 *Exceptions to other performance requirements.* A headlamp with a glass lens need not meet the abrasion resistance test (S9.2). A headlamp with a nonreplaceable lens need not meet the chemical and corrosion resistance test of reflectors (S9.10). A headlamp with a nonreplaceable glass lens need not meet the chemical resistance test (S9.3). A headlamp with a glass lens and a non-plastic reflector need not meet the internal heat test of S9.6.2. A headlamp of sealed design as verified in S9.9 (sealing) need not meet the dust, humidity or corrosion resistance requirements of S7.4.8, except that it must meet the corrosion resistance requirement for terminals in S7.4.8.3.

S7.4.10 *Incorporation of non-headlamp light sources.* An integral beam headlamp may incorporate replaceable light sources that are used for purposes other than headlighting.

S7.5 *Replaceable light source headlamp systems.* Each replaceable light source headlamp system shall use replaceable light sources complying with S7.6, or a combination at each side of fixed light sources and complying replaceable light sources, and it shall be designed to conform to the following requirements:

S7.5.1 *Photometric requirements.* The system shall provide in total not more than two upper beams and two lower beams and shall incorporate not more than two replaceable light sources in each headlamp of a two-headlamp system nor more than one replaceable light source in each headlamp of a four-headlamp system. The color of the emanating light produced by a headlamp shall be white as specified in SAE J578 JUN95. The photometric performance specified in S7.5.1.1 and S7.5.1.2 (depicted in Figure 26) shall be obtained using any complying replaceable light source of the type intended for use in such system.

S7.5.1.1 *Four-headlamp systems.* Each upper beam headlamp and each lower beam headlamp of a four-headlamp system shall be designed to conform to the photometrics of one of the following:

(a) Figure 15, or

(b) Figures 15 or 27 if the system uses only light sources of types HB1 or HB5.

S7.5.1.2 *Two-headlamp systems.* Each headlamp in a two-headlamp system shall be designed to conform to the photometrics of one of the following:

(a) Figure 17, or

(b) Figures 17 or 27 if the system uses only light sources of types HB1 or HB5.

S7.5.2 *Photometric test procedure.* Each replaceable light source headlamp system shall be designed to conform to the applicable photometric performance requirements of S7.5.1 (rather than Table 3 of SAE J1383 DEC96) when tested in accordance with the test procedures of Paragraphs 5.1 and 5.1.4 of SAE Standard J1383 DEC96. Unless stated otherwise, a tolerance of ±¼ degree is permitted during photometric performance tests for any headlamp. The test points 10U–90U shall be measured in a horizontal range 45R to 45L from the normally exposed surface of the lens face. Luminous intensities in this upper region may exceed the limits contained in S7.5.1 if they are confined within a 2-degree conical angle and do not exceed 438 cd. The term "aiming plane" means "aiming reference plane," or an appropriate vertical plane defined by the manufacturer as required in S8.1.

S7.5.3 *Arrangement and marking of upper and lower beams.*

(a) The reflector with the most outboard lighted edge or the most outboard light source within a headlamp in a two-headlamp system, or the most outboard headlamp in a four-headlamp system shall provide all or part of the lower beam. If the light sources or the outboard lighted edges of reflectors or headlamps are arranged along the same vertical longitudinal plane, the upper light source, reflector or headlamp shall provide all or part of the lower beam. For purposes of this paragraph, the location within the headlamp reflector of the light path from a remote light source shall be considered the location of the light source.

(b) In a four-headlamp system the lower beam headlamp lens shall be permanently marked with the letter "L" and the upper beam headlamp lens shall be permanently marked with the letter "U".

(c) The lens of each replaceable light source headlamp shall bear permanent marking in front of each replaceable light source with which it is equipped that states the HB Type or the bulb marking/designation provided in compliance with Section VIII of Appendix A or Section VI of Appendix B of part 564 of this chapter.

S7.5.4 *Aimability.* The system shall be aimable in accordance with the requirements of S8. Headlamps designed to conform to the external mechanical aiming requirements of S8.3 shall have no mechanism that allows adjustment of an individual light source, or, if there are two light sources, independent adjustment of each reflector.

S7.5.5 *Replaceable lenses.* Headlamps that are visually/optically aimable in accordance with S8.5 or that incorporate a vehicle headlamp aiming device conforming to S8.4 may be designed to have a replaceable lens.

S7.5.6 *Replacement lens-reflector units.* Each lens reflector unit manufactured as replacement equipment shall be designed to conform to the requirements of S7.5.1 when any replaceable light source appropriate for such unit is inserted in it.

S7.5.7 *Other performance requirements.* Each headlamp shall meet the requirements of S7.4.8 and S7.4.9, except that the sentence in S7.4.9 granting exceptions to the corrosion, dust and humidity test requirements for sealed headlamps does not apply.

S7.5.8 *Incorporation of non-headlamp light sources.* A replaceable bulb headlamp may incorporate replaceable light sources that are used for purposes other than headlighting.

S7.6 *Replaceable light sources.* Each replaceable light source shall be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to part 564 of this chapter, and shall conform to the following requirements:

S7.6.1 *Color.* When the replaceable light source of any complying headlamp

is replaced with a complying light source having a compatible base, the color of the light produced by the headlamp shall remain white as specified in SAE J578 JUN95.

S7.6.2 *Test of luminous flux and power.* The measurements of maximum power and luminous flux that are submitted in compliance with Appendix A or Appendix B of part 564 of this chapter, shall be made with the direct current test voltage regulated within one quarter of one percent. The test voltage shall be 12.8v. The measurement of luminous flux shall be in accordance with the Illuminating Engineering Society of North America, LM 45; *IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps* (April 1980). The replaceable light source shall be seasoned before such measurement.

(a) For a light source with a resistive element type filament, seasoning of the light source shall be made in accordance with paragraph 3.8 of SAE Standard J1383 DEC96 *Performance Requirements for Motor Vehicle Headlamps.* The measurement of luminous flux shall be made with the black cap installed on Type HB1, Type HB2, Type HB4, and Type HB5 light sources, and on any other replaceable light source so designed, and shall be made with the electrical conductor and light source base shrouded with an opaque white colored cover, except for the portion normally located within the interior of the lamp housing. The measurement of luminous flux for Type HB3 and Type HB4 shall be made with the base covered with the white cover shown in the drawings for Types HB3 and HB4 filed in Docket No. NHTSA 98–3397. The white covers are used to eliminate the likelihood of incorrect lumens measurement that will occur should the reflectance of the light source base and electrical connector be low.

(b) For a light source using excited gas mixtures as a filament or discharge arc, seasoning of the light source system, including any ballast required for its operation, shall be made in accordance with paragraph 4.0 of SAE Recommended Practice J2009 FEB93 *Discharge Forward Lighting Systems.* With the test voltage applied to the ballast input terminals, the measurement of luminous flux shall be made with the black cap installed, if so designed, and shall be made with the base covered with an opaque white colored cover, except for the portion normally located within the interior of the lamp housing.

S7.6.3 *Test of seal airtightness.* The capsule, lead wires and/or terminals, and seal on each Type HB1, Type HB3, Type HB4, and Type HB5 light source, and on any other replaceable light source which uses a seal, shall be installed in a pressure chamber as shown in Figure 25 so as to provide an airtight seal. The diameter of the aperture in Figure 25 on a replaceable light source (other than an HB Type) shall be that dimension furnished for such light source in compliance with Section IV.B of Appendix A or Section III.B of Appendix B of part 564 of this chapter. An airtight seal exists when no air bubbles appear on the low pressure (connector) side after the light source has been immersed in water for one minute while inserted in a cylindrical aperture specified for the light source, and subjected to an air pressure of 70kPa (10 P.S.I.G.) on the glass capsule side.

7.6.4 *Deflection resistance requirement.* After the force deflection test conducted in accordance with S7.6.5, the permanent deflection of the glass envelope shall not exceed 0.13 mm (0.005 in) in the direction of the applied force.

S7.6.5 *Deflection test.* With the light source rigidly mounted in a fixture in a manner indicated in Figure 8, a force of 17.8 ± 0.4N (4.0 ± 0.1 lb) is applied at a distance "A" from the reference plane perpendicular to the longitudinal axis of the glass capsule and parallel to the smallest dimension of the pressed glass capsule seal. The force shall be applied (using a rod with a hard rubber tip with a minimum spherical radius of 1 mm (0.039 in) radially to the surface of the glass capsule in four locations in a plane parallel to the reference plane and spaced at a distance "A" from that plane. These force applications shall be spaced 90 degrees apart starting at the point perpendicular to the smallest dimension of the pressed seal of the glass capsule. The bulb deflection shall be measured at the glass capsule surface at 180 degrees opposite to the force application. Distance 'A' for a replaceable light source other than an HB Type shall be the dimension provided in accordance with Appendix A of part 564 of this chapter.

7.6.6 *Rated laboratory life of discharge type light sources.* The "rated laboratory life" that is submitted in compliance with Appendix B of Part 564 of this chapter shall be determined in accordance with paragraphs 4.3 and 4.9 of SAE Recommended Practice J2009 FEB93 *Forward Discharge Lighting Systems* for light sources that use excited gas mixtures as a filament or discharge arc.

7.6.7 *Marking requirements for light sources.* The base of each HB Type shall be marked with its HB Type designation. If other than an HB Type, the light source shall be marked with the bulb marking designation specified for it in compliance with Appendix A or Appendix B of part 564 of this chapter. Each replaceable light source shall also be marked with the symbol DOT and with a name or trademark in accordance with S7.2.

7.6.8 *Marking requirements for ballast devices.* If a ballast is required for light source operation, each ballast shall bear the following permanent markings:

(a) Name or logo of ballast manufacturer;

(b) Ballast part number or unique identification;

(c) Part number or other unique identification of the light source for which the ballast is designed;

(d) Rated laboratory life of the light source/ballast combination, if the information for the light source has been filed in Appendix B of part 564 of this chapter;

(e) A warning that ballast output voltage presents the potential for severe electrical shock that could lead to permanent injury or death;

(f) Ballast output power in watts and output voltage in volts DC or root mean squared volts AC; and

(g) The symbol 'DOT'.

S7.7 *Special wiring requirements.*

S7.7.1 *Headlamp beam switching.* Each vehicle shall have a means of switching between lower and upper beams designed and located so that it may be operated conveniently by a simple movement of the driver's hand or foot. The switch shall complete the circuit for one beam before opening the circuit for the other beam to avoid transient points in which neither beam is powered. A blue or green upper beam indicator light shall be provided, with a minimum area equivalent to that of a 4.75 mm (3/16 in) diameter circle, plainly visible to drivers of all heights under normal driving conditions when headlamps are required.

S7.7.2 *Semi-automatic headlamp beam switching.* As an alternative to S7.7.1, a vehicle may be equipped with semi-automatic means of switching between lower and upper beams that conforms to SAE Recommended Practice J565 JUN89, *Semi-Automatic Headlamp Beam Switching Devices.*

S7.7.3 *Prohibition against simultaneous upper and lower beam use.* Except as provided in S7.7.4, the wiring harness or connector assembly of each headlamp system shall be designed so that only those light sources intended for meeting lower beam photometrics are energized when the beam selector

switch is in the lower beam position, and that only those light sources intended for meeting upper beam photometrics are energized when the beam selector switch is in the upper beam position. Except as provided in S7.7.4, the lower and upper beams shall not be energized simultaneously except momentarily for temporary signaling purposes or during switching between beams.

S7.7.4 *Exceptions to simultaneous beam prohibition.*

S7.7.4(a) On a motor vehicle equipped with a headlighting system designed to conform to the photometric requirements of Figure 15–1 or 15–2, the lower beam lamps may be wired to remain activated when the upper beam lamps are activated.

(b) On a motor vehicle equipped with an Integral Beam headlighting system meeting the photometric requirements of S7.4.1.1(b), the lower beam headlamps shall be wired to remain permanently activated when the upper beam headlamps are activated.

(c) On a motor vehicle equipped with a headlighting system designed to conform to the requirements of Figure 17–1 or 17–2, a lower beam light source may be wired to remain activated when an upper beam light source is activated if the lower beam light source contributes to compliance of the headlighting system with the upper beam requirements of Figure 17–1 or 17–2.

(d) Lower beam headlamps may be wired to activate upon failure of an upper beam headlamp, regardless of the position of the beam selector switch.

S7.7.5 *Flashing.* Headlamps and side marker lamps may be wired to flash for signaling purposes;

S7.7.6 *Motorcycle headlamp beam modulation.* A motorcycle headlamp may be wired to allow either its upper beam or its lower beam, but not both, to modulate between a higher intensity and a lower intensity in accordance with S7.3.4.

S8. *Headlamp aimability performance requirements.*

S8.0 The following is a table of contents for headlamp aimability performance requirements:

S8.1 General requirements
S8.2 Aiming reference features
S8.3 Headlamp mounting and aiming mechanism
S8.4 External mechanical aiming
S8.5 On-vehicle mechanical aiming (VHAD)
S8.6 Visual/optical aiming
S8.7 Replacement headlamps

S8.1 *General requirements.* When a headlamp system is installed on a motor vehicle, it shall be aimable with at least one of the following: an externally applied mechanical aiming device, as specified in S8.4; an on-vehicle mechanical headlamp aiming device installed by the vehicle or lamp manufacturer, as specified in S8.5; or by visual/optical means, as specified in S8.6. All of the headlamps within the system shall be aimable by the same means. An auxiliary vertical VHAD complying with S8.5 may be used on a headlamp complying with S8.6.

S8.2 *Aiming reference features*

(a) Each headlamp or beam contributor that is not visually/optically aimable in accordance with S8.6 of this standard shall be equipped with fiducial marks, aiming pads, or similar references of sufficient detail and accuracy, for determination of an appropriate vehicle plane to be used with the photometric procedures of SAE J1383 DEC96 for correct alignment with the photometer axis when being tested for photometric compliance, and to serve for the aiming reference when the headlamp or beam contributor is installed on a motor vehicle. The fiducial marks, aiming pads, or similar references are protrusions, bubble vials, holes, indentations, ridges, scribed lines, or other readily identifiable marks established and described by the vehicle or headlamp manufacturer.

(b) Each motor vehicle manufactured on and after September 1, 1998, shall be equipped with headlamps or beam contributors which have a mark or markings that are visible from the front of the headlamp when installed on the vehicle to identify the optical axis of the headlamp to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment. The manufacturer is free to choose the design of the mark or markings. The mark or markings may be on the interior or exterior of the lens or indicated by a mark or central structure on the interior or exterior of the headlamp. Examples of such marks include, but are not limited to: dots, circles or trademarks with an obvious center; marks on the periphery of the lens which can be converged accurately to the optical center; pointed bulb tips or circular light shields clearly visible through unfluted lenses if they coincide with the optical center. The shape of a round or rectangular headlamp intrinsically marks the center if its lens surface is symmetric about its beam axis.

(c) Each headlamp that is visually/optically aimable in accordance with S8.6 of this standard shall be marked in accordance with S8.6.6.

S8.3 *Headlamp mounting and aiming mechanism.* Except as provided in this paragraph, each headlamp shall be installed on a motor vehicle with a mounting and aiming mechanism that allows aim inspection and adjustment of both vertical and horizontal aim, and is accessible for those purposes without removal of any vehicle parts, except for protective covers removable without the use of tools.

S8.3.1 *Cross-axis sensitivity.*

(a) When installed on the vehicle, adjustment of one aim axis through its full on-vehicle range shall not cause the aim of the other axis to deviate more than ±0.76 degree.

(b) If the performance specified in S8.3.1(a) is not achievable, the labeling requirements of S8.5.3(c) apply, except that if the aiming mechanism is not a VHAD, the requirements specific to VHADs are not applicable, and the instructions shall be specific to the aiming mechanism installed.

(c) A visually/optically aimable headlamp that has a lower beam shall not have a horizontal adjustment mechanism unless such mechanism meets the on-vehicle aiming requirements of S8.4 of this standard.

S8.3.2 *Aim adjustment range.*

(a) When a headlamp system is tested in a laboratory, the range of its vertical aim shall not be less than ±4 degrees from the nominal correct aim position for the intended vehicle application. When installed on a motor vehicle, the range of vertical aim shall be not less than the full range of pitch of the vehicle on which the headlamp system is installed. The installed range of static pitch angle shall as a minimum be determined from unloaded vehicle weight to gross vehicle weight rating, and incorporate pitch angle effects from maximum trailer or trunk loadings, the full range of tire intermix sizes and suspensions recommended and/or installed by the vehicle manufacturer, and the anticipated effects of variable passenger loading. The vertical aim adjustment mechanism shall be continuously adjustable over the full range.

(b) When a headlamp system is tested in a laboratory, the range of its horizontal aim shall be not less than ±2.5 degrees from the nominal correct aim position for the intended vehicle application.

S8.3.3 *Mechanisms with independent reflector movement.* If the headlamp is aimed by moving the reflector relative to the lens and headlamp housing, or vice versa, it shall:

(a) allow movement of the headlamp system, when tested in the laboratory, to be not less than the full range of pitch on the vehicle on which the headlamp system is installed and for the horizontal aim range limits of S8.3.2(b),

(b) conform with the photometrics applicable to it with the lens at any position relative to the reflector within the range limits as specified in S8.3.3(a)

(c) be exempted from the ±4 degree vertical aim range for laboratory testing of S8.3.2(a), and

(d) be exempted from the ±2.5 degree horizontal aim range of S8.3.2(b) if it is visually/optically aimable and has fixed horizontal aim.

S8.4 *External Mechanical aiming.* Each headlamp system that is capable of being mechanically aimed by externally applied headlamp aiming devices shall be mechanically aimable using the equipment specified in SAE Standard J602 DEC89 *Headlamp Aiming Device for Mechanically Aimable Headlamp Units* without the removal of any ornamental trim rings, covers, wipers or other vehicle parts. The torque deflection test of S8.4.1 assures that headlamps designed for external aiming are mounted to the vehicle in a manner sufficiently rigid to prevent aiming errors as a consequence of the weight of the headlamp aiming device. The inward force test limits the influence of aerodynamic forces on headlamp aim.

S8.4.1 *Torque deflection test.* The aim of the headlamps in each headlamp system that is designed to use such external aiming devices, shall not deviate more than 0.30 degree when a torque of 2.25 N-m (20 in-lb), applied about a horizontal axis in the aiming reference plane, is removed from the headlamp in its design operating position. The downward force used to create the torque shall be applied parallel to the aiming reference plane, through the aiming pads, and displaced forward using a lever arm that is perpendicular to the aiming reference plane and originates at the center of the aiming pad pattern (see Figures 4–1 and 4–3). For headlamps using the aiming pad locations of Group I, the distance between the point of application of force and the aiming reference plane shall be not less than 168.3 mm (6.625 in.) plus the distance from the aiming reference plane to the secondary plane, if used (see S8.3.4(a)). For headlamps using the aiming pad locations of Group II, the distance between the point of application of force and the aiming reference plane shall be not less than 167.9 mm (6.609 in) plus the distance from the aiming reference plane to the secondary plane, if used. For headlamps using the nonadjustable Headlamp Aiming Device Locating Plates for the 146 mm diameter, the 176 mm diameter, and the 92x150 mm sealed beam units, the distance between the point of application of force and the aiming plane shall, respectively, be not less than 177.4 mm (6.984 in), 176.2 mm (6.937 in), and 193.7 mm (7.625 in). For types A, B, C, D, E, F, G and H sealed beam headlamps the force shall be applied using the appropriate deflectometer described in SAE J1383 DEC96.

S8.4.2 *Inward force test.* When a headlamp is installed on a motor vehicle, its aim in any direction shall not change by more than 0.30 degree nor shall the lamp recede more than 2.5 mm (0.1 in) after being subjected to an inward force of 222N (50 lb) applied evenly to the lens parallel to the optical axis.

S8.4.3 *Corrosion test.* The mounting and aiming mechanism of each headlamp system shall be subjected to a salt spray (fog) test in accordance with ASTM B117–73 *Method of Salt Spray (Fog) Testing* for a period of 50 hours, consisting of two successive 25-hour periods of 24 hours exposure followed by 1 hour of drying. At the end of 50 hours, the headlamp system shall be capable of meeting any of the applicable requirements of S8.

S8.4.4 *Lens marking for use of adjustable aimer locating plate.* Each headlamp system which is designed to use the type of Headlamp Aiming Device Locating Plates which uses adjustable length legs for the 100 x 165 mm unit and the 142 x 200 mm unit shall meet the requirements of S8.4.4 (a) and (b).

(a) The lens shall have three aiming pads which meet the requirements of Figure 4, *Dimensional Specifications for Location of Aiming Pads on Replaceable Bulb Headlamp Units.* The aiming pads need not be centered at the geometric center of the lens, or on the optical axis. Except as provided in subparagraph S8.4.4(b), a whole number, which represents the distance in tenths of an inch (i.e., 0.3 inch = 3) from the aiming reference plane to the respective aiming pads which are not in contact with that plane, shall be inscribed adjacent to each respective aiming pad on the lens. The height of these numbers shall be not less than 4 mm (0.157 in). If there is interference between the plane and the area of the lens between the aiming pads, the whole number represents the distance to a secondary plane. The secondary plane shall be located parallel to the aiming reference plane and as close to the lens as possible without causing interference.

(b) If the most forward aiming pad is the lower inboard aiming pad, then the dimensions may be placed anywhere on the lens. The dimension for the outboard aiming pad (Dimension F in Figure 4) shall be followed by the letter "H" and the dimension for the center aiming pad shall be followed by the letter "V." The dimensions shall be expressed in tenths of an inch.

S8.4.5 *Nonadjustable aimer locating plate.* Each headlamp may be designed to use the nonadjustable Headlamp Aiming Device Locating Plate for the 100 x 165 mm unit, the 142 x 200 mm unit, the 146 mm diameter unit, the 178 mm diameter unit, or the 92 x 150 mm unit of SAE J602 DEC89 and incorporate lens mounted aiming pads or other aimimg plane locators as specified for those units in Figures 27, 21, 22, 25 or 23 respectively in SAE J1383 DEC96. If so designed, no additional lens marking is necessary to designate the type of plate or dimensions.

S8.5 *On-vehicle mechanical aiming (VHAD).* Each headlamp system that is capable of being aimed by mechanical equipment installed on the vehicle shall include a Vehicle Headlamp Aiming Device (VHAD), providing for headlamp aim inspection and adjustment in both the vertical and horizontal axes, that conforms to the following requirements:

S8.5.1 *Vertical aim.* The VHAD shall include the necessary references and scales relative to the horizontal plane to assure correct vertical aim for photometry and aiming purposes. An off-vehicle measurement of the angle of the plane of the ground is permitted. In addition, an equal number of graduations from the "0" position representing angular changes in the axis in the upward and downward directions shall be provided.

(a) Each graduation shall represent a change in the vertical position of the mechanical axis not larger than 0.19 degree (2.54 mm at 7.61 m (1 in. at 25 ft)) to provide for variations in aim at least 1.2 degrees above and below the horizontal, and have an accuracy relative to the zero mark of less than 0.1 degree.

(b) The VHAD shall be marked to indicate headlamp aim movement in the upward and downward directions.

(c) Each graduation shall indicate a linear movement of the scale indicator of not less than 1.27 mm (0.05 in) if a direct reading analog indicator is used. If a remote reading indicator is provided, it shall represent the actual aim movement in a clear, understandable format.

(d) The vertical indicator shall perform through a minimum range of ±1.2 degrees.

(e) Means shall be provided in the VHAD for compensating for deviations in floor slope less than 1.2 degrees from the horizontal that would affect the correct positioning of the headlamp for vertical aim.

(f) The graduations shall be legible under an illumination level not greater than 30 foot-candles, measured at the top of the graduation, by an observer having 20/20 vision (Snellen), and shall permit aim adjustment to within 0.19 degree (25.4 mm at 7.61 m (1 in. at 25 ft)).

S8.5.2 *Horizontal aim.* The VHAD shall include references and scales relative to the longitudinal axis of the vehicle necessary to assure correct horizontal aim for photometry and aiming purposes. An "0" mark shall be used to indicate alignment of the headlamps relative to the longitudinal axis of the vehicle. In addition, an equal number of graduations from the "0" position representing equal angular changes in the axis relative to the vehicle axis shall be provided.

(a) Each graduation shall represent a change in the horizontal position of the mechanical axis not greater than 0.38 degree (51 mm at 7.61 m (2 in. at 25 ft)) to provide for variations in aim at least 0.76 degree (102 mm at 7.61 m (4 in. at 25 ft.)) to the left and right of the longitudinal axis of the vehicle, and shall have an accuracy relative to the zero mark of less than 0.1 degree.

(b) The VHAD shall be marked to indicate headlamp aim movement in the left and right directions.

(c) The graduations shall be legible under an illumination level not greater than 30 foot-candles, measured at the top of the graduation, by an observer having 20/20 vision (Snellen), and shall permit aim adjustment to within 0.38 degree (51 mm at 7.61 m (2 in. at 25 ft.)).

(d) The horizontal indicator shall perform through a minimum range of ±0.76 degree (102 mm at 7.61 m (4 in. at 25 ft.)); however, the indicator itself shall be capable of recalibration over a movement of ±2.5 degrees relative to the longitudinal axis of the vehicle to accommodate any adjustment necessary for recalibrating the indicator after vehicle repair from accident damage.

S8.5.3 *Aiming labels and instructions.*

(a) The instructions for properly aiming the headlighting system using the VHAD shall be provided on a label permanently affixed to the vehicle adjacent to the VHAD, or in the vehicle operator's manual. The instructions shall advise that the headlighting system is properly aimed if the appropriate vertical plane (as defined by the vehicle manufacturer) is perpendicular to both the longitudinal axis of the vehicle, and a horizontal plane when the vehicle is on a horizontal surface, and the VHAD is set at "O" vertical and "O" horizontal.

(b) Should a remote indicator or a remote indicator and adjuster be provided, the instructions shall be placed in the operator's manual, and may also be placed on a label adjacent to the VHAD.

(c) Should the mechanism not meet the requirements of S8.3.1, a cautionary label shall be placed adjacent to the mechanism stating the caution and including either the reason for the caution or the corrective action necessary. Each such label shall also refer the reader to the vehicle operator's manual for complete instructions. Each such vehicle shall be equipped with an operator's manual containing the complete instructions appropriate for the mechanism installed.

S8.5.4 *Fixed VHAD calibration.* Each headlamp equipped with a VHAD that is manufactured for use on motor vehicles manufactured on or after September 1, 1998, shall be manufactured with the geometry of the VHAD devices permanently aligned with the beam pattern.

S8.5.5 *Testing the VHAD.*

S8.5.5.1 The headlamp assembly (the headlamp(s) and the VHAD(s)) shall be mounted on a level goniometer, aligned to a photometer located not less than 18.3 m (60 ft) from the VHAD assembly. The assembly shall be mechanically aimed using the VHAD in accordance with the manufacturer's instructions as provided with the vehicle on which the VHAD is intended to be used. A ¼ degree re-aim is permitted in any direction at any test point to allow for variations in readings between laboratories. The test shall be conducted in accordance with the photometry test procedures of paragraphs 5.1 and 5.1.4 of SAE J1383 DEC96. Under these conditions the mounted headlamp assembly shall be designed to conform to the photometric requirements appropriate for the headlamp system under test.

S8.5.5.2 When tested in accordance with S8.5.5.1, with any complying replacement headlamp unit(s) or complying light sources intended for use in the system under test, the VHAD and headlamp system shall be designed to conform to the photometric performance requirements appropriate for the system under test.

S8.5.5.3 With the same VHAD and associated headlamp(s) (or headlamp assembly) rigidly mounted in a headlamp test fixture, each graduation on the horizontal and vertical aim scales shall be checked and any variation from the correct aim shall not exceed ±0.2 degree, and ±0.1 degree respectively.

S8.5.5.4 The calibration of the VHAD shall be maintained under the following test conditions. The aimer shall be adjusted before each of the following tests to assure that the indicators are centered at 0 with the aiming plane horizontal and vertical and with the scale on the device set at 0.

(a) The VHAD and an unlighted headlamp assembly shall be stabilized at −7 ±3 degrees C (20 ±5 degrees F) in a circulating air environmental test chamber. After a period of 30 minutes, when measured at that soak temperature, the variation from correct horizontal or vertical aim shall not exceed ±0.2 degree, and ±0.1 degree, respectively.

(b) The VHAD, and the headlamp assembly with it highest wattage filament (or combination of filaments intended to be used simultaneously) energized at its design voltage, shall then be stabilized at 38 ±3 degrees C (100 ±5 degrees F) in a circulating air environmental test chamber. After a period of 30 minutes, when measured at that soak temperature, the variation from correct horizontal and vertical aim shall not exceed ±0.2 degree, and ±0.1 degree, respectively.

(c) The VHAD and an unlighted headlamp assembly shall then be placed in a circulating air environmental test chamber and exposed to a temperature of 60 ±3 degrees C (140 ±5 degrees F) for 24 hours, followed by a temperature of −40 ±5 degrees C (−40 ±3 degrees F) for 24 hours and then permitted to return to room temperature, after which the VHAD and headlamp assembly shall show no damage which would impair its ability to perform as specified herein. The variation from correct horizontal or vertical aim shall not exceed ±0.2 degree, and ±0.1 degree, respectively.

S8.5.5.5 The same VHAD and headlamp assembly shall then be tested according to the corrosion test procedure of S8.5.3.

S8.5.5.6 The same VHAD and headlamp assembly shall then be tested for photometric compliance as specified in S8.5.5.1 and S8.5.5.2.

S8.6 *Visual/optical aiming.* Each visually/optically aimable headlamp shall be designed to conform to the following requirements:

S8.6.1 *Vertical aim, lower beam.* Each lower beam headlamp shall have a cutoff in the beam pattern. It may be either on the left side or the right side of the optical axis, but once chosen for a particular headlamp system's design, the side chosen for the cutoff shall not be changed for any headlamps intended to be used as replacements for those system's headlamps.

S8.6.1.1 *Vertical position of cutoff:* The headlamp shall be aimed vertically

so that the cutoff is on the left side, at 0.4 degree down from the H–H line, or on the right side, at the H–H line.

S8.6.1.2 *Vertical gradient:* The gradient of the cutoff measured at either 2.5 degrees L or 2.0 degrees R shall be not less than 0.13 based on the procedure of S8.5.1.5.

S8.6.1.3 *Horizontal position of the cutoff:* The width shall be not less than two degrees, with not less than two degrees of its actual width centered at either 2.5 degrees L, or 2.0 degrees R.

S8.6.1.4 *Maximum inclination of cutoff:* The vertical location of the highest gradient at the ends of the minimum width shall be within ±0.2 degree of the vertical location of the maximum gradient measured at the appropriate vertical line (at either 2.5 degrees L for a left-side cutoff, or 2.0 degrees R for a right-side cutoff.)

S8.6.1.5 *Measuring the cutoff parameter:*

(a) The headlamp shall be mounted on a fixture which simulates its actual design location on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. The headlamp shall be energized at the specified test voltage.

(b) The headlamp beam pattern shall be aimed with the cutoff at the H-H axis. There shall be no adjustment, shimming, or modification of the horizontal axis of the headlamp or test fixture, unless the headlamp is equipped with a VHAD. In this case the VHAD shall be adjusted to zero.

(c) A vertical scan of the beam pattern shall be conducted for a headlamp with a left-side gradient by aligning the goniometer on a vertical line at 2.5 degrees L and scanning from 1.5 degrees U to 1.5 degrees D. For a headlamp with a right-side gradient, a vertical scan of the beam pattern shall be conducted by aligning the goniometer on a vertical line at 2.0 degrees R and scanning from 1.5 degrees U to 1.5 degrees D.

(d) Determine the maximum gradient within the range of the scan by using the formula: $G = \log E(\alpha) - \log E(\alpha+0.1)$, where "G" is the gradient, "E" is illumination and "α" is vertical angular position. The maximum value of the gradient "G" determines the vertical angular location of the cutoff. Perform vertical scans at 1.0 degree L and R of the measurement point of the maximum gradient to determine the inclination.

S8.6.2 *Horizontal aim, lower beam.* There shall be no adjustment of horizontal aim unless the headlamp is equipped with a horizontal VHAD. If the headlamp has a VHAD, it shall be set to zero.

S8.6.3 *Vertical aim, upper beam.*

(a) If the upper beam is combined in a headlamp with a lower beam, the vertical aim of the upper beam shall not be changed from the aim set using the procedures of S8.6.1 and S8.6.2 used for the lower beam.

(b) If the upper beam is not combined in a headlamp with a lower beam, the vertical aim of the upper beam shall be adjusted so that the maximum beam intensity is located on the H-H axis.

S8.6.4 *Horizontal aim, upper beam.*

(a) If the upper beam is combined in a headlamp with a lower beam, the horizontal aim of the upper beam shall not be changed from the aim set using the procedures of S8.6.1 and S8.6.2 used for the lower beam.

(b) If the upper beam is not combined in a headlamp with the lower beam and has fixed horizontal aim or has a horizontal VHAD, then the headlamp shall be mounted on a fixture which simulates its actual design location on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. The headlamp shall be energized at 12.8 V ±20 mV. There shall be no adjustment, shimming, or modification of the horizontal axis of the headlamp or test fixture, unless the headlamp is equipped with a VHAD. In this case the VHAD shall be adjusted to zero.

(c) If the upper beam is not combined in a headlamp with a lower beam, and it does not have a VHAD, the horizontal aim of the upper beam shall be adjusted so that the maximum beam intensity is located on the V-V axis.

S8.6.5 *Photometric Requirements and Measurement:*

(a) Instead of being designed to conform to the photometric requirements of Figures 15–1, 17–1, 27–1 or 28–1, a visually/optically aimable headlamp shall be designed to conform to the requirements of Figures 15–2, 17–2, 27–2 or 28–2 when tested in accordance with S8.6.5 (b) and SAE J575 JUN92, with the distance from the photometer to the headlamp no less than 18.3 m (60 ft).

(b) If the lower beam has a left side cutoff, reaim the headlamp vertically to place the maximum gradient found in S8.5 at 0.4 degree below the H-H line. For a headlamp with a lower beam right side cutoff, place the maximum gradient found in S8.5 at the H-H line. For an upper beam, the headlamp would already be aimed at the end of the procedure found in S8.5. A 0.25 degree reaim is permitted in any direction at any test point.

S8.6.6 *Marking.*

S8.6.6.1 Headlamp optical axis mark. There shall be a mark or markings identifying the optical axis of the headlamp visible from the front of the headlamp when installed on the vehicle, to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment with the headlamp being aimed. The manufacturer is free to choose the design of the mark or markings. The mark or markings may be on the interior or exterior of the lens or indicated by a mark or central structure on the interior or exterior of the headlamp.

S8.6.6.2 *Visual/optical aimability identification marks.*

(a) The lens of a lower beam headlamp shall be marked "VOL" if the headlamp is intended to be visually/optically aimed using the left side of the lower beam pattern.

(b) The lens of a lower beam headlamp shall be marked "VOR" if the headlamp is intended to be visually/optically aimed using the right side of the lower beam pattern.

(c) The lens of each sealed beam or integral beam headlamp shall be marked "VOR" if the headlamp is of a type that was manufactured before March 1, 1997, and if such headlamp type has been redesigned since then to be visually/optically aimable.

(d) The lens of a headlamp that is solely an upper beam headlamp and intended to be visually/optically aimed using the upper beam shall be marked "VO".

(e) Each letter used in marking according to this paragraph shall be not less than 3 mm. (0.118 in) high.

S8.7 *Replacement headlamps.*

S8.7.1 If a headlamp using visual/optical aim or a VHAD is offered as a replacement for a headlamp using external mechanical aim, it shall have the same pattern of aiming pads as the original headlamp.

S8.7.2 A headlamp using visual/optical aim may be offered as a replacement for a headlamp using a VHAD only if the replacement headlamp has a horizontal VHAD complying with S8.5.

S8.7.3 A headlamp using a VHAD may be offered as a replacement for a headlamp using visual/optical aim.

S9. *Headlamp performance test procedures.*

S9.0 The following is a table of contents of the test procedures for headlamp performance.

S9.1 Photometry.
S9.2 Abrasion.

S9.3 Chemical resistance.
S9.4 Corrosion.
S9.5 Dust.
S9.6 Temperature and internal heat tests.
S9.7 Humidity.
S9.8 Vibration.
S9.9 Sealing.
S9.10 Chemical and corrosion resistance of reflectors of replaceable lens headlamps

S9.1 *Photometry.* Each headlamp to which S9 applies shall be tested according to the test procedures of Paragraphs 5.1 and 5.1.4 of SAE Standard J1383 DEC96 and the applicable photometric requirements specified in S7.4 or S7.5, after each test specified in S9.2, S9.3, S9.5, S9.6.1, S9.6.2, S9.7, and S9.10.1 and S9.10.2, if applicable. A 1/4 degree reaim is permitted in any direction at any test point.

S9.2 *Abrasion.*

S9.2.1 A headlamp shall be mounted in the abrasion test fixture in the manner indicated in Figure 5 with the lens facing upward.

S9.2.2 An abrading pad meeting the requirements in S9.2.2 (c)(1) through (c)(4) shall be cycled back and forth (1 cycle) for 11 cycles at 100 mm ± 20 mm (4 ± 0.8 in) per second over at least 80 percent of the lens surface, including all the area between the upper and lower aiming pads, but not including lens trim rings and edges.

S9.2.3(a) The abrading pad shall be not less than 25 mm ± 1 mm (1.0 ± .04 in) wide, constructed of 0000 steel wool, and rubber cemented to a rigid base shaped to the same vertical contour of the lens. The "grain" of the pad shall be perpendicular to the direction of motion.

(b) The abrading pad support shall be equal in size to the pad and the center of the support surface shall be within ± 2 mm (±.08 in) of parallel to the lens surface.

(c) The density of the abrading pad shall be such that when the pad is mounted to its support and is resting unweighted on the lens, the base of the pad shall be no closer than 3.2 mm (.125 in) to the lens at its closest point.

(d) When mounted on its support and resting on the lens of the test headlamp, the abrading pad shall then be weighted such that a pad pressure of 14 ± 1 kPpa (2.0 ± .15 psi) exists at the center and perpendicular to the face of the lens.

S9.2.4 A pivot shall be used if it is required to follow the contour of the lens.

S9.2.5 Unused steel wool shall be used for each test.

S9.3 *Chemical resistance.*

S9.3.1 The entire exterior lens surface of the headlamp in the headlamp test fixture and top surface of the lens-reflector joint shall be wiped once to the left and once to the right with a 150 mm (6 in) square soft cotton cloth (with pressure equally applied) which has been saturated once in a container with 60 ml (2 oz) of a test fluid as listed in S9.3.2. The lamp shall be wiped within 5 seconds after removal of the cloth from the test fluid.

S9.3.2 The test fluids are:

(a) ASTM Reference Fuel C, which is composed of Isooctane 50 percent volume and Toluene 50 percent volume. ASTM Reference Fuel C must be used as specified in OSHA Standard 29 CFR 1910.106—*Handling storage and use of flammable combustible liquids.*

(b) Tar remover (consisting by volume of 45 percent xylene and 55 percent petroleum base mineral spirits).

(c) Power steering fluid (as specified by the vehicle manufacturer for use in the motor vehicle on which the headlamp is intended to be installed).

(d) Windshield washer fluid consisting of 0.5 percent monoethanolamine with the remainder 50 percent concentration of methanol/distilled water by volume.

(e) Antifreeze (50 percent concentration of ethylene glycol/distilled water by volume).

S9.3.3 After the headlamp has been wiped with the test fluid, it shall be stored in its designed operating attitude for 48 hours at a temperature of 73 degrees F ± 7 degrees (23 degrees C ± 4 degrees) and a relative humidity of 30 ±10 percent. At the end of the 48-hour period, the headlamp shall be wiped clean with a soft dry cotton cloth and visually inspected.

S9.4 *Corrosion.*

(a) Prior to exposure, each terminal between the headlamp and its connector shall be tested with apparatus shown in Figure 11. The power source shall be set to provide 12.8 volts and the resistance shall be set to produce 10 amperes at each terminal and recorded. In the case of replaceable light source headlamps, the procedure may be performed with the light source removed from the headlamp. If necessary, holes may be made in the connector body or bulb base for access to the terminal. Such holes shall be plugged during the test procedure of paragraph (b) below, and reopened for the procedure of paragraph (c), below.

(b) The headlamp with connector attached to the terminals (but the rest of the apparatus of Figure 11 removed), unfixtured and in its designed operating attitude with all drain holes, breathing devices or other designed openings in their normal operating positions, shall be subjected to a salt spray (fog) test in accordance with ASTM B117–73, *Method of Salt Spray (Fog) Testing,* for 240 hours, consisting of ten successive 24-hour periods. During each period, the headlamp shall be mounted in the middle of the chamber and exposed for 23 hours to the salt spray. The spray shall not be activated during the 24th hour. The replaceable light source shall be removed from the headlamp and from the test chamber during the one hour of salt spray deactivation and reinserted for the start of the next test period, at the end of the first and last three 23-hour periods of salt spray exposure, and at the end of any two of the fourth through seventh 23-hour periods of salt-spray exposure. The test chamber shall be closed at all times except for a maximum of 2 minutes which is allowed for removal or replacement of the replaceable light source during each period. After the ten periods, the lens reflector unit without the bulb shall be immersed in deionized water for 5 minutes, then secured and allowed to dry by natural convection only.

(c) Using the voltage, resistance and pretest set up of subparagraph (a) the current in each terminal test circuit shall be measured after the salt spray exposure test conducted in subparagraph (b).

S9.5 *Dust.* The headlamp, mounted on a headlamp test fixture, with all drain holes, breathing devices or other designed openings in their normal operating positions, shall be positioned within a cubical box, with inside measurements of 900 mm (35.4 in) on each side or larger if required for adequate wall clearance, i.e., a distance of at least 150 mm (5.9 in) between the headlamp and any wall of the box. The box shall contain 4.5 kg (9.9 lb) of fine powdered cement which conforms to the ASTM C150–77 specification for Portland Cement. Every 15 minutes, the cement shall be agitated by compressed air or fan blower(s) by projecting blasts of air for a two-second period in a downward direction so that the cement is diffused as uniformly as possible throughout the entire box. This test shall be continued for five hours after which the exterior surfaces of the headlamp shall be wiped clean.

S9.6 *Temperature and internal heat tests.* A headlamp with one or more replaceable light sources shall be tested according to S9.6.1 and S9.6.2. Tests shall be made with all filaments lighted at design voltage that are intended to be used simultaneously in the headlamp and which in combination draw the highest total wattage. These include but are not limited to filaments used for turn signal lamps, fog lamps, parking lamps, and headlamp lower beams

lighted with upper beams when the wiring harness is so connected on the vehicle. If a turn signal is included in the headlamp assembly, it shall be operated at 90 flashes a minute with a 75±2 percent current "on time." If the lamp produces both the upper and lower beam, it shall be tested in both the upper beam mode and the lower beam mode under the conditions above described, except for a headlamp with a single Type HB1 or HB2 light source.

S9.6.1 *Temperature cycle.* A headlamp, mounted on a headlamp test fixture, shall be subjected to 10 complete consecutive cycles having the thermal cycle profile shown in Figure 6. During the hot cycle, the lamp, shall be energized commencing at point "A" of Figure 6 and de-energized at point "B." Separate or single test chambers may be used to generate the environment of Figure 6. All drain holes, breathing devices or other openings or vents of the headlamps shall be in their normal operating positions.

S9.6.2 *Internal Heat Test.*

(a) The headlamp lens surface that would normally be exposed to road dirt shall be uniformly sprayed with any appropriate mixture of dust and water or other materials to reduce the photometric output at the H–V test point of the upper beam (or the 1/2D–1 1/2R test point of the lower beam as appropriate) to 25±2 percent of the output originally measured in the photometric test conducted pursuant to S7.4.2 or S7.5.2, as applicable. A headlamp with a single light source having two filaments shall be tested on the upper beam only. Such reduction shall be determined under the same conditions as that of the original photometric measurement.

(b) After the photometric output of the lamp has been reduced as specified in 9.6.(a), the lamp and its mounting hardware shall be mounted in an environmental chamber in a manner similar to that indicated in Figure 7 "Dirt/Ambient Test Setup." The headlamp shall be soaked for one hour at a temperature of 35 + 4 − 0 degrees C (95 + 7 − 0 degrees F) and then the lamp shall be energized according to S8.6 for one hour in a still air condition, allowing the temperature to rise from the soak temperature.

(c) The lamp shall be returned to a room ambient temperature of 23 + 4 − 0 degrees C (73 + 7 − 0 degrees F) and a relative humidity of 30 ± 10 percent and allowed to stabilize to the room ambient temperature. The lens shall then be cleaned.

S9.7 *Humidity.*

(a) The test fixture consists of a horizontal steel plate to which three threaded steel or aluminum rods of nominal 13 mm (0.5 in) diameter are screwed vertically behind the headlamp. The headlamp assembly is clamped to the vertical rods, which are behind the headlamp. All attachments to the headlamp assembly are made behind the lens and vents or openings, and are not within 51 mm (2 in) laterally of a vent inlet or outlet.

(b) The mounted headlamp assembly is oriented in its design operating position, and is placed in a controlled environment at a temperature of 38+4 − 0 degrees C (100+7 − 0 degrees F) with a relative humidity of not less than 90 percent. All drain holes, breathing devices, and other openings are in their normal operation positions for all phases of the humidity test. The headlamp shall be subjected to 24 consecutive 3-hour test cycles. In each cycle, it shall be energized for 1 hour at design voltage with the highest combination of filament wattages that are intended to be used, and then de-energized for 2 hours. If the headlamp incorporates a turn signal, it shall flash at 90 flashes per minute with a 75±2 percent current "on-time."

(c) Within 3 minutes after the completion of the 24th cycle, the air flow test will begin. The following shall occur: the mounted assembly shall be removed, placed in an insulating box and covered with foam material so that there is no visible air space around the assembly; the box shall be closed, taken to the air flow test chamber, and placed within it. Inside the chamber, the assembly with respect to the air flow, shall be oriented in its design operating position. The assembly is positioned in the chamber so that the center of the lens is in the center of the opening of the air flow entry duct during the test. The headlamp has at least 75 mm (3 in) clearance on all sides, and at least 100 mm (4 in) to the entry and exit ducts at the closest points. If vent tubes are used which extend below the lamp body, the 75 mm (3 in) are measured from the bottom of the vent tube or its protection. The temperature of the chamber is 23+4–0 degrees C (73+7–0 degrees F) with a relative humidity of 30+10–0 percent. The headlamp is not energized.

(d) Before the test specified in S9.7(e) the uniformity of the air flow in the empty test chamber at a plane 100 mm (4 in) downstream of the air entry duct shall have been measured over a 100 mm (4 in) square grid. The uniformity of air flow at each grid point is ±10 percent of the average air flow specified in S9.7(e) of this paragraph.

(e) The mounted assembly in the chamber shall be exposed, for 1 hour to an average air flow of 100+0–10 m/min (330+0–30 ft/min) as measured with an air velocity measuring probe having an accuracy of ±3 percent in the 100 m/min (330 ft/min) range. The average air flow is the average of the velocity recorded at six points around the perimeter of the lens. The six points are determined as follows: at the center of the lens, construct a horizontal plane. The first two points are located in the plane, 25 mm (1 in) outward from the intersection of the plane and each edge of the lens. Then, trisect the distance between these two points and construct longitudinal vertical planes at the two intermediate locations formed by the trisection. The four remaining points are located in the vertical planes, 25 mm (1 in) above the top edge of the lens, and 25 mm (1 in) below the bottom edge of the lens.

(f) After one hour, the headlamp is removed and inspected for moisture.

S9.8 *Vibration.* A vibration test shall be conducted in accordance with the procedures of SAE J2139 JAN94 *Tests for Lighting Devices and Components Used on Vehicles 2032 mm or More in Overall Width,* and the following: the table on the adapter plate shall be of sufficient size to completely contain the test fixture base with no overhang. The vibration shall be applied in the vertical axis of the headlamp system as mounted on the vehicle. The filament shall not be energized.

S9.9 *Sealing.* An unfixtured headlamp in its design mounting position shall be placed in water at a temperature of 60 ±3 degrees C (176 ±5 degrees F) for 1 hour. The headlamp shall be energized in its highest wattage mode, with the test voltage at 12.8 ±0.1 V. during immersion. The lamp shall then be de-energized and immediately submerged in its design mounting position into water at 0 +3–0 degrees C (32 +5–0 degrees F). The water shall be in a pressurized vessel, and the pressure shall be increased to 70 kPa (10 psi), upon placing the lamp in the water. The lamp shall remain in the pressurized vessel for a period of 30 minutes. This entire procedure shall be repeated for four cycles. Then the lamp shall be inspected for any signs of water on its interior. During the high temperature portion of the cycles, the lamp shall be observed for signs of air escaping from its interior. If any water occurs on the interior or air escapes, the lamp is not a sealed lamp.

S9.10 *Chemical and corrosion resistance of reflectors of replaceable lens headlamps.*

S9.10.1 *Chemical resistance.*

(a) With the headlamp in the headlamp test fixture and the lens removed, the entire surface of the reflector that receives light from a

headlamp light source shall be wiped once to the left and once to the right with a 150 mm (6 in) square soft cotton cloth (with pressure equally applied) which has been saturated once in a container with 60 ml (2 oz) of one of the test fluids listed in S9.10.1(b). The lamp shall be wiped within 5 seconds after removal of the cloth from the test fluid.

(b) The test fluids are tar remover (consisting by volume of 45 percent xylene and 55 percent petroleum base mineral spirits); mineral spirits; and fluids other than water contained in the manufacturer's instructions for cleaning the reflector.

(c) After the headlamp has been wiped with the test fluid, it shall be stored in its designed operating attitude for 48 hours at a temperature of 23 degrees C ± 4 degrees (73 degrees F ± 7 degrees) and a relative humidity of 30 ± 10 percent. At the end of the 48-hour period, the headlamp shall be wiped clean with a soft dry cotton cloth and visually inspected.

S9.10.2 *Corrosion.*

(a) The headlamp with the lens removed, unfixtured and in its designed operating attitude with all drain holes, breathing devices or other designed openings in their normal operating positions, shall be subjected to a salt spray (fog) test in accordance with ASTM B117–73, *Method of Salt Spray (Fog) Testing,* for 24 hours, while mounted in the middle of the chamber.

(b) Afterwards, the headlamp shall be stored in its designed operating attitude for 48 hours at a temperature of 23 degrees C ± 4 degrees (73 degrees F ± 7 degrees) and a relative humidity of 30 ± 10 percent and allowed to dry by natural convection only. At the end of the 48-hour period, the reflector shall be cleaned according to the instructions supplied with the headlamp manufacturer's replacement lens, and inspected. The lens and seal shall then be attached according to these instructions and the headlamp tested for photometric performance.

S10. *Headlamp concealment devices.*

S10.1 While the headlamp is illuminated, its fully-opened headlamp concealment device shall remain fully opened should any loss of power to or within the headlamp concealment device occur.

S10.2 Whenever any malfunction occurs in a component that controls or conducts power for the actuation of the headlamp concealment device shall be capable of being fully opened by a means not requiring the use of any tools. Thereafter, the headlamp concealment device must remain fully opened until intentionally closed.

S10.3 Except for malfunctions covered by S10.2, each headlamp concealment device shall be capable of being fully opened and the headlamps illuminated by actuation of a single switch, lever, or similar mechanism, including a mechanism that is automatically actuated by a change in ambient light conditions.

S10.4 Each headlamp concealment device shall be installed so that the headlamp may be mounted, aimed, and adjusted without removing any component of the device, other than components of the headlamp assembly.

S10.5 Except for cases of malfunction covered by S10.2, each headlamp concealment device shall, within an ambient temperature range of −29 degrees C to +49 degrees C (−20 degrees F to +120 degrees F), be capable of being fully opened in not more than 3 seconds after the actuation of the headlighting control.

S11. *Photometric test of DRL.* A lamp that is wired in accordance with S5.5.11, shall be tested for compliance with S5.5.11(a)(1) in accordance with the test method specified for photometric testing in SAE Standard J575 JUN92 when a test voltage of 12.8V ±20 mV is applied to the input terminals of the lamp switch module or voltage-reducing equipment, whichever is closer to the electrical source on the vehicle. The test distance from the lamp to the photometer shall be not less than 18.3 m (60 ft), if the lamp is optically combined with a headlamp, or is a separate lamp, and not less than 3 m (9.75 ft), if the lamp is optically combined with a lamp, other than a headlamp, that is required by this standard.

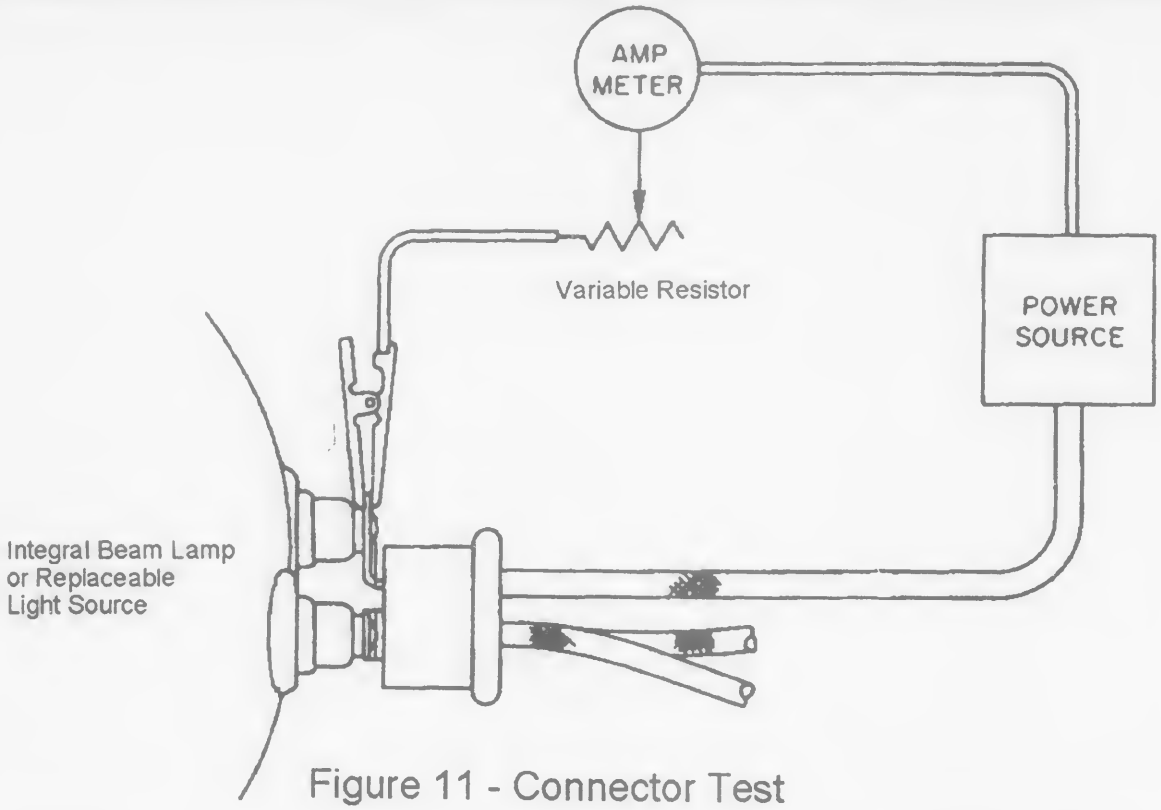

Figure 11 - Connector Test

BILLING CODE 4910–59–C

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[Insert Figure 11]

* * * * *

BILLING CODE 4910–59–P

Issued on: November 4, 1998.

James R. Hackney,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 98–29921 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 981006253–8253–01; I.D. 082698D]

RIN 0648–AK05

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 9

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 9 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This proposed rule would increase the minimum size for red porgy, black sea bass, gag, and black grouper for all participants in the fishery; increase the minimum size for vermilion snapper for a person subject to the bag limit; establish bag limits for red porgy and black sea bass; during March and April, prohibit harvest and possession in excess of the bag limit and prohibit purchase and sale of red porgy, gag grouper, and black grouper; for greater amberjack, reduce the bag limit, establish a commercial quota and trip limit, prohibit sale of greater amberjack caught under the bag limit when the commercial fishery is closed, prohibit harvest and possession in excess of the bag limit during April, change the beginning of the fishing year to May 1, and prohibit coring (i.e., removing the head from the carcass); restrict possession of gag and black grouper within the aggregate grouper bag limit; establish an aggregate bag limit for all snapper-grouper species currently not under a bag limit (excluding tomtate and blue runner); require escape vents and escape panels with degradable hinges and fasteners in black sea bass pots; and specify that a vessel with longline gear on board may only possess certain deep-water species of snapper-grouper (i.e., snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish.) The intended effect of this rule is to reduce overfishing and to conserve and manage these snapper-grouper species.

DATES: Written comments must be received on or before December 28, 1998.

ADDRESSES: Comments on this proposed rule or on the initial regulatory flexibility analysis (IRFA) should be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N.,

St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of Amendment 9, which includes a final supplemental environmental impact statement, a regulatory impact review (RIR), an IRFA, and a social impact assessment/fishery impact statement should be sent to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 843–571–4366; Fax: 843–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 727–570–5305.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Recent scientific stock assessments and public testimony have identified a number of snapper-grouper species as being overfished. The management measures in Amendment 9 are designed to prevent this overfishing, rebuild some of the overfished species, and manage the fishery in a more orderly manner. The Council has chosen management alternatives in Amendment 9 that would make substantial progress toward rebuilding stocks, where needed, by increasing the spawning potential ratio (SPR), which is used as a measure of stock status. For some species, up-to-date assessments were not available or data used for assessments were limited. For other species, recent landings trends and other information contradicted assessment information. The Council based decisions on the most recent and best scientific information available to ensure overfished stocks would be well on their way to recovery from the overfished status of below 30–percent SPR. For certain species, the Council chose alternatives that would further rebuild the species toward the optimum yield (OY) level, which is also expressed in terms of SPR.

Overfishing

The OY for species in the snapper-grouper management unit is 40–percent (static) SPR. Species that are below 30–percent (transitional) SPR are considered overfished and must be rebuilt as soon as possible.

Red porgy, black sea bass, vermilion snapper, and gag are overfished and in need of rebuilding. The status of black grouper is uncertain. Declining commercial landings and the average size of fish landed indicate that greater amberjack may be approaching a condition of being overfished. Thus, the Council has recommended precautionary management measures for black grouper and greater amberjack to ensure that overfishing does not occur. A general description of the biological status and proposed management measures for each species is given below.

Red Porgy

A 1994 stock assessment, based on data through 1992, indicated that red porgy is overfished, with an SPR of 13 percent. Fishing mortality needs to be reduced by 75 percent to achieve the OY of 40–percent SPR and must be reduced by 65 percent to eliminate overfishing.

This proposed rule would impose a 14–inch (35.6–cm) total length (TL) recreational and commercial minimum size limit, a 5–fish bag limit, and March-April seasonal harvest limitations. In combination, these measures should reduce total catch by 59 percent. This rule also proposes prohibiting all permitted dealers from purchasing red porgy during March and April regardless of where the red porgy is harvested or possessed (i.e., state or Federal waters). However, red porgy harvested from areas outside the South Atlantic could be purchased and possessed, provided appropriate documentation of the area of origin is maintained. The Council believes that conservation measures enacted in 1992 have resulted in some stock rebuilding and that these proposed management measures should result in rebuilding the stock within 10 years in accordance with the FMP's current stock rebuilding schedule.

Decreased landings resulting from the March-April seasonal harvest limitations and the increase in minimum size should result in a loss in gross revenues from red porgy sales of about $268,500 in the first year. However, the increase in minimum size would result in an increase in yield-per-recruit, which should lead to increased commercial landings in future years. In addition, fishermen likely would increase effort for red porgy during the open season, which would reduce the estimated loss in revenues. There would be unquantified losses for the for-hire industry and a reduction in consumer surplus related to canceled private recreational trips. The reduction in landings in the short term would result in progress toward rebuilding the red porgy stocks; however, the offsetting benefits cannot be calculated precisely because there is insufficient information available to predict future yields that may be possible from a rebuilt stock.

Black Sea Bass

A 1996 stock assessment, based on data through 1995, indicates that black sea bass are overfished, with an SPR of 26 percent. In addition, the catch-per-unit-effort of headboats off South Carolina has declined from just over 11 fish per angler day in 1980 to just over 1 fish per angler day in 1995. In 1995, the commercial sector harvested about 49 percent of the total catch.

Fishing mortality needs to be reduced by 56 percent to achieve OY and by 22 percent to eliminate overfishing. This proposed rule would increase the minimum size limit to 10 inches (25.4 cm) and impose a 20–fish bag limit. In combination, these measures should reduce total catch by 34 percent. This proposed rule also would require escape vents and escape panels with degradable fasteners in black sea bass pots. This would minimize bycatch of juvenile fish and reduce release mortality from this component of the fishery. Also, handling of undersized fish would be reduced, which should result in a more efficient fishing operation. In the first year these measures would reduce commercial revenues by about $242,300 and reduce recreational landings by about 40 percent. However, revenues and landings are expected to increase as the resource rebuilds toward OY. The proposed management measures are expected to rebuild the black sea bass stock within 10 years in accordance with the FMP's current stock rebuilding schedule.

Greater Amberjack

A 1996 stock assessment, based on data through 1995, indicates an SPR of 84 percent. However, in a recent review of the status of fisheries required by the Magnuson-Stevens Act, NMFS' Southeast Fisheries Science Center (SEFSC) determined that the status of the stock relative to the FMP's current overfishing definition is unknown. The SEFSC found that the scant data and analyses used in the assessment yielded results inconsistent with subsequent data showing declines in average size and landings of greater amberjack. Accordingly, the Council is recommending precautionary measures to ensure that this species does not approach an overfished condition.

This rule proposes to: (1) Reduce the recreational bag limit from 3 to 1 greater

amberjack per person per day; (2) prohibit throughout the EEZ harvest and possession in excess of the bag limit during April ; (3) establish a 1,000–lb (454–kg) daily commercial trip limit; (4) establish a commercial quota of 1,169,931 lb (530,672 kg) (63 percent of the 1995 landings); (5) begin the fishing year May 1; (6) prohibit sale of fish harvested under the bag limit when the season is closed; and (7) prohibit coring (i.e., removing the head from the carcass). In 1995, the commercial sector harvested 66 percent of the total catch, although formerly most greater amberjack were taken by the recreational sector.

NMFS believes that the Council intended immediate implementation of the measures for greater amberjack that establish a quota and begin the fishing year on May 1. Therefore, NMFS will apply this quota to greater amberjack that have been landed since May 1, 1998.

In addition, this proposed rule would prohibit all permitted dealers from purchasing greater amberjack in April regardless of where the greater amberjack is harvested or possessed (i.e., state or Federal waters), with the exception that greater amberjack harvested from areas outside the South Atlantic could be purchased and possessed, provided appropriate documentation of the area of origin is maintained, as specified in this proposed rule.

In combination, these measures should reduce total recreational and commercial landings of greater amberjack by 11 percent and 41 percent, respectively. This would result in a loss of commercial revenues of about $352,000–$397,000 in the first year. The reduction in landings in the short term would result in a more stable greater amberjack stock. The potential benefits of the proposed measures cannot be calculated precisely because there is insufficient information available to predict future yields that may result from the proposed measures.

Vermilion Snapper

A 1997 assessment, based on data through 1996, indicated that vermilion snapper were overfished, with an SPR of 27 percent. Fishing mortality must be reduced by between 39 and 51 percent to achieve OY and by between 11 and 31 percent to eliminate overfishing. In 1995, the commercial sector harvested about 75 percent of the catch.

This proposed rule would increase the recreational minimum size limit for vermillion snapper from 10 inches (25.4 cm) to 11 inches (27.9 cm) TL. This should reduce the recreational catch by about 9 percent in the short term. The associated reduction in fishing mortality and the increase in yield-per-recruit should result in sustainable increases in catch levels as the resource rebuilds. The Council believes that the proposed increase in minimum size limit would be sufficient to rebuild the stock within 10 years in accordance with the FMP's current stock rebuilding schedule. The Council will continue to monitor this species and, if necessary, implement additional measures to rebuild this resource.

Gag

The SPR for gag in a 1996 stock assessment, based on data through 1993, was 13 percent. This proposed rule would increase the minimum size limit for gag from 20 inches (50.8 cm) to 24 inches (61.0 cm) TL. This proposed rule also would prohibit the harvest and possession of gag in excess of the bag limit during March and April. This would protect the spawning stock, particularly males, which are more aggressive during this period and more susceptible to being caught. In 1995, about 71 percent of all gag were landed by commercial fishermen.

Further, this proposed rule would prohibit all permitted dealers from purchasing gag during March and April regardless of where the gag is harvested or possessed (i.e., state or Federal waters), with the exception that gag harvested from areas outside the South Atlantic could be purchased and possessed, provided appropriate documentation of the area of origin is maintained, as specified in this proposed rule.

The proposed March-April seasonal harvest restrictions and the proposed increase in minimum size, in combination, should reduce commercial landings by about 37 percent in the first year. This represents a potential loss of up to $1,186,000 in annual gross revenues. The proposed increase in minimum size would substantially increase yield-per-recruit, which should lead to increased commercial landings in future years. The initial reduction in landings would result in progress toward rebuilding the gag resource, but the offsetting benefits cannot be calculated precisely because there is insufficient information available to predict future yields that may be possible from a rebuilt stock. The Council believes that the proposed measures would rebuild the gag stock above the 30–percent SPR level, if the natural mortality rate is 0.15 or higher, within 15 years in accordance with the FMP's current stock rebuilding schedule.

Black Grouper

The 1997 stock assessment, based on data through 1995, indicated that the SPR was about 5 percent. Because of the uncertainty of this estimate, the status of the stock is listed as unknown in NMFS' Report to Congress on Status of Fisheries of the United States, September 1997. In 1994, about 80 percent of the catch of black grouper was harvested by commercial fishermen.

This proposed rule would prohibit all permitted dealers from purchasing black grouper in March and April regardless of where the black grouper is harvested or possessed (i.e., state or Federal waters), with the exception that black grouper harvested from areas outside the South Atlantic could be purchased and possessed, provided appropriate documentation of the area of origin is maintained, as specified in this proposed rule.

This proposed rule would prohibit the harvest of black grouper in March and April (the spawning season) and would increase the minimum size limit (from 20 to 24 inches (50.8 to 61 cm)) TL . In combination, these measures should reduce commercial landings by 35 percent, which represents a potential $90,000 loss in gross revenues in the first year. The increase in the minimum size limit would reduce headboat landings by 71 percent (based on number of fish) or by 44 percent (based on weight). The reduction in landings in the short term would result in progress toward rebuilding the black grouper stocks, but the offsetting benefits cannot be calculated precisely because there is insufficient information available to predict future yields that may be possible from a rebuilt stock. However, the increase in minimum size limit would increase yield-per-recruit, and future recruitment should be enhanced by these measures, which should result in increased landings. The Council will continue to monitor the status of the stock and propose new measures, should they be required to rebuild the stock further.

Gag and Black Grouper Bag Limit Restriction

This proposed rule would impose a recreational bag limit of no more than two gag or black grouper, individually or in combination. This would help to minimize compliance problems associated with anglers' general inability to distinguish between these species, and would enhance enforcement efforts. The Council concluded that the bag limit would have little effect on the headboat sector and

an unknown economic effect on the charterboat or private/rental boat sectors. Although the impact of this measure can not be quantified, it should result in some conservation benefit. Also, it may help to direct fishing effort to species that are not overfished and not subject to such restrictive limits.

South Atlantic Snapper-Grouper 20–Fish Aggregate Bag Limit

This proposed rule would establish an aggregate bag limit of 20 South Atlantic Snapper-Grouper. No bag limit currently exists for these species. The proposed bag limit would provide some biological protection for these species and discourage commercial fishing by recreational fishermen. The 20–fish bag limit should reduce headboat catches by 1 percent and private/rental catches by about 7 percent. There would be no catch reduction for charter vessels. Total reduction in recreational catch should be less than 1 percent. This measure should help encourage anglers to conserve marine fishery resources and would enhance enforcement efforts.

Longline Restriction

Currently, bottom longline gear is allowed only in waters deeper than 50 fm and only north of St. Lucie Inlet, Florida. This restriction is designed to conserve mid-shelf species (i.e., those typically found in depths less than 50 fm) and to protect critical coral and live-bottom habitat. This proposed rule would further restrict vessels with longline gear on board to possession of only the following deep-water South Atlantic snapper-grouper species: Snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish.

Landings data indicate that longline vessels are catching species that are commonly found in depths of 50 fm or less, i.e., mid-shelf species. The proposed restriction would limit vessels with longline gear on board to possession of South Atlantic snapper-grouper that are typically found only in depths greater than 50 fm. This measure is designed to complement the existing prohibition on use of longline gear in depths shoreward of 50 fm.

Based on landings from 1994 to 1996, an average of 104,397 lb (47,354 kg) of mid-shelf species were landed annually by vessels with longline gear on board. Assuming an exvessel price of $1.50 per pound, annual gross revenue of up to $157,000 could be lost by longline vessels as a result of this proposed measure. This assumes that the number of fishing trips would remain the same as during the 1994–1996 period.

The Council is also concerned that bottom longlines are being used in areas that could suffer damage to bottom habitat. This proposed measure would further support keeping bottom longlines out of sensitive habitat areas, thereby meeting the Magnuson-Stevens Act mandate to protect essential fish habitat.

Availability of Amendment 9

Additional background and rationale for the measures discussed above are contained in Amendment 9, the availability of which was announced in the **Federal Register** (63 FR 47461; September 8, 1998). Written comments on Amendment 9 must be received on or before November 9, 1998. Comments that are received by November 9, 1998, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision. All comments received on Amendment 9 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Changes Proposed by NMFS

In § 622.36(b)(2), NMFS proposes to revise the wording of the seasonal harvest limitation for mutton snapper to improve clarity and provide consistency with other similar provisions in the regulations.

For the convenience of the reader, NMFS proposes to reorder the minimum sizes in § 622.37 based on species rather than on minimum size.

NMFS proposes to add language to § 622.39(a)(1) to advise vessel operators of their responsibility for ensuring compliance with bag and possession limits.

Classification

At this time, NMFS has not determined that Amendment 9 is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 9.

The Council prepared a final supplemental environmental impact statement for this FMP; a notice of availability was published on October 9, 1998 (63 FR 54476).

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

The Council prepared an IRFA, based on the RIR, that describes the impact this proposed rule, if adopted, would have on small entities. Based on the IRFA, NMFS agrees with the Council's conclusion that Amendment 9, if approved and implemented through final regulations, would have a significant economic impact on a substantial number of small entities. A summary of the IRFA's assessment of the significant impacts on small entities follows.

The rule is designed to meet five specific objectives, the most important being the prevention of overfishing for a number of the snapper-grouper species. The Magnuson-Stevens Act provides the legal basis for the rule and no duplicative, overlapping or conflicting Federal rules were identified.

Under Amendment 8 to the FMP, about 2,000 commercial fishing businesses are expected to qualify for limited access permits when § 622.44(c) becomes effective on December 14, 1998. Most or all of these would be affected by Amendment 9 and are considered small entities for the purposes of the Regulatory Flexibility Act because their annual gross revenues are less than $3 million. Accordingly, it was determined that a substantial number of small entities would be expected to be affected for purposes of the Regulatory Flexibility Act. The Council concluded that the red porgy, black sea bass, amberjack, gag, black grouper actions, and the gear regulation addressing the possession of longline gear and certain snapper-grouper species could reduce revenues by as much as $2.3 million, or approximately 15 percent of the 1995 estimated ex-vessel value of the snapper grouper fishery. Although some actions would decrease recreational satisfaction due to restrictions of size or bag limits, there would be no decline in charterboat or headboat trips. The proposed rule would create a new recordkeeping requirement for permitted dealers in certain situations. The rule generally prohibits possession of red porgy, greater amberjack, gag, and black grouper during the closed seasons for these species. However, permitted dealers that have a documented paper trail showing that the fish were harvested in areas not under the jurisdiction of the Council would be allowed to possess these species during the closed seasons. The total cost of the public burden in terms of the value of the time spent by permitted dealers to create and/or maintain the paper trail record is estimated at $1,000. There would also be a compliance cost associated with a new requirement for escape panels and escape vents with biodegradable fasteners for black sea bass pots. The aggregate estimated cost

to make the necessary alterations to all existing black sea bass pots is $25,000.

Significant alternatives were identified for most of the actions proposed in Amendment 9. The status quo was identified as an alternative for all the actions under consideration but was rejected in all cases because continuing the status quo is not a feasible alternative under the Magnuson-Stevens Act. A number of other alternatives were identified for all the actions being considered and although some of these would minimize the adverse economic effects relative to the preferred alternatives, they did not meet the objectives, especially the biological objectives, specified as the basis for the amendment.

A copy of the IRFA is available for comment (see **ADDRESSES**).

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 (PRA) unless that collection of information displays a currently valid OMB Control Number.

This rule contains a new collection-of-information requirement subject to the PRA—namely, the requirement that dealers possessing red porgy, gag, black grouper, or greater amberjack during seasonal closures must maintain documentation that such fish were harvested from areas other than the South Atlantic. This requirement has been submitted to OMB for approval. The public reporting burden for this collection of information is estimated at 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these, or any other aspects of the collections of information, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 5, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.30, paragraph (d) is added to read as follows:

§ 622.30 Fishing years.

* * * * *

(d) *South Atlantic greater amberjack*—May 1 through April 30.

3. In § 622.36, headings for paragraphs (a) and (b) and new paragraphs (b)(4) and (b)(5) are added; paragraph (b) introductory text is removed; and paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 622.36 Seasonal harvest limitations.

(a) *Gulf EEZ.* * * *

(b) *South Atlantic EEZ*—(1) *Greater amberjack spawning season.* During April, each year, the possession of greater amberjack in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such greater amberjack were harvested, is limited to one per person per day or one per person per trip, whichever is more restrictive. Such greater amberjack are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(6).

(2) *Mutton snapper spawning season.* During May and June, each year, the possession of mutton snapper in or from the EEZ on board a vessel that has a commercial permit for South Atlantic snapper-grouper is limited to 10 per person per day or 10 per person per trip, whichever is more restrictive.

* * * * *

(4) *Black grouper and gag.* During March and April, each year, the possession of black grouper and gag in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such black grouper or gag were harvested, is limited to two black grouper or gag, combined, per person per day or two black grouper or gag, combined, per person per trip, whichever is more restrictive. Such black grouper or gag are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(5).

(5) *Red porgy.* During March and April, each year, the possession of red porgy in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such red porgy were harvested, is limited to five per person per day or five per person per trip, whichever is more restrictive. Such red porgy are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(5).

4. In § 622.37, paragraph (e) is revised to read as follows:

§ 622.37 Minimum sizes.

* * * * *

(e) *South Atlantic snapper-grouper*—(1) *Snapper.* (i) Lane snapper—8 inches (20.3 cm), TL.

(ii) Vermilion snapper—11 inches (27.9 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39 (d)(1)(v) and 12 inches (30.5 cm), TL, for a fish taken by a person not subject to the bag limit.

(iii) Blackfin, cubera, dog, gray, mahogany, queen, silk, and yellowtail snappers; and schoolmaster—12 inches (30.5 cm), TL.

(iv) Mutton snapper—16 inches (40.6 cm), TL.

(v) Red snapper—20 inches (50.8 cm), TL.

(2) *Grouper.* (i) Red, yellowfin, and yellowmouth grouper; and scamp—20 inches (50.8 cm), TL.

(ii) Black grouper and gag—24 inches (61.0 cm), TL.

(3) *Other snapper-grouper species.* (i) Black sea bass—10 inches (25.4 cm), TL.

(ii) Gray triggerfish in the South Atlantic EEZ off Florida—12 inches (30.5 cm), TL.

(iii) Hogfish—12 inches (30.5 cm), fork length.

(iv) Red porgy—14 inches (35.6 cm), TL.

(v) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(i) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

* * * * *

5. In § 622.38, paragraph (e) is removed; paragraphs (f) through (i) are redesignated as paragraphs (e) through (h), respectively; and paragraph (a) is revised to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(a) The following must be maintained with head and fins intact: Cobia, king mackerel, and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel in paragraph (g) of this section; South Atlantic snapper-grouper in or from the South Atlantic EEZ, except as specified in paragraph (h) of this section; yellowtail snapper in or from the Caribbean EEZ; and finfish in or from the Gulf EEZ, except as specified in paragraphs (c), and (d) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

* * * * *

6. In § 622.39, a concluding sentence is added to paragraph (a)(1); paragraphs (d)(1)(i), and (d)(1)(ii) are revised; and paragraphs (d)(1)(vi) through (viii) are added to read as follows:

§ 622.39 Bag and possession limits.

(a) * * * (1) * * * The operator of a vessel that fishes in the EEZ is responsible for ensuring that the bag and possession limits specified in this section are not exceeded.

* * * * *

(d) * * *

(1) * * *

(i) Greater amberjack—1.

(ii) Groupers, combined, excluding jewfish and Nassau grouper, and tilefishes—5. However, within the 5–fish aggregate bag limit, no more than two fish may be gag or black grouper, combined.

* * * * *

(vi) Red porgy—5.

(vii) Black sea bass—20.

(viii) South Atlantic snapper-grouper, combined, excluding tomtate and blue runner and those specified in paragraphs (d)(1)(i) through (vii) of this section—20.

* * * * *

7. In § 622.40, paragraph (b)(3)(i) is revised to read as follows:

§ 622.40 Limitations on traps and pots.

* * * * *

(b) * * *

(3) * * * (i) A sea bass pot that is used or possessed in the South Atlantic EEZ between 35°15.3' N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL) is required to have—

(A) On at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior end of the trap's throat (funnel). The hinges and fasteners of each panel or door must be made of one of the following degradable materials:

(*1*) Ungalvanized or uncoated iron wire with a diameter not exceeding 0.041 inches (1.0 mm), that is, 19 gauge wire.

(*2*) Galvanic timed-release mechanisms with a letter grade designation (degradability index) no higher than J.

(B) An unobstructed escape vent opening on at least two opposite vertical sides, excluding top and bottom. The minimum dimensions of an escape vent opening (based on inside measurement) are:

(*1*) 1 1/8 by 5 3/4 inches (2.9 by 14.6 cm) for a rectangular vent.

(*2*) 1.75 by 1.75 inches (4.5 by 4.5 cm) for a square vent.

(*3*) 2.0–inch (5.1–cm) diameter for a round vent.

* * * * *

8. In § 622.41, paragraph (d)(6) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(d) * * *

(6) *Longline species limitation.* A vessel that has on board a valid Federal commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ on a trip with a longline on board, may possess only the following South Atlantic snapper-grouper: snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish. For the purpose of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

* * * * *

9. In § 622.42, paragraph (e)(3) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(e) * * *

(3) *Greater amberjack*—1,169,931 lb (530,672 kg), gutted weight, that is, eviscerated but otherwise whole.

* * * * *

10. In § 622.43, paragraphs (a)(5) and (b)(1) are revised to read as follows:

§ 622.43 Closures.

(a) * * *

(5) *South Atlantic snapper-grouper, excluding wreckfish.* (i) *Greater amberjack.* The bag limit specified in § 622.39(d)(1)(i) and the possession limits specified in § 622.39(d)(2) apply to all harvest or possession of greater amberjack in or from the South Atlantic EEZ, and the sale or purchase of greater amberjack taken from the EEZ is prohibited. In addition, the bag and possession limits for greater amberjack and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such greater amberjack were harvested.

(ii) *Golden tilefish and snowy grouper.* Golden tilefish and snowy grouper, for which there are quotas, are managed under the commercial trip limits specified in § 622.44(c) in lieu of the closure provisions of this section.

* * * * *

(b) * * * (1) The prohibition on sale/purchase during a closure for Gulf reef fish, king and Spanish mackerel, royal red shrimp, greater amberjack, or wreckfish in paragraph (a)(1), (a)(3)(iii), (a)(4), (a)(5)(i), or (a)(6) of this section does not apply to the indicated species that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

* * * * *

11. Section 622.44(c), which was published at 63 FR 38303, July 16, 1998, is proposed to be amended by adding paragraph (c)(4) to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(c) * * *

(4) *Greater amberjack.* Until the fishing year quota specified in § 622.42(e)(3) is reached, 1,000 lb (454 kg).

* * * * *

12. In § 622.45, paragraphs (d)(5) and (d)(6) are added to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(d) * * *

(5) During March and April, no person may sell or purchase a red porgy, gag, or black grouper harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on

sale/purchase during March and April does not apply to red porgy, gag, or black grouper that were harvested, landed ashore, and sold prior to March 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of red porgy, gag, or black grouper harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the red porgy, gag, or black grouper;

(iii) The port and date of offloading from the vessel harvesting the red porgy, gag, or black grouper; and

(iv) A statement signed by the dealer attesting that the red porgy, gag, or black grouper was harvested from an area other than the South Atlantic.

(6) During April, no person may sell or purchase a greater amberjack harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during April does not apply to greater amberjack that were harvested, landed ashore, and sold prior to April 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of greater amberjack harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the greater amberjack;

(iii) The port and date of offloading from the vessel harvesting the greater amberjack; and

(iv) A statement signed by the dealer attesting that the greater amberjack was harvested from an area other than the South Atlantic.

* * * * *

13. Figure 2 of Appendix C to Part 622 is amended by removing the reference to "length for deheaded greater amberjack.

[FR Doc. 98–30230 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 218
Thursday, November 12, 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

Food Safety and Inspection Service

[Docket No. 97–057N]

Notice of Change of Inspection Procedures; Adoption of Selective Carcass Palpation Procedure for Lambs

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) of the Department of Agriculture (USDA) is clarifying the changes that it intends to make in its inspection procedures for lambs. Currently, inspectors extensively palpate the carcasses of lambs for the purpose of detecting and removing carcasses with caseous lymphadenitis. The Agency announced in a October 27, 1997, **Federal Register** notice that it would be changing its inspection procedure for lambs in response to a petition from the American Sheep Association. In this notice, the Agency is clarifying the changes that it intends to make and the basis for those changes.

FOR FURTHER INFORMATION CONTACT: Dr. Alice Thaler, Chief, Concepts and Design Branch, Inspection Systems Development Division, Office of Policy, Program Development, and Evaluation, FSIS; telephone (202) 205–0005 or FAX (202) 690–0824.

SUPPLEMENTARY INFORMATION: FSIS is issuing this notice to clarify, and to provide additional information about the basis for, certain planned changes in how it inspects lamb carcasses that it announced in the **Federal Register** of October 27, 1997 (62 FR 55569). The National Advisory Committee on Meat and Poultry Inspection recommended that FSIS clarify the terminology that it used in the October 27 notice, and that the Agency more fully explain the basis for its planned action. In the October 27 notice, FSIS used the term "hands-on" to describe its current inspection procedures and the term "hands-off" to describe the new inspection procedures that it planned to implement. FSIS believes that the terms "extensive carcass palpation" and "selective carcass palpation" more accurately describe its current and its planned new inspection procedures for lambs. Thus, it is replacing the terms used in the October 27 notice to describe its inspection procedures with these terms and will use these terms.

Traditionally, USDA meat inspectors have extensively palpated the carcasses of lambs as part of their post-mortem evaluation of these animals. The American Sheep Industry Association petitioned the Agency to end this practice for food safety reasons. The primary justification for this long-standing extensive carcass palpation practice was to detect carcasses with caseous lymphadenitis.

In determining the desirability of such a procedure for lambs, FSIS considered two questions: (1) Will diseased carcasses or parts be more likely to reach consumers using a selective carcass palpation inspection procedure, and (2) Are current inspection procedures which use extensive carcass palpation likely to be spreading or adding contamination to carcasses?

Description of Extensive and Selective Carcass Palpation

Extensive carcass palpation for lambs is described in the Meat and Poultry Inspection Manual's inspection procedures for sheep (which includes lambs) and goats (MPI Manual 11.1(j)(2)) as follows:

- Palpate prefemoral, superficial inguinal, or supramammary, and popliteal lymph nodes.
- Palpate back and sides of carcass.
- Palpate prescapular lymph nodes and shoulders, and lift forelegs.

These procedures are considered extensive carcass palpation because no other livestock species receives palpation of this magnitude.

In contrast, selective carcass palpation will mean that inspectors palpate lamb carcasses only when they have reason to believe that disease conditions or pathology may be present. Selective carcass palpation will apply only to carcasses and not to viscera. Selective carcass palpation will not change other inspection procedures for lambs such as turning the carcass, which is necessary to perform inspection procedures.

Comparing Extensive Carcass Palpation to Selective Carcass Palpation Procedures

In determining whether to change inspection procedures for lamb carcasses, FSIS first considered the benefits derived from extensive carcass palpation and determined what food safety or other consumer protection benefits, if any, are attributable to the current inspection procedure. Caseous lymphadenitis is the primary disease of lambs detected by extensive carcass palpation. In the United States, six federally inspected plants slaughter 80 percent of the lambs. From Fiscal Years 1987 to 1996, these six plants slaughtered 26,347,480 lambs and yearlings (present data do not distinguish between lambs and yearlings), and FSIS inspectors condemned only 1,203 animals for caseous lymphadenitis, a 0.0046 percent condemnation rate.

Caseous lymphadenitis is rare in lambs, and it does not cause foodborne illness in people who eat lamb, regardless of how thoroughly or not it is cooked, or in people who handle lamb. Of the diseases routinely present in lambs, seven are of public health concern: actinobacillosis, campylobacteriosis, contagious ecthyma, echinococcosis, leptospirosis, Salmonella dysentery, and toxoplasmosis. None of these seven, however, requires carcass palpation for diagnosis.

FSIS then considered whether the current inspection techniques used on lambs that employ extensive carcass palpation cause inspectors to spread or add contamination to lamb carcasses. Although there is no published data on this question, the unpublished data provided to FSIS by the American Sheep Industry Association (LeValley 1997)[1] and data from other food handling and health care industries (Gould and Ream 1996; Wenzel and Pulverer 1995), support the concern that extensive carcass palpation can contaminate lamb carcasses or spread contamination.

[1] This information is on display in the FSIS Docket Room, 300 12th St., SW., Washington, DC.

Conclusion

The primary reason for extensive carcass palpation in lambs is to detect lesions of caseous lymphadenitis. This disease does not cause foodborne illness and has an extremely low prevalence in lambs. Other diseases routinely present in lamb carcasses that are of public health concern are not detected by carcass palpation. Therefore, there is little basis to find that selective carcass palpation will cause foodborne illness or cause diseased carcasses or parts to reach consumers.

On the other hand, the cited literature attests to the fact that hands are capable of spreading or adding microorganisms. Although it has not been proven directly that extensive carcass palpation by lamb inspectors causes microbial contamination or actually spreads such contamination, the evidence from the sheep industry and allied industries strongly suggests that this can occur. Thus, current inspection procedures using extensive carcass palpation can spread or add contamination to carcasses.

FSIS, therefore, announced in the October 27, 1997, **Federal Register** notice that it was taking a hands-off inspection approach to lambs. As stated previously, this approach is more accurately described as selective carcass palpation. Adopting this approach entails a number of steps, including consultation with employee organizations. Additional information may be found in a new FSIS directive on the Agency's planned inspection procedures for lambs, which will be effective upon publication and after consultations have been completed.

FSIS will continue to monitor condemnation rates in plants that slaughter lambs to identify the impact, if any, of the change. Further, the Agency intends to look at the implications of handling product during inspection procedures with regard to the production of all meat and poultry products.

Done at Washington, DC, on: November 4, 1998.

Thomas J. Billy,

Administrator.

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[FR Doc. 98–30182 Filed 11–10–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2:00 p.m., Wednesday, November 18, 1998.

PLACE: Room 5030, South Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: Introduction of board directors and staff and general discussion involving:

1. 1999 agency budget.
2. Current telecommunications industry issues.
3. Liquidating account and Federal Credit Reform.
4. Status of PBO planning.
5. Legal advisor to privatization committee.
6. Administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9:00 a.m., Thursday, November 19, 1998.

PLACE: The Williamsburg Room, Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Report on board election results.
3. Oath of office.
4. Election of board officers; Chairperson, Vice Chair, Secretary, and Treasurer.
5. Action on the August 21, 1998, Minutes.
6. Report on loans approved in FY 1998.
7. Summary of financial activity for FY 1998.
8. Report on interest earned on amounts in the liquidating account.
9. Governor's report on PBO planning.
10. Consideration of resolution to re-establish the privatization committee.
11. Consideration of resolution to approve Roberta D. Purcell to serve as the Assistant Governor.
12. Establish date and location of next regular board meeting.
13. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: November 5, 1998.

Christopher A. McLean,

Deputy Governor, Rural Telephone Bank.

[FR Doc. 98–30390 Filed 11–9–98; 2:18 pm]

BILLING CODE 3410–15–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:30 p.m. on December 7, 1998, at the Marriott Hotel, 700 Grand Avenue, Des Moines, Iowa 50309. The purpose of the meeting is to hold orientation for new members and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, .

Carol-Lee Hurley

Chief, Regional Programs Coordination Unit

[FR Doc. 98–30202 Filed 11–10–98; 8:45 am]

BILLING CODE 6335–01–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 1:30 p.m. on December 4, 1998, at the Central Maine Power Offices, Conference Room, 83 Edison Drive, Augusta, Maine 04336. The Committee will be briefed by invited civil rights advocates on the status of civil rights issues in Maine. The Committee will also plan future events and review a draft of the Committee report, *Limited English Proficient Students in Maine: An Assessment of Equal Educational Opportunities.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gerald Talbot, 207–772–6098 or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, .

Carol-Lee Hurley

Chief, Regional Programs Coordination Unit

[FR Doc. 98–30200 Filed 11–10–98; 8:45 am]

BILLING CODE 6335–01–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on December 9, 1998, at the Crowne Plaza Downtown Jackson, 200 East Amite, Jackson, Mississippi 39201. The purpose of the meeting is to hold orientation for new members and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 5, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–30203 Filed 11–10–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 7:30 p.m. on December 1, 1998, at the Office of the Rhode Island General Treasurer, Conference Room, State House, Providence, Rhode Island 02903. The Committee will be briefed by invited civil rights advocates on the status of civil rights issues in Rhode Island. The Committee will also plan future events and review a draft of the Committee's statement of concern, *The Impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on Legal Immigrants in Rhode Island.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Olga Noguera, 401–464–1876 or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at

least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, .

Carol-Lee Hurley

Chief, Regional Programs Coordination Unit

[FR Doc. 98–30201 Filed 11–10–98; 8:45 am]

BILLING CODE 6335–01–F

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Notice of request for public comment on the potential market impact of proposed disposals of excess commodities from the National Defense Stockpile. The Department of Defense plans to further revise certain material quantities included in the proposed Fiscal Year (FY) 1999 and the FY 2000 Annual Materials Plans (AMP). Defense has requested that the Committee consider the proposed revisions to the AMP disposal levels.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee seeks comments concerning the potential market impact of disposals of excess materials from the Stockpile. The Departments of Commerce and State co-chair the Committee. The FY 1999 and proposed FY 2000 AMP materials under review are Bauxite (refractory), Tungsten (Ferro), Columbium Metal Ingots, Platinum-Iridium, and Tantalum Metal Ingots.

DATE: The Commerce Department must receive comments by December 14, 1998.

ADDRESSES: Please send all written comments to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, 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; FAX (202) 501–0657.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S. Department of Commerce, (202) 482–3634; or Stephen H. Muller, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–2871; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: The Department of Defense, as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. The stockpile was established under the authority of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*). Defense is required by law to refrain from causing undue market disruption, while at the same time protecting the U.S. Government against avoidable loss, when disposing and acquiring materials.

The President appointed an Interagency Market Impact Committee (the Committee) under the FY 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–1) to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile. * * *" The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury and the Federal Emergency Management Agency and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to "consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile."

The Committee requests that interested parties provide comment on the potential market impact of the proposed revised disposals of these commodities. This information will enhance the quality of advice that the Committee offers to Defense.

The AMP listing below includes the proposed maximum disposal quantity for each material. These quantities are not sales target disposal quantities. They are only a statement of the proposed maximum disposal quantity of each material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time as well as on the quantity of material approved for disposal by Congress.

PROPOSED REVISION TO FY 1999 AMP AND TO PROPOSED FY 2000 AMP

Material	Units	Current FY 1999 quantity	Revised FY 1999 quantity	Revised FY 2000 quantity
Bauxite (Refractory)	LCT ..	0	29,000	29,000
Columbium Metal Ingots	Lb Cb	0	20,000	20,000
Tantalum Metal Ingots	Lb Ta	0	40,000	40,000
Tungsten (Ferro)	Lb W	100,000	400,000	400,000
Platinum-Iridium	Tr Oz	0	4,450	4,450

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Public comments in response to this Notice must be received by December 14, 1998 to ensure the Committee's full consideration. Interested parties are encouraged to submit additional comments and supporting information at any time thereafter to keep the Committee informed of any market impact resulting from the sale of these commodities. Public comment is an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified or business confidential will be exempted from public disclosure. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the

public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Information about the inspection and copying of records at the facility may be obtained from Mr. Henry Gaston, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: November 4, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–30157 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of November 1998, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Periods
Antidumping Duty Proceedings	
Argentina:	
Barbed Wire & Barbless Fencing Wire, A–357–405	11/1/97–10/31/98
Carbon Steel Wire Rods, A–357–007	11/1/97–10/31/98
Brazil: Circular Welded Non-Alloy Steel Pipe, A–351–809	11/1/97–10/31/98
Japan:	
Bicycle Speedometers, A–588–038	11/1/97–10/31/98
Light Scattering Instruments, A–588–813	11/1/97–10/31/98
Mexico: Circular Welded Non-Alloy Steel Pipe, A–201–805	11/1/97–10/31/98
Singapore: Light-Walled Rectangular Pipe & Tube, A–559–502	11/1/97–10/31/98
Republic of Korea: Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/97–10/31/98
Taiwan:	
Circular Welded Non-Alloy Steel Pipe, A–583–814	11/1/97–10/31/98
Collated Roofing Nails, A–583–826	11/20/97–10/31/98
The People's Republic of China:	
Collated Roofing Nails, A–570–850	11/20/97–10/31/98
Garlic, A–570–831	11/1/97–10/31/98
Paper Clips, A–570–826	11/1/97–10/31/98
Tungsten Ore Concentrates, A–570–811	11/1/97–10/31/98
Venezuela: Circular Welded Non-Alloy Steel Pipe, A–307–805	11/1/97–10/31/98
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
Japan: Certain Small Electric Motors of 5 to 150 Hoursepower, CA–588–090	11/1/97–10/31/98
Mexico: Fresh Tomatoes, CA–201–820	11/1/97–10/31/98
Russia: Cut-to-Length Carbon Steel Plate, A–821–808	11/1/97–10/31/98
South Africa: Cut-to-Length Carbon Steel Plate, A–791–804	11/1/97–10/31/98
The People's Republic of China: Cut-to-Length Carbon Steel Plate, A–570–849	11/1/97–10/31/98
The Ukraine:	
Cut-to-Length Carbon Steel Plate, A–823–808	11/1/97–10/31/98
Silicomanganese, A–823–805	11/1/97–10/31/98

In accordance with § 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or

a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of orgin and each country of orgin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/ Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party of the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of November 1998. If the Department does not receive, by the last day of November 1998, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 5, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–30281 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties

AGENCY: International Trade Administration/Import Administration, Department of Commerce

ACTION: Rebuttal period for comments on policy concerning assessment of antidumping duties.

SUMMARY: On October 15, 1998, the Department of Commerce published in the **Federal Register** (63 FR 55361) a request for parties to comment on the Department's regulation on automatic liquidation where a reseller has been involved in the chain of commerce for merchandise. This notice establishes a rebuttal period.

FOR FURTHER INFORMATION CONTACT: Joan L. MacKenzie, Senior Attorney, Office of the Chief Counsel for Import Administration, (202) 482–1310, or Laurie Parkhill, Director, Office 3, Import Administration, (202) 482–4733.

SUPPLEMENTARY INFORMATION: On October 15, 1998, the Department of Commerce published in the **Federal Register** (63 FR 55361) a request for parties to comment on the Department's regulation on automatic liquidation where a reseller has been involved in the chain of commerce for merchandise. This notice establishes a rebuttal period to any comments submitted in response to the October 15, 1998, notice.

Subsequent to the publication of the October 15, 1998 notice, we received a request to extend the due date for comments. This request was granted and comments are now due Friday, November 13, 1998. In addition, on October 23, 1998, we received a request that we establish a period for rebuttal to any comments submitted in response to the October 15, 1998, notice. The Department is granting the request for a rebuttal period. All rebuttal comments will be due Friday, December 4, 1998.

To help simplify the processing and distribution of comments and rebuttals, the Department requests that a submission in electronic form accompany the required paper copies. Comments filed in electronic form should be on a DOS formatted 3.5" diskette in either WordPerfect format or a format that the WordPerfect program can convert into WordPerfect. Please make each comment a separate file on the diskette and name each separate file using the name of the proposed document, *e.g.*, "Reseller Liquidation."

Comments received on diskette will be made available to the public on the Web at the following address: "http://www.ita.doc.gov/import admin/ i records/". In addition, upon request, the Department will make comments filed in electronic form available to the public on 3.5" diskettes (at cost) with specific instructions for accessing compressed data (if necessary). Any questions concerning file formatting, document conversion, access on the Web, or other electronic filing issues should be addressed to Andrew Lee Beller, IA Webmaster, at (202) 482-0866 or via e-mail at andrew lee beller@ita.doc.gov.

Address written comments to Robert S. LaRussa, Assistant Secretary for Import Administration, Dockets Center, Room 1870, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230. Attention: Laurie Parkhill, Comment on Automatic Liquidation.

Dated: November 3, 1998.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–30237 Filed 11–6–98; 3:08 pm]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 1997–1998 antidumping duty administrative review and new shipper review of stainless steel bar from India.

SUMMARY: In response to requests from Bhansali Bright Bars Pvt. Ltd. and Venus Wire Industries Limited, the Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India. In response to requests from Sindia Steels Limited, Chandan Steel Limited, and Madhya Pradesh Iron & Steel Company, the Department of Commerce is conducting a new shipper review of the antidumping duty order on stainless steel bar from India. These reviews cover sales of stainless steel bar to the United States during the period February 1, 1997, through January 31, 1998.

We have preliminarily determined that, during the period of review, Venus Wire Industries Limited, Sindia Steels Limited, and Madhya Pradesh Iron & Steel Company made sales below normal value and that Bhansali Bright Bars Pvt. Ltd. and Chandan Steel Limited did not make sales below normal value. If these preliminary results are adopted in our final results of administrative review and new shipper review, we will instruct the Customs Service to assess antidumping duties equal to the difference between the export price and the normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 12, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith or James Breeden, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0189 or (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (April 1998).

Background

On February 23 and February 25, 1998, the Department received requests from Bhansali Bright Bars Pvt. Ltd. ("Bhansali") and Venus Wire Industries Limited ("Venus") to conduct an administrative review of the antidumping duty order on stainless steel bar from India. The Department published in the **Federal Register**, on March 23, 1998, a notice of initiation of an administrative review of Bhansali and Venus covering the period February 1, 1997, through January 31, 1998 (63 FR 13837).

On February 19, 1998, Sindia Steels Limited ("Sindia") requested that we conduct a new shipper review. Sindia's request was followed by similar requests from Chandan Steel Limited ("Chandan") and Madhya Pradesh Iron and Steel Company ("Madhya") on February 27, 1998. We published the notice of initiation for this new shipper review on April 7, 1997 (63 FR 16972). This new shipper review covers the same period as the administrative review and, pursuant to section 751(a) of the Act and 19 CFR 351.214(j)(3), is being conducted concurrently with the administrative review.

On August 14 and October 30, 1998, the Department initiated sales below cost investigations of Madhya and Bhansali, respectively. A sales below cost analysis of Bhansali is not included in this notice because the sales below cost investigation was initiated shortly before issuance of these preliminary results. A sales below cost analysis of Madhya is not included in this notice because Madhya did not submit the requested cost information in a timely manner *(see, Facts Available,* below).

Scope of Reviews

Imports covered by these reviews are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in-thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Use of Facts Otherwise Available

Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and that is necessary to the determination but which does not meet all the applicable requirements established by the Department if—

(1) The information is submitted by the deadline established for its submission,

(2) The information can be verified,

(3) The information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) The interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and

(5) The information can be used without undue difficulties.

On September 3, 1998, Madhya requested a one week extension in which to submit its responses to Section D (Cost of Production and Constructed Value) of the original questionnaire and to the Department's supplemental questionnaire. In support of its request, Madhya stated that it needed additional time because it was having difficulty responding to both questionnaires at the same time. We granted its request. On the date the responses were due, we received an additional request for an extension from Madhya's counsel. Counsel explained that, as of this date, it had not received the questionnaire responses from Madhya; in fact, counsel had "not heard from them." We granted the request. Finally, on September 14, 1998, the date the questionnaire responses were due, we received a request for a third extension. The only reasoning supplied to the Department was that the responses from India had not yet been provided to counsel. Because we did not receive an adequate explanation or reasoning as to why the extension was needed, we did not grant the request. Nonetheless, Madhya submitted its responses on September 17, 1998. However, because Madhya failed to meet an already extended deadline and provided no explanation as to why it did not meet the extended deadline, we rejected its response as untimely.

We must therefore consider whether the submitted information already on the record is usable under section 782(e) of the Act. The information that Madhya failed to provide would have been the first comprehensive cost information to be used in the Department's cost

investigation. Thus, the information currently on the record is so incomplete that it cannot serve as a reliable basis for reaching preliminary results (*see, Elemental Sulphur From Canada: Preliminary Results of Antidumping Duty Administrative Review, 62 FR 969 (January 7, 1997)*. Therefore, in accordance with section 776(a) of the Act and 19 CFR 351.308(a), we must use facts otherwise available.

In determining the appropriate facts available to apply to Madhya's sales, we have preliminarily determined that Madhya failed to cooperate by not acting to the best of its ability to comply with a request for information under section 776(b) of the Act. Specifically, as described above, Madhya failed to submit its questionnaire responses on time and failed to provide adequate reasons for the delays, despite having been advised by its counsel of the importance of meeting the Department's deadlines. Therefore, we have applied adverse facts available to calculate Madhya's margin.

As adverse facts available, we have preliminarily assigned a margin of 12.45 percent to Madhya's sales of the subject merchandise. This margin is the "all others" rate established in the less-than-fair-value ("LTFV") investigation. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action ("SAA") provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see*, H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as facts available. Therefore, we preliminarily find that the 12.45 percent rate is corroborated.

United States Price

In calculating the price to the United States, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation into the United States and use of constructed export price was not otherwise indicated.

We calculated EP based on either the CIF or C&F price to the United States. In accordance with section 772(c)(2) of the Act, we made deductions, as appropriate, for foreign inland freight, international freight, marine insurance, brokerage and handling, and clearing and forwarding.

All five respondents claimed an upward adjustment to EP for a "duty drawback" program. In the preliminary results of the first administrative review of this order, we analyzed the functioning of this duty drawback program and found that it did not meet the Department's criteria for an upward adjustment to EP (*see*, 62 FR 10540 at 10541, March 7, 1997). We maintained our position in the final results (*see*, 62 FR 37030, July 10, 1997). We have reexamined the program in regard to the five respondents, and have found no reason to deviate from our previous decision. As stated in *Certain Welded Carbon Standard Steel Pipes and Tubes from India* (62 FR 47632 at 47635, September 10, 1997), "we determine whether an adjustment to U.S. price for a respondent's claimed duty drawback is appropriate when the respondent can demonstrate that it meets both parts of our two-part test. There must be: (1) A sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product." Because the respondents did not demonstrate a sufficient link between the import duty and the rebate, we have not made an adjustment to EP.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a basis for calculating normal value ("NV"), we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. When home market sales were determined to be insufficient in quantity to permit a proper comparison with sales to the United States, we compared the respondents' volume of third country sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

For Bhansali and Chandan, because the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV for these companies on the prices at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.

For Venus and Sindia, because the aggregate volume of home market sales of the foreign like product was not greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was not appropriate for calculating NV. Therefore, we examined these companies' sales to third country markets. Both Venus and Sindia had more than one third country market that satisfied the criteria of section 773(a)(1)(B)(ii) of the Act. To select among these markets, we considered the criteria outlined in 19 CFR 351.404(e): The similarity of the foreign like product exported to each third country versus subject merchandise exported to the United States; the volume of sales to the third countries; and other factors that we considered appropriate. For Venus, we chose Belgium as the third country market. Although it was not the largest third country market, the merchandise sold to Belgium was more similar to the merchandise sold by Venus to the United States. In the case

of Sindia, we selected Canada. Again, Canada was not the largest third country market, but the merchandise sold there was more similar to the merchandise sold to the United States and the Canadian sales were contemporaneous with U.S. sales, while sales to the largest third country were not. Both Venus' aggregate sales of the foreign like product to its second largest third country market and Sindia's aggregate sales of the foreign like product to Canada were greater than five percent of their sales, by volume, of the subject merchandise to the United States (see the Memoranda to Richard Moreland dated October 2, 1998, "*Selection of Third Country Comparison Market,*" which are available in the public records of the Department's Central Records Unit, Room B–099.).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. *See, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in these reviews, we reviewed information from each respondent regarding the marketing stage involved in the reported home market or third country and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution. Pursuant to section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action at 827, in identifying levels of trade for EP and home market sales, we considered the selling functions reflected in the starting prices before any adjustments. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

Based on an analysis of the selling functions, class of customers, and level of selling expenses, we found that the marketing processes in both the home market or third country and the United States were not substantially dissimilar for Bhansali, Chandan, Venus, or Sindia. Therefore, we have preliminarily found that sales in both markets for each respondent are at the same LOT and consequently, no LOT adjustment is warranted.

Preliminary Results of the Reviews

As a result of our comparison of EP and NV, we preliminarily determine the following weighted-average dumping margins:

Manufacturer/ Exporter	Period	Margin (percent)
Bhansali ..	2/1/96–1/31/97	0.00
Venus	2/1/96–1/31/97	0.23
Sindia	2/1/96–1/31/97	0.19
Chandan ..	2/1/96–1/31/97	0.00
Madhya ...	2/1/96–1/31/97	12.45

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will issue the final results of these administrative and new shipper reviews, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon completion of these administrative and new shipper reviews, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between EP and NV may vary from the percentages stated above. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the period of review ("POR") to the total value of subject merchandise entered during the POR. In order to estimate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value. This rate will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

The following deposit requirement will be effective upon publication of the final results of these administrative and new shipper reviews for all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of these reviews; (2) if the exporter is not a firm covered in these reviews, but was covered in a previous review or the original LTFV investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 12.45 percent, the "all others" rate established in the LTFV investigation (59 FR 66915, December 28, 1994).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review, new shipper review, and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213 and 351.214.

Dated: November 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30280 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–052. *Applicant:* University of Maryland, Baltimore, Department of Anatomy and Neurobiology, 685 W. Baltimore Street, Room 222, Baltimore, MD 21201. *Instrument:* Patch Clamp System. Manufacturer: Luigs and Neumann, Germany. *Intended Use:* The instrument will be used to provide visual stimulation during experiments on the processing of visual information in ferrets. In addition, the instrument will be used in rotation courses for graduate students preparing for thesis work. *Application accepted by Commissioner of Customs:* October 20, 1998.

Docket Number: 98–053. *Applicant:* Rutgers, The State University of New Jersey, Department of Ceramics and Material Engineering, 56 Bevier Road, Piscataway, NJ 08855. *Instrument:* Superfine Mill and Crushing Ring, Model MIC–2. *Manufacturer:* NARA Machinery Co. Ltd., Japan. *Intended Use:* The instrument will be used to make hydroxyapatite biomaterials as well as lead magnesium niobate electronic materials using novel mechanochemical phenomena. The experiments will consist of blending different types of particulate raw materials that will be subjected to mechanochemical stresses under a variety of operating conditions of the instrument. In addition, the instrument will be used by graduate students in a graduate program of ceramic science and engineering. *Application accepted by Commissioner of Customs:* October 22, 1998.

Docket Number: 98–054. *Applicant:* University of Illinois at Chicago, Purchasing Division, 845 W. Taylor Street (M/C 273), Chicago, IL 60607–7059. *Instrument:* Two-Zone Mercury Overpressure Annealing System. *Manufacturer:* Cifer SRL, Italy. *Intended Use:* The instrument is intended to be used for studies of mercury cadmium telluride grown by molecular beam epitaxy with the objective of obtaining multi-layer mercury cadmium telluride structures with p on n junctions to fabricate infrared detector arrays. *Application accepted by Commissioner of Customs:* October 23, 1998.

Docket Number: 98–055. *Applicant:* Mount Sinai School of Medicine, One Gustave L. Levy Place, New York, NY 10029. *Instrument:* Electron Microscope and Accessories, Model H–7500. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* The instrument is intended to be used to examine nervous system tissue in order to achieve the aims of the following research projects: (1) Morphologic Basis for Central Vestibular Inhibition, (2) Morphologic Basis for Central Vestibular Adaptation, (3) Nitric Oxide Signaling in Hypergravity-Induced Neuronal Plasticity and (4) Ultrastructural Anatomy of the Toadfish Crista. *Application accepted by Commissioner of Customs:* October 23, 1998.

Docket Number: 98–056. *Applicant:* University of Wisconsin—Madison, Biotechnology Center, 750 University Avenue, Madison, WI 53706. *Instrument:* Piezo Manipulator, Model PPM–150FU. *Manufacturer:* Prime Tech Ltd., Japan. *Intended Use:* The instrument will be used to reduce the trauma to oocytes during experiments involving the cloning of rodents (mice and rats) from cultured cells. *Application accepted by Commissioner of Customs:* October 27, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–30282 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110598C]

International Whaling Commission; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: NOAA makes use of a public Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participating on the Committee and a tentative schedule of meetings and other important dates.

DATES: December 4, 1998, 2:00 p.m. See **SUPPLEMENTARY INFORMATION** for additional information and tentative dates of additional interagency meetings in 1999.

ADDRESSES: The December 4, 1998, meeting will be held in Room 1863, Herbert C. Hoover Building, Department of Commerce, 14th and Constitution, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Catherine Corson, (301) 713–2322.

SUPPLEMENTARY INFORMATION: The December 4, 1998, Interagency Committee meeting will review recent events relating to the IWC and issues that will arise at the 1999 IWC annual meeting.

The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary for Oceans and Atmosphere, who is also the U.S. Commissioner to the IWC. The U.S. Commissioner has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other interested agencies.

Each year, NOAA conducts meetings and other activities to prepare for the annual meeting of the IWC. The major purpose of the preparatory meetings is to provide input in the development of policy by individuals and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling. Any person with an identifiable interest in United States whale conservation policy may participate in the meetings, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Foreign nationals and persons who represent foreign governments may not attend. These

stringent measures are necessary to promote the candid exchange of information and to establish the necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practices.

Tentative Meeting Schedule

The schedule of additional meetings and deadlines, including those of the IWC, during 1999 follows. Specific locations and times will be published in the **Federal Register**.

February 19, 1999: Interagency Committee meeting to review recent events relating to the IWC and to review U.S. positions for the 1998 IWC annual meeting.

April 9, 1999: Interagency Committee meeting to review recent events relating to the IWC and to review U.S. positions for the 1998 IWC annual meeting.

April 30 to May 3, 1999 (Grenada): IWC Scientific Committee Working Groups.

May 3 to 15, 1999 (Grenada): IWC Scientific Committee.

May 17 to 19, 1999 (Grenada): IWC Whale Killing Methods Workshop.

May 19 to 21, 1999 (Grenada): IWC Commission Committee, Sub-committees and Working Groups.

May 24 to 28, 1999 (Grenada): IWC 51st Annual Meeting.

Special Accommodations

Department of Commerce meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Catherine Corson at least 5 days prior to the meeting date.

Dated: November 5, 1998.

Patricia Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30264 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110398A]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Whiting Oversight Committee on Monday, November 30, 1998 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on November 30, 1998. See **SUPPLEMENTARY INFORMATION** for the specific time.

ADDRESSES: The meeting will be held in Portsmouth, NH. See **SUPPLEMENTARY INFORMATION** for the specific location.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, Massachusetts 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Date and Agenda

Monday, November 30, 1998, 10:00 a.m.—Whiting Oversight Committee Meeting.

Location: Urban Forestry Center, 45 Elwyn Road, Portsmouth, NH 03801; telephone: (603) 431–6774; fax: (603) 431–5553.

Review rationale for final management measures for Amendment 12 to the Northeast Multispecies Fishery Management Plan (to manage silver hake, offshore hake, and red hake); review text of draft regulations for Amendment 12; discuss and resolve outstanding issues identified by NMFS relevant to achieving the objectives of the management plan and fulfilling the requirements of the Sustainable Fisheries Act.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 4, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30263 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110498D]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a plan team meeting.

SUMMARY: The North Pacific Fishery Management Council's Plan Team for the Bering Sea/Aleutian Island King and Tanner Crab Fishery Management Plan will meet in Anchorage, AK.

DATES: The meeting will be held on November 30–December 1, 1998, beginning at 11:00 a.m. on Monday, November 30.

ADDRESSES: The meeting will be held in Room 229, Old Federal Building, 605 W. 4th Avenue, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

The agenda for the meeting will include the following:

1. Review of comments received from the Scientific and Statistical Committee on the Crab Stock Assessment and Fishery Evaluation Report.

2. Review length-based analysis model for Bristol Bay red king crab.

3. Review progress on Bering Sea C. bairdi crab rebuilding plan.

4. Review opilio crab bycatch limits in the scallop fishery.

Although other issues not contained in this agenda may come before this Team for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: November 4, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30262 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 9805–29140–8140–01]

Cooperation Between the Technology Administration of the United States Department of Commerce and the Science and Technology Commission of The People's Republic of China; Civil Industrial Technology Coordinating Committee

AGENCY: Technology Administration, Department of Commerce.

ACTION: Notice; request for nominations for the coordinating committee.

SUMMARY: The Technology Administration invites nominations of individuals to appointment to the Civil Industrial Technology Coordinating Committee established under the Implementing Arrangement Concerning Cooperation in Civil Industrial Technology. The Technology Administration will consider all nominations received in response to this notice of appointment to the Coordinating Committee.

DATES: Please submit nominations on or before January 8, 1999.

ADDRESSES: Please submit nominations to Phyllis Yoshida, Office of Technology Policy, Technology Administration, Department of Commerce, Room 4411, Washington, D.C. 20230. Nominations may also be submitted by fax to 202–219–3310.

FOR FURTHER INFORMATION CONTACT: Phyllis Yoshida, telephone 202–482–1287; fax 202–219–3310; e-mail *Phyllis__Yoshida@ta.doc.gov.*

SUPPLEMENTARY INFORMATION:

Goals of the Implementing Arrangement

On October 24, 1996, the United States Department of Commerce and the State Science and Technology Commission of the People's Republic of China (hereinafter referred to as the "Participants") signed the Implementing Arrangement Concerning Cooperation in Civil Industrial Technology. It establishes a framework and goals for cooperation in science and technology, and requires the creation of a joint Civil Industrial Technology Coordinating Committee ("CIT Coordinating Committee"). The Technology Administration is the executive secretariat for this initiative.

The goal of the Participants is to promote mutually beneficial cooperation among public and private entities in both nations, to strengthen technological capabilities of the Participants, and to broaden and intensify relations between their technological communities.

Cooperative Activities

Cooperative activities under this Implementing Arrangement may include, among others, joint research and technology projects, studies, and investigations; joint technological courses, workshops, conferences, and symposia; exchange of scientific and technical information in the context of cooperative activities; and other forms of scientific and technological cooperation as may be deemed appropriate. Cooperative activities should reflect technological strengths in China and the United States, and should be structured to provide an appropriate role for the private sector and academic organizations.

Information on the CIT Coordinating Committee

The Participants intend to jointly establish a CIT Coordinating Committee, consisting of 12 members, six to be designated by the Department of Commerce, and six to be designated by the State Science and Technology Commission. The Committee also includes the Executive Secretariat and Secretariat, two government officials designated by each of the Participants. The Coordinating Committee members will be drawn from the private sector, representing private industry, academia, or non-governmental organizations in the Participants'countries.

The members of the Coordinating Committee will be expected to carry out the following functions:

1. Identify fields and forms of cooperation in accordance with the goals and objectives of the Implementing Arrangement;
2. Review, assess, and make specific recommendations concerning cooperative activities; and
3. Undertake other appropriate functions as may be approved by the Participants.

Meetings of the Coordinating Committee

The CIT Coordinating Committee meets twice a year, alternating between China and the United States to meet the objectives of the Implementing Arrangement.

Length of Service

The Participants intend to maximize public participation through regular rotation of CIT Coordinating Committee members. Committee members will serve a three year term, with staggered term ends to ensure that at least one-third of the membership is replaced annually.

Membership Criteria and Requirements

The U.S. members of the CIT Coordinating Committee shall be eminent leaders from industry, academia, or government who have experience in technology development, technology diffusion, or international technology collaboration. The CIT Coordinating Committee members should be familiar with the business climate, status of technology, and economic development of China. They should be U.S. citizens. Members of the CIT Coordinating Committee shall serve without compensation.

The Department of Commerce is committed to equal opportunity in the workplace, and seeks a broad-based and diverse CIT Coordinating Committee membership.

Conflict of Interest

Nominees will be evaluated for their ability to contribute to the goals and objectives of the Implementing Arrangement. Nominees will be vetted in accordance with processes established by the Department of Commerce in February 1997, as soon as possible following tentative selection. The vetting has three components: (1) an internal review for possible appearance of conflict problems; (2) an external review for possible appearance of problems; and (3) a recusal/ethics agreement review.

Dated: November 4, 1998.

Kelly H. Carnes,

Deputy Assistant Secretary for Technology Policy.

[FR Doc. 98–30187 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–18–U

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 9805–29138–8138–01]

The United States-Greek Initiative for Technology Cooperation With the Balkans; Joint Science and Technology Cooperation Council

AGENCY: Technology Administration, Department of Commerce.

ACTION: Notice; request for nominations for joint council.

SUMMARY: The Technology Administration invites nominations of individuals to appointment to the Joint Council on Technology Cooperation established under a Memorandum on Understanding between the United States Department of Commerce and the Greek Ministry of National Economy concerning technology cooperation with the Balkans. The Technology Administration will consider all nominations received in response to this notice of appointment to the Joint Council.

DATES: Please submit nominations on or before January 8, 1999.

ADDRESSES: Please submit nominations to Lucy H. Richards, Office of Technology Policy, Technology Administration, Department of Commerce, Room 4411, Washington, D.C. 20230. Nominations may also be submitted by fax to 202–482–4826.

FOR FURTHER INFORMATION CONTACT: Lucy H. Richards, telephone 202–482–6804; fax 202–482–4826, e-mail *Lucy__Richards@ta.doc.gov.*

SUPPLEMENTARY INFORMATION:

Goals of the Memorandum of Understanding

On January 17, 1998, the United States Department of Commerce and the Greek Ministry of National Economy (hereinafter known as the "Participants") entered into a Memorandum of Understanding (MOU) concerning technology cooperation with the Balkans, to be known as "The United States-Greek Initiative for Technology Cooperation with the Balkans" (ITCB). A Joint Science and Technology Cooperation Advisory Council (hereinafter "the Joint Council") is to be established under the MOU.

The Participants recognize that working together to foster collaborative and mutually beneficial technology cooperation with countries in the Balkan region will provide economic benefits to the Balkan region and to the United States and Greece. The goal of the Participants is to foster collaboration among public and private entities in the Participants'countries, and public and private entities in the Balkan region in order to enhance technological capabilities in the Balkan region, enhance the relationship between U.S. and Greek private sector firms and entities in the Balkan region, and promote the development of stable, free market economies in the Balkan region. For the purposes of the MOU, the Balkan region is to encompass Albania, Bulgaria, Romania, the Former Yugoslav Republic of Macedonia, and any other countries in the region that the Participants may later mutually agree to include.

Cooperative Activities

Cooperative activities under this MOU may include, among others, coordinated and joint research and technology projects, studies, and investigations; joint technological courses, workshops, conferences, and symposia; exchanges of science and technology information and documentation in the context of cooperative activities; exchanges of scientists, specialists, and researchers; exchanges or sharing of equipment or materials; and other forms of scientific and technological cooperation as may be deemed appropriate. Cooperative activities should reflect technological strengths in the United States and Greece, and should be structured to provide an appropriate role for U.S. and Greek private sector and academic organizations. Cooperative activities should also seek to include public and private science and technology establishments in the Balkan region and encourage the application and adoption of technology in their relevant entities.

Information on the Joint Council

For the purposes of implementing this MOU, the Participants intend to jointly establish a Joint Science and Technology Cooperation Advisory Council, to consist of six members, three to be designated by, and serve at the pleasure of the Greek Ministry of National Economy, and three to be designated by, and serve at the pleasure of, the U.S. Department of Commerce. Each participant may also designate alternate members.

The members of the Joint Council will be expected to carry out the following functions:

1. Recommend to the Participants overall policies under the MOU;
2. Identify fields and forms of cooperation in accordance with the goals and objectives of the MOU;
3. Review, assess, and make specific recommendations concerning cooperative activities;
4. Prepare periodic reports concerning the activities of the Joint Council and cooperative activities undertaken under the MOU for submission to the Participants; and
5. Undertake such further functions as may appropriately be approved by the Participants.

Meetings of the Joint Council

The Joint Council may meet annually, or at other regular intervals as deemed appropriate, alternately in Greece and the United States, and additionally as may be determined by the Participants.

Length of Service

A member's length of service on the Joint Council is not stipulated in the MOU and is discretionary with the Department of Commerce. Individuals chosen for membership will serve a term that best fits the needs and objectives of the Joint Council. Members will serve a two or three-year term with staggered term ends. Upon the completion of a member's term, the Department will either repeat this recruitment and selection process or extend the member's term as long as the member proves to work effectively on the Joint Council and his/her expertise is still needed.

Membership Criteria and Requirements

The U.S. members of the Joint Council shall be eminent leaders, broadly representative of industry, academia, or government, who have experience in technology development, technology diffusion, or international technology collaboration. They shall be U.S. citizens. They shall be familiar with the business climate and the status of technology and economic development in Greece and the Balkans, with Greek and Balkan industry, or with Greek and Balkan academic institutions. Members of the Joint Council shall serve without compensation.

The Department of Commerce is committed to equal opportunity in the workplace, and seeks a broad-based and diverse Joint Council membership.

Conflict of Interest

Nominees will be evaluated for their ability to contribute to the goals and objectives of the MOU. Nominees will be vetted in accordance with processes established by the Department of Commerce in February 1997, as soon as possible following tentative selection. The vetting system has three components: (1) an internal review for possible appearance of conflict problems; (2) an external review for possible appearance of problems; and (3) a recusal/ethics agreement review.

Dated: November 4, 1998.

Kelly H. Carnes,

Deputy Assistant Secretary For Technology Policy.

[FR Doc. 98–30186 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–18–U

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 9805–29139–8139–01]

Cooperation Between the Technology Administration of the United States Department of Commerce and the Industrial Research and Technology Unit of the Northern Ireland Department of Economic Development; Joint Board on Scientific and Technological Cooperation

AGENCY: Technology Administration, Department of Commerce.

ACTION: Notice; request for nominations for joint board.

SUMMARY: The Technology Administration invites nominations of individuals to appointment to the Joint Board on scientific and technological cooperation established under a Memorandum of Understanding on technology cooperation between the Technology Administration and the Northern Ireland Industrial Research and Technology Unit. The Technology Administration will consider all nominations received in response to this notice of appointment to the Joint Board.

DATES: Please submit nominations on or before January 8, 1999.

ADDRESSES: Please submit nominations to Lucy H. Richards, Office of Technology Policy, Technology Administration, Department of Commerce, Room 4411, Washington, D.C. 20230. Nominations may also be submitted by fax to 202–482–4826.

FOR FURTHER INFORMATION CONTACT: Lucy H. Richards, telephone 202–482–6804; fax 202–482–4826; e-mail *Lucy_Richards@ta.doc.gov*.

SUPPLEMENTARY INFORMATION:

Goals of the Memorandum of Understanding

On December 1, 1995, the Technology Administration of the United States Department of Commerce and the Industrial Research and Technology Unit of the Northern Ireland Department of Economic Development (hereinafter known as the "Participants") entered into a Memorandum of Understanding (hereinafter referred to as the "MOU") concerning technology cooperation. A Joint Board on Scientific and Technological Cooperation (hereinafter referred to as "the Joint Board") was established under the MOU.

The Participants recognize that working together to foster enhanced cooperation in technology development, encouraging technology diffusion arrangements, and seeking opportunities for the collaborative and mutually beneficial use of technology for industrial wealth creation and increased economic competitiveness will provide substantial benefits to Northern Ireland and the United States. The goals of the Participants are to strengthen technological capabilities of the Participants, to broaden and expand relations between their technological communities and to promote technological cooperation in areas of mutual benefit for peaceful purposes.

Cooperative Activities

Cooperative activities under this MOU may include coordinated and joint research and technology projects, studies, and investigations; joint technological courses, workshops, conferences, and symposia; exchanges of science and technology information and documentation in the context of cooperative activities; exchanges of scientists, specialists, and researchers; exchanges or sharing of equipment or materials; and other forms of scientific and technological cooperation as may be approved by the Joint Board.

Information on the Joint Board

For the purposes of implementing this MOU, the Participants have established a Joint Board on Scientific and Technological Cooperation, to consist of six members, three to be designated by and serve at the pleasure of the Industrial Research and Technology Unit, and three to be designated by and serve at the pleasure of the Technology Administration of the U.S. Department of Commerce. Each Participant may also designate alternate members.

The members of the Joint Board will be expected to carry out the following functions:

1. Recommend to the Participants overall policies under the MOU;

2. Identify fields and forms of cooperation in accordance with the goals and objectives of the MOU;

3. Review, assess, and make specific recommendations concerning cooperative activities;

4. Prepare periodic reports concerning the activities of the Joint Board and cooperative activities undertaken under the MOU for submission to the Secretary of Commerce of the United States and the Minister of Economic Development of Northern Ireland; and

5. Undertake such further functions as may appropriately be approved by the Participants.

Meetings of the Joint Board

The Joint Board may meet annually, or at other regular intervals as deemed appropriate, alternately in the United States and Northern Ireland, and additionally as may be determined by the Participants.

Length of Service

The Charter of the Joint Board establishes that members of the Joint Board shall each serve for a three year term, unless removed by the Secretary of Commerce or his/her designee (for the United States members) or the Chief Executive of the Industrial Research and Technology Unit or his/her designee (for the Northern Ireland members). Upon the completion of a member's term, the Department will either announce a request for nominations or extend the member's term as long as the member proves to work effectively on the Joint Board and his/her expertise is still needed.

Membership Criteria and Requirements

The U.S. members of the Joint Board shall be eminent leaders from industry, academia, or government who have experience in technology development, technology diffusion, or international technology collaboration. They should be familiar with the business climate and the status of technology and economic development in Northern Ireland, and with Northern Ireland institutions. They should be U.S. citizens. Members of the Joint Board shall serve without compensation.

The Department of Commerce is committed to equal opportunity in the workplace, and seeks a broad-based and diverse Joint Board membership.

Conflict of Interest

Nominees will be evaluated for their ability to contribute to the goals and objectives of the MOU. Nominees will be vetted in accordance with processes established by the Department of Commerce in February 1997, as soon as possible following tentative selection. The vetting has three components: (1) an internal review for possible appearance of conflict problems; (2) an external review for possible appearance of problems; and (3) a recusal/ethics agreement review.

Dated: November 4, 1998.

Kelly H. Carnes,

Deputy Assistant Secretary for Technology Policy.

[FR Doc. 98–30185 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–18–U

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 5, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and guaranteed access levels for textile products, produced or manufactured in the Dominican Republic and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits and guaranteed access levels. The limits for Categories 339/639 and 347/348/647/648 have been reduced for carryforward applied in 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 5, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Restraint limit
338/638	951,261 dozen.
339/639	1,080,321 dozen.
340/640	979,271 dozen.
342/642	689,136 dozen.
347/348/647/648.	2,194,361 dozen of which not more than 1,238,434 dozen shall be in Categories 647/648.
351/651	1,173,979 dozen.
433	22,085 dozen.
442	74,983 dozen.
443	137,182 numbers.
444	74,983 numbers.
448	38,628 dozen.
633	143,688 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 19, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 1999, you are directed to establish guaranteed access levels for properly certified textile products in the following categories which are assembled in the Dominican Republic from fabric formed and cut in the United States and re-exported to the United States from the Dominican Republic during the period January 1, 1999 through December 31, 1999:

Category	Guaranteed access level
338/638	1,150,000 dozen.
339/639	1,150,000 dozen.
340/640	1,000,000 dozen.
342/642	1,000,000 dozen.
347/348/647/648.	8,050,000 dozen.
351/651	1,000,000 dozen.
433	21,000 dozen.
442	65,000 dozen.
443	50,000 numbers.
444	30,000 numbers.
448	40,000 dozen.
633	60,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of February 25, 1987, as amended, shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–30234 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on the Extension of Temporary Amendment to the Requirements for Participating in the Special Access Progam for Caribbean Basin Countries

November 5, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice and letter to the Commissioner of Customs published in the Federal Register on December 17, 1997 (62 FR 66057) announced the temporary amendment to the foreign origin exception for findings and trimmings under the Special Access Program. This amendment extended the exemption period for one year, December 23, 1997 through December 22, 1998, for women's and girls' chest type plate, "hymo" piece or "sleeve header" of woven or welf-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of tailored suit jackets and suit-type jackets in Categories 433, 443, 633 and 643 which are entered under the Special Access Program (9802.00.8015) provided they are cut in the United States. In a subsequent notice and letter published on September 29, 1998 (63 FR 51903), the exemption was extended for the period September 23, 1998 through September 22, 1999 for men's and boys' chest type plate, "hymo" piece or "sleeve header" of woven or welf-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of tailored suit jackets and suit-type jackets in the same categories.

The purpose of this notice is to request public comments on CITA's intention to combine and extend through December 31, 2000, the exemption periods for women's and girls' and men's and boys' "hymo" type interlining. Thereafter, the exemption period for women's and girls' and men's and boys' "hymo" type interlining would extend through December 31, 2000.

There will be a 30-day comment period beginning November 12, 1998 and extending through December 14, 1998. Anyone wishing to comment or provide data or information regarding domestic production or availability of the products mentioned above is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30235 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 99–C0003]

Small World Toys, Inc., a Domestic Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substance Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with Small World Toys, Inc., a domestic corporation, containing a civil penalty of $225,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 27, 1998.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 99–C0003, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626, 1346.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: November 4, 1998.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. Small World Toys, Inc. (hereinafter, "Small World"), a corporation, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staff's allegations that Small World violated the Consent Decree of Permanent Injunction and the Federal Hazardous Substances Act (FHSA).

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2053.

3. Small World is a corporation organized and existing under the laws of the State of California. Small World's address is 5711 Buckingham Parkway, Culver City, CA 90231. Small World is an importer and wholesaler of children's toys.

II. Allegations of the Staff

A. Violation of the Consent Decree

4. On July 31, 1986, the United States Department of Justice on behalf of the Commission and Small World entered into a Consent Decree of Permanent Injunction, hereinafter, "Consent Decree" (Consent Decree, Attachment A) to resolve allegations that Small World introduced or caused the introduction in interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, toys and other articles intended for use by children under three years of age that failed to comply with the Commission's Small Parts Regulation at 16 CFR Part 1501, in violation of sections 4 (a) and (c) of the FHSA, 15 U.S.C. 1263 (a) and (c).

5. The Consent Decree requires Small World to test six (6) units of a toy or other article intended for children under three years old for small parts pursuant to the use and abuse procedures set forth in 16 CFR 1501.4 and 1500.51 and .52 twice per calendar year unless Small World receives only one shipment of the particular toy during the calendar year. If any unit of a toy fails use and abuse procedures, Small World is prohibited from distributing the toy in interstate commerce and must notify the Commission in writing within three (3) days of the failure.

6. Small World has not complied with the testing and reporting requirements of the Consent Decree.

7. Small World's failure to comply with the testing and reporting requirements of the Consent Decree constitutes a violation of the Consent Decree.

B. Toys With Small Parts

8. On four occasions between October 12, 1994, and December 1, 1995, Small World introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, eight kinds of toys (23,604 retail units) intended for use by children under three years old. These toys are identified and described as follows:

Sample No.	Product	Collect. date * entry date	Expt/Mfg.	Quantity
T–867–8045	Necklace	10/12/94	Fishel	3,456
T–867–8046	Necklace	10/12/94	Fishel	2,304
T–867–8178	Bracelet	*01/27/95	Fishel	4,320
T–867–8179	Bracelet	*01/27/95	Fishel	4,320
T–867–8180	Locomotive	*01/27/95	Supertoys	576
T–867–8181	Car	*01/27/95	Golden Bell	2,448
T–867–8338	Gazoobo	*09/12/95	Caben	6,168
96–860–5154	Simba Doll	*12/01/95	Unknown	12

9. The toys identified in paragraph 8 above are intended for children under three years old and are subject to the Commission's Small Parts Regulation, 16 CFR Part 1501.

10. The toys identified in paragraph 8 above failed to comply with the Commission's Small Parts Regulation, 16 CFR Part 1501, in that when tested under the "use and abuse" test methods specified in 16 CFR 1500.51 and .52, (a) one or more parts of each tested toy separated and (b) one or more of the separated parts from each of the toys fit completely within the small parts test cylinder, as set forth in 16 CFR 1501.4.

11. Because the separated parts fit completely within the test cylinder as described in paragraph 10 above, each of the toys identified in paragraph 8 above presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration, and/or ingestion of small parts).

12. Each of the toys identified in paragraph 8 above is a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

13. Each of the toys identified in paragraph 8 above is a "banned hazardous substance" pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) and 16 CFR 1500.18(a)(9) because it is intended for use by children under three years of age and bears or contains a hazardous substance as described in paragraph 12 above; and because it presents a mechanical hazard as described in paragraph 11 above.

14. Small World knowingly introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the aforesaid banned hazardous toys, identified in paragraph 8 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263 (a) and (c).

C. Rattles With Small Parts

15. On one occasion in 1994, Small World introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, one kind of rattle (3,456 units) intended for use by children. This rattle is identified and described as follows:

Sample No.	Product	Entry Date	Expt/Mfg.	Quantity
S–867–8429	Handy Dandy Rattle	10/12/94	Ambi	3,456

16. The rattle identified in paragraph 15 above is subject to, but failed to comply with the Commission's Rattle Regulations, 16 CFR Part 1510, in that when tested under the procedures set forth in 16 CFR 1510.4, the rattle penetrated the full depth of the test fixture.

17. Because the rattle identified in paragraph 15 above penetrated the full depth of the cavity of the test fixture as specified in 16 CFR 1510.4, it presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking) and is, therefore, a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

18. The rattle identified in paragraph 15 above is a "banned hazardous substance" pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) and 16 CFR 1500.18(a)(15) because it is intended for use by children and bears or contains a hazardous substance; and because it presents a mechanical hazard as defined in paragraph 17 above.

19. Small World knowingly introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the aforesaid banned hazardous rattle identified in paragraph 15 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c).

D. Art Material

20. On three occasions between August 31, 1993, and September 13, 1993, Small World introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, eight (8) different types of art material products (8,592 units). These art material products are identified and described as follows:

Sample No.	Product	Entry Date	Expt/Mfg.	Quantity
R–867–8507	Dino Puzzle	08/31/93	Aims	1,152
R–867–8508	Water Color Paint Set	09/01/93	Weghorn	120
R–867–8509	Water Color Paint Set	09/01/93	Weghorn	576

Sample No.	Product	Entry Date	Expt/Mfg.	Quantity
R–867–8515	Water Color Paint Set	09/01/93	Weghorn	480
R–867–8516	Water Color Paint Set	09/01/93	Weghorn	2,592
R–867–8517	Color Paint Set	09/01/93	Weghorn	312
R–867–8518	Water Color Paint Set	09/01/93	Weghorn	480
R–867–8579	Mini Crayons	09/13/93	Aims	2,880

21. The art material products identified in paragraph 20 above are subject to, but failed to comply with the requirements for the Labeling of Art Materials Act in that (a) Small World did not submit these art material products for review by a toxicologist as required by section 23(a) of the FHSA, 15 U.S.C. 1277(a) and 16 CFR 1500.14(b)(8)C)(1); and (b) these art material products did not bear the statement of conformance with ASTM D–4236, as required by section 23(a) of the FHSA, 15 U.S.C. 1500.14(b)(8)(C)(7).

22. The art material products identified in paragraph 20 above are "misbranded hazardous substances" pursuant to section 3(b) of the FHSA, 15 U.S.C. 1262(b) and 16 CFR 1500.14(b)(8)(C)(1) and (7).

23. Small World knowingly introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the aforesaid misbranded hazardous art materials identified in paragraph 20 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c).

E. Failure to Follow Export Notification Requirements

24. On ten occasions between April 8, 1997, and November 24, 1997, Small World exported 10 different kinds of toys (9,291 units) intended for use by children under three years old that failed to comply with the Commission's Small Parts Regulations 16 CFR Part 1501 without submitting a "notification of intent to export" to the Commission pursuant to section 14(d) of the FHSA, 15 U.S.C. 1273(d) and the Commission's Procedures For Export of Noncomplying Products, 16 CFR Part 1019. These toys are described and identified as follows:

Product	Expt./Mfg.	Quantity
Pull-Along Dog.	Ambi	2,847
Sand Boat	Ambi	882
Animal Trains.	Caben	714
Ambu-lance.	Golden Bell	888
Bear Trumpet.	Hong Kong Toy Ctr.	624
Cement Mixer.	Kodomo	600
Water Wheel.	Kodomo	1,188
Shape Sorter.	Megcos	720
Crane Truck.	Golden Bell	600
Bank	Caben	228

25. Small World knowingly failed to file the required notification informing the Commission of its intent to export the toys identified in paragraph 24 above, in violation of section 4(i) of the FHSA, 15 U.S.C. 1263(j).

III. Response of Small World

26. Small World denies the allegations of the staff set forth in paragraphs 4 through 25 above. Small World denies the allegations that it violated the testing and reporting provisions of the Consent Decree and that it knowingly introduced or caused the introduction in interstate commerce and delivered or proffered delivery thereof for pay or otherwise any banned hazardous toys and rattles and any misbranded hazardous art material products.

27. Small World contends the necklaces, bracelets, locomotive and car listed in paragraph 8 are not intended or promoted for use by children under three years old and therefore are not subject to the CPSC Small Parts Regulation. The Gazoobo toy is intended and promoted for ages above 18 months through 5 years and it meets CPSC's Small Parts requirement for that age group. The Simba Doll sold by Small World met the CPSC Small Parts Regulation.

28. Small World did not knowingly introduce or cause the introduction into interstate commerce or receive or deliver or proffer delivery of any banned hazardous rattles as alleged in paragraph 15.

29. Small World never received in interstate commerce the art materials listed in paragraph 20 and never introduced them into interstate commerce. They were stopped before entry into the United States and before Small World had any opportunity to inspect them to determine if they were properly labeled under the Labeling of Art Materials Act. Two products, Dino Puzzle and Mini Crayons, were returned to the manufacturer before they entered the United States. The Color Paint Sets were properly labeled after SWT was informed that they had arrived at the port without labels.

IV. Agreement of the Parties

30. The Consumer Product Safety Commission has jurisdiction over Small World and the subject matter of this Settlement Agreement and Order under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

31. Upon final acceptance by the Commission of this Settlement Agreement and Order, Small World knowingly, voluntarily, and completely waives any rights it may have in this matter (a) to an administrative or judicial hearing, (b) to judicial review or other challenge or contest of the validity of the Commission's actions, (c) to a determination by the Commission whether Small World failed to comply with the testing and reporting requirements of the Consent Decree and the FHSA, (d) to a statement of findings of facts and conclusions of law, and (e) to any claims under the Equal Access to Justice Act.

32. In settlement of the staff's allegations, Small World agrees to pay a civil penalty of $225,000.00 as set forth in the incorporated Order.

33. In settlement of the staff's allegations, Small World agrees to comply with the testing and reporting requirements of the Consent Decree.

34. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and Order.

35. Upon provisional acceptance of this Settlement Agreement by the Commission, the Commission will place the Settlement Agreement and the Provisional Order on the public record, and publish it in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written requests not to accept the Settlement Agreement within 15 days, the Settlement Agreement shall be deemed finally accepted and the Final Order issued on the 16th day.

36. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

37. The provisions of this Settlement Agreement and Order shall apply to Small World and each of its successors and assigns.

38. Small World shall notify the CPSC in writing at least thirty (30) calendar days prior to any reorganization, dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiaries, or any other changes in the corporate structure of Small World that may affect compliance obligations arising out of this Settlement Agreement and Order. Such notice shall be sent by certified mail, return receipt requested to: Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, D.C. 20207–0001.

39. Upon final acceptance of this Agreement, the Commission shall issue the attached Final Order.

Respondent Small World Toys, Inc.

Dated: October 6, 1998.

Edward M. Goldwasser,

President, Small World Toys, Inc., 5711 Buckingham Parkway, Culver City, CA 90231.

Dated: October 7, 1998.

Michael A. Brown,

Esquire,

Margaret A. Freeston,

Esquire, Brown & Freeston, P.C., 3201 New Mexico Avenue, N.W., Suite 242, Washington, D.C. 20016–2756.

Commission Staff

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207–0001.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: October 8, 1998.

Dennis C. Kacoyanis,

Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent Small World Toys, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Small World Toys, Inc.; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement and Order, Small World Toys, Inc. shall pay to the Commission a civil penalty in the amount of TWO HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($225,000.00) in three (3) payments. The first payment of SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS ($75,000.00) shall be due within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting the attached Settlement Agreement or December 20, 1998 whichever is later. The second payment of SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS ($75,000.00) shall be due on December 20, 1999. The third payment of SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS ($75,000.00) shall be due on December 20, 2000. Upon the failure by Small World Toys, Inc. to make a payment or upon the making of a late payment by Small World Toys, Inc. (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (c).

Provisionally accepted and Provisional Order issued on the 4th date of November, 1998.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Consent Decree of Permanent Injunction

The United States of America, on behalf of the Consumer Product Safety Commission, having filed on the 29th day of July, 1986, a complaint seeking to enjoin permanently the defendant from directly or indirectly doing or causing to be done any act in violation of sections 4(a) and (c) of the Federal Hazardous Substances Act (FHSA) 15 U.S.C. 1263(a) and (c) by introducing, delivering for introduction or receiving in interstate commerce any toy or other article intended for use by children under 3 years of age which is a banned hazardous substance pursuant to 15 U.S.C. 1261(q)(1)(A), and the regulations issued thereunder, 16 CFR 1500.18(a)(9) and 16 CFR Part 1501, 16 CFR Part 1510, 16 CFR 1500.48 and .49; and from directly or indirectly doing or causing to be done any act or violation of section 19(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2068(a)(2), by manufacturing for sale, offering for sale; distributing in commerce or importing into the United States any toy or other article intended for use by children that are banned under 16 CFR Part 1303, regarding articles bearing lead containing paint. The defendant, Small World Toys, a corporation, having consented to the entry of this decree and to each and every provision hereof, without contest and before any testimony has been taken, and the United States having moved this Court for this permanent injunction:

Now, therefore, it is *ordered, adjudged and decreed* that:

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1337 and 1345 and 15 U.S.C. 1267(a) and has personal jurisdiction over the defendant.

2. Small World Toys, ("Small World"), a corporation organized and existing under the laws of the State of California, with its principal place of business located at 5711 Buckingham Parkway, Culver City, California 90230, is in the business of importing and distributing toys that are subject to the requirements of the FHSA and the regulations issued thereunder.

3. Defendant has introduced, delivered for introduction or received in interstate commerce, children's toys called Ambi "Funhouse," Model No. E71; Ambi "Jack in the Ball," Model No. E153; Ambi "Mini-Racer," Model No. E666; Royal Company Ltd., "Water Wheel," Model No. 1928; Jimson, "Super Air Bus," Model No. 349; Jimson "Elephant Boat," Model No. 376; Jimson, "See Thru Locomotive," Model No. 270T; Discovery World/Small World Toys "Lift & Learn Puzzles," Model Nos. 2501, 2502, 2503, 2504, 2505 and 2506; Discovery World/Small World Toys "Scratch & Sniff Puzzles," Model Nos. 2507, 2508, 2509, 2510, and 2512; Hermann Eichhorn Gmb. Hu. Co., K6, "Wooden Train," Model No. 2037 and Hans Clemens Co., "Stuffed Bears," Model No. 51250.

4. The Commission believes the toys referred to in paragraph 3 are toys intended for use by children under three and are subject to the requirements of the FHSA and its regulations.

5. The Commission believes the children's toys referred to in paragraph 3 above are banned hazardous substances pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A), and the regulations issued thereunder, 16 CFR 1500.18(a)(9) and 1501 because they exhibit small parts which present choking, aspiration or ingestion hazards when subject to the

test requirements of 16 CFR 1500.51 and 1500.52 and 1501.4.

6. The defendant voluntarily agreed to the Commission's request to stop distributing the Ambi "Funhouse," Royal Company "Water Wheel," Jimson "Super Air Bus," Jimson "Elephant Boat," Herman Eichorn Gm. Hu. Co. "Wooden Train", Hans Clemens Co. "Stuffed Bear," and Jimson "See Thru Locomotive" until such time as they have been changed and complied with the requirements of the FHSA. The defendant also agreed to recall the Ambi "Jack in the Ball," and agreed to a limited recall from the retail level of the Discovery World/Small World Toys "Lift & Learn Puzzles" and "Scratch & Sniff Puzzles," and a limited recall of the hat of the Ambi "Mini-Racer," including an incentive program to encourage consumers to return the hat, and agreed not to sell such products until such time as the products were or have been appropriately modified.

7. The defendant, and each and all of its directors, officers, agents, servants, representatives, employees, successors or assigns, and any and all persons in active concert or participation with it, are hereby enjoined from directly or indirectly doing or causing the introduction, delivery for introduction or receipt in interstate commerce, of:

(a) Any toy or other article intended for use by children under three years of age that presents a choking, aspiration or ingestion hazard because of small parts as defined in 16 CFR Part 1501 or which when tested in accordance with 16 CFR 1501.4 and 1500.51 and .52, presents a choking, aspiration or ingestion hazard because of small parts as defined in 16 CFR Part 1501.

(b) Any toy or article intended for use by children that does not comply with the requirements of 16 CFR 1500.48 and .49, regarding sharp points and edges.

(c) Any rattle which does not comply with the requirements of 16 CFR Part 1510.

(d) Any toy or other article intended for use by children that does not comply with the requirements of 16 CFR Part 1303, regarding articles bearing lead containing paint.

8. Although the FHSA does not require manufacturers, distributors or importers to test any products, the defendant agrees to conduct, or have conducted on its behalf, the tests described in 16 CFR 1501.4 and 1500.51 and .52 to detect any banned hazardous toys or other articles intended for use by children under three years of age. The testing shall be as follows.

(a) Samples of each model of toy or other article intended for use by children shall be tested at least twice each calendar year. However, if only one shipment of a model is received during the calendar year, samples of the model shall be tested only one time during the calendar year. The samples shall be tested before items from the shipment(s) involved are introduced or delivered for introduction into interstate commerce by defendant or its agents.

(b) A sample shall consist of at least six items of a model, but the Commission encourages defendant to use 12 or more items. The number of items used shall be divided evenly between each of the tests required under this paragraph, except that the torque and tension tests, 16 CFR 1500.51 (e) and (f) and .52 (e) and (f), shall be conducted on the same items.

(c) The items in each sample shall be selected at random from as many cartons as possible and from more than one shipment if possible.

(d) Each item in the sample shall be tested in accordance with 16 CFR 1501.4, 1500.51 and .52. If any items from the sample fail the testing requirements, the shipment(s) from which these items were selected shall not be released into interstate commerce until such time as the products have been appropriately modified or a remedial plan under subsection (e) is implemented. The defendant shall notify the Commission within three (3) working days of defendant's actual or constructive receipt of such test results and shall provide CPSC with a copy of any written failing test reports. Such notification shall be sent by certified mail, return receipt requested, to the following address: Consumer Product Safety Commission, Western Regional Office, 555 Battery Street, Room 401, San Francisco, California 94111.

(a) Upon receipt of such notification, the Commission will then discuss with defendant what remedial action may be necessary.

9. The Commission agrees that defendant has 30 days from the effective date of this consent decree to complete the initial testing required by paragraph eight (8) of all toys intended for children under three subject to the decree which are in their possession or control on the effective date of the decree. For those toys or articles distributed by defendant which are age labeled for children over three years or which are not age labeled, but which defendant believes may be subject to this consent decree because they are toys or other articles intended for use by children under three years of age, defendant shall seek guidance from the Commission within 10 days of entry of this consent decree on whether the Commission believes these toys or other articles are subject to this consent decree. Defendant has 30 days from the receipt of such guidance in which to complete the initial testing required by paragraph eight (8) of this consent decree.

10. For the purpose of complying with the terms of this consent decree, the tests required by 16 CFR 1500.51(b)(2) and .52(b)(2) may be conducted using resilient non-textile floor Type IV tiles that conform to federal specification SS–T–312B.

11. Defendant agrees to maintain records of the tests conducted pursuant to paragraph eight (8) for a period of 3 years. Such records shall include, but not be limited to, the date of the test, the procedure used, the citation of the Code of Federal Regulations of each test used, the number of samples tested, and the results.

12. CPSC, its agents and duly authorized representatives shall be permitted to enter any of defendant's facilities at reasonable times to inspect defendant's business premises and defendant's business records relating to the matters that are the subject of this Consent Decree; to collect any samples; and to conduct any tests which the Consumer Product Safety Commission believes are necessary to ensure that the purposes of this decree are implemented.

13. Defendant shall notify the Consumer Product Safety Commission, in writing, at least 30 days before any changes such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporate structure of Small World Toys that may affect compliance obligations arising out of this Consent Decree. Such notice shall be sent, certified mail, return receipt requested, to the address in paragraph eight (8) above.

14. Defendant shall conduct an immediate limited recall of the hat of the Ambi "Mini-Racer," combined with an incentive program approved by the Consumer Product Safety Commission, to encourage consumers to return the hat. The defendant shall also conduct an immediate limited recall from the retail level of the Discovery World/Small World Toys "Lift & Learn Puzzles" and "Scratch & Sniff Puzzles." The recalls shall, at a minimum, consist of written notification approved by the Commission to each of defendant's customers, such as retailers and distributors, who obtained the toys from the defendant. All aspects of the recall shall be approved by the Commission. Defendant shall also stop distribution of the Ambi "Funhouse," Royal Company "Water Wheel," Jimson "Super Air

Bus," Jimson "Elephant Boat," Hermann Eichorn Gm. Hu. Co. "Wooden Train," Hans Clemens Co. "Stuffed Bear" and Jimson "See Thru Locomotive," until such time as they have been changed and comply with the requirements of the FHSA.

15. The parties to this consent decree agree that the Court retains jurisdiction of these matters for the purpose of enabling any party to the consent decree to apply for any further orders that may be needed to construe, carry out, modify, terminate or enforce compliance with the terms of this agreement.

16. By signing this consent decree, the defendant does not admit any violation of the FHSA and does not admit that any of its actions described in paragraphs six (6) and fourteen (14) above were taken to correct any violations of the FHSA.

Dated: Los Angeles, California, July 30, 1986.

Small World Toys

Edward M. Goldwasser,

President.

Michael A. Brown,

Counsel for Small World Toys.

Schmeltzer, Aptaker & Sheppard, P.C.,

1800 Massachusetts Avenue, NW., Suite 500, Washington, DC 20036, (202) 828–1000.

Approved and so ordered:

John G. Davies

Dated: July 31, 1986.

For the United States

Richard K. Willard,

Assistant Attorney General, Civil Division.

Robert C. Bonner,

United States Attorney for the Central District of California.

Assistant United States Attorney.

Attorney, Civil Division, Office of Consumer Litigation, Department of Justice.

[FR Doc. 98–30163 Filed 11–10–98; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Navy Planning and Steering Advisory Committee

ACTION: Notice.

SUMMARY: The Navy Planning and Steering Advisory Committee (PSAC) has been renewed in consonance with the public interest, and in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act."

The PSAC provides objective advice and recommendations to the Secretary of Defense, the Secretary of the Navy and the Chief of Naval Operations on matters relating to ballistic missile security and anti-submarine warfare. The committee establishes a technical dialogue between experts from the public and private sectors on matters of national security involving the ballistic missile program.

The PSAC will be composed of approximately 25 members, from government and private academic, scientific, and intelligence communities who are experts in the disciplines of ballistic missile security and anti-submarine warfare, thus ensuring a fairly balanced membership in terms of the functions to be performed and the interest groups represented.

For further information regarding the PSAC, contact: Laura Wurzer, Department of the Navy, telephone: 703–602–4039.

Dated: November 5, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30160 Filed 11–10–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on December 1, 1998; December 8, 1998; December 15, 1998; December 22, 1998 and December 29, 1998, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: 5 November 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30159 Filed 11–10–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Graviton, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Graviton, Inc., a revocable, nonassignable, exclusive license in the United States and certain foreign countries, to practice the Government-owned inventions described in U.S. Patent No. 5,372,930 entitled "Sensor for Ultra-Low Concentration Molecular Recognition" issued December 13, 1994; U.S. Patent No. 5,807,758 entitled "Chemical and Biological Sensor Using An Ultra-Sensitive Force Transducer" issued September 15, 1998; U.S. Patent Application Serial No. 08/794,979 (Navy Case No. 77,576) entitled "Biosensor Using Magnetically-Detected Label" filed February 5, 1997; U.S. Patent Application Serial No. 09/008,782 (Navy Case No. 78,183) entitled "Force Discrimination Assay" filed January 20, 1998; U.S. Patent Application Serial No. 09/074,541 (Navy Case No. 78,838) entitled "Apparatus and Method for Measuring Intermolecular Interactions by Atomic Force Microscopy" filed May 8, 1998; in the field of pharmaceutical biological assays, clinical diagnostics, and biochemical sensors.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than January 11, 1999.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Dr. Richard H. Rein, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: November 3, 1998.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–30266 Filed 11–10–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and 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 January 11, 1999.

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, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

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: November 5, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Research on Charter School Finances.

Frequency: On occasion.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 693.

Burden Hours: 671.

Abstract: This two-year study explores how state and district policies, as well as charter school practices, affect charter schools' cost-effectiveness and quality. Funding equity and adequacy are assessed. This study proposes to inform policymakers at the federal, state, and local level of the precise effects of varied approaches to charter school finance.

[FR Doc. 98–30197 Filed 11–10–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 14, 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, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Werfel—d@al.eop.gov. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of

the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 5, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Annual Survey of Bilingual Education: State Grant Program.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Burden:
Responses: 59.
Burden Hours: 1,180.
Abstract: This information will be used to make funding decisions, to inform the Congress on the status of Limited English Proficient (LEP) students nationwide, and to inform Congress and other entities of the progress of LEP students with each state. The respondents are SEAs charged with the authority to provide technical assistance to LEAs and to collect data on LEP population.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–30198 Filed 11–10–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Teleconference

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of Executive Committee teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference of the Executive Committee of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. The public is being given less than 15 days notice of this meeting because of the need to expedite a decision involving other agencies.

DATES: November 12, 1998.

TIME: 1–2 p.m., EST.

LOCATION: Room 100, 80 F St., NW, Washington, DC 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma__Leenhouts@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The teleconference is open to the public. The Executive Committee will consider issues related to participation in an international study on the impact of information and communication technology on learning and teaching. Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, DC 20208–7564.

Dated: November 6, 1998.

Eve M. Bither,

Executive Director.

[FR Doc. 98–30222 Filed 11–10–98; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Education Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Peer Review and Standards Committee of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATES: December 2, 1998.

TIME: 10–4 p.m., EST.

LOCATION: Room 100, 80 F St., NW, Washington, D.C. 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma__Leenhouts@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The meeting is open to the public. The Peer Review and Standards Committee will consider recommendations for the improvement of standards for the evaluation and peer review of grant and cooperative agreement applications. Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, DC 20208–7564.

Dated: November 6, 1998.

Eve M. Bither,

Executive Director.

[FR Doc. 98–30223 Filed 11–10–98; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Science; Continuation of Solicitation for the Office of Science (Formerly the Office of Energy Research) Financial Assistance Program—Notice 99–01

AGENCY: U.S. Department of Energy.

ACTION: Annual Notice of Continuation of Availability of Grants and Cooperative Agreements.

SUMMARY: The Office of Science of the Department of Energy hereby announces its continuing interest in receiving grant applications for support of work in the following program areas: Basic Energy Sciences, High Energy Physics, Nuclear Physics, Computational and Technology Research, Fusion Energy Sciences, Biological and Environmental Research and Energy Research Analyses. On

September 3, 1992, (57 FR 40582), DOE published in the Federal Register the Office of Energy Research Financial Assistance Program, 10 CFR Part 605, Final Rule, which contained a solicitation for this program. Information about submission of applications, eligibility, limitations, evaluation and selection processes and other policies and procedures are specified in 10 CFR Part 605.

DATES: Applications may be submitted at any time in response to this Notice of Availability.

ADDRESSES: Applications must be sent to: Director, Grants and Contracts Division, Office of Science, SC–64, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. When preparing applications, applicants should use the Office of Science Financial Assistance Program Application Guide and Forms located on the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. Applicants without Internet access may call 301–903–5212 for information.

SUPPLEMENTARY INFORMATION: This Notice is published annually and remains in effect until it is succeeded by another issuance by the Office of Science. This annual Notice 99–01 succeeds Notice 98–01 which was published October 31, 1997.

It is anticipated that approximately $400 million will be available for grant and cooperative agreement awards in FY 1999. The DOE is under no obligation to pay for any costs associated with the preparation or submission of an application. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this Notice.

In addition, the following program descriptions are offered to provide more in-depth information on scientific and technical areas of interest to the Office of Science:

1. Basic Energy Sciences

The Basic Energy Sciences (BES) program supports fundamental research in the natural sciences and engineering leading to new and improved energy technologies and to understanding and mitigating the environmental impacts of energy technologies. The science divisions and their objectives are as follows:

(a) Materials Sciences

The objective of this program is to increase the understanding of phenomena and properties important to materials behavior that will contribute to meeting the needs of present and future energy technologies. It is comprised of the subfields metallurgy, ceramics, solid state physics, materials chemistry, and related disciplines where the emphasis is on the science of materials. Program Contact: (301) 903–3427.

(b) Chemical Sciences

The objective of this program is to expand, through support of basic research, knowledge of various areas of chemistry, chemical engineering and atomic molecular and optical physics with a goal of contributing to new or improved processes for developing and using domestic energy resources in an efficient and environmentally sound manner. Disciplinary areas where research is supported include atomic molecular and optical physics; physical, inorganic and organic chemistry; chemical physics; photochemistry; radiation chemistry; analytical chemistry; separations science; actinide chemistry; and chemical engineering sciences. Program Contact: (301) 903–5804.

(c) Engineering Research

This program's objectives are: (1) to extend the body of knowledge underlying current engineering practice in order to open new ways for enhancing energy savings and production, prolonging useful equipment life, and reducing costs while maintaining output performance, and environmental quality; and (2) to broaden the technical and conceptual base for solving future engineering problems in the energy technologies. Long-term research topics of current interest include: foundations of bioprocessing of fuels and energy related wastes, fracture mechanics, experimental and theoretical studies of multi phase flows, intelligent machines, and diagnostics and control for plasma processing of materials. Program Contact: (301) 903–5822.

(d) Geosciences

The goal of this program is to develop a quantitative and predictive understanding of the energy-related aspects of processes in the earth. The emphasis is on the upper levels of the earth's crust and the focus is on geophysics, geomechanics and geochemistry of rock-fluid systems and interactions emphasizing processes taking place at the atomic and molecular scale. Specific topical areas receiving emphasis include: high resolution geophysical imaging; rock physics, fundamental properties and interactions of rocks, minerals, and fluids; and sedimentary basin systems. The resulting improved understanding and knowledge base are needed to assist efforts in the utilization of the Nation's energy resources in an environmentally acceptable fashion. Program Contact: (301) 903–5822.

(e) Energy Biosciences

The primary objective of this program is to generate the fundamental understanding of biological mechanisms in the areas of botanical and microbiological sciences that will support biotechnological developments related to DOE's mission. The research serves as the basic information foundation with respect to an environmentally responsible renewable resource production for fuels and chemicals, microbial conversions of renewable materials and biological systems for the conservation of energy. This office has special requirements for the submission of preapplications, when to submit, and the length of the applications. Applicants are encouraged to contact the office regarding these requirements. Program Contact: (301) 903–2873.

2. High Energy and Nuclear Physics

This program supports about 90% of the U.S. efforts in high energy and nuclear physics. The objectives of these programs are indicated below:

(a) High Energy Physics

The primary objectives of this program are to understand the ultimate structure of matter in terms of the properties and interrelations of its basic constituents, and to understand the nature and relationships among the fundamental forces of nature. The research falls into three broad categories: experimental research, theoretical research, and technology R&D in support of the high energy physics program. Program Contact: (301) 903–3624.

(b) Nuclear Physics (Including Nuclear Data Program)

The primary objectives of this program are an understanding of the interactions and structures of atomic nuclei and nuclear matter at the most elementary level possible, and an understanding of the fundamental forces of nature as manifested in nuclear matter. Program Contact: (301) 903–3613.

3. Computational and Technology Research

The goal of this program is to conduct an integrated program in applied mathematical sciences, high

performance computing and communications, information infrastructure, advanced energy projects research, and technology research, to address complex problems. Research in forefront and diverse programs is becoming more multi disciplinary and requires new approaches to the solution of these complex problems. The program exploits the capabilities and research skills at universities, national laboratories, and industrial research laboratories. The program provides technical, analytical, and management direction for development, implementation, and evaluation of research programs that include activities from fundamental research to technology development. The goal of the program is accomplished through the effort of the following two divisions:

(a) Mathematical, Information, and Computational Sciences

This subprogram supports a spectrum of fundamental research in applied mathematical sciences, computer science, and networking from basic through prototype development. Results of these efforts are used to form partnerships with users in scientific disciplines to validate the usefulness of the ideas and to develop them into tools. Testbeds on important applications for DOE are supported by this subprogram. Program Contact: (301)–903–5800.

(b) Advanced Energy Projects/ Laboratory Technology Research

Advanced Energy Projects—This activity funds research to establish the feasibility of novel, energy-related concepts. These concepts are usually derived from recent advances in basic research, but require additional research to establish their feasibility. A common theme for each concept is the initial linkage of new, or previously neglected, research results to a practical energy payoff for the Nation.

Laboratory Technology Research—This subprogram conducts high risk, energy-related research that advances fundamental science and technology toward innovative applications that could significantly impact the Nation's energy economy. Scientists at the Office of Science laboratories enter into cost-shared research partnerships with industry to explore energy applications of research advances in areas of mission relevance to both parties. The partners jointly bring technology research to a point where industry or the Department's technology development programs can pursue final development or commercialization. Current research projects emphasize advanced materials, intelligent processes and controls, and energy-related applications of biotechnology. Program Contact: (301)-903–5995.

4. Fusion Energy Sciences

The mission of the Fusion Energy Sciences program is to advance plasma science, fusion science, and fusion technology—the knowledge base needed for an economically and environmentally attractive fusion energy source. This program is supported by the Office of Fusion Energy Sciences (OFES), which fosters both applied and basic research and emphasizes international collaboration to accomplish this mission.

(a) Science Division

This Division seeks to develop the physics knowledge base needed to advance the Fusion Energy Sciences program toward its goals. Basic and applied research is carried out in the following areas: (1) basic plasma science research directed at furthering the understanding of fundamental processes in plasmas; (2) improving the theoretical understanding of fusion plasmas necessary for interpreting results from present experiments and the planning and design of future confinement devices, (3) obtaining the critical data on plasma properties, atomic physics and new diagnostic techniques for support of confinement experiments, (4) supporting exploratory research into concepts that are alternatives to the tokamak, and (5) carrying out research on issues that support the development of Inertial Fusion Energy, for which target development is carried out by the Department of Energy's Defense Programs. Research into basic physics issues associated with medium to large scale confinement devices is essential to studying conditions relevant to the production of fusion energy. Experiments on these scale of devices are used to explore the limits of specific confinement concepts, as well as study associated physical phenomena. Specific areas of interest include: (1) the production of increased plasma densities and temperatures, (2) the understanding of the physical laws governing plasma energy of high plasma pressure, (4) the investigation of plasma interaction with radio frequency waves, and (5) the study and control of particle transport and exhaust in plasmas. Program Contact: (301) 903–4095.

(b) Technology Division

This Division seeks to develop the technology knowledge base needed to advance the Fusion Energy Sciences program toward its goals. The Division's science-oriented goal is to provide the technologies that are required to successfully design, build, and operate near-term experiments aimed at producing, understanding, and optimizing the fusion energy process. The Division's energy-oriented goal is to develop the technologies that will be needed in the long-term for an economically and environmentally attractive fusion energy source. These goals are pursued through multi-institutional domestic programs and international collaboration partnerships. Program Contact: (301) 903–5378.

5. Biological and Environmental Research Program

The goals of the Biological and Environmental Research Program are as follows: (1) to provide, through basic and applied research, the scientific information required to identify, understand and anticipate the long-term health and environmental consequences of energy use and development; and (2) to utilize the Department's unique resources to solve major scientific problems in medicine, biology and the environment. Goals of the program are accomplished through the efforts of the following research program elements:

(a) Health Effects and Life Sciences Research

This is a broad program of basic and applied biological research. The objectives are: (1) to create and apply new technologies and resources in mapping, sequencing, and information management for characterizing the molecular nature of the human genome; (2) to develop and support DOE national user facilities for use in fundamental structural biology; (3) to use model organisms to understand human genome organization, human gene function and control, and the functional relationships between human genes and proteins; (4) to characterize and exploit the genomes and diversity of microbes with potential relevance for energy, bioremediation, or global climate; (5) to understand and characterize the risks to human health from exposures to low levels of radiation and chemicals; (6) to develop novel technologies for high throughput determination of protein structure; and (7) to anticipate and address ethical, legal, and social implications arising from genome research. Program Contact: (301) 903–5468.

(b) Medical Applications and Measurement Science

The objectives of this program comprise the following areas: (1) to develop technologies for the beneficial applications of radiation and in vivo

radiotracer detection in the study, diagnosis and treatment of human diseases and disorders; (2) to develop new instrumentation for biological and medical research; and (3) to develop new concepts and techniques for detecting and measuring the hazardous agents of biochemical, physical and environmental consequences related to energy production.

Program Contact: (301) 903–3213.

(c) Environmental Remediation

The objectives of the program relate to environmental processes affected by energy production and use. The program develops information on the physical, chemical and biological processes that cycle and transport energy-related material, particularly contaminates that arose during nuclear weapons production, through the Earth's surface and subsurface. Emphasis is put on the development of a strong basis for understanding and implementing the appropriate and efficient use of bioremediation, particularly at the Department's sites.

Program Contact: (301) 903–3281.

(d) Environmental Processes

This program addresses global environmental change from increases in atmospheric carbon dioxide and other greenhouse gases. The scope of the global change program encompasses the carbon cycle, climate modeling and diagnostics, atmospheric sciences and meteorology, ecosystem responses, and impacts on resources. The role of clouds and radiation in climate prediction is a particular emphasis.

Program Contact: (301) 903–3281.

6. Energy Research Analyses

This program supports energy research analyses of the Department's basic and applied research activities. Specific objectives include assessments to identify any duplication or gaps in scientific research activities, and impartial and independent evaluations of scientific and technical research efforts.

Program Contact: (202) 586–7021.

7. Experimental Program to Stimulate Competitive Research (EPSCoR)

The objective of the EPSCoR program is to enhance the capabilities of EPSCoR states to conduct nationally competitive energy-related research and to develop science and engineering manpower to meet current and future needs in energy-related fields. This program addressees research needs across all of the Department of Energy research interests. Research supported by the EPSCoR program is concerned with the same broad research areas addressed by the Office of Science programs that are described above. The EPSCoR program is restricted to applications which originate in eighteen states (Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming) and the commonwealth of Puerto Rico. It is anticipated that in Fiscal Year 1999, only a limited number of new competitive research grants will be awarded under this program due to prior commitments to ongoing EPSCoR grant projects.

Program Contact: (301) 903–3427.

Issued in Washington, DC, on November 5, 1998.

John Rodney Clark,

Associate Director for Resource Management, Office of Science.

[FR Doc. 98–30278 Filed 11–10–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–37–000]

Town of Colorado City, Arizona; Notice of Petition for Declaratory Order

November 5, 1998.

Take notice that on October 27, 1998, the Town of Colorado City, Arizona (Colorado City), P.O. Box 70, Colorado City, Arizona 86021 filed a petition for the declaratory order addressing the question of the Commission's jurisdiction over Questar Gas Company (Questar) as it relates to Questar providing a natural gas transportation service for Colorado City, all as more fully set forth in the application on file with the Commission an open to public inspection.

It is stated that Colorado City is in the process of establishing a municipal gas distribution system to serve residential, commercial and industrial customers. It is asserted that Colorado City has determined that it can obtain natural gas supply from sources outside of Arizona and have the gas transported by interstate pipelines. Colorado City states that it has requested Questar to transport gas from its system in Utah to an interconnection, located in Hurricane, Utah, with the facilities of the City of Hildale, Utah (Hildale). It is explained that Colorado City has an agreement with Hildale for transportation to Hildale, Utah, which is located on the Arizona border. Colorado City asserts that Questar presently transports gas from interstate sources to the Hildale Electric Power Plant, an end-user. It is explained that Colorado City sent a letter December 7, 1998, to Questar requesting transportation service to Hildale for use in Colorado City's distribution system in Arizona. It is further explained that Questar refused this request in a letter sent on January 5, 1998, stating that Questar is not in the business of transporting gas for resale.

In this petition, Colorado City requests that the Commission issue a declaratory order which addresses the question of whether the Commission has exclusive jurisdiction to order Questar to provide an interstate transportation service through its pipeline facilities in Utah to Colorado City's facilities in Arizona.

Colorado City requests a determination as to whether Questar's refusal to provide such a service is in violation of the Commission's Regulations in light of Colorado City's assertion that Questar is transporting similar gas for use in a municipal electric plant. Colorado City requests a determination as to whether it can file an application under Section 7(a) of the Natural Gas Act requesting the Commission to compel Questar to provide the requested service.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 27, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 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 a grant of the

certificate is 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 Colorado City to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–30171 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–44–000]

Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

November 5, 1998.

Take notice that on October 29, 1998, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP99–44–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct a new meter station, located in Huerfano County, Colorado, for delivery of gas to Petroglyph Energy, Inc. (Petroglyph), under CIG's blanket certificate issued in Docket No. CP83–21–000, pursuant to Section 7(c) 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.

CIG proposes to construct a new delivery facility to be located in Section 9, Township 29 South, Range 67 West, Huerfano County, Colorado. CIG states that the new facility will consist of a two-inch meter run and appurtenant facilities for the delivery of gas to Petroglyph, a producer, for start up fuel gas for their compression facility.

CIG declares that the delivery facility will be capable of delivering up to 8,000 Mcf per day. CIG asserts that the proposed facility will not have an impact on CIG's peak day and annual deliveries as the service will be provided on an interruptible basis and only when start up fuel gas is required.

CIG states that the proposed delivery facility will cost an estimated $6,000.

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,

Secretary.

[FR Doc. 98–30174 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–41–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

November 5, 1998.

Take notice that on October 29, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP99–41–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct, own and operate a new delivery point on FGT's 36-inch mainline to accommodate natural gas deliveries to Clark-Mobile Counties Gas District (Clark-Mobile), in Mobile County, Alabama. FGT makes such request under its blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

FGT proposes to construct, own, and operate a new delivery point on FGT's 36-inch mainline on the discharge side of Compressor Station 11, to accommodate the transportation of natural gas to Clark-Mobile's Mount Vernon B Meter Station (Mt. Vernon B). FGT states that it will own an 8-inch hot tap on its 36-inch mainline, 250 feet of 6-inch connecting lateral and electronic flow measurement facilities, and that Clark-Mobile will construct and own the Mt. Vernon B meter station and regulator station. It is indicated that Clark-Mobile requested this additional tap on the discharge side of FGT's 36-inch mainline to allow delivery of gas to Clark-Mobile at a higher pressure to serve customers requiring higher pressures than FGT can deliver from the suction side of Compressor Station 11.

The maximum gas quantity that FGT will deliver into the existing meter station is 28,800 MMBtu per day or 10,512,000 MMBtu per year to serve an interruptible load to Clark-Mobile's customers. It is averred that the end use of the gas will primarily be for industrial, commercial, and residential uses.

The estimated total cost of the proposed construction is approximately $128,000, inclusive of tax gross up. It is stated that Clark-Mobile will reimburse FGT for all costs directly and indirectly incurred by FGT for the construction of the facilities proposed herein. It is indicated that to the extent such reimbursement qualifies as a contribution in aid of construction under the Tax Reform Act of 1986, Clark-Mobile agrees to reimburse FGT for income tax incurred by FGT.

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,

Secretary.

[FR Doc. 98–30172 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–404–000]

Mississippi River Transmission Corporation; Revised Notice Rescheduling Technical Conference

November 5, 1998.

Take notice that the Commission staff will convene a technical conference as provided by the Commission order in this proceeding issued October 14,

1998.[1] The technical conference, previously scheduled for Wednesday, November 4, 1998, at 10:00 a.m., has been rescheduled.

Take notice that the technical conference will be held on Thursday, November 12, 1998, at 2:00 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Attendance will be limited to parties and staff. For additional information, please contact Jerie O'Connor at (202) 208–0459, or Harris Wood at (202) 208–0224.

David P. Boergers,

Secretary.

[FR Doc. 98–30176 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–406–000]

Overthrust Pipeline Company; Notice of Technical Conference

November 5, 1998.

On October 16, 1998, the Commission issued an order in the captioned docket requiring, among other things, that a technical conference be convened to investigate the reasonableness of Overthrust's proposed tariff changes.

Take notice that the conference will begin at 9:00 a.m., on Thursday, November 19, 1998, at the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426 in a room to be designated at that time.

Any questions concerning the conference should be directed to Richard A. White, OGC, (202) 208–0491 or Yolanda C. Hart-Harris, OPR, (202) 208–0069.

David P. Boergers,

Secretary.

[FR Doc. 98–30177 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Mississippi River Transmission Corporation, 85 FERC ¶61,049 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–43–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

November 5, 1998.

Take notice that on October 29, 1998, Tennessee Gas Pipeline Company (Tennessee), a Delaware corporation, P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP99–43–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization construct and operate a delivery point to provide transportation service to Greater Dickson Gas Authority (Dickson) in Dickson County, Tennessee under Tennessee's blanket certificate issued in Docket No. CP82–413–000 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.

Tennessee proposes to construct a delivery point on its system at approximately M.P. 81–3, −4+7.2 on Tennessee's 30-inch lines 100–3 and 100–4. Tennessee states that the total quantities to be delivered to Dickson will not exceed the total quantities authorized prior to this request. Tennessee states that construction of the delivery point is not prohibited by Tennessee's existing tariff. Tennessee states that it has sufficient capacity to accomplish deliveries at the delivery point without detriment or disadvantage to Tennessee's other customers. Further, Tennessee states that the construction of the delivery point is not expected to have any significant impact upon Tennessee's peak day or annual deliveries.

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,

Secretary.

[FR Doc. 98–30173 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–290–000]

Viking Gas Transmission Company; Notice of Informal Settlement Conference

November 5, 1998.

Take notice that an informal settlement conference in this proceeding will be convened on Tuesday, November 17, 1998, at 10:00 a.m., continuing on Wednesday, November 18, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

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, please contact Arnold H. Meltz at (202) 208–2161 or John P. Roddy at (202) 208–0053.

David P. Boergers,

Secretary.

[FR Doc. 98–30175 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6641–027]

City of Marion and Smithland, Hydroelectric Partners; Notice of Availability of Final Environmental Assessment

November 5, 1998.

A final environmental assessment (FEA) is available for public review. The FEA is for an application to amend the Smithland Hydroelectric Project. The licensee proposes to replace the licensed three large turbine/generator units with 216 small turbines and 108 generator units. The FEA finds that

approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Smithland Hydroelectric Project is located on an existing U.S. Army Corps of Engineers Dam, on the Ohio River in Livingston County, Kentucky.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

David P. Boergers,

Secretary.

[FR Doc. 98–30180 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing; Notice That the Application Is Not Ready for Environmental Analysis; Notice of Solicitation of Interventions and Protests

November 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.

b. *Project No.:* 372–008.

c. *Date filed:* June 12, 1998.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Lower Tule River Hydroelectric Project.

f. *Location:* On the North and South Forks of the Middle Fork Tule River in Tulare County, California, partially within the boundaries of the Sequoia National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. C. Edward Miller, Manager, Hydro Generation, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770, (626) 302–1564.

i. *FERC Contact:* Nan Allen at (202) 219–2938.

j. *Deadline Date:* 60 days from the issuance date of this notice.

k. *Description of the Project:* The existing project consists of: (1) A 15-foot-high, concrete dam; (2) a 5-foot-high, rubble masonry dam; (3) a 31,802-foot-long flow line; (4) a 2,815-foot-long steel penstock; (5) a 3.37 acre-foot forebay; (6) a powerhouse containing two turbine-generator units with a total installed capacity of 2,520 kilowatts (kW); and (7) a 2,352-foot-long tailrace.

l. *Locations of the Application:* A copy of the application is available for inspection or reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A–1, Washington, DC 20426, or by calling (202) 208–2326. A copy of the application may also be viewed or printed by accessing the Commission's WebSite on the Internet at www.ferc.fed.us. For assistance users call (202) 208–2222. A copy is also available for inspection and reproduction at the Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770 (626) 302–1564.

m. *Status of Application and Environmental Analysis:* This application has been accepted for filing, but it is not ready for environmental analysis. See attached paragraph E1.

n. *Invitation to Intervene or Protest:* Intervenors are reminded of the Commission's Rules of Practice and Procedure requiring parties filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project. Further, if a party or intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. See attached paragraph B1.

o. This notice contains the standard paragraphs B1 and E1.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 98–30178 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

November 5, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Application Type:* Amendment to License.

b. *Project No:* 2100–095, & –096.

c. *Date Filed:* October 26, 1998.

d. *Applicant:* California Department of Water Resources.

e. *Name of Project:* Feather River Hydroelectric Project.

f. *Location:* On the Feather River in Butte County, California.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. Roland Williams, California Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236–0001, (530) 534–2323.

i. *FERC Contact:* Timothy Welch (202) 219–2666.

j. *Comment Date:* December 15, 1998.

k. *Description of Amendment:* The California Department of Water Resources (licensee) filed an application to extend its Lake Oroville fish stocking study for one year. The one year extension is needed to allow an additional year to evaluate the 1997 stocked salmon. The licensee has been conducting the study since 1993 and will use the information from the study to recommend a final stocking rate for Lake Oroville in 1999. The licensee also requests a one year extension of its Lake Oroville fish habitat enhancement project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protest or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–30179 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of License

November 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:* Surrender of License.

b. *Project No.:* 6461–019.

c. *Date Filed:* October 8, 1998.

d. *Applicant:* City of Port Angeles.

e. *Name of Project:* Morse Creek.

f. *Location:* Morse Creek, Clallaham County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Robert J. Titus, 321 East Fifth Street, P.O. Box 1150, Port Angeles, WA 98362, (360) 417–4701.

i. *FERC Contact:* David Snyder, (202) 219–2385.

j. *Comment Date:* December 15, 1998.

k. *Description of Application:* The City of Port Angeles (City) has applied to surrender its license because the project has proven to be uneconomical to operate. The City states that the project's annual operation and maintenance expenses have exceeded the annual value of the power generated by the project in recent years. The project consists of: (1) a 10-foot-high, 25-foot-long concrete diversion weir and intake structure; (2) a 750-foot-long, 30 by 36-inch-diameter concrete tunnel; (3) a 11,400-foot-long, 24-inch-diameter steel pipeline; (4) a tee connection in the pipeline; (5) a 1,300-foot-long, 24-inch-diameter penstock; (6) a powerhouse with a single generator having a nameplate rating of 560 kW; (7) a 2,400 underground transmission line; (8) 4,400 feet of access road; and appurtenance facilities. The City proposes to remove the existing generating equipment and continue to use the diversion structure and pipeline to provide an emergency water supply.

l. The notice also consists of the following standard paragraphs: B, C2, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Any motion to intervene must also be served upon each representative of the applicant specified in the particular notice.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–30181 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6188–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Final Authorization for Hazardous Waste Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Action (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget

(OMB): Final Authorization for Hazardous Waste Management, EPA ICR Number 0969.04, OMB Control Number 2050–0041 (expiration date March 31, 1999.) Before submitting the ICR to OMB for Review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Tony Terrell at EPA, (703) 308–6496, and refer to EPA ICR No. 969.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–SAIP–fffff to: RCRA docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address below. Comments may also be submitted electronically through the Internet to: *rcradocket@epamail.epa.gov* Comments in electronic format should also be identified by docket number F–98–SAIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically.

The ICR is available on the Internet. Follow these instructions to access the information electronically:

WWW: *http://www.epa.gov.oswer/hazwaste/state/index.htm*
FTP: *ftp.epa.gov*
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Tony Terrell, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) *308–6496/8638,terrell.tony@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which are authorized to manage the federal Hazardous waste program.

Title: Final Authorization for Hazardous Waste Management Programs, (OMB Control No. 2050–0041, ICR No. 969.) expiring March 31, 1999.

Abstract: In order for a State to obtain final authorization for a State hazardous waste program or to revise its previously authorized program, it must submit an official application to the EPA Regional office for approval. The purpose of the application is to enable EPA to properly determine whether the State's program meets the requirements of section 3006 of RCRA.

A State with an approved program may voluntarily transfer program responsibilities to EPA by notifying EPA of the proposed transfer, as required by section 271.23. Further, EPA may withdraw a State's authorized program under section 271.23.

State program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. In the event that the State is revising its program by adopting new Federal requirements, the State shall prepare and submit modified revisions of the program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary. The State shall inform EPA of any proposed modifications to its basic statutory or regulatory authority in accordance with section 271.21. If a State is proposing to transfer all or any part of any program from the approved State agency to any other agency, it must notify EPA in accordance with section 271.21 and submit revised organizational charts as required under section 271.6, in accordance with section 271.21. These paperwork requirements are mandatory under section 3006(a). EPA will use the information submitted by the State in order to determine whether the State's program meets the statutory and regulatory requirements for authorization. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automatic electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 275 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States with authorized State Programs.

Estimated Number of Respondents: 49.

Frequency of Response: 12.

Estimated Total Annual Hour Burden: 3037 hours.

Estimated Total Annualized Cost Burden: $63,863.

Dated: November 4, 1998.

Barnes Johnson,

Acting Director, Office of Solid Waste.

[FR Doc. 98–30275 Filed 11–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6185–5]

Protection of Stratospheric Ozone: Notice of Revocation of Technician Certification Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revocation.

SUMMARY: Through this action, EPA is announcing the revocation of Education Dynamics Institute (EDI) (located in Las Vegas, NV) to provide the technician certification exam in accordance with regulations promulgated at 40 CFR 82.161. EDI was issued a letter of revocation on August 19, 1998 that included an explanation of the basis for EPA's decision. This action also acknowledges the voluntary withdrawal of I.M./Thrifty Distribution, Inc. (located in Portland, OR); Advanced Technical Institute (located in Milpitas/Fremont, CA); and ADC, Limited (located in Albuquerque, NM) from the list of EPA-approved certification programs.

EDI has not complied with the recordkeeping and reporting requirements established for all technician certification programs pursuant to section 608 of the Clean Air Act Amendments. In accordance with those requirements, all approved technician certification programs must submit an activity report to EPA on a semi-annual basis. EPA sent EDI an information collection request issued pursuant to section 114(a) of the Clean Air Act, in which EPA requested that the program submit the required activity report. That information request letter indicated that failure to respond could result in revocation. Subsequent attempts by EPA to contact EDI were unsuccessful.

In accordance with 40 CFR 82.161(e), EPA revoked approval of EDI on August 19, 1998. All the above mentioned programs are no longer authorized to certify technicians or issue valid certification credentials. However, technicians certified by these programs during the period that the programs operated as EPA-approved programs, will remain certified in accordance with 40 CFR 82.161(a).

DATES: EDI had its approval as an EPA-approved technician certification program revoked, effective August 19, 1998.

FOR FURTHER INFORMATION CONTACT: Jake Johns, 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 Hotline at 800–296–1996 can also be contacted for further information.

Dated: November 3, 1998.

Paul M. Stolpman,

Director, Office of Atmospheric Programs.

[FR Doc. 98–30276 Filed 11–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6188–3]

Clean Air Act Advisory Committee—Notice of Charter Renewal

The Charter for the Environmental Protection Agency's (EPA) Clean Air Act Advisory Committee (CAAAC) will be renewed for an additional two-year period, beginning on November 16, 1998, as a necessary committee which is in the public interest, in accordance with provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. appl. 2 section 9(c). The purpose of the CAAAC is to provide independent advice and counsel to the EPA on policy and technical issue associated with implementation of the Clean Air Act of 1990. It is determined that CAAAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Paul Rasmussen, Designated Federal Official, CAAAC, U.S. EPA, Senior Advisor, Office of Air and Radiation (6102), 401 M Street SW., Washington, DC 20460.

Dated: November 3, 1998.

Paul Rasmussen,

Designated Federal Official.

[FR Doc. 98–30270 Filed 11–10–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6187–9]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Lake Salvage Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment on proposed CERCLA 122(h)(1) agreement with Litton Systems, Inc.; MagneTek Inc.; Philips Electronics North America Corporation; Alex Simkin; Edward Simkin and Irwin Simkin for the Lake Salvage Superfund Site.

SUMMARY: In accordance with section 122(I)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (CERCLA), notification is hereby given of a proposed administrative agreement concerning the Lake Salvage Company házardous waste site at 2527–29 West Lake Street in Chicago, Illinois (the "Site"). EPA proposes to enter into this agreement under the authority of section 122(h) and 107 of CERCLA. The proposed agreement has been executed by Litton Systems, Inc.; MagneTek Inc.; Philips Electronics North America Corporation; Alex Simkin; Edward Simkin and Irwin Simkin (the "Settling Parties").

Under the proposed agreement, the Settling Parties will pay $77,785.15 to the Hazardous Substances Superfund to resolve EPA's claims against them for response costs incurred by EPA at the Site. EPA incurred response costs mitigating an imminent and substantial endangerment to human health or the environment present or threatened by hazardous substances present at the Site. EPA also incurred response costs overseeing response activities conducted by Litton Systems, Inc. at the Site.

For thirty days following the date of publication of this document, the Environmental Protection Agency will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before December 14, 1998.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In the Matter of Lake Salvage Site, Chicago, Illinois, U.S. EPA Docket No. V–W–99C–_____.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, (312) 886–0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. sections 9601–9675.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 98–30271 Filed 11–10–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission.

November 4, 1998.

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

DATES: Persons wishing to comment on this information collection should submit comments January 11, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact below as soon as possible.

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

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Section 95.861, Interference.

Form Number: N/A.

Type of Review: Existing collection in use without OMB control number.

Respondents: Business or other for-profit entities.

Number of Respondents: 400.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occassion reporting requirements.

Total Annual Burden: 200 hours.

Total Annual Cost: None.

Needs and Uses: The notification requirement contained in Section 95.861 requires 218–219 MHz licensees to notify all households located both within a TV Channel 13 Grade B predicted contour and an 218–219 MHz system service area of the potential for interference to Channel 13 TV reception.

OMB Control Number: 3060–XXXX.

Title: Proposed Section 95.833, Construction requirements (WT Docket 98–169).

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 900.

Estimated Time per Response: 1 hour.

Frequency of Response: Information is filed within five and ten years of license grant.

Total Annual Burden: 900 hours.

Total Annual Cost: None.

Needs and Uses: The requirement contained in Section 95.861 is necessary for 218–219 MHz Service system licensees to file a report within five and ten years of license grant to demonstrate that they provide substantial service to its service areas. This collection, which is currently in the rules, has been waived by an Order released on January 14, 1998, (DA 98–59), for all licensees pending resolution of the construction requirement by the current Notice of Proposed Rulemaking, WT Docket No. 98–169, FCC 98–228. No collection have been made. The NPRM proposes to reduce the regulatory burden on licensees by extending the filing of a report from three years to five years.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 98–30217 Filed 11–10–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 3, 1998.

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

DATES: Written comments should be submitted on or before December 14, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW, Washington, DC 20554 until December 4, 1998 or via internet to jboley@fcc.gov. After December 4th, direct all comments to Judy Boley, Federal Communications Commission, Room C1804, 445 12th Street, SW, Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0374.

Title: Section 73.1690, Modification of Transmission System.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 650 (300 AM station + 350 FM/TV station licensees.)

Estimated Time Per Response: 0.5 to 3.0 hours (3 hours/respondent for AM stations; 0.5 hours/respondent for FM/TV stations).

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Cost to Respondents: N/A.

Total Annual Burden: 1,075 hours.

Needs and Uses: Section 73.1690(d) requires AM, FM and TV station licensees to prepare an informal statement or diagram describing any electrical and mechanical modification to authorized transmitting equipment that can be made without prior Commission approval provided that equipment performance measurements are made to ensure compliance with FCC rules. This informal statement or diagram is to be retained at the transmitter site as long as the equipment is in use. The data is used by broadcast licensees to provide prospective users of the modified equipment with necessary information. If no such information exists, any future problems could prove difficult to solve and could result in electronic frequency interference for long periods of time.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 98–30218 Filed 11–10–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) submitted to OMB for Review and Approval.

November 4, 1998.

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

DATES: Written comments should be submitted on or before December 14, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., NW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0665.

Title: Section 64.707, Public Dissemination of Information by Providers of Operator Services.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 436.

Estimated Time per Response: 4 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 1,744 hours.

Cost to Respondents: None.

Needs and Uses: 47 CFR 64.707, requires that operator service providers (OSPs) regularly publish and make available at no cost upon request from consumers written materials that describe any changes in operator services and choices available to consumers. A statute, 47 U.S.C. 226 (d)(4)(B), required adoption of this rule. This requirement was a response to a widespread failure of operator service providers to provide information necessary for informed consumer choice in the marketplace. OSPs have provided this information primarily to consumers in the form of a written report that will be regularly updated at the OSP's discretion. Consumers will use this information to increase their knowledge of the choices available to them in the operator service marketplace.

OMB Control Number: 3060–0653.

Title: Section 64.703 (b), Consumer Information " Posting by Aggregators.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 56,200.

Estimated Time per Response: 3.67 hours (avg.).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 206,566 hours.

Cost to Respondents: None.

Needs and Uses: As required by 47 U.S.C. 226 (c)(1)(A), Section 64.703 (b) of the Commission's rules provides that aggregators (providers of telephones to the public or transient users) must post in writing, on or near such phones, information about presubscribed operator services, rates, carrier access, and the FCC address to which consumers may direct complaints. The Commission proposes to modify Section 64.703 to establish a 30-day time limit for updating consumer information posting on aggregator telephones.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30220 Filed 11–10–98; 8:45 am]

BILLING CODE 6712–10–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 November 27, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. James R. Izant, and Elizabeth Ann Izant, both of Warren, Ohio; Phyllis J. Izant, Lafayette, Indiana; and Holly H. Izant-McSharry, Riverside, Connecticut; to acquire voting shares of Second Bancorp Incorporated, Warren Ohio, and thereby indirectly acquire voting shares of Second National Bank of Warren, Warren, Ohio.

Board of Governors of the Federal Reserve System, November 5, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30191 Filed 11–10–98; 8:45 am]

BILLING CODE 6210–01–F

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 November 27, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. David A. Straz, Jr., Tampa, Florida; to acquire additional voting shares of City Financial Corporation of Tampa, Tampa, Florida, and thereby indirectly acquire additional voting shares of City First Bank, Tampa, Florida.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Stephen J. Goodenow, Okoboji, Iowa; and Sara J. Blum, Storm Lake, Iowa; to acquire additional voting shares of Goodenow Bancorporation, Okoboji, Iowa, and thereby indirectly acquire additional voting shares of Bank Midwest, Fairmont, Minnesota.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Huston Family Voting Trust and Non Huston Family Members Voting Trust, both of Marshall, Missouri; to acquire voting shares of Wood & Huston Bancorporation, Inc., Marshall, Missouri, and thereby indirectly acquire voting shares of Missouri Southern Bank, West Plains, Missouri; and Wood & Huston Bank, Marshall, Missouri.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Tieman H. & Katherine W. Dippel, Jr., Brenham, Texas; Tieman H. Dippel, III, Brenham, Texas; Margaret K. & Dathan C. Voelter, Waco, Texas; Arthur S. Knolle, Brenham, Texas; and Ronald D. & Deanna D. Alfred, Brenham, Texas; all to acquire additional voting shares of Brenham Bancshares, Inc., Brenham, Texas, and thereby indirectly acquire additional voting shares of Brenham National Bank, Brenham, Texas.

Board of Governors of the Federal Reserve System, November 6, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30286 Filed 11–10–98; 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 December 7, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. CCBT Bancorp, Inc., Hyannis, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Cape Code Bank and Trust Company, Hyannis, Massachusetts.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. First Perry Bancorp, Inc., Marysville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Marysville, Marysville, Pennsylvania.

C. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Mountain Bancorp, Inc., West Liberty, Kentucky; to acquire 100 percent of the voting shares of Citizens Bank, Grayson, Kentucky.

D. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. The First Bancshares, Inc., Hattiesburg, Mississippi; to acquire 100

percent of the voting shares of The First National Bank of the Pine Belt, Laurel, Mississippi (in organization).

E. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. P&C Investments, Inc., Muscatine, Iowa; to become a bank holding company by acquiring 20.59 percent of the voting shares of Peoples National Corporation, Columbus Junction, Iowa, and thereby indirectly acquire Community Bank, Muscatine, Iowa.

Board of Governors of the Federal Reserve System, November 5, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30190 Filed 11–10–98; 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 December 7, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. BB&T Corporation, Winston-Salem, North Carolina, and BB&T Financial Corporation of Virginia, Virginia Beach, Virginia; to merge with MainStreet Financial Corporation, Martinsville, Virginia, and thereby indirectly acquire Piedmont Trust Bank, Martinsville, Virginia; Bank of Carroll, Hillsville, Virginia; Bank of Ferrum, Ferrum, Virginia; First Community Bank of Saltville, Saltville, Virginia; The First Bank of Stuart, Stuart, Virginia; MainStreet Bank Central Virginia, Mechanicsville, Virginia; First National Bank of Clifton Forge, Clifton Forge, Virginia; Commerce Bank Corporation, College Park, Maryland; Tysons National Bank, McLean, Virginia; and The Bank of Northern Virginia, Arlington, Virginia.

In connection with this application, Applicants have also applied to acquire MainStreet Trust Company, N.A., Martinsville, Virginia, and thereby engage in trust activities, pursuant to § 225.28(b)(5) of Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Security Bancorp, Searcy, Arkansas; to acquire 100 percent of the voting shares of Baxter County Bancshares, Inc., Mountain Home, Arkansas, and thereby indirectly acquire Peoples Bank & Trust Company, Mountain Home, Arkansas.

Board of Governors of the Federal Reserve System, November 6, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30284 Filed 11–10–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Westbank Corporation, West Springfield, Massachusetts; to acquire Cargill Bancorp, Putnam, Connecticut, and thereby acquire Cargill Bank, Putnam, Connecticut, and thereby engage in operating a savings and loan association, pursuant to § 225.28(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 5, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30192 Filed 11–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies

with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 27, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Enterbank Holdings, Inc., Clayton, Missouri; to engage *de novo* through its subsidiary, Argent Capital Management, LLC, Clayton, Missouri, in financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, November 6, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30285 Filed 11–10–98; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Advisory Committee for Injury Prevention and Control: Notice of Recharter

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee for Injury Prevention and Control, National Center for Injury Prevention and Control, of the Department of Health and Human Services, has been rechartered for a 2-year period, through October 28, 2000.

For further information, contact Thomas E. Blakeney, Executive Secretary, ACIPC, CDC, 1600 Clifton Road, NE, m/s K61, Atlanta, Georgia 30333. Telephone 770/488–1481, fax 770/488–4222, e-mail teb2@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 5, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99023]

Notice of Availability of Funds; Cooperative Agreement for National Programs To Prevent HIV Infection and Other Important Health Problems Among Youth Strengthen Coordinated School Health Programs

I. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for cooperative agreements that establish national programs to prevent behaviors that place elementary through college-aged young people at risk for human immunodeficiency virus (HIV) infection, other sexually transmitted diseases (STDs), unintended pregnancy, and other important health problems. CDC expects to award cooperative agreements to national organizations that can become an integral part of a broad national strategy to prevent and reduce (1) sexual behaviors that result in HIV infection, STDs, and unintended pregnancy; (2) alcohol and other drug use; (3) tobacco use; (4) dietary patterns that result in disease; (5) intentional and unintentional injury; and (6) sedentary lifestyles among young people. Applicants may apply for one of the three following priority areas:

Priority 1: Strengthen the capacity of national, state, and/or local agencies to help schools prevent behaviors that place all young people at risk and particularly those from communities of color for human immunodeficiency virus (HIV) infection, other sexually transmitted diseases (STDs), unintended pregnancy, and other important health problems.

Special Emphasis Area

Additional funding is available to expand activities to enable the nations' schools to develop programs to prevent teenage pregnancies. National organizations that receive funds to support activities in this special emphasis area must represent state and local education and health policymakers, administrators, or school personnel who develop teenage pregnancy prevention programs. Recipients of awards for teenage pregnancy prevention funds also must apply for and receive an award for Priority Area 1.

Priority 2: Strengthen the capacity of postsecondary institutions to work with national, state, and/or local agencies to prevent behaviors that place all young people at risk particularly those from communities of color for HIV infection, other STDs, unintended pregnancy, and other important health problems.

Priority 3: Strengthen the capacity of organizations that serve young people in high-risk situations and young people within communities of color, to work with national, state, and/or local agencies to prevent behaviors that place these young people at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems. A list of young people considered to be in high-risk situations is included as Attachment C in this program announcement.

This program addresses the Healthy People 2000 with a particular focus on the education and community-based programs priority area. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," an activity to reduce morbidity and mortality and improve the quality of life.

II. Eligible Applicants

Eligible applicants are national health, education, and social service organizations including national parent and minority organizations that are private, nonprofit, professional, or voluntary. A parent organization represents parents whose purpose is to promote the health and well-being of school-aged children.

Eligible organizations must have affiliate offices or local, state, or regional membership constituencies in a minimum of 10 states and territories. Affiliate offices and local, state, or regional membership constituencies may not apply in lieu of, or on behalf of, their national office. For profit agencies are not eligible to apply. Colleges and universities are not eligible to apply.

To be considered a national minority organization, eligible applicants must meet the following criteria:

1. At least 51 percent of persons on the governing board must be members of racial or ethnic minority populations.

2. The organization must possess a documented history of serving racial or ethnic minority populations through its offices, affiliates, or participating organizations at the national level for at least 12 months before the submission of the application.

The American Association of Colleges for Teacher Education, American Association of Community Colleges, American College Health Association, Association of American Colleges and

Universities, American Association of Colleges for Teacher Education, Boost Alcohol Consciousness Concerning the Health of University Students (BACCHUS), and Gamma Peer Education, National Association of Student Personnel Administrators, National Association of Equal Opportunity in Higher Education, and United Negro College Fund are not eligible for funding of Priority Area 2 under this program announcement. These organizations are currently funded for similar activities under Program Announcement 532, A National System of Integrated Activities to Prevent HIV Infection and Other Serious Health Problems Among Students, Especially Postsecondary Students. Organizations funded under Announcement 532 may apply for funding under Priority Areas 1 or 3 of this program announcement.

Limited competition is justified under this program announcement because of the need for directed and concentrated focus in the effective dissemination of programs and information. The coordination and implementation of a national health education program strategy requires organizations that have the capacity and experience to influence the professional actions of their constituencies; have the capacity to identify, assess, and advocate for implementing effective programs; and can build the capacity of health, education, and social service agencies.

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.

III. Availability of Funds

It is anticipated that $6 million will be available in FY 1999 to fund approximately 25 awards under the three priority areas, including at least one national organization that represents parents and one national minority organization. In addition, it is anticipated that $1 million will be available in FY 1999 to fund approximately 8 awards in a special emphasis area associated with priority #1.

A. Approximately $3.3 million will be available to fund approximately 15 awards under Priority 1. The average award will be approximately $220,000, ranging from $100,000 to $300,000.

Approximately $1 million will be available to fund approximately eight awards under the special emphasis area, teenage pregnancy prevention. The average award will be $125,000, ranging from $100,000 to $140,000. Only applicants receiving funding under Priority Area 1 are eligible for special emphasis area funding.

B. Approximately $460,000 will be available to fund approximately two awards under Priority 2. The average award will be approximately $230,000, ranging from $100,000 to $300,000.

C. Approximately $1.52 million will be available to fund approximately eight awards under Priority 3. The average award will be approximately $190,000, ranging from $100,000 to $300,000.

D. Approximately $480,000 will be available to fund at least one national minority organization in one or more of the three priority areas.

E. Approximately $240,000 will be available to fund an organization that represents parents and families in one of the three priority areas.

Awards are expected to begin on or about March 15, 1999, and will be for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory performance as evidenced by required reports and the availability of funds.

IV. Program Requirements

Funds must be used for categorical activities to prevent behaviors that place elementary through college-aged young people and specifically those in communities of color, at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems. Funds may be used to integrate such categorical activities into broader coordinated health programs to improve the health of young people (e.g., adolescent health programs, coordinated school health programs, college health programs).

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under Section A, and CDC will be responsible for conducting activities under Section B.

A. Recipient Activities

1. Collaborate with constituents; state and local education, health, and social service agencies; nongovernmental partners; and CDC to develop a national strategy to achieve the purposes of this program.

2. Implement specific, measurable, and feasible goals and objectives.

3. Evaluate the effectiveness of the program in achieving goals and objectives.

4. Participate in the Division of Adolescent and School Health (DASH) annual conference and at least one workshop during the budget period.

5. Disseminate programmatic information through appropriate methods, such as:

(a) Sharing materials through clearinghouses, at workshops and conferences, and as part of annual progress reports.

(b) Sharing project-related news and information with other CDC-funded State Education Agencies (SEAs), Local Education Agencies (LEAs), and national organizations through the Internet, other computer networks, the mail, and at workshops and conferences.

(c) Disseminate information and materials to decision makers, school personnel, public health officials, leaders of postsecondary institutions, leaders in State and local organizations that support health education, and others.

6. Implement an operational plan for the funded priority area that may include, but is not limited to, one or more of the following activities:

a. Possible overall activities:

(1) Help schools or other agencies that serve young people conduct coordinated programs that prevent behaviors that place elementary through college-aged young people in general, and in particular young people within communities of color at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems.

(2) Collaborate with other national organizations to establish and maintain initiatives to prevent behaviors that place elementary through college-aged young people at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems.

(3) Educate and enable managers, leaders, and decision makers who are members of the national organizations to act individually and collectively to support locally determined programs that are consistent with community values and appropriate to community needs and to place such programs high on their own agenda and on the public health agenda.

(4) Educate and enable families, minority organizations, the media, businesses, and others in the community to act individually and collectively to support (a) health programs for young people with content that is locally determined, (b) strategies that have credible evidence of effectiveness to reduce the priority health risk behaviors among young people, and (c) programs that are

consistent with community values and appropriate to community needs.

(5) Build the capacity of community agencies, parents, and professionals who work with minority populations to establish and/or maintain programs that focus on prevention education to reduce the risk for HIV infection, other STDs, unintended pregnancy, and other important health problems among elementary through college-aged young people.

(6) Provide technical assistance and training to parents, members of faith communities, and professionals who work with minority populations to use proven, effective strategies and programs to prevent behaviors that place elementary through college-aged young people at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems.

b. Possible Activities Related to Priority Area 1: For young people at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems.

(1) Support state and local education agencies to improve the health and academic status of elementary through high school-aged youth.

(2) Develop and strengthen an effective working relationship between state and local education, health, and social service agencies to prevent behaviors that place elementary through high school-aged youth at risk.

(3) Support the development of national, state, and local policies and programs that facilitate the coordination of government agencies and non-governmental organizations to support coordinated school health programs for students.

(4) Support efforts by education agencies, health departments, and social service agencies to develop school and community-based health programs that demonstrate credible evidence of reducing HIV infection, other STDs, unintended pregnancy, and other important health problems among young people.

c. Possible Activities Related to Priority Area 2:

(1) Develop and strengthen the capacity of postsecondary institutions to work with state and local schools to prevent behaviors that place elementary through college-aged young people at risk.

(2) Assist postsecondary institutions in encouraging college and university personnel to provide technical assistance to State and local education, health, and social service agencies so that structural and educational improvements are implemented to support coordinated school health programs.

d. Possible Activities Related to Priority Area 3:

(1) Establish or build the capacity of state and local schools or other agencies that serve young people to implement and maintain effective HIV prevention interventions that target young people in high-risk situations; and coordinate these efforts with other agencies and their constituents that serve young people.

(2) Support and strengthen HIV prevention interventions targeting specific populations of young people in high-risk situations, especially those within communities of color by: (a) providing technical assistance and training to meet the needs of constituent agencies at the local level, (b) establishing systematic policies and procedures that serve young people in high-risk situations, and (c) providing materials and resources to assist schools and community agencies in implementing effective programs.

(3) Strengthen collaboration at the national, state, and local levels to meet the needs of specific populations of young people in high-risk situations by: (a) Working closely with other nongovernmental organizations, especially those with access to or resources for the targeted population; (b) encouraging state and local constituent agencies and groups to be involved with the HIV prevention community planning group process in their area, as well as with their state or local health departments and other key organizations that serve young people of color; (c) identifying and communicating opportunities to share resources, models, ideas, and best practices among constituent agencies, as well as with other relevant Federal, national, state, and local agencies.

e. Possible Activities Related to the Special Emphasis Area of Teenage Pregnancy Prevention:

(1) Build the capacity of schools to develop and carry out pregnancy prevention policies and programs.

(2) Work with other funded national organizations in the Special Emphasis Area to coordinate and determine the informational and technical assistance needs of state and local school board members, health and education officials, legislators, administrators, and school personnel.

B. CDC Activities

1. Provide and periodically update information related to the purposes or activities of this program announcement.

2. Coordinate with national, state, and local education, health and social service agencies, as well as other relevant organizations, in planning and conducting national strategies designed to strengthen programs for preventing HIV infection, STDs, unintended pregnancy, and other important health risks and health problems among young people.

3. Provide programmatic consultation and guidance related to program planning, implementation, and evaluation; assessment of program objectives; and dissemination of successful strategies, experiences, and evaluation reports.

4. Plan and carry out meetings of national, state, and local education agencies and other appropriate organizations and individuals to address issues and program activities related to improving coordinated school health programs and strengthening the capacity of postsecondary institutions and agencies that serve young people to prevent HIV infection, STDs, and other important health problems among young people.

5. Assist in the evaluation of program activities.

V. Application Content

Applications must be developed in accordance with Public Health Service (PHS) form 5161–1, information contained in the program announcement, and the instructions outlined in the following section headings. Applicants must not identify any activities that would constitute research. Activities funded under this announcement are intended to build the capacity of national organizations to promote HIV, STD, and unintended pregnancy prevention among youth and should not include any formal or informal research. Applicants may apply for funding under only one of the priority areas and the application must clearly identify the specific priority area for which support is requested. Applicants who are funded under Priority Area 1 will be eligible to compete for, and receive, funding under the special emphasis area, school-based teenage pregnancy prevention. Applicants who elect to compete for the special emphasis area funding should address each of the following areas in a separate section of the application that is submitted in addition to their application for priority one funds.

A. Executive Summary

The applicant should provide a concise, two to three page, summary that clearly describes:

1. Eligibility, including: (a) Status as a national organization, (b) number and membership of affiliate offices, (c) status as a parent or minority organization, if applicable, and (d) experience and capacity as an organization to work with personnel from State and local education agencies, State or local health agencies, postsecondary institutions, or other relevant agencies in preventing behaviors that place elementary through college-aged young people at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems. Documentation that supports eligibility should be submitted as an attachment to the Executive Summary.

2. The need for implementing a program to prevent HIV infection and other important health problems among young people in schools (Priority Area 1), young people in postsecondary institutions (Priority Area 2), or young people in high-risk situations (Priority Area 3).

3. The major proposed goals, objectives, and activities for implementation of the program, as well as the total requested amount of Federal funding.

4. Applicant's capability to implement the program.

5. If applying for funding for the special emphasis area to prevent teenage pregnancy, evidence of an established working relationship with State and local education and health policymakers, administrators, and/or school personnel.

B. Background and Need (not more than 4 pages)

Identify the priority area for which support is being requested and describe:

1. Experience in identifying needs associated with the priority area.

2. Organization's background and experience in addressing the needs related to the priority area.

3. The need for the proposed activities.

C. Capacity (not more than 8 pages)

1. Describe ability to address the identified needs.

2. Describe constituents and affiliates as follows:

(a) Type of constituency.

(b) Number of constituents and affiliates.

(c) Location of constituents and affiliates.

(d) How the constituency can work with or influence the population identified in the priority area.

(e) How the constituents and affiliates are working with state and local education and health policymakers.

3. Describe efforts and relevant experience at the national, state, and local levels that support the priority area(s) and expanded activities, if applicable, for which the applicant is applying, including such factors as:

(a) Current and previous experience related to the proposed program activities.

(b) Current and previous coordination with health, education, and social service agencies or other appropriate agencies.

(c) Activities related to building alliances, networks, or coalitions.

(d) Current and previous coordination with national non-governmental agencies that have an interest in health-related issues among young people.

4. Submit a copy of the organizational chart, describe the organizational structure, and describe how that structure supports health promotion and education activities.

D. Operational Plan (not more than 15 pages)

1. Goals. List goals that specifically relate to program requirements that indicate where the program will be at the end of the projected 5 year project period.

2. Objectives. List objectives that are specific, measurable, and feasible to be accomplished during the projected 12-month budget period. The objectives should relate directly to the project goals and recipient activities.

3. Describe in narrative form and display on a timetable, specific activities that are related to each objective. Indicate when each activity will occur as well as when preparations for activities will occur. Also, indicate who will be responsible for each activity and identify staff who will work on each activity.

E. Project Management and Staffing Plan (not more than 8 pages)

(a) Describe the proposed staffing for the project and provide job descriptions for existing and proposed positions.

(b) Submit curriculum vitae (limited to 2 pages per person) for each professional staff member named in the proposal.

(c) Submit job descriptions illustrating the level of organizational responsibility for professional staff who will be assigned to the project.

(d) If other organizations will participate in proposed activities, provide the name(s) of the organization(s), as well as the applicant's staff person who will coordinate the activity and/or supervise the other staff. For each organization listed, provide a letter identifying the specific activity and the capacity of the assisting organization or subcontractor, and their role in carrying out the proposed activities.

F. Sharing Experiences (not more than 1 page)

Describe how materials that are developed or activities that are successful will be shared with others. Examples of such activities include, but are not limited to:

1. Sharing materials through clearinghouses, at workshops and conferences, and as part of annual progress reports.

2. Sharing project-related news and information with other CDC-funded SEAs, LEAs, and national organizations through the Internet and other computer networks, the mail, and at workshops and conferences.

3. Disseminating materials to affiliates, constituents, other national organizations, or State and local education departments.

4. Disseminating information and materials within the State to decision makers, school personnel, public health officials, leaders of postsecondary institutions, leaders in State and local organizations that support health education, and others.

G. Collaborating (not more than 1 page)

Describe the types of proposed collaboration and the agencies and organizations with whom collaboration will be conducted. Examples of such activities include, but are not limited to:

1. Planning and implementing joint training programs or workshops.

2. Planning and convening joint conferences.

3. Participating in conferences or workshops with other recipients.

4. Participating in a national coordinating committee on school health that will be convened at least twice within each budget period.

5. Identifying measures of progress.

H. Evaluation (not more than 4 pages)

Describe a plan that evaluates the program's effectiveness in meeting its objectives. For each of the types of evaluation listed below, specify the evaluation question to be answered, data to be obtained, the type of analysis, to whom it will be reported, and how data will be used to improve the program. Indicate in the plan the projected staff and time lines to be used.

1. Process evaluation. Evaluate the program's progress in meeting objectives and conducting activities during the budget period.

2. Outcome evaluation. Assess the effectiveness of proposed activities, including training sessions and documents developed in attaining

goal(s) at the completion of the one year budget period and the 5 year project period.

I. Budget and Accompanying Justification

Provide a detailed budget and line-item justification of all operating expenses. The budget should be consistent with the stated objectives and planned activities of the project. Budget requests should include the cost of a 4 day trip to Atlanta for two individuals.

J. Typing and Mailing

Applicants are required to submit an original and two copies of the application, including an executive summary. Pages must be numbered clearly, and a complete table of contents of the application and its appendixes must be included. Begin each separate section on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All materials must be typewritten, single-spaced, using an unreduced type not less than 12 point (10 characters per inch) on 8½" x 11" paper, with at least a 1" margin, including headers and footers, and printed on one side only.

VI. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before December 21, 1998, submit the application to: Robert Hancock, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 99023, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mail Stop E–18, Atlanta, Georgia 30305–2209.

If the application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless the applicant can provide proof that the application was mailed on or before the deadline (i.e., Receipt from U.S. Postal Service postmark or a commercial carrier. Private metered postmarks are not acceptable).

VII. Special Guidelines for Technical Assistance Workshop

One-day technical assistance workshops will be available for potential applicants in each of the following locations: November 19, 1998 in Washington, D.C. and November 23, 1998 in Denver, Colorado. Each meeting will begin promptly at 10:00 a.m. and end by 4:00 p.m. in their respective time zones. Locations of the meeting are to be determined and information will be available by contacting the program representative identified below. The purpose of this meeting is to help potential applicants to:

1. Understand the scope and intent of the national programs to strengthen coordinated school health programs and prevent HIV infection and other important health problems among young people.

2. Understand the scope and intent of the State and local school health programs to prevent serious health problems and improve educational outcomes.

3. Become familiar with the Department of Health and Human Services grants policies, applications, and review procedures.

Attendance at this workshop is not mandatory. Applicants who are currently funded by CDC may not use project funds to attend this workshop. Workshops will be held only if 10 persons or more sign-up by the aforementioned deadline.

Each potential applicant may send not more than two representatives to this meeting. Please provide the names of the persons who are planning to attend this meeting to Mary Vernon, Acting Chief, Special Populations Section, Program Development and Services Branch, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–31, Atlanta, Georgia 30341–3717, E-mail address mev0@cdc.gov; telephone (770) 488–3253, within 1 week after the publication date of the program announcement in the **Federal Register**.

VIII. Evaluation Criteria (100 Points)

Each application will be evaluated individually according to the following criteria by an independent review group appointed by CDC.

A. Background and Need (10 points)

The extent to which the applicant justifies need for the program under the priority area, their organization's experience in addressing the priority area, and the need for proposed activities.

B. Capacity (30 points)

The extent to which the applicant demonstrates the capacity and ability of their organization and constituency to address the identified needs and develop and conduct program activities.

C. Operational Plan (25 points)

The extent to which the applicant:

1. Identifies Goals. The extent to which the applicant has submitted goals that are specific and feasible for the projected 5 year project period and are consistent with program requirements.

2. Identifies Objectives. The extent to which the applicant has submitted objectives for the 1 year budget period that are specific, measurable, and feasible and are related directly to the program's goals.

3. Proposes activities that are likely to achieve each objective for the budget period.

4. Addresses each recipient activity for the relevant priority area.

5. Provides a reasonable time line for conducting those activities.

D. Project Management and Staffing (15 points)

The extent to which the applicant identifies staff that have the responsibility, capability, and authority to carry out each activity, as evidenced by job descriptions, curriculum vitae, organizational charts, and letters of support from collaborating agencies.

E. Sharing Experiences and Resources (5 points)

The extent to which the applicant indicates how they will share effective materials and activities.

F. Collaborating (5 points)

The extent to which the applicant describes how they will collaborate with agencies such as State and local health and education departments, postsecondary institutions, and other national organizations.

G. Evaluation (10 points)

The extent and method to which the applicant proposes to measure progress in meeting objectives and program effectiveness, and presents a reasonable plan for obtaining data, reporting the results, and using the results for programmatic decisions.

H. Budget (Not Scored)

The extent to which the applicant provides a detailed and clear budget narrative consistent with the stated objectives, planned activities and goals of the project.

IX. Other Requirements

A. HIV/AIDS Requirements

Recipients must comply with the document entitled: "Interim Revision of Requirements of the Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control and Prevention Assistance Programs" (June

15, 1992), a copy of which is included in the application kit. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.1113, which is also included in the application kit. In progress reports, the recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

B. Lobbying Restrictions

Applicants should be aware of restriction on the use of DHHS funds for lobbying of Federal or State legislative bodies. See Attachment I for further details.

C. Research Activities Restricted

Applicants must not identify any activities that would constitute research. Activities funded under this announcement are intended to build the capacity of national organizations to promote HIV, STD, and unintended pregnancy prevention among youth and should not include any formal or informal research.

D. Technical Reporting Requirements

Provide CDC with an original and two copies of:

1. Annual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Mildred Garner, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mail Stop E–18, Atlanta, Georgia 30305–2209.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II in the application kit.

AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–15 Proof of Non-profit Status

X. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a), 311(b) (c) and 317(R)(2) of the Public Health Service Act [42 U.S.C. section 241(a), 243(b) and (c), and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.938.

XI. Where To Obtain Additional Information

Please refer to Program Announcement 99023 when you request information. For a complete program description, information on application procedures, an application package, and business management technical assistance, contact: Robert Hancock, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 99–023, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mail Stop E–18, Atlanta, Georgia 30305–2209, Telephone: (404) 842–6508, E-mail address: rnh2@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov. For program technical assistance, contact Mary Vernon, Acting Chief, Special Populations Section, Program Development and Services Branch, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Mail Stop K–31, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Atlanta, Georgia 30341–3717, E-mail address mev0@cdc.gov; telephone (770) 488-3253.

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management and technical assistance may be obtained from: Robert Hancock, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 99023, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mail Stop E–18, Atlanta, Georgia 30305–2209, Telephone (404) 842–6508, E-mail address rnh2@cdc.gov.

John L. Williams,

Director, Procurement and Grants Office.

[FR Doc. 98–30206 Filed 11–10–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Health Research Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: Mine Health Research Advisory Committee (MHRAC).

Time and Date: 9 a.m.—4 p.m., December 4, 1998.

Place: Pittsburgh Research Laboratory, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

Status: Open to the public, limited only by space available. The meeting room accommodates approximately 150 people.

Purpose: The Committee is charged with advising the Secretary; the Assistant Secretary for Health; the Director, Centers for Disease Control and Prevention; and the Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters to be Discussed: The agenda will include an Overview of NIOSH; NIOSH-wide Mining Research; Surveillance of Coal Workers Pneumoconiosis (SWP) and Silicosis; Status of Continuous Respirable Dust Monitors; Surveillance, Statistics and Research Support Activity at PRL; Overview of Extramural Grants Process and Future Activities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Larry Grayson, Ph.D., Executive Secretary, MHRAC, NIOSH, CDC, 200 Independence Avenue, S.W., Room 715-H, Humphrey Building, Washington, D.C. 20201, telephone 202/401–2192, fax 202/260–4464, e-mail lhg9@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 5, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Interim Tribal TANF Data Report.

OMB No.: 0970–0176.

Description: This information is being collected to meet the statutory requirements of section 411 of the Social Security Act and section 116 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. It consists of disaggregated demographic and program information that will be used to determine participation rates and other statutorily required indicators for the Tribal Temporary Assistance for Needy Families (Tribal TANF) program.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Interim Tribal TANF Data Report	18	4	451	32,472

Estimated Total Annual Burden Hours: 32,472.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn; ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 6, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–30251 Filed 11–10–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP) Detailed Model Plan and the Abbreviated Model Plan.

OMB No.: 0970–0075.

Description: This information requirement is an annual activity which is required by law for the receipt of Federal block grant funds under the LIHEAP statute. By law, we must make this model plan available to grantees. It provides grantees an optional management tool that may alleviate the burden of preparing additional information to complete plans. The detailed model plan is to be filed only once every three years or sooner if major changes are made to a grantee's program. In the other two years, grantees would submit an abbreviated application which will still meet the statutory requirement for a complete application.

Respondents: State, Local or Tribal Govt.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Model Plan	65	1	1	65
Abbreviated Model Plan	115	1	.33	38

Estimated Total Annual Burden Hours: 103.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W.; Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Attn: Ms. Wendy Taylor.

Dated: November 5, 1998.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 98–30164 Filed 11–10–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1039–CN]

RIN 0938–AI87

Medicare Program; Hospice Wage Index; Corrections

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice; correction notice.

SUMMARY: In the October 5, 1998 issue of the **Federal Register** (63 FR 53446), we published a notice announcing the annual update to the hospice wage index. The wage index is used to reflect local differences in wage levels. That update was effective October 1, 1998 and is the second year of a 3-year transition period. This notice corrects errors made in that document.

FOR FURTHER INFORMATION CONTACT: Carol Blackford, (410) 786–5909.

SUPPLEMENTARY INFORMATION: The October 5, 1998 notice contained technical and typographical errors. Therefore, we are making the following corrections:

1. On page 53447, in Table A., "Schoharie, NY" is removed from the list of counties with MSA code number 0160.

2. On page 53448, in Table A., "Stanly, NY" is removed from the list of counties with MSA code number 1520 and is added to a new MSA code number "15206," with area name "Charlotte-Gastonia-Rock Hill, NC-SC" and with wage index value "0.9741."

3. On page 53449, in Table A., the MSA code number "2580" for Washington, AR is corrected to read "25806."

4. On page 53449, in Table A., the MSA code number "2760" for Allen, IN, De Kalb, IN, and Whitley, IN is corrected to read "27606."

5. On page 53450, in Table A., "La Crosse, WI" is removed from the list of counties with MSA code number 3870.

6. On page 53451, in Table A., the MSA code number "5640" for Warren, NJ is corrected to read "56406."

7. On page 53452, "St. Louis, MO" is added to the list of counties with MSA code number 70408.

Authority: Section 1814(i) of the Social Security Act (42 U.S.C. 1395f (i)(1))

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 29, 1998.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 98–30193 Filed 11–10–98; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995.

Proposed Project: The National Health Service Corps (NHSC) Loan Repayment Program (OMB No. 0915–0127)—Extension and Revision. The NHSC Loan Repayment Program (LRP) was established to assure an adequate supply of trained primary care health professionals to the neediest communities in the Health Professional Shortage Areas (HPSAs) of the United States. Under this program, the Department of Health and Human Services agrees to repay the educational loans of the primary care health professionals. In return, the health professionals agree to serve for a specified period of time in a federally-designated HPSA approved by the Secretary for LRP participants.

This request for extension of OMB approval will include the NHSC LRP application and loan verification form, as well as two new forms: a Site Information Form and Request for Method of Advanced Loan Repayment Form. In an effort to improve the procedure for recruiting NHSC applicants and to alleviate some of the burden and delay in the application process, the following changes are proposed:

(1) The applicant will submit a "Site Information Form" rather than a copy of the signed employment contact. This form provides information about the proposed employment site, requiring only a signature and date from the Site Administrator/Executive Officer. This change will allow HRSA to begin consideration of the application at an earlier stage, since a signed employment contract generally takes more time to negotiate.

(2) A new one page form, "The Request for Method of Advanced Loan Repayment" form, will be included with the application. It provides a description of three methods of payment (quarterly, annually, and biennially), and asks applicants to select the method they prefer.

(3) Applicants now obtain a self-report from the National Practitioner Data Bank (NPDB), which must be submitted with the application form. To obtain that form, applicants must submit a written request to the NPDB. To expedite that process, HRSA proposes to send the NPDB request form with the LRP application.

The estimate of burden is as follows:

Respondent	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Applicants	800	1	1.5	1200
Lenders	45	1	15 minutes	11
Total	845			1211

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of

Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 4, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–30221 Filed 11–10–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–99–1610–00]

Grand Staircase-Escalante National Monument Draft Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with section 102 of the National Environmental Policy Act of 1970, section 202 of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610, a draft management plan/draft environmental impact statement for Grand Staircase-Escalante National Monument, Utah, has been prepared and is available for review and comment. The DMP/DEIS describes and analyzes future options for managing 1,684,899 acres of public land in Garfield and Kane Counties, Utah. The DMP/DEIS also examines recommendations on suitability for additions to the Wild and Scenic Rivers System. Decisions generated during this planning process will supersede land use planning guidance presented in the Management Framework Plans and subsequent amendments.

ADDRESSES: Copies of the Grand Staircase-Escalante National Monument Draft Management Plan and Draft Environmental Impact Statement (DMP/DEIS) may be obtained from the following Bureau of Land Management (BLM) locations: Grand Staircase-Escalante National Monument Planning Office, 337 South Main Street, Suite 010, Cedar City, Utah 84720, telephone (435) 865–5100; BLM, Utah State Office, 324 South State, Public Room (4th Floor), Salt Lake City, Utah, telephone (801) 539–4001; Kanab Resource Area Office, 318 North First East, Kanab, Utah 84741, telephone (435) 644–2672; Escalante Interagency Office, P.O. Box 225, Escalante, Utah 84726, telephone (435) 826–4291. Comments must be received by the Grand Staircase-Escalante National Monument Planning Office, 337 South Main Street, Suite 010, Cedar City, Utah 84720 by Friday, February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Pete Wilkins, Planning Team Leader, or A. J. Meredith, Monument Manager, Bureau of Land Management, Grand Staircase-Escalante National Monument Planning Office, 337 South Main Street, Suite 010, Cedar City, Utah 84720, telephone (435) 865–5100.

SUPPLEMENTARY INFORMATION: The DMP/DEIS analyzes five alternatives to resolve the following seven major issues: (1) How will Monument resources be protected? (2) How will research associated with the Monument be managed? (3) How will Monument management be integrated with community plans? (4) How will people's activities and uses be managed? (5) What facilities are needed and where? (6) How will transportation and access be managed? (7) To what extent is water necessary for the proper care and management of the objects of the Monument, and what further action is necessary to assure the availability of water. Each alternative represents a complete management plan for the area. The alternatives can be summarized as (A) the no action or change from management as directed by the Proclamation and the Interim Management Guidance, (B) the preferred alternative which emphasizes the preservation of the monument, while recognizing its value as a scientific resource, (C) emphasizes the exemplary opportunities for scientific research, (D) emphasizes the preservation of the primitive, undeveloped nature of the Monument through the stewardship of intact natural systems, and (E) emphasizes and facilitates a full range of developed and undeveloped recreational opportunities, while relying upon public education and use management to protect Monument resources.

Wild and Scenic Rivers

In Alternative A (No Action Alternative), a suitability determination would not be made on the 25 eligible river segments (330 miles). In Alternative B (Preferred Alternative) and E, 17 eligible river segments, totaling 225 river miles would be recommended as suitable for Congressional designation into the National Wild and Scenic River System (NWSRS). In Alternative C, all 25 eligible river segments (330 miles) would be determined to be unsuitable. In Alternative D, all 25 eligible river segments, totaling 330 river miles, would be determined suitable and would be recommended for Congressional designation. The table outlines the river segments that were determined eligible for Congressional designation. The table also identifies, by alternative, which eligible river segments would be determined suitable and recommended to Congress for designation into the NWSRS.

River segment	Segment description	Miles	Tentative classification	Determined suitable by alternative				
				A	B	C	D	E
Escalante River Basin								
Harris Wash	Tenmile Crossing to confluence with Bighorn Wash.	2.9	Scenic	.....	.....	.....	X	.....
	Bighorn Wash to unnamed road.	8.7	Wild	.....	.....	.....	X	
	Road to west side of State section.	2.8	Recreational	.....	.....	.....	X	.....
	State section to Monument boundary.	1.2	Wild	.....	X	.....	X	X
Lower Boulder Creek	Downstream side of State section to Escalante River.	13.6	Wild	.....	X	.....	X	X
Dry Hollow Creek	Monument boundary to Lower Boulder Creek.	4.3	Wild	.....	.....	.....	X	.....

River segment	Segment description	Miles	Tentative classification	Determined suitable by alternative				
				A	B	C	D	E
Slickrock Canyon	Monument boundary to private land.	2.8	Wild	.....	X	.....	X	X
Cottonwood Canyon	Monument boundary to Lower Deer Creek.	4.4	Wild	.....	.....	.....	X	.....
Lower Deer Creek	Private land to Burr Trail Road	3.8	Recreational	.....	X	.....	X	X
	Burr Trail Road to Lower Boulder Creek.	7	Wild	.....	X	.....	X	X
The Gulch, Blackwater Canyon, Lamanite Arch Canyon, and Water Canyon.	Monument boundary to Burr Trail Road.	11	Wild	.....	X	.....	X	X
	Along Burr Trail Road	0.6	Recreational	.....	X	.....	X	X
	Below Burr Trail Road to Escalante River.	13	Wild	.....	X	.....	X	X
	Black Water, Lamanite and Water Canyons.	6.5	Wild	.....	.....	.....	X	.....
Steep Creek	Monument boundary to The Gulch.	8.9	Wild	.....	X	.....	X	X
Lower Horse Canyon	Outstanding Natural Area boundary to Escalante River.	3	Wild	.....	.....	.....	X	.....
Wolverine Creek	Entire	9.7	Wild	.....	.....	.....	X	.....
Little Death Hollow	Entire	14.8	Wild	.....	.....	.....	X	.....
Escalante River	Confluence with Pine Creek to Highway 12.	13.8	Wild	.....	X	.....	X	X
	Highway 12 to east side of private land.	1.1	Recreational	.....	X	.....	X	X
	Private land to Monument boundary.	19.2	Wild	.....	X	.....	X	X
Lower Sand Creek and Willow Patch Creek.	Sweetwater Creek to Escalante River.	13.2	Wild	.....	X	.....	X	X
Mamie Creek and west tributary.	Monument boundary to Escalante River.	9.2	Wild	.....	X	.....	X	X
Death Hollow Creek	Monument boundary to Mamie Creek.	9.9	Wild	.....	X	.....	X	X
Calf Creek	Headwaters to Lower falls	3.5	Wild	.....	X	.....	X	X
	Lower falls to recreation site	3	Scenic	.....	X	.....	X	X
	Recreation site to Escalante River.	1.5	Recreational	.....	X	.....	X	X
Phipps Wash and tributaries	Headwaters to Escalante River	6	Wild	.....	.....	.....	X	.....
Unnamed Tributary (West of Calf Creek).	Headwaters to Escalante River	2.6	Wild	.....	.....	.....	X	.....
Twentyfive Mile Wash	Rat Seep Hollow to Monument boundary—including unnamed wash on north side.	9.1	Wild	.....	.....	.....	X	.....
	T37S, R6E, S29 to Monument boundary—not including unnamed wash on north side.	6.8	Wild	.....	X	.....	.....	X
Paria River Basin								
Paria River including Deer Creek Canyon, Snake Creek, Hogeye Creek, part of Kitchen Canyon, Starlight Canyon, and part of Cottonwood Creek.	Paria River—T38S, R2W, S21 to T41S, R1W, S7.	22	Wild	.....	X	.....	X	X
	Paria River—T41S, R1W, S7 to downstream of private land south of Highway 89.	16.9	Recreational	.....	X	.....	X	X
	Deer Creek—Headwaters to Paria River.	5.1	Wild	.....	X	.....	X	X
	Snake Creek—entire	4.7	Wild	.....	X	.....	X	X
	Hogeye Creek—entire	6.3	Wild	.....	X	.....	X	X
	Kitchen Canyon—T40S, R2W, S28 to Starlight Canyon.	1.2	Wild	.....	X	.....	X	X
	Starlight Canyon—entire	4.9	Wild	.....	X	.....	X	X

River segment	Segment description	Miles	Tentative classification	Determined suitable by alternative				
				A	B	C	D	E
	Lower Cottonwood Creek—confluence with Hackberry Creek to Paria River.	2.9	Recreational	.....	X	.....	X	X
Bull Valley Gorge	Little Bull Valley to Sheep Creek.	5.9	Wild	.....	.....	.....	X	.....
Lower Sheep Creek	Bull Valley Gorge to Paria River.	1.5	Wild	.....	X	.....	X	X
Hackberry Creek	Headwaters to Cottonwood Creek.	20	Wild	.....	X	.....	X	X
Buckskin Gulch (outside Monument).	Wilderness boundary to Paria River.	18	Wild	.....	X	.....	X	X
Lower Paria River (outside Monument).	Downstream side of private land to wilderness boundary.	3.3	Recreational	.....	X	.....	X	X
	Segment in wilderness	4.8	Wild	.....	X	.....	X	X

Open houses will be held from 5:00 PM to 8:30 PM on the following dates at the following locations, except as noted:

Kanab, UT, Kanab Middle School, December 1, 1998 (6:30 PM to 9:00 PM)
Albuquerque, NM, Winrock Inn, 18 Winrock Center, N.E., December 1, 1998
Escalante, UT, Escalante High School, December 3, 1998
Denver, CO. Hyatt Regency Tech Ctr., 7800 Tufts Avenue, December 3, 1998
Salt Lake City, UT, Salt Lake Hilton, 150 W. 500 S., December 8, 1998
Tropic, UT, Bryce Valley High, December 8, 1998
San Francisco, CA, San Francisco Marriott, 55 Fourth Street, December 10, 1998
Big Water, UT, Big Water Town Hall, December 10, 1998
Orderville, UT, Valley High School, January 5, 1999
Panguitch, UT, Panguitch High School, January 5, 1999
Flagstaff, AZ, Flagstaff Radisson, Woodlands Plaza, 1175 West Route 66, January 7, 1999
Cedar City, UT, Southern Utah University—Charles Hunter, January 7, 1999
Washington, DC, The Capital Hilton, 16th and K Streets NW, January 12, 1999

Dated: November 5, 1998.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 98–30162 Filed 11–10–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale 172

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed notice of sale.

Gulf of Mexico Outer Continental Shelf (OCS); Notice of Availability of the Proposed Notice of Sale for proposed Oil and Gas Lease Sale 172 in the Central Gulf of Mexico. This Notice of Availability is published pursuant to 30 CFR 256.29(c), as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

The proposed Notice for proposed Sale 172 and a "Proposed Sale Notice Package" containing information essential to potential bidders may be obtained from Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 17, 1999.

Dated: November 5, 1998.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 98–30261 Filed 11–10–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Technical Work Group

AGENCY: Bureau of Reclamation.

ACTION: Notice of public meetings; correction.

SUMMARY: On September 1, 1998, the Bureau of Reclamation published a notification in the **Federal Register** on page 46468 concerning the announcement of three upcoming Glen Canyon Technical Work Group public meetings to be held in Phoenix, Arizona. The document contained incorrect dates for the second meeting.

The correct dates and locations for the second meeting are:

November 16–17, 1998—Phoenix, Arizona: The meeting will begin at 10:00 a.m. and end at 5:00 p.m. on the first day. The second day of the meeting will begin at 8:00 a.m. and end at 4:00p.m. The meeting will be held in the Turquoise Room at the Embassy Suites Hotel at 1515 North 44th Street in Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Bruce Moore, Bureau of Reclamation, Salt Lake City, Utah at 801–524–3702.

Dated: November 5, 1998.

Kirk Rodgers,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 98–30184 Filed 11–10–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974

require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 1999 is 6.875 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 1998, through and including September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Schluntz, Economist, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, Attention: D–5200, Building 67, Denver Federal Center, Denver, CO 80225–0007; telephone: (303) 445–2901.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 6.875 percent for fiscal year 1999.

This rate has been computed in accordance with Section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 6.02 percent. Rounding this average yield to the nearest one-eighth percent is 6.000 percent, which exceeds the permissible one-quarter of 1 percent change from fiscal year 1998 to 1999. Therefore, the change is limited to one-quarter of 1 percent.

The rate of 6.875 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated: October 29, 1998.

Maryanne C. Bach,

Assistant Director, Program Analysis Office.

[FR Doc. 98–30161 Filed 11–10–98; 8:45 am]

BILLING CODE 4310–94–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collections without change to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public.

DATES: Comments will be accepted until January 11, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen, (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposals for the following collections of information:

OMB Number: 3133–0138.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Community Development Revolving Loan Program for Credit Unions, Application for Funds. NCUA requests this information from credit unions to assess financial ability to repay the loans and to ensure the funds are used to benefit the institution and community it serves.

Respondents: Community Credit Unions which request loans from the revolving loan program.

Estimated No. of Respondents/ Recordkeepers: 25.

Estimated Burden Hours Per Response: 8 hours.

Frequency of Response: Other. As the need for borrowing arises.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost: $3,126.

By the National Credit Union Administration Board on November 1, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–30195 Filed 11–10–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following new information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public.

DATES: Comments will be accepted until January 11, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposals for the following collections of information:

OMB Number:

Form Number: N/A.

Type of Review: Existing collection in use without an Agency OMB control number.

Title: Home Mortgage Disclosure Act—Loan Application Register. The Federal Reserve Board, through Regulation C, requires depository institutions that meet its asset-size threshold to maintain data about home loan applications, to update the

information quarterly, and to report the information annually.

Respondents: Credit Unions which meet the Federal Reserve asset-size threshold for reporting.

Estimated No. of Respondents/ Recordkeepers: 1593.

Estimated Burden Hours Per Response: 8 hour.

Frequency of Response: 362,731 (estimated).

Estimated Total Annual Burden Hours: 30,227.

Estimated Total Annual Cost: $302,270.

By the National Credit Union Administration Board on November 1, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–30196 Filed 11–10–98; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Literature Section (Heritage & Preservation, and Education & Access categories) to the National Council on the Arts will be held on December 1–2, 1998. The panel will meet from 9:00 a.m. to 7:00 p.m. on December 1st and from 9:00 a.m. to 4:30 p.m. on December 2nd, in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 11:00 a.m. to 1:00 p.m. on December 2nd, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:00 a.m. to 7:00 p.m. on December 1st and from 9:00 a.m. to 1:00 p.m. and 3:00 p.m. to 4:30 p.m. on December 2nd, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 28, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–30212 Filed 11–10–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Multidisciplinary Section (Heritage & Preservation and Education & Access categories) to the National Council on the Arts will be held on December 1–3, 1998. The panel will meet from 9:00 a.m. to 7:00 p.m. on December 1st, from 9:00 a.m. to 6:45 p.m. on December 2nd, and from 9:00 a.m. to 3:45 p.m. on December 3rd, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506. A portion of this meeting, from 11:30 a.m. to 12:30 p.m. on December 3rd, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines

The remaining portions of this meeting, from 9:00 a.m. to 7:00 p.m. on December 1st, from 9:00 a.m. to 6:45 p.m. on December 2nd, and from 9:00 a.m. to 11:30 a.m. and 12:30 p.m. to 3:45 p.m. on December 3rd, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: November 5, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–30213 Filed 11–10–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Music Section (Heritage & Preservation and Education & Access categories) to the National Council on the Arts will be held on December 1–3, 1998. The panel will meet from 9:00 a.m. to 6:00 p.m. on December 1st, from 8:45 a.m. to 6:30 on December 2nd, and from 8:30 a.m. to 5:00 p.m. on December 3rd, in Room M–07 and Room 219 (sub-panels A and B) at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 3:15 p.m. to 4:30 p.m. on December 3rd, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines. The open session will be held in Room M–07.

The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on December 1st, from 8:30 a.m. to 6:45 p.m. on December 2nd, and from 9:00 a.m. to 3:15 p.m. on December 3rd, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: November 5, 1998.

Kathy Plowitz-Worden.

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–30214 Filed 11–10–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Media Arts Section B (Heritage & Preservation and Education & Access categories) to the National Council on the Arts will be held on December 2–4, 1998. The panel will meet from 9:30 a.m. to 6:30 p.m. on December 2nd, from 9:30 a.m. to 5:30 p.m. on December 3rd, and from 9:30 a.m. to 3:00 p.m. on December 4th, in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 4:00 p.m. to 5:30 p.m. on December 3rd, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects,and guidelines.

The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on December 2nd, from 9:30 a.m. to 4:00 p.m. on December 3rd, and from 9:30 a.m. to 3:00 p.m. on December 4th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated; November 5, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–30215 Filed 11–10–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Arts Education Section (Education & Access and Planning & Stabilization categories) to the National Council on the Arts will be held on December 7–11, 1998. The panel will meet from 9:00 a.m. to 6:00 p.m. on December 7th, from 8:30 a.m. to 6:00 p.m. on December 8th–10th, and from 9:00 a.m. to 3:00 p.m. on December 11th, in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 10:30 a.m. to 12:00 p.m. on December 11th, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, meet from 9:00 a.m. to 6:00 p.m. on December 7th, from 8:30 a.m. to 6:00 p.m. on December 8th–10th, and from 9:00 a.m. to 10:30 a.m. and 12:00 p.m. to 3:00 p.m. on December 11th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: November 5, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations National Endowment for the Arts.

[FR Doc. 98–30216 Filed 11–10–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board

DATE AND TIME:

November 19, 1998, 12:30 p.m. Closed Session

November 19, 1998, 2:00 p.m. Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, November 19, 1998

Closed Session (12:00–12:30 p.m. and 1:30—1:50 p.m.)

- Closed session Items for November 1998
- Minutes, August 1998
- Personnel
- Nominees
- Awards and Agreements
- Status—NSF FY2000 Budget

Thursday, November 19, 1998

Open Session (1:50 p.m.—6:00 p.m.)

- Swearing in of NSB nominees
- Minutes, August 1998
- Closed Session Items for March 1999
- Chairman's Report
- Director's Report
- Reports from Committees
- Science and Engineering Indicators—2000 Plan
- NSB Strategic Plan
- February Policy Meeting & NSB retreat
- Break
- Environment for NSF Planning and Budget Activity

Marta Cehelsky,

Executive Officer.

[FR Doc. 98–30373 Filed 11–9–98; 12:26 pm]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, November 17, 1998.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

7086 Transit Bus Special Investigation Report.

7085 Brief of Accident—Failure of an Allied-Signal, Inc., Railroad Tank Car and Released of Anhydrous Hydrogen Fluoride in Memphis, Tennessee, April 2, 1997.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT. Rhonda Underwood, (202) 314–6065.

November 6, 1998

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–30289 Filed 11–6–98; 4:32 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–16055–ML, ASLBP No. 95–707–02–ML]

Atomic Safety and Licensing Board; Advanced Medical Systems, Inc.; Order Granting Hearing and Federal Register Notice of Opportunity to Intervene

Before Administrative Judges: B. Paul Cotter, Jr., Chairman, Thomas D. Murphy, Special Assistant

November 4, 1998.

On September 28, 1998, the Director of the Office of Nuclear Materials Safety and Safeguards of the Nuclear Regulatory Commission, notified Seymour Stein, President of Advanced Medical Systems, Inc. (AMS), that his firm's application to renew AMS's License No. 34–19089–01 to possess and use nuclear materials was denied. The stated basis for denial was that AMS lacked the requisite financial assurance necessary for decommissioning the facility. Pursuant to 10 CFR 2.103, the notice granted AMS 20 days to request a hearing to contest the denial and stated that if a hearing were to be held, the issue to be decided would be:

whether the renewal application complies with the requirements of 10 CFR 30.35 such that the Licensee's application for renewal of its license should be granted.

By timely motion of October 15, 1998, Mr. Stein, on behalf of AMS, requested a hearing to consider whether the AMS renewal application complies with the requirements of 10 CFR 30.35. Thereafter, on October 28, 1998, the undersigned Presiding Officer was appointed to rule upon requests for hearing and petitions to intervene in this matter, and, if necessary, to conduct an informal adjudicatory hearing.

Based on the information presented in Staff's September 28, 1998 letter and AMS's request for hearing, the hearing request is granted. AMS is entitled to a hearing under 10 CFR 2.103(b) which extends hearing rights to licensees whose license renewal applications have been rejected so long as their requests for hearings are timely. This hearing is to be conducted under the informal hearing procedures of 10 CFR Part 2, Subpart L.

In accordance with 10 CFR 2.1205 (j) and (k)[1] 1998, persons wanting to intervene in this proceeding, including a State, county, municipality, or an agency thereof wishing to participate as an interested governmental entity pursuant to 10 CFR 2.1211 (b), must file a petition within 30 days of the publication of this notice in the **Federal Register**. A petition to intervene under 10 CFR 2.1205(k) must provide the information required by 10 CFR 2.1205(e), including a detailed description of the petitioner's interests in the proceeding, how its interests may be affected by the proceeding, and its areas of concern about the licensing activities which are the subject matter of this proceeding. A governmental entity wishing to participate in accordance with 10 CFR 2.1211(b) must provide the information required by that provision, including a listing of its areas of concern about the subject matter of the proceeding.

It is so ordered.

Dated: November 4, 1998.

B. Paul Cotter, Jr.,

Administrative Judge.

[FR Doc. 98–30258 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Energy Corporation (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

[1] This rule and all rules governing the proceeding may be found at 10 CFR, Part 2, Subpart L and on the Internet at <http://www.NRC.gov/NRC/ASLBP/part2cfr.txt.

The proposed amendments would add current Technical Specification (TS) 3.7.1, Condition B, which applies to inoperable startup transformers and would remove the allowance to shut down a unit under Action B when a Required Action and associated Completion Time of Condition A is not met. As adopted into the improved TS (ITS), the proposed change would require initiation of a shutdown in 1 hour and an intermediate step to Mode 4 in 18 hours. The second involves ITS Limiting Condition for Operation 3.8.1.b and would add a specification for minimum Keowee lake level.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for each of the above proposed changes. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below.

1. Would the changes involve a significant increase in the probability or consequences of an accident previously evaluated?

For all the changes the answer is "no." The proposed changes would not affect the safety function of the subject systems. There would be no direct effect on the design or operation of any plant structures, systems, or components. No previously analyzed accidents were initiated by the functions of these systems, and the systems were not factors in the consequences of previously analyzed accidents. Therefore, the proposed changes would have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Would the changes create the possibility of a new or different kind of accident from any accident previously evaluated?

For all the changes the answer is "no." The proposed changes would not lead to any hardware or operating procedure change. Hence, no new equipment failure modes or accidents from those previously evaluated would be created.

3. Would the changes involve a significant reduction in a margin of safety? For all the changes the answer is "no." Margin of safety is associated with confidence in the design and operation of the plant. The proposed changes to the TS do not involve any change to plant design, operation, or analysis. Thus, the margin of safety previously analyzed and evaluated is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 14, 1998, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated October 28, 1997, as supplemented by letters dated March 26, April 8, May 20, May 25, and October 28, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 5th day of November 1998.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30254 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–259]

Tennessee Valley Authority; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission or NRC) has granted a request by the Tennessee Valley Authority (TVA) to withdraw its June 2, 1995, application for an amendment to Facility Operating License DPR–33 issued to TVA for the operation of the Browns Ferry Nuclear Plant, Unit 1, located in Limestone County, Alabama. The application was revised by letter dated March 6, 1997, and was supplemented by letters dated April 11, 1997, and March 13, 1998. Notice of consideration of issuance of this amendment was published in the **Federal Register** on August 16, 1995 (60 FR 42609). The application also requested similar amendments to Facility Operating Licenses DPR–52 and DPR–68 for Browns Ferry Nuclear Plant, Units 2 and 3 respectively. The requested actions for Units 2 and 3 have been approved.

The proposed amendment, submitted in custom Technical Specification (TS) format, would have revised the custom TSs for Unit 1 to include changes associated with the implementation of the Power Range Neutron Monitor (PRNM) upgrade, and to incorporate changes related to the implementation of Average Power Range Monitor (APRM) and Rod Block Monitor technical specification improvements and Maximum Extended Load Line Limit (MELLL) Analysis. A general revision to the application was submitted on March 6, 1997, and parallel changes in Improved TS (ITS) format were submitted on April 11, 1997, and revised by a submittal dated March 13, 1998.

On July 14, 1998, NRC approved the conversion from custom TSs to ITSs (Amendment No. 234) for Unit 1. On October 5, 1998, TVA informed the staff by letter that because the custom TSs are no longer in use, the Unit 1 TS changes previously proposed in custom format for PRNM/MELLL are no longer needed. Also, because TVA has no firm schedule for the restart of Unit 1, the PRNM/MELLL proposed changes in ITS format also are being withdrawn. Furthermore, since TVA does not now have a firm schedule for the restart of Unit 1, any changes associated with the PRNM/MELLL will be resubmitted prior to Unit 1 restart.

For further details with respect to this action, see the application for amendment dated June 2, 1995, and March 6, 1997, and TVA's letters dated April 11, 1997, and March 13, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Athens Public Library, 405 E. South Street, Athens, Alabama.

Dated at Rockville, Maryland, this 4th day of November 1998.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30256 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–259]

Tennessee Valley Authority; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by the Tennessee Valley Authority (TVA) to withdraw its June 21, 1996, application for an amendment to Facility Operating License DPR–33 issued to TVA for the operation of the Browns Ferry Nuclear Plant, Unit 1, located in Limestone County, Alabama. The application was supplemented by letter dated February 7, 1997. Notice of consideration of issuance of this amendment was published in the **Federal Register** on August 14, 1996 (61 FR 42285).

The proposed amendment, submitted in custom technical specification format, would have provided a new safety limit minimum critical power ratio (SLMCPR) to replace the existing non-conservative value. The proposed amendment also would have updated a technical specification bases to clarify the usage of the residual heat removal supplemental spent fuel pool cooling mode.

On May 7, 1997, the Nuclear Regulatory Commission (NRC) issued the Bases change, however, no further action was taken on the remainder of the application pending TVA documentation of completion of analyses related to the SLMCPR for Unit 1. On July 14, 1998, the NRC issued Amendment No. 234 to Operating License DPR–33. Amendment No. 234 converted the Unit 1 custom technical specifications, which were in effect at the time the June 21, 1996, application was submitted, into the standard technical specification format. Thus, the NRC was unable to take any further action upon the June 21, 1996, application. TVA's letter of October 13, 1998, informed the staff that the requested changes are no longer needed. Furthermore, since TVA does not now have a firm schedule for the restart of Unit 1, any changes associated with the SLMCPR will be resubmitted prior to Unit 1 restart.

For further details with respect to this action, see the application for amendment dated June 21, 1996, TVA's letters dated February 7, 1997, and October 13, 1998, and the staff's letter dated September 22, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Athens Public Library, 405 E. South Street, Athens, Alabama.

Dated at Rockville, Maryland, this 4th day of November 1998.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30257 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029–LA–R; ASLBP No. 99–754–01–LA–R]

Atomic Safety and Licensing Board; Yankee Atomic Electric Company (Yankee Nuclear Power Station), License Termination Plan; Notice of Prehearing Conference

Before Administrative Judges: Charles Bechhoefer, Chairman; Dr. Thomas S. Elleman; Thomas D. Murphy

November 5, 1998.

Notice is hereby given that, as provided in the Atomic Safety and Licensing Board's Memorandum and Order (Schedules for Remanded Proceeding; Prehearing Conference), dated October 27, 1998, a prehearing conference is hereby scheduled beginning at 9:30 a.m. on Wednesday, December 16, 1998, at the Grand Jury Room (top floor), Franklin County Courthouse, 425 Main Street, Greenfield, MA 01301. To the extent necessary, the conference will continue on Thursday and Friday, December 17 and 18, 1998, beginning at 9:00 a.m., at the same location.

The purpose of the conference will be to determine whether any of the petitioners found by the Commission in CLI–98–21 to have standing—i.e., the New England Coalition on Nuclear Pollution, Inc. (NECNP) and the Citizens Awareness Network (CAN)—have submitted admissible contentions conforming to the criteria set forth in 10 CFR 2.714 (b) and (d), to enable them to become parties to the proceeding. The conference will also consider petitions, if any, from interested States or governmental bodies, as discussed by the Commission in CLI–98–21. Finally, to the extent necessary, the conference will consider discovery and future schedules for various aspects of the proceeding.

In accordance with 10 CFR 2.715(a), the Board will hear oral limited appearance statements at this prehearing conference. Any person not a party to the proceeding or a petitioner for intervention will be permitted to make such a statement, either orally or in writing, setting forth his or her position on issues of concern. These statements do not constitute testimony or evidence but may help the Board and/or parties in their deliberations on the extent of the issues to be considered.

Oral limited appearance statements may be given from 7:00 p.m. to 9:30 p.m. on Wednesday, December 16, 1998 (or such lesser time as is necessary to accommodate speakers who are present), at the same location as the site of the prehearing conference. (To the extent that the Board is apprised of a need to accommodate further speakers, it will attempt to do so at the beginning of any later session of the conference that may be necessary.) The number of persons making oral statements and the time allotted for each statement may be limited depending on the number of persons present at the designated time. (Normally, each oral statement may extend for up to five (5) minutes.) Written statements may be submitted at any time. Written statements, and requests for oral statements, should be submitted to the Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington D.C. 20555. A copy of such statement or request should also be served on the Chairman of this Licensing Board. (Persons desiring to make oral statements who have filed a written request will be given priority over those who have not filed such a request.)

Documents relating to this application are on file at the Local Public Document Room, located at the Greenfield Community College, 1 College Drive, Greenfield, MA 01301, as well as at the Commission's Public Document Room, the Gelman Building, 2120 L St., N.W., Washington D.C. 20037.

It is so ordered.

Rockville, Maryland, November 5, 1998.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 98–30259 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Co. and MidAmerican Energy Co.; Quad Cities Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order, approving under 10 CFR 50.80, the transfer of control of Facility Operating License Nos. DPR–29 and DPR–30, to the extent held by MidAmerican Energy Company (MidAmerican) for possession of the Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities), located in Rock Island County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the transfer of control of the licenses, with respect to MidAmerican's 25 percent ownership interest in Quad Cities, to the extent such transfer would be effected by a proposed corporate merger involving CalEnergy Company (CalEnergy) and MidAmerican Energy Holdings Company (MAHC), the parent of MidAmerican. Commonwealth Edison Company (ComEd) alone is licensed to operate, as well as possess Quad Cities and is not involved in the proposed merger. MidAmerican would continue to remain the minority owner and possession-only licensee of the facility.

The proposed action is in accordance with the application dated September 10, 1998, filed by CalEnergy and MidAmerican, accompanied by cover letters dated September 10, 1998, and supplemented by a letter dated September 16, 1998, and attachments thereto, from Roy P. Lessy, Jr., counsel for CalEnergy and MidAmerican.

The Need for the Proposed Action

The proposed action is needed to permit the consummation of the proposed corporate merger discussed above to the extent the merger will effect a transfer of control of the licenses.

Environmental Impacts of the Proposed Actions

The Commission has completed its evaluation of the proposed merger and concludes that there will be no changes to Quad Cities or the environment as a result of this action. The transfer of control of the licenses to the extent effected by the merger between MidAmerican and CalEnergy will not affect the numbers, qualifications, or organizational affiliation of the personnel who operate the facility, since ComEd is not involved in the proposed merger and will continue to be solely responsible for the operation of Quad Cities. No changes are being made with respect to any requirements governing plant operations or equipment.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the proposed action and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the proposed action would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects associated with the proposed action, any alternative with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested approval. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative actions are identical.

Alternative Use of Resources

The action does not involve the use of resources not previously considered in the Final Environmental Statement Related to Operation of Quad Cities Nuclear Power Station, Units 1 and 2, dated September 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on September 30, 1998, the staff consulted with the Illinois State official, Mr. Frank Niziolek, Head, Reactor Safety Section, Division of Engineering, Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the request for approval dated September 10, 1998, accompanied by cover letters dated September 10, 1998, and supplemented by a letter dated September 16, 1998, and attachments thereto, from Roy P. Lessy, Jr., counsel for CalEnergy and MidAmerican, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the public document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, MD, this 4th day of November 1998.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30255 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 105th meeting on December 15–17, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, December 15, 1998—8:30 a.m. until 6:00 p.m.

Wednesday, December 16, 1998—8:30 a.m. until 6:00 p.m.

Thursday, December 17, 1998—8:30 a.m. until 4:00 p.m.

A. *Overviews of FY–99 NRC Staff Programs*—The Committee will hear a number of briefings from the NRC staff on FY–99 waste related programs. These overviews will include decommissioning activities, the High Level Waste repository program, and

programs planned or underway in the spent fuel projects office.

B. *Viability Assessment*—The Committee will review the Department of Energy's Yucca Mountain viability assessment. This will include an overview of the Total System Performance Assessment and factors used in abstracting TSPA models, the repository safety strategy, performance allocation, and an overview of the license application plan.

C. *Preparation of ACNW Reports*—The Committee will discuss planned reports on the following topics: an ACNW self assessment; a 1999 Action Plan for the Committee; proposed importance measures for evaluating nuclear waste repository performance; issues related to regulatory guidance and a standard review plan for decommissioning; observations from the recent European technical exchange; and other topics discussed during this and previous meetings as the need arises.

D. *Meeting with NRC's Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards*—The Committee will meet with the Director to discuss recent developments within the division such as developments at the Yucca Mountain project, rules and guidance under development, available resources, and other items of mutual interest.

E. *Prepare for the Next Meeting with the Commission*—The Committee will begin preparations for its next public meeting with the Commission. Topics to be discussed will be selected and Committee assignments made.

F. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

G. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51807). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 a.m. and 5:00 p.m. EST.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at *http://www.nrc.gov/ACRSACNW.*

The ACNW meeting dates for Calendar Year 1999 are provided below:

ACNW Meeting No.	1999 ACNW meeting date
	No Meeting in January.
106th	February 22–26, 1999 (San Antonio, Texas).
107th	March 23–25, 1999.
	No Meeting in April.
108th	May 11–13, 1999.
109th	June 15–17, 1999.
110th	July 19–21, 1999.
	No Meeting in August.
111th	September 14–17, 1999 (Amargosa Valley, Nevada).
112th	October 12–14, 1999.
	No Meeting in November.
113th	December 14–16, 1999.

Dated: November 5, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–30260 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 9, 16, 23, and 30, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 9

Thursday, November 12

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Friday, November 13

9:00 a.m.
*Meeting on NRC Response to Stakeholders' Concerns (Public Meeting) (Contact: Bill Hill, 301–415–1661/1969)

***Please Note:** The room location for the *Meeting on NRC Response to Stakeholders' Concerns,* scheduled for Friday, November 13, is in the NRC auditorium, Bldg 2, NRC Headquarters, Rockville, Md.

Week of November 16—Tentative

Tuesday, November 17

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of November 23—Tentative

Tuesday, November 24

9:00 a.m.
Briefing on fire Protection Issues (Public Meeting) (Contact: Steve West, 301–415–1220)

Wednesday, November 25

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of November 30—Tentative

Monday, November 30

2:00 p.m.
Meeting of DC Cook (Public Meeting) (Contact: John Stang, 301–415–1345)

3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on November 3, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "BRIEFING BY EXECUTIVE BRANCH" (Closed Ex.-1) be held on

November 3, 1998, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: November 6, 1998.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 98–30385 Filed 11–9–98; 1:04 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–16055]

Advanced Medical Systems, Inc.; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), has acted on a Petition for action under 10 CFR 2.206, dated August 19, 1994, filed by William B. Schatz, Esq., on behalf of the Northeast Ohio Regional Sewer District (District), with respect to an NRC Licensee, Advanced Medical Systems, Inc. (AMS).

The District requested, pursuant to 10 CFR 2.206, that NRC amend AMS' License No. 34–19089–01 to require AMS to install, maintain, and operate a radiation alarm system on all drains at 1020 London Road, Cleveland, OH (AMS Facility) that lead to either sanitary or storm sewers.

The Petitioner's request to require a radiation alarm system on all drains at the AMS Facility was based on the risk posed by the contaminated AMS Facility, and on the basis that the original license for the site, issued to Picker X-Ray Corporation (Picker) in 1959, contained a requirement for an alarm system to detect unmonitored discharges.

For the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD–98–11), the Director of the Office of Nuclear Material Safety and Safeguards has denied the request. The complete text of DD–98–11 follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Perry Public Library, 3735 Main Street, Perry, OH 44081.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, this Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes review of the decision within that time.

Dated at Rockville, Maryland, this 4th day of November, 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

I. Introduction

By letter dated August 19, 1994, addressed to Mr. James M. Taylor, former Executive Director for Operations, U.S. Nuclear Regulatory Commission (NRC), William B. Schatz, Esq., on behalf of the Northeast Ohio Regional Sewer District (District), requested that the NRC take action with respect to Advanced Medical Systems, Inc. (AMS), of Cleveland, OH, an NRC licensee.[1] The District requested, pursuant to 10 CFR 2.206, that the NRC amend License No. 34–19089–01, to require AMS to install, maintain, and operate a radiation alarm system on all drains at 1020 London Road, Cleveland, OH (AMS Facility), that lead to either sanitary or storm sewers.

The District asserts two major reasons as the bases for the request. First, it views the quantity of cobalt-60 waste in the AMS Facility's basement as a major threat based on the following: (a) The NRC has admitted that the existing contamination at the AMS Facility continues to pose a risk; (b) the contamination that exists at the AMS Facility is estimated to include 393 curies, as of 1988, of loose, "talcum-like" cobalt-60 scattered on the floor of the basement waste hold-up room; (c) cobalt-60 contamination was found in the sewer line connecting the AMS Facility to the public sewer, and was found directly under the AMS discharge; (d) the District has already incurred costs of nearly $2 million to address loose cobalt-60 contamination at the Easterly and Southerly Wastewater Treatment Plants; (e) the NRC has been unable or unwilling to explain the source of the cobalt-60 on the District's property, and unable to identify any likely sources for the cobalt-60 other than the AMS Facility; and (f) the quantity of cobalt-60 at the Southerly Plant exceeds that which the AMS records show was released by AMS into the sewer system. Secondly, the original license for this site, issued to Picker in 1959, contained a requirement for an alarm system to detect unmonitored discharges. The District states that such an alarm system was not a condition of the subsequent AMS license, despite a recommendation from Oak Ridge Associated Universities that such an alarm system be installed, along with control valves, to shut off flow to the sewer if the alarm sounds.

By letter dated September 7, 1994, the NRC formally acknowledged receipt of the District's letter, and informed the District that its request was being treated pursuant to 10 CFR 2.206 of the Commission's regulations. A notice of the receipt of the Petition was published in the **Federal Register** on September 19, 1994 (59 FR 47959). The NRC Staff sent a copy of its acknowledgment letter, with a copy of the Petition, to AMS. By letter dated November 9, 1995, the NRC informed the District that further action on its request was being deferred until completion of an ongoing proceeding on AMS' November 29, 1994, application to renew its license. While that proceeding has not been terminated, the NRC staff has decided to deny the renewal application. See letter

[1] Northeast Ohio Regional Sewer District submitted two previous Petitions for action against AMS under 10 CFR 2.206. In a Petition dated March 3, 1993, and supplemented by letters dated September 13, 1994, October 13, 1994, and April 29, 1996, the Petitioner requested that NRC: (1) modify AMS' License No. 34–19089–01 to require that AMS assume all costs resulting from the off-site release of cobalt-60 that has been deposited at the Petitioner's Southerly Wastewater Treatment Center; (2) order AMS to decontaminate the sewer connecting its facility with the public sewer at London Road, and continue down stream with such decontamination to the extent that sampling indicates is necessary; (3) commence enforcement action against AMS for violation of 10 CFR 303(a), 401(c)(3) and 20.2003; and (4) take action on the AMS license to safely, immediately, and reasonably decontaminate the London Road interceptor (the sewer). The second request had been partially granted when the NRC amended the AMS license to require remediation of the sewer line connecting AMS Facility with the public sewer, and the Petition was denied in all other respects. Advanced Medical Systems, Inc. (DD–97–13), 45 NRC 460 (1997). In a second Petition dated August 3, 1993, the Petitioner requested that the NRC take action to require AMS to provide adequate financial assurance to cover public liability pursuant to section 170 of the Atomic Energy Act of 1954, as amended. The second petition was denied. Advanced Medical Systems, Inc. (DD–94–6), 39 NRC 373 (1994).

from C. Paperiello, NRC to S. Stein, AMS, dated September 28, 1998. Accordingly, it is now appropriate for the staff to consider the action requested by the District.

I have completed my evaluation of the matter raised by the District and have determined that, for the reasons stated below, the Petition should be denied.

II. Background

In 1959, the Atomic Energy Commission (AEC) (predecessor to the NRC) issued License No. 34–07225–09 to Picker X-Ray Corporation (Picker), for operation of a sealed-source manufacturing facility located at 1020 London Road. The license authorized Picker to receive, store, and encapsulate cobalt-60 for the purpose of installing these encapsulated sources in approved devices and distributing the sources to customers having valid licenses. The facility at 1020 London Road had been built specifically for the intended purpose of handling and encapsulating large quantities of cobalt-60 (in the kilocurie range); the building included a hot cell for encapsulating the cobalt-60, and various support areas, including a heavily shielded room that contained two stainless steel tanks to collect liquid radioactive waste [waste hold-up tanks (WHUT)]. During the manufacturing of encapsulated sources, it was not uncommon that the hot cell would become contaminated with oxidized cobalt-60. To maintain control of contamination and radiation levels, the cell would be cleaned periodically, with the liquid waste generated by the cleanup diverted to the WHUT room, which had a combined holding capacity of 600 gallons. The stored liquid radioactive waste was then discharged to the sanitary sewer at irregular intervals, depending on the volume of liquid waste generated during normal operations. In a manual entitled "Radiation Safety Procedures for the Picker X-Ray Corporation, Waite Manufacturing Division, Inc.," dated December 1959, a procedure outlined the equipment and steps followed to discharge the liquid waste to the sewer. The liquid radioactive waste was pumped directly from the WHUT into the sanitary sewer system through a drain in the basement floor. The hose from the WHUT to the sewer drain was continuously monitored during discharge, with the liquid passing through a solenoid valve, an in-line monitor consisting of a G-M tube with a rate meter and a strip chart recorder, and a water meter. The solenoid valve opened only during intentional discharge from the WHUT, and only when the monitoring system detected count rates below a preset level, ensuring that only authorized concentration levels were being discharged. A record of the total discharge would be indicated by the total volume of liquid discharged and the count rate information from the monitor, calculating the average concentration and the total activity. The description of the monitoring process did not have the detection system operating continuously, but only while discharging from the hold-up tanks to the sanitary sewer drain.

In a letter submitted to the AEC dated January 25, 1974, Picker submitted a manual entitled "Radiation Safety Procedures for the Picker Corporation, Isotope Operations," requesting it supersede the then effective manual, "Radiation Safety Procedures for the Picker X-Ray Corporation, Waite Manufacturing Division, Inc.," mentioned above. This new manual modified the facility's liquid waste disposal method and system, and was later revised in September 1976. See Inspection Report No. 030–16055/93003(DRSS) at 13. The AEC, and later the NRC, did not incorporate the January 1974 letter, the manual, and the subsequent September 1976 revision, into Picker's license. In February 1974 (OR Inspection Report No. 74–01 for License No. 34–07225–09 at 6), Picker modified its liquid radioactive waste discharge procedure from the in-line continuous monitor, to a batch disposal method. This batch disposal system consisted of a 55-gallon drum located outside the room housing the WHUT, atop a stand pipe connected to a floor drain leading to the sanitary sewer line. Waste water was pumped from the WHUT to the 55-gallon drum, the drum liquid was then agitated by an electrically driven trolling motor, and, after agitation, the liquid was sampled to determine its radioactive concentration. After determining radioactivity concentration and the volume in the 55-gallon drum, for recording concentration and total quantity of radioactive material, the plug at the bottom of the drum was removed to discharge the contents to the sanitary sewer. This batch method of disposal was continued until Picker terminated this license in November 1979.

In 1979, Picker sold the facility and operation at 1020 London Road to AMS. The provisions of the AMS license application were similar to the previous Picker license, with many of the procedures carried forward to the AMS license, including the batch method for liquid radioactive waste release described above. AMS used the same batch method for disposal of liquid radioactive waste as Picker, from the time that AMS' initial license (License No. 34–19089–01) was issued on November 2, 1979, until April 1986. In 1986, AMS installed a 200-gallon plastic tank to collect waste from the drain leading from decontamination showers, the laundry, and sinks, and discontinued use of the 55-gallon drum for discharge. One of the two tanks in the WHUT room, a 500-gallon tank, was no longer receiving liquid waste when the 200-gallon tank was installed in 1986, and the use of the other tank in the WHUT room (100-gallon capacity) was discontinued in 1988, when the WHUT room was isolated. The batch method of determining concentration and total volume of the liquid discharge from the 200-gallon tank, to show compliance, continued until May 1989, when discharge to the sanitary sewer (via floor drains) was discontinued completely.

III. Discussion

The District's petition requests the NRC to require AMS to install, maintain, and operate a radiation alarm system on all drains at the AMS Facility that lead to either sanitary or storm sewers. The request to modify the license by having alarms installed appears to be an effort to put in place a mechanism that would indicate when cobalt-60 is entering the District's sanitary sewer system, and, in turn, to stop the entry of the cobalt-60 into the sanitary sewer system on positive indication of material.

Most of the bases for the Petition are restatements of facts, or existing information in previously published documents, that are associated with the facility at 1020 London Road. Since 1989, when AMS changed its decontamination process to a dry method, AMS' records indicate that AMS has not disposed of any radioactive waste into the sanitary sewer drain.

The District has incurred costs of nearly $2 million addressing the cobalt-60 contamination at its Easterly and Southerly wastewater treatment plants. The District's apparent concern in this Petition is the threat that the London Road facility poses to the District's treatment facilities, primarily pertaining to the imposition of additional costs through release of cobalt-60 from the AMS facility into the District's system. As described below, however, neither the nature or activity of the contamination in the WHUT room, in light of the condition of the WHUT room, nor the requirements formally applicable to Picker, establish any basis

to take the requested action. This cobalt-60 contamination is in a dry state, and the WHUT room is completely isolated from the sewer system and from accidental access. There are no floor drains in the WHUT room, and there is no water supply into or out of the room. Accordingly, the existence of contamination of 393 curies (14.5 terabecquerels) of loose, "talcum-like" cobalt-60 in the WHUT room in the basement does not warrant granting of the District's request.

The District indicated there had been an alarm and control system that had once been in place when Picker operated the facility, up to November of 1979. In connection with this type of system, the District states that the system had not been a required condition of the license after Picker terminated work at the facility, and operations continued under the AMS license. In its original license application to show compliance with the regulations at that time, Picker included conditions requiring a water-monitoring system that detected concentration levels in a drainpipe. The system that Picker described in the Informational Memorandum No. 6, "Calibration and Evaluation of Water Monitor System," submitted by Picker to the NRC on December 2, 1959, was used as both a control system, to prevent discharge above a preset limiting concentration, and as a method of showing compliance with then-applicable regulations. However, this documentation does not indicate that there had been any alarm as part of the system—nor is it documented, from that time, why the in-line system was discontinued, and a batch method used in its stead, in 1974. See OR Inspection Report 74–01, License No. 34–07225–09, transmittal dated May 3, 1974. Two interviewees questioned during a 1993 inspection indicated that the in-line system was discontinued because the in-line G–M detector needed to be replaced, but was no longer manufactured or available. See Report No. 030–16055/93003 (DRSS) at 11. Both procedures, the in-line monitoring method and the batch method, at the time they were being used, satisfied the requirement to show compliance independently, and, therefore, either procedure was considered acceptable at the time of the request.

The Oak Ridge Associated Universities report that recommended monitoring the discharge to the sanitary sewer and placing a servo-valve mechanism on the drains was part of a larger report. See "Evaluation of the Operational Radiation Safety and Fire Protection Programs of the Advanced Medical Systems, Inc., London Road Facility, Cleveland, Ohio," December 1985. This method was given as an alternative for developing a contingency plan for controlling release to the sanitary sewer system in case of a major spill into the basement. The other alternative offered in this report was to seal the drains in the basement floor, so that any release could be monitored before releasing to the sewer system. AMS chose this latter alternative as a means of preventing an unmonitored release. The method of sealing the drains was determined to be appropriate to ensure compliance with 10 CFR 20.303 (1985). A continuous monitor could be used for the purpose of detecting a major unintended release, but might be relatively insensitive for normal operations.

In October 1994, the District issued an Executive Director's Order to AMS terminating all sewer service effective October 24, 1994. In November 1994, the District placed a compression plug in the AMS lateral sewer line that connects the AMS Facility to the District's sewer system under London Road. Thus, in effect, the District isolated the AMS Facility's sanitary and storm drain lines from the sanitary sewerage treatment system. In mid-1995, AMS grouted shut the entire lateral line, to immobilize any residual cobalt-60 that remained in the lateral. AMS' grouting of the lateral line blocked release, through the lateral, from the AMS Facility to the District's sewer system. At some point following the grouting operation, the District removed the compression plug on AMS' lateral sewer line. Currently, there are drains at the AMS Facility that lead from the rooftop (for rainwater) to the main sewer system in London Road, but there are no other drains from the facility that are connected to the sewer system. The lateral connector, which connects all drains originating from within the AMS Facility to the District's sewer line, remains grouted. Also, in a settlement agreement between the District and AMS, executed on December 20, 1996, the District indicated that it would allow re-connection of the AMS Facility to its London Road Interceptor pursuant to procedures set forth in the agreement, provided that several conditions were first satisfied. As of the date of this Director's Decision, AMS has not executed all the conditions in the agreement. The December 1996 settlement agreement states that re-connection shall be in full accordance with several criteria and requirements, with one of the requirements being that AMS must agree not to discharge any cobalt-60 into the sanitary sewer system, directly or indirectly. See Settlement Agreement dated December 20, 1996, at 10, forwarded by a letter from Dwight Miller, Stavole & Miller, Attorneys and Counsellors at Law, to John Madera, Chief, Materials Inspection Branch 1, Region III, dated January 6, 1997. With this agreement for re-connection in place, and with the only connection between the interior of the AMS Facility and the District's sewer system grouted, until AMS satisfies the condition of the settlement agreement, the requested requirement for an alarm system is not necessary at this time.

The existence of unsealed cobalt-60 at the AMS Facility does represent a potential risk. As the NRC staff has previously stated, the possibility remains that the contamination existing on site might be spread to areas offsite or that future operations could result in offsite contamination. Such offsite contamination would not necessarily spread to the District's system, however. In addition, the likelihood of accidental release of cobalt-60 from the licensee's facility has diminished and continues to do so. Advanced Medical Systems (DD–94–6) 39 NRC 373, 379 (1994). Since 1994, the amount of cobalt-60 that could be released in an accident at the licensee's facility has been greatly diminished because of disposals to a licensed disposal site. See NRC Inspection Report No. 030–16055/97001(DNMS) (March 7, 1997). Moreover, NRC inspection and review of records have not revealed any documentation at AMS or other evidence that would indicate discharges into the sanitary sewer system have been in excess of authorized limits. Advanced Medical Systems, Inc. (DD–97–13) 45 NRC 460, 465 (1997). As the situation exists today, the NRC staff concludes that neither the contamination at the facility nor the licensee's drainage system present an immediate health and safety hazard to the public, and that the requested action is not warranted.

IV. Conclusion

The staff has carefully considered the request of the Petitioner. In addition, the staff has evaluated the bases for the Petitioner's request. For the reasons discussed above, the District's request for action pursuant to section 2.206 is denied, and no action pursuant to section 2.206 is being taken in this matter.

As provided by 10 CFR 2.206, a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. The Decision will

become the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, November 4, 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–30252 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23524; File No. 812–11282]

Provident Mutual Life Insurance Co. et al.

November 4, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order pursuant to Section 26(b) and Section 17(b) of the Investment Company Act of 1940 (the "Act" or the "1940 Act").

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of securities issued by certain management investment companies (each a "Management Company") and held by either Provident Mutual Variable Managed Separate Account (the "Managed Account"), Provident Mutual Variable Separate Account (the "Separate Account"), Providentmutual Variable Annuity Separate Account (the "Variable Account"), or Providentmutual Variable Life Separate Account (the "Variable Life Account") (each, an "Account," together, "Accounts") to support variable life insurance contracts or variable annuity contracts (collectively, the "Contracts") issued by Provident Mutual Life Insurance Company ("PMLIC") or Providentmutual Life and Annuity Company of America ("PLACA"). Applicants also seek an order exempting them from Section 17(a) of the Act to the extent necessary to permit PMLIC to consolidate the Managed Account with the Separate Account to permit PLACA to consolidate two subaccounts to the Variable Account and to consolidate two subaccounts of the Variable Life Account.

APPLICANTS: PMLIC, PLACA, the Managed Account, the Separate Account, the Variable Account, and the Variable Life Account.

FILING DATE: August 27, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on November 30, 1998, and must be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Adams Scaramell, Esq., Provident Mutual Life Insurance Company, 1050 Westlakes Drive, Berwyn, Pennsylvania 19312. Copies to Stephen E. Roth, Esq. and David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, N.W., Washington, D.C. 20004–2415.

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. PMLIC, a mutual life insurance company chartered by the Commonwealth of Pennsylvania, is authorized to transact life insurance and annuity business in Pennsylvania and in 50 other jurisdictions. PLMIC is the depositor and sponsor of the Separate Account and the Managed Account.

2. PLACA is a stock life insurance company originally incorporated under the laws of the Commonwealth of Pennsylvania in 1958, and redomiciled as a Delaware insurance company in 1992. It is a wholly owned subsidiary of PMLIC. PLACA is licensed to do business in 48 states and the District of Columbia. PLACA is a depositor and sponsor of the Variable Account and the Variable Life Account.

3. PMLIC established the Managed Account on October 21, 1985, and the Separate Account on June 3, 1993, as segregated investment accounts under Pennsylvania law. PLACA established the Variable Account on May 9, 1991, as a segregated investment account under Pennsylvania law, and established the Variable Life Account on June 30, 1994, as a segregated investment account under Delaware law. Each Account is a "separate account" as defined by Rule 0–1(e) under the Act, and is registered with the Commission as a unit investment trust.

4. The Separate Account is divided into sixteen subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponsing investment portfolio (each, a "Portfolio") of one of six series-type Management Companies. The Managed Account is not divided into subaccounts and invests in shares of the Market Street Fund, Inc. The assets of the Separate Account and the Managed Account support variable life insurance Contracts, and interests in these Accounts offered through such Contracts have been registered under the Securities Act of 1933 (the "1933 Act") on Form S–6.

5. The Variable Account is divided into thirty-three subaccounts. Each subaccount invests exclusively in a Portfolio of one of ten series-type Management Companies. The assets of Variable Account support annuity Contracts, and interests in the Account offered through such Contracts have been registered under the 1933 Act on Form N–4.

6. The Variable Life Account is divided into twenty-two subaccounts. Each subaccount invests in a Portfolio of one of seven series-type Management Companies. The assets of the Variable Life Account support variable life Contracts, and interests in the Account offered through such Contracts have been registered under the 1933 Act on Form S–6.

7. The Separate Account, the Variable Account, and the Variable Life Account each invest in two Management Companies that are involved in the substitutions discussed in the application: the Neuberger & Berman Advisers Management Trust and the American Century Portfolios, Inc.

8. American Century Variables Portfolios, Inc. ("ACVP") was organized as a Maryland corporation on June 4, 1987. It is registered under the Act as an open-end management investment company. ACVP is a series investment company as defined by Rule 18f–2 under the Act, and currently comprises six Portfolios, one of which, American Century V.P. Capital Appreciation Portfolio, is involved in the proposed substitutions. Investors Research Corporation serves as the investment adviser to ACVP.

9. AMT was organized as a Delaware business trust on May 23, 1994. AMT is registered under the Act as a diversified, open-end management investment company. AMT is a series investment company as defined by Rule 18f-2 under the Act, and is a "feeder" fund in a "master-feeder" structure. Each series of AMT currently invests all of its net investible assets in a corresponding series of Advisers Master Trust, the "master" fund. AMT currently comprises eight Portfolios. Neuberger & Berman Management Incorporated serves as investment adviser to AMT. The following AMT Portfolios are involved in the proposed substitutions discussed in the application: AMT's Balance Portfolio, AMT's Growth Portfolio and AMT's Partners Portfolio.

10. MSF was incorporated in Maryland on March 21, 1985. MSF is registered under the Act as an open-end diversified management investment company. MSF is a series investment company as defined by Rule 18f-2 under the Act and currently comprises eleven Portfolios. Providentmutual Investment Management Company serves as investment adviser to the MSF All Pro Large Cap Growth Portfolio. Sentinel Advisers Company serves as investment adviser to the Managed Portfolio.

11. The Contracts are flexible premium variable life insurance contracts and individual flexible premium deferred variable annuity contracts. PMLIC issues four of the variable life insurance Contracts that are participating in the proposed substitution. PLACA issues one of the variable life insurance Contracts and the only variable annuity Contract that are participating in the proposed substitution. The Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a fixed basis. PMLIC or PLACA, under each of the Contracts, reserves the right to substitute shares of one Portfolio for shares of another, including a Portfolio of a different Management Company.

12. Under all of the variable life insurance Contracts except the "Options Contract," a Contract owner may make unlimited transfers (in minimum amounts of at least $1000) of contract value in a Contract year between and among the subaccounts of the relevant Account, the other separate accounts available under the Contract, and either PMLIC's or PLACA's general account. However, after the fourth transfer in a Contract year, each insurer assesses a $25 charge for each transfer. Under the Options Contract, a Contract owner may make four transfers (of at least $100) of account value in a contract year between and among the subaccounts of the Separate Account and the other separate accounts available under this Contract. Under the PLACA variable annuity contract, a Contract owner may make unlimited transfers (of at least $500) of account value between and among the subaccounts of the Variable Annuity Account and PLACA's general account. There is no charge for transfers.

13. PMLIC, on its behalf and on behalf of the Separate Account; and PLACA, on its behalf and on behalf of the Variable Account and the Variable Life Separate Account; propose to make certain substitutions of shares held in those Accounts. PMLIC and PLACA propose to substitute shares of MSF Managed Portfolio for shares of AMT Balanced Portfolio, shares of MSF All-Pro Large Cap Growth Portfolio for shares of ACVP Capital Appreciation Portfolio, and shares of AMT Partners Portfolio for shares of AMT Growth Portfolio. PMLIC and PLACA believe that by making the proposed substitutions in each of their Accounts, they can better serve the interests of owners of their Contracts.

14. MSF Managed Portfolio and AMT Balanced Portfolio have substantially the same investment objectives and achieve these objectives by investing in equity and debt securities. Applicants, however, believe that the proposed substitutions will benefit Contract owners by offering MSF Managed Portfolio, which in recent years has had lower expenses and better performance than AMT Balanced Portfolio. MSF Manged Portfolio also is a more popular investment option than the AMT Balanced Portfolio. The expense ratios for MSF Manged Portfolio have been significantly lower over each of the past three years (by approximately 33% in 1995, by approximately 49% in 1996, and by approximately 46% in 1997) than the expense ratios for AMT Balanced Portfolio for the same periods. Applicants believe that MSF Managed Portfolio will continue to have low expense ratios, and have no reason to believe that AMT Balanced Portfolio will match the low expense ratios of the Balanced Portfolio in the near future. Likewise, for each of the past three years, MSF Managed Portfolio has had somewhat higher total returns than AMT Balanced Portfolio. Similarly, as shown below, the average annual total returns for the Portfolios for 1, 3, and 5 years show MSF Managed Portfolio with somewhat better performance results than AMT Balanced Portfolio.

AVERAGE ANNUAL TOTAL RETURNS

[As of 12/31/97]

	1 year	3 years	5 years
AMT Balanced	18.6%	15.6%	9.4%
MSF Managed	20.3%	18.2%	12.2%

Applicants have no reason to believe that, in the near term, the performance of AMT Balanced Portfolio will match or exceed that of MSF Managed Portfolio. Finally, Applicants assert that the AMT Balanced Portfolio has proved to be an unpopular investment choice with Contract owners and does not exhibit signs of becoming more popular in the future. During each of the past three fiscal years, far more Contract owners allocated Contract values to MFS Managed Portfolio than to AMT Balanced Portfolio.

NUMBER OF OWNERS OF ALL PMLIC/PLACA CONTRACTS WITH VALUE ALLOCATED TO EACH PORTFOLIO

	MSF managed portfolio	AMT balanced portfolio
12/31/97	13,062	3,320
12/30/96	12,767	2,802

NUMBER OF OWNERS OF ALL PMLIC/PLACA CONTRACTS WITH VALUE ALLOCATED TO EACH PORTFOLIO—Continued

	MSF managed portfolio	AMT balanced portfolio
12/31/95	12,495	2,058

For the foregoing reasons, Applicants submit that the proposed substitution of

the MSF Managed Portfolio for shares of the AMT Balanced Portfolio is in the best interests of Contract owners.

15. MSF All Pro Large Cap Growth Portfolio and ACVP Capital Appreciation Portfolio have substantially the same investment objective: to achieve capital appreciation or growth by investing in equity securities. In addition, ACVP Capital Appreciation Portfolio was managed with an essentially large capitalization growth stock investment style. Applicants' however, believe that Contract owners will be better served by replacing ACVP Capital Appreciation Portfolio with MSF All Pro Large Cap Growth Portfolio for three basic reasons: (a) ACVP Capital Appreciation's poor performance and shrinking asset base over each of the past three years, (b) the shift in investment strategy made by the adviser of ACVP Capital Appreciation Portfolio, and (c) the unpopularity of ACVP Capital Appreciation Portfolios as an investment option under the Contracts. For each of the past three fiscal years the total returns for ACVP capital Appreciation Portfolio have been poor. In 1996 and 1997 the Portfolio had negative total returns (−4.32% and −3.26%, respectively). The Portfolio had these poor returns despite the record highs achieved in the U.S. equity markets during 1996 and 1997. Further, ACVP Capital Appreciation Portfolio is the worst performing domestic equity Portfolio available under the Contracts for each of the past two fiscal years. In addition, the net assets of ACVP Capital Appreciation Portfolio have declined in each of the past three fiscal years. Significantly, the Portfolio's net assets declined by more than 50% during 1997. Should the decline in net assets of ACVP Capital Appreciation Portfolio continue, Applicants believe that the expenses of the Fund would eventually increase. Applicants have no reason to believe that the performance of the Portfolio or the rate of decline of its asset base will be reversed in the foreseeable future.

16. In addition to poor performance and a shrinking asset base, ACVP Capital appreciation Portfolio has recently changed its investment style. When PMLIC and PLACA selected the Portfolio as an investment option under the Contracts, it was managed primarily as a large capitalization growth stock portfolio. However, the investment adviser now emphasizes primarily smaller capital stocks. MSF All Pro Large Cap Growth Portfolio is a large capitalization growth stock portfolio that invests in the equity securities of the 750 largest companies by market capitalization. Substituting MSF All Pro Large Cap Growth Portfolio for ACVP Capital Appreciation Portfolio will ensure that the Contracts continue to offer a growth portfolio with a large capitalization stock orientation.

17. Finally, Applicants submit that ACVP Capital Appreciation Portfolio has been among the least (if not the least) popular investment option for Contract owners for each of the past three fiscal years, and does not exhibit signs of becoming more popular in the future. Applicants believe that MSF All Pro Large Cap Growth Portfolio would be a more popular investment option for Contract owners. For the foregoing reasons, Applicants submit that the substitution of MSF All Pro Large Cap Growth Portfolio shares for shares of ACVP Capital Appreciation Portfolio will better serve the interests of Contract owners.

18. AMT Partners Portfolio has substantially the same investment objective as the AMT Growth Portfolio. Applicants, however, believe that it is in the best interests of Contract owners to substitute shares of the AMT Partners Portfolio for shares of the AMT Growth Portfolio because of the change in investment strategy of the AMT Growth Portfolio, and the good performance, declining expenses, and growth potential of the AMT Partners Portfolio. Although AMT Growth Portfolio has not changed its investment objective recently, its style of investing has changed dramatically. In July 1997, the Fund's adviser appointed a new portfolio manager. As a result of this management change, AMT Growth Portfolio no longer follows a strategy which emphasizes the selection of large capitalization stocks with value characteristics and instead employs a strategy which emphasizes the selection of mid-capitalization stocks with strong earnings growth momentum. AMT Partners Portfolio is essentially the portfolio that the AMT Growth Portfolio once was. In addition, AMT Partners Portfolio follows what used to be AMT Growth Portfolio's investment strategy of investing significantly in large capitalization stocks with value characteristics such as low price/earnings ratios. As such, the AMT Partners Portfolio is a suitable replacement to fill the void left by the AMT Growth Portfolio in the large capitalization value category of investment options available under the Contracts.

19. Moreover, the AMT Partners Portfolio has exhibited stronger performance and greater growth over each of the past three fiscal years than has AMT Growth Portfolio. For example, during 1997, net assets increased by approximately 57%, the expense ratio declined .09% from 1996 to .86%, and total return increased from 29.57% in 1996 to 31.25% in 1997. In contrast, net assets of AMT Growth Portfolio increased approximately 3% over 1997, the expense ratio declined only .02% from 1996 to .90%, and total return increased from 9.14% in 1996 to 29.01%. In addition, for each of the past three years, the expense ratios for the AMT Partners Portfolio have declined, while the expense ratios for the AMT Growth Portfolio have stayed roughly the same. Applicants have no reason to believe that strong performance, declining expenses, and growth potential of the AMT Partners Portfolio will not continue. For the foregoing reasons, Applicants believe that Contract owners would be better served by substituting shares of the AMT Partners Portfolio for shares of the AMT Growth Portfolio.

20. The following charts show the approximate year-end size (in net assets), expense ratio (ratio of operating expenses as a percentage of average net assets), and annual total returns for each of the past three years for five of the six Portfolios involved in the proposed substitutions. (The MSF All Pro Large Cap Growth Portfolio is not included in the charts below because it is new.)

	Net assets at year-end (in millions)	Expense ratio (percent)	Total return (percent)
AMT Balanced Portfolio:			
1995	$144.4	.99	23.76
1996	173.2	1.09	6.89
1997	161.9	1.04	19.45
MSF Managed Portfolio:			
1995	36.0	.66	24.43
1996	43.4	.60	11.88

	Net assets at year-end (in millions)	Expense ratio (percent)	Total return (percent)
1997	56.1	.58	21.23
American Century V.P. Capital Appreciation Portfolio:			
1995	1,461.0	.99	31.10
1996	1,314.0	1.00	(4.32)
1997	594.0	1.00	(3.26)
AMT Growth Portfolio:			
1995	537.8	.90	31.73
1996	566.4	.92	9.14
1997	583.7	.90	29.01
AMT Partners Portfolio:			
1995	207.5	1.09	36.47
1996	705.4	.95	29.57
1997	1,632.8	.86	31.25

21. By supplements to the various prospectuses for the Contracts and the Accounts, all owners of the Contracts will be notified of PMLIC's and PLACA's intention to take the necessary actions to substitute shares of the Portfolios. The supplements for the Accounts advise Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make one transfer of all amounts under a Contract invested in any one of the affected subaccounts or the Managed Account on the date of the supplement to another subaccount or separate account available under a Contract other than one of the other affected investment subaccounts or the Managed Account, without that transfer counting as a "free" transfer permitted under a Contract. The supplements also inform Contract owners that PMLIC and PLACA will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the Proposed substitution.

22. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's account value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights to PMLIC's nor PLACA's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by PMLIC or PLACA. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. The proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. PMLIC and PLACA will not exercise any right either may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the substitutions.

23. In addition to the prospectus supplements distributed to owners of Contracts, within five days after the proposed substitutions, any Contract owners who were affected by the substitution will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all account value under a Contract invested in any one of the affected subaccounts or the Managed Account on the date of the notice to another subaccount or separate account available under their Contract without that transfer counting as one of any limited number of transfers permitted in a Contract year or as one of a limited number transfers permitted in a Contract year free of charge. The notice will also reiterate the fact that PMLIC and PLACA will not exercise any rights reserved by either under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states. Contract owners who are affected by the substitutions may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by PMLIC (or one of its affiliates) or PLACA (or one of its affiliates) during the 60 days following the proposed substitutions. The notices will be accompanied by current prospectuses for MSF Managed Portfolio, the MSF All Pro Large Cap Growth Portfolio, and the AMT Partners Portfolio.

24. PMLIC and PLACA also are seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

Applicants' Legal Analysis

Section 26(b)

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. Section 26(b) was added to the Act by the Investment Company Amendments of 1970. Prior to the enactment of the 1970 amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five days of the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted fund, recommended that Section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval. Congress responded to the Commission's concerns by enacting Section 26(b) to require that the Commission approve all substitutions by the depositor of investments held by unit investment trusts.

2. The proposed substitutions appear to involve substitutions of securities within the meaning of Section 26(b) of the Act. Applicants therefore request an order from the Commission pursuant to Section 26(b) approving the proposed substitutions.

3. The Contracts expressly reserve for PMLIC or PLACA the right, subject to

compliance with applicable law, to substitute shares of another Management Company for shares of a Management Company held by an Account or a subaccount of an Account. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right. PMLIC and PLACA each reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contract owners.

4. In the case of the proposed substitution of shares of MSF Managed Portfolio for shares of AMT Balanced Portfolio, AMT Balanced Portfolio would be replaced by a Portfolio with substantially the same investment objectives but which has lower expenses and better performance. Moreover, MSF Managed Portfolio is already available under the Contracts and is a more popular investment option than AMT Balanced Portfolio.

5. In the case of the proposed substitution of shares of MSF All Pro Large Cap Growth Portfolio for shares of ACVP Capital Appreciation Portfolio, the interests of Contract owners will be better served primarily because the worst performing domestic equity Portfolio and one of the least attractive investment options under the Contracts would be replaced by a Portfolio with substantially the same investment objective and hopefully better performance. In addition, ACVP Capital Appreciation Portfolio has shifted its investment strategy since it was first made available as an investment option to Contract owners. Its investment adviser no longer primarily invests in large capitalization stocks and instead primarily invests in smaller capitalization stocks. MSF All Pro Large Cap Growth Portfolio, in contrast, will invest primarily in large capitalization stocks.

6. Finally, in the case of the proposed substitution of shares of AMT Partners Portfolio for shares of AMT Growth Portfolio, Contract owners will be better served because AMT Partners Portfolio has an investment strategy comparable to that of AMT Growth Portfolio before it changes its strategy. However, AMT Partners Portfolio has lower fees, better performance, and better growth potential than AMT Growth Portfolio. AMT Partners Portfolio uses the value style of investing (as opposed to the growth style of investing currently used by AMT Growth Portfolio) and has substantially the same investment objective as AMT Growth Portfolio.

7. In addition to the foregoing, Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

8. Applicants anticipate that Contract owners will be in at least as favorable a position with the proposed array of separate accounts and subaccounts offered after the proposed substitutions as they have been with the array of separate accounts and subaccounts offered prior to the substitutions. The proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer account values between and among the same number of separate accounts or subaccounts as they could before the proposed substitutions.

9. Applicants assert that each of the proposed substitutions is not the type of substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer account values into other separate accounts or subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

10. The proposed substitutions also are unlike the type of substitution which Section 26(b) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific type of insurance coverage offered by PMLIC or PLACA under their Contract as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered PMLIC's or PLACA's size, financial condition, type and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed substitutions.

11. Applicants submit that, for all the reasons summarized above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 17(b)

12. Applicants also request an order under Section 17(b) exempting them from the provisions of Section 17(a) to the extent necessary to consolidate: (a) the Managed Account with the subaccount of the Separate Account that will invest in MSF Managed Portfolio, (b) the subaccount of the Variable Account that currently invests in MSF Managed Portfolio with the subaccount that currently invests in AMT Balanced Portfolio, and (c) the subaccount of the Variable Life Account that currently invests in MSF Managed Portfolio with the subaccount that currently invests in AMT Balanced Portfolio.

13. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company. Because the Managed Account and the Separate Account (as well as several other PMLIC separate accounts) are registered collectively with the Commission as a single unit investment trust of which PMLIC is the depositor, the Managed Account and the Separate Account are affiliated persons of each other. Because PLACA is the depositor of the Variable Account and the Variable Life Account, these Accounts are affiliated persons of each other. Further, because all of the Accounts are under the common control of PMLIC, they are all affiliated persons of each other.

14. The combining of the Managed Account with a subaccount of the Separate Account, and possibly the consolidation of subaccounts of the Variable Account and the Variable Life Account, because it could be deemed to involve the transfer of assets from one entity to another, may involve these entities, acting as principal, in buying and selling securities or other property from one to another in contravention of Section 17(a).

15. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that:

(a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(b) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and

(c) The proposed transaction is consistent with the general purposes of the Act.

16. Applicants submit that the terms of the proposed substitutions, as described in this Application, including the consideration to be paid and received, are fair and reasonable and do not involve overreaching on the part of any person concerned. Applicants also submit that the proposed substitutions are consistent with the policies of each of the Accounts and with the general purposes of the Act. The Commission has previously granted exemptions from Section 17(a) to permit the combination or consolidation of separate accounts registered as unit investment trusts. The Commission also has granted numerous exemptions from Section 17(a) to permit the consolidation of subaccounts of a separate account registered as a unit investment trust in connection with a substitution.

17. Rule 17a–8 under the Act provides an exemption from Section 17(a) of the Act for mergers of affiliated mutual funds (or acquisitions of one fund by an affiliated fund) as long as the directors of the funds determine that the merger (or acquisition) is in the best interests of the fund and that the interests of each fund's shareholders will not be diluted. In proposing Rule 17a–8, the Commission offered several factors for directors to consider in reaching this determination. Although the Accounts (and relevant subaccounts) do not have directors and the proposed substitutions do not come within the parameters of Rule 17a–8, Applicants submit that the Commission may look to these factors as a standard for judging the reasonableness and fairness of the proposed substitutions and related consolidations.

(a) Immediately after the proposed substitutions, the Managed Account and each affected subaccount of the other Accounts would invest exclusively in shares of the same Portfolio as does the subaccount with which it would be consolidated. Therefore, to the extent that the investment objectives of these Portfolios can be attributed to the Managed Account or a subaccount, each surviving subaccount will, by definition, have the same "investment objectives, policies, restrictions and portfolios" after the proposed substitutions and related consolidations as it and its consolidation partner had before the transactions.

(b) The proposed substitutions and related consolidations will be effected by "combining" the Managed Account and certain subaccounts with other subaccounts and transferring shares of Portfolios held by the Managed Account or a subaccount to a surviving subaccount. The transfer will be carried out in conformity with Section 22(c) of the Act and Rule 22c–1 thereunder in that the aggregate net asset value of the transferred shares will not change and each Contract owner holding units of interest in the Managed Account or a subaccount will have those units exchanged for units of equal value in the surviving subaccount. The "prices" or values of the exchanged interests under the Contracts will thus be equivalent. In addition, the proposed substitutions and related consolidations will impose no tax liability upon Contract owners or alter the tax status of the Contracts. The proposed substitutions and related consolidations will not in any way dilute the interests of Contract owners.

(c) PMLIC or PLACA will bear all of the costs and expenses of the proposed substitutions and related consolidations. None of the Accounts, affected subaccounts or Contract owners will incur any costs or expenses and will not pay any fees or charges as a result of the proposed substitutions and related consolidations. Therefore, no direct or indirect costs to Contract owners or dilution of Contract owner interests will occur.

18. The proposed substitutions and related consolidations will benefit Contract owners by consolidating an unneeded Account and several duplicative subaccounts of other Accounts. The consolidations are motivated by effiencies of administration that will result from the elimination of the Managed Account and two subaccounts of each of the other Accounts, the continued existence of which serves no useful purpose. PMLIC and PLACA expect and intend that Contract owners will benefit from the consolidation to the extent that it streamlines record keeping and other administrative operations.

19. As explained above, each surviving subaccount will have the same investment policy as its consolidation partner as recited in the registration statements and reports for both filed under the Act.

20. The proposed substitutions and related consolidations are consistent with the general purposes of the Act, as enunciated in the Findings and Declaration of Policy of the Act, particularly, Section 1(b)(2). The proposed substitutions and related consolidations do not present any of the abuses that the Act was designed to prevent or raise issues it was designed to address. Applicants will carry out the proposed substitutions and related consolidations in a manner appropriate in the public interest and consistent with the protection of investors.

21. Applicants submit that, for all of the reasons summarized above, the terms of the proposed substitutions and related consolidations, including the consideration to be paid or received, are reasonable and fair to each Account (and subaccounts) and to Contract owners invested in each and do not involve overreaching on the part of any person; furthermore, the proposed substitutions and related consolidations are consistent with the policy of each Account (and subaccount) and the general purposes of the Act.

Conclusion

For the reasons summarized above, Applicants assert that the requested order meets the standards set forth in 26(b) and 17(b), respectively, and should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30246 Filed 11–10–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40631; File No. SR–NYSE–98–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to NYSE Rule 64

November 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 October 16, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to NYSE Rule 64. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE 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 and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, NYSE Rule 64 requires Floor Official approval for all "non-regular way" [3] trades during all but the final calendar week of the year. The Rule provides that during the last calendar week of the year such approval is required only for sales more than 4/16 point away from the regular way bid or offer. The Exchange is proposing that the rule be amended so that the current provision applicable for the last week of trading in the year applies at all times. Therefore, Floor Official approval would be required only for those "non-regular way" trades that are more than 4/16 point away from the regular way bid or offer.

Exchange staff has analyzed price changes from the current bid or offer for "non-regular way" trades during June 1998. Their analysis showed that 97% of such trades were 4/16 point or less away from the regular way bid or offer. This result indicates that a large proportion of "non-regular way" trades occur at a small variation from the current regular way market.

The Exchange believes that the proposed rule change would relieve members of the burden of obtaining Floor Official approval for routine "non-regular way" trades at small price variations, while preserving Floor Official supervision for those instances where it is most needed. The Rule would retain the requirement for Floor Officials to "take into consideration whether the price of the transaction is reasonable in relation to the 'regular way' market" when deciding whether to grant approval for a "non-regular way" trade.

The Exchange believes that this proposal would allow Floor Officials to focus their attention on supervising those situations where oversight is most important.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–33 and should be submitted by December 3, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30247 Filed 11–10–98; 8:45 am]

BILLING CODE 8010–01–M

[3] A "non-regular way" trade is a trade that is settled in a different time frame from "regular-way" trades, which settle on the third business day following the transaction. *See* NYSE Rule 64(a)(3).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

STATE JUSTICE INSTITUTE

Sunshine Act Meeting

DATE AND TIME:

Friday, November 20, 1998 9:00 a.m.–5:00 p.m.

Saturday, November 21, 1998 9:00 a.m.–12:00 p.m.

PLACE: Hilton, Palm Springs Resort, 400 E. Tahquitz Canyon Way, Palm Springs, CA 92262.

MATTERS TO BE CONSIDERED: FY 1999 grant requests, internal Institute business matters.

PORTIONS OPEN TO THE PUBLIC: All matters other than those noted as closed below.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters and Board of Directors' committee meetings.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 98–30290 Filed 11–6–98; 4:47 pm]

BILLING CODE 6820–SC–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need for and usefulness of the BTS Form 41. Comments are requested concerning whether (a) the continuation of Form 41 is necessary for DOT to carry out its mission of promoting air transportation; (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, use and clarity of the data collected; and (d) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, BTS, at (202) 366–4387.

SUPPLEMENTAL INFORMATION:

OMB Approval No. 2138–0013.

Title: Report of Financial and Operating Statistics for Large Certificated Air Carriers.

Form No.: BTS Form 41.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 98.

Estimated Time Per Response: 4 hours.

Total Annual Burden: 35287 hours.

Needs and Uses: DOT uses Form 41 traffic data to help formulate the United States position in international negotiations, to select carriers for international routes and to conduct environmental impact analyses. DOT uses Form 41 cost data to calculate the Standard Fare Levels (Passenger and Cargo) and to set the Intra-Alaska and international mail rates. The Department of the Air Force, Military Airlift Command uses Form 41 data in ratemaking for the Civil Reserve Air Fleet Program, and for its Air Carrier Analysis Support System (ACAS). DOT uses aircraft inventory data in its administration of the War Air Service Program (Emergency Preparedness). DOT uses operational and financial data to review International Air Transport Association Agreements (IATA), to review initial air carrier fitness, to review air carrier continuing fitness, to review foreign air carrier applications and to monitor the status of the air transport industry. The Justice Department uses the data in its antitrust analyses. DOT meets its responsibility to the International Civil Aviation Organization, an arm of the United Nations, by the use of Form 41 data.

Traffic data, especially enplanement data, are used for the National Plan of Integrated Airport Systems, airport capacity analyses, the Airport Improvement Program, systems planning at airports, exemption requests to transport hazardous materials, and essential air service analyses. The Federal Aviation Administration and the National Transportation Safety Board use Form 41 data in safety analyses (operational), air carrier certification, safety forecasting/ regulatory analysis and air carrier safety surveillance and inspection.

The Department of Energy uses Form 41 fuel data in monitoring industry fuel consumption for emergency preparedness planning.

The Department of Commerce, Bureau of Economic Analysis, uses Form 41 data in its estimation of the Gross National Product, analyses of international trade accounts and to compile the Input-Output Tables of the United States.

The Department of Labor uses employment statistics in its Productivity Studies and Indices.

Timothy E. Carmody,

Director, Office of Airline Statistics, Bureau of Transportation Statistics.

[FR Doc. 98–30245 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: George Bush Intercontinental Airport, Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for construction of a proposed new Runway 8L–26R, extension and widening of Runway 14R–32L and associated near term master plan projects at George Bush International Airport, Houston, Texas.

The purpose of the proposed project is to reduce aircraft delay and maintain the Airport's ability to serve as a connecting hub.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Senior Program Manager, ASW–651, Texas Airports Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298. Telephone (817) 222–5655.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the city of Houston Department of Aviation, will prepare an EIS for the proposed project. The city of Houston proposes to construct a new air carrier runway to improve the efficiency of George Bush Intercontinental Airport. The preliminary proposed placement of the runway is parallel to and north of the existing Runway 8–26. The preliminary length is approximately 9,400 feet. While this is the preliminary layout proposed by the city of Houston, a number of alternative placements will be explored in the EIS. The city of Houston also proposes to extend and widen Runway 14R–32L to improve the efficiency of the Airport. Extensions to both runway ends, as well as a single runway end, will be considered in the EIS. The city of Houston also proposes to expand the International Arrival Building (IAB) to improve the terminal efficiency of George Bush Intercontinental Airport. International traffic has been increasing an average of 15 percent a year since 1995. Associated with these projects, the City proposes the following projects: improve Airport drainage, construct storm runoff treatment system, extend the Automated People Mover (APM), extend the Terminal C south ramp, extend the ramp north of Terminals B and C, expand aircraft rescue and fire fighting (ARFF) Station 54, construct a new cargo area, extend Taxiway SD across JFK Boulevard, and other near-term projects.

The FAA intends to conduct a scoping process to gather input from all interested parties to help identify any issues of concern associated with the proposed project. In addition to this notice, Federal, state, and local agencies which have jurisdiction by law or have special expertise with respect to any potential environmental impacts associated with the proposed project will be notified through letter of a scoping meeting to be held at 1 p.m. on December 9, 1998, in the Terminal A conference room at George Bush Intercontinental Airport. In order to notify the general public of the scoping process, a notice will be placed in a newspaper having general circulation in the project area describing the proposed

project and its purpose. The newspaper notice will notify the public that a scoping meeting will be held on December 9, 1998, at the Nimitz High School, 2005 W.W. Thorne Rd., Houston, TX 77073 and on December 10, 1998, at the Deerbrook Mall Community Room, 20131 Highway 59, Humble, TX 77338 to gain the public's input concerning the proposed project.

Issued on: November 4, 1998.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 98–30240 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Chicago Midway Airport, Chicago, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 14, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Mary Rose Loney, Commissioner, of the City of Chicago, Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, Illinois 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago, Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip M. Smithmeyer, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (847) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 22, 1998 the FAA determined that the application to use the revenue from a PFC submitted by the City of Chicago, Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 29, 1999.

The following is a brief overview of the application.

PFC application number: 99–06–U–00–MDW.

Level of the proposed PFC: $3.00.

Actual charge effective date: August 1, 1998.

Estimated charge expiration date: August 1, 2020.

Total estimated PFC revenue: $187,179,775.

Brief description of proposed project(s): Midway Terminal Development.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi operators.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago, Department of Aviation.

Issued in Des Plaines, Illinois on November 2, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–30239 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Howell, Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for proposed vehicular improvements for access to the Kent County International Airport and areas surrounding the airport in the southeast Grand Rapids and Kentwood area of, Kent County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. James Kirschensteiner, Environmental Programs and Field Operations Engineer, Federal Highway Administration, 315 W. Allegan Street, Lansing, Michigan 48933, Telephone (517) 377–1880 x 41, Mr. Ron Kinney, Manager, Environmental Section, Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone (517) 335–2621, or Mr. Steve Warren, Kent County Road Commission, 1500 Scribner Ave. NW, Grand Rapids, Michigan 49504, Telephone (616) 752–7111.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Michigan Department of Transportation (MDOT), Kent County Road Commission, Grand Valley Metropolitan Council, City of Kentwood, Cascade Charter Township, Kent County International Airport, and the Grand Rapids Area Transit Authority, is preparing an Environmental Impact Statement (EIS) for proposed access improvements to the Kent County International Airport and environs. The area is experiencing significant growth and development. Currently there is no direct airport access to and from the freeway system. Existing roadways accessing the airport and the surrounding environs are not able to accommodate current and future traffic volumes in an acceptable manner.

A Major Investment Study is underway to narrow the range of alternative investment strategies. The alternatives under consideration include (1) No Build, (2) the construction of a new I–96 Interchange at a new location, and (3) implementing traffic management programs which could include expansion of transit ridership, and/or travel demand management initiatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, with a Scoping Document. A substantial public involvement effort is currently underway to solicit public views and comments. Two public involvement efforts have been conducted to date under the Major Investment Study: the first in April 1998

and the second on October 21, 1998, to provide the public an opportunity to discuss the proposed action. A public hearing will also be held on the Draft Environmental Impact Statement. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A Scoping Meeting is scheduled for November 23, 1998, at 9:00 a.m. at the Kent County Road Commission.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on: November 3, 1998.

Norman R. Stoner,

Assistant Division Administrator, Lansing, Michigan.

[FR Doc. 98–30268 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–98–4622]

National Corridor Planning and Development Program and Coordinated Border Infrastructure Program—Implementation of the Transportation Equity Act for the 21st Century

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments; solicitation of applications for FY 1999 grants.

SUMMARY: This document provides implementation guidance on sections 1118 and 1119 of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178. These sections established the National Corridor Planning and Development Program (NCPD program) and the Coordinated Border Infrastructure Program (CBI program). The NCPD program and the CBI program are funded by a single funding source. These programs provide funding for planning, project development, construction and operation of projects that serve border regions near Canada and Mexico and high priority corridors throughout the United States. States and metropolitan planning organizations (MPOs) are, under the NCPD program, eligible for discretionary grants for: corridor feasibility; corridor planning; multistate coordination; environmental review; and construction. Border States and metropolitan planning organizations (MPOs) are, under the CBI program, eligible for discretionary grants for: transportation and safety infrastructure improvements, operation and regulatory improvements and coordination and inspection improvements in a border region.

DATES: Grant applications should be received by FHWA Division Offices on January 11, 1999. Specific information required in grant applications is provided in Section III of this notice. Comments on program implementation should be received on or before April 12, 1999. The additional time is provided so that any applicants can use the first 60 days to fully concentrate on preparing grant applications and, subsequently, to use information developed during that time to formulate comments in the following 90 days. The FHWA will consider comments received in developing the FY 2000 solicitation of grant applications. More information on the type of comments sought by the FHWA is provided in Section II of this notice.

ADDRESSES: Your signed, written comments on program implementation for FY 2000 and beyond should refer to the docket number appearing at the top of this document and you must submit the comments 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 should include a self-addressed, stamped envelope or postcard.

Applications for FY 1999 grants under the NCPD and CBI programs should be submitted to the FHWA Division Office in the State of the applicant.

FOR FURTHER INFORMATION CONTACT: Martin Weiss, Intermodal and Statewide Programs Division, HEP–10, (202) 366–5010; or Diane Mobley (for the NCPD program), Office of the Chief Counsel, HCC–31, (202) 366–1366; or Grace Reidy (for the CBI program), Office of the Chief Counsel, HCC–31, (202) 366–6226; Federal Highway Administration, 400 Seventh Street SW., Washington D.C. 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 Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: "http://www.nara.gov/fedreg" and the Government Printing Office's database at: "http://www.access.gpo.gov/nara".

In addition, a number of documents and links concerning the NCPD and CBI programs are available though the home page of the Corridor/Border Programs: "http://www.fhwa.dot.gov/hep10/corbor/corbor.html".

Background

Sections 1118 and 1119 of the TEA–21 establish the NCPD and CBI programs; respectively. These programs respond to substantial interest in both subjects dating from, at least as early as, 1991. In that year, the Intermodal Surface Transportation Efficiency Act (ISTEA) designated a number of high priority corridors. Subsequent legislation modified the corridor descriptions and designated additional corridors. Citizen and civic groups were formed to promote many of these corridors as, for example, a means to accommodate international trade. Similarly, since 1991, a number of studies have identified infrastructure and operation deficiencies near the U.S. borders with Canada and Mexico. Also various groups, some international and/or intergovernmental, were formed to study opportunities to improve infrastructure and operations.

The NCPD and CBI programs are funded by a single funding source. The combined authorized funding for these two programs is $140 million in each year from FY 1999 to FY 2003 (a total of $700 million). However, obligations will be limited each year by the requirements of Section 1102 (Obligation Ceiling) of the TEA–21.

Under the NCPD program, funds are available to States and metropolitan planning organizations (MPOs) for coordinated planning, design, and construction of corridors of national

significance, economic growth, and international or interregional trade. Under the CBI program, funds are available to border States and MPOs for projects to improve the safe movement of people and goods at or across the border between the United States and Canada and the border between the United States and Mexico. In addition, the Secretary may transfer up to a total of $10 million of combined program funds, over the life of the TEA–21, to the Administrator of General Services for the construction of transportation infrastructure necessary for law enforcement in border States. Such transfers will be made outside the provisions of this notice, based on funding requested and supporting information furnished by the Administrator of General Services.

The Federal share for these funds is 80% plus the sliding scale adjustment in States with substantial public lands. The period of availability for obligation is the fiscal year for which the funds are authorized and the 3 years following. States which receive an allocation of funds under these programs will, at the same time, receive an increase in obligation authority equal to the allocation. For FY 1999, there will be no targets for each of the two programs (e.g., x% for the NCPD program and y% for the CBI program). However, based on the wide interest in all facets of both programs, the FHWA does expect to allocate substantial funding in FY 1999 for projects from both the NCPD and CBI programs.

This notice includes three sections and one attachment:

Section I—Notice of program implementation
Section II—Request for comments on program implementation in FY 2000 and beyond
Section III—Solicitation of applications for FY 1999 grants
Attachment 1—Summary sheet

Section I—Notice of Program Implementation

The FHWA is implementing both the NCPD and CBI programs with the same goals: These are:

1. Respect both the letter and the intent of existing statutes.

2. Minimize administrative additions to statutory requirements.

3. Minimize grant application paperwork.

4. Maximize administrative control of grants by FHWA field personnel rather than FHWA Headquarters personnel.

5. Encourage substantive coordination of grant applications and grant administration by State and local officials.

6. Encourage appropriate private/public, State/local, intermodal, interregional, multistate and multinational coordination.

7. Encourage grant applications that have realistic objectives and time horizons.

Outreach, Coordination and Cooperation

In addition to the goals noted above, the implementation of this program has been based on various other sources of information. The first source of input, both verbal and written, were the comments made by elected officials and the general public during the course of the DOT's outreach activities following the passage of TEA–21. Written comments were those received by the public docket associated with the overall TEA–21 outreach program. The U.S. Department of Transportation (DOT) established Docket No. OST–98–4146 for such comments. Verbal comments were those provided by people at three outreach sessions which focused specifically on the NCPD and CBI programs. These sessions were held: in San Diego, CA on August 25, 1998; in Detroit, MI on August 27, 1998; and, in Houston, TX on October 8, 1998. Internet users may access summaries of these sessions from the home page of the TEA–21 outreach session at: "http://www.fhwa.dot.gov/tea21/outreach.htm".

The second source of input were the comments made by a working group comprised of persons in various offices in the FHWA and other offices in the DOT.

The third source of input was information provided during other discussions between FHWA staff and a variety of public sector and private sector officials who have contributed program related information and/or voiced concerns since the passage of TEA–21.

Eligibility—NCPD Program

Projects eligible for funding include:

1. Feasibility studies.

2. Comprehensive corridor planning and design activities.

3. Location and routing studies.

4. Multistate and intrastate coordination for corridors.

5. Environmental review or construction after review by the Secretary of a development and management plan for the corridor or useable section of the corridor (hence called "corridor plan").

The FHWA considers work in the pre-feasibility stage of a project, e.g., development of metropolitan and State plans and programs, as not eligible for support with federal aid under Section 1118 funds (although funds authorized by other portions of the TEA–21 are eligible for such support), but project development planning is eligible for support.

The FHWA construes the phrase 'environmental review', as used above, as being the portion of the environmental documentation (e.g., EA/FONSI, EIS) process requiring formal interagency review and comment. Thus, even without review of the corridor plan, work needed to produce the pre-draft EIS and to revise the draft would be eligible for support with federal aid under Section 1118. However, work subsequent to FHWA signature of the draft EIS (or equivalent) would not be eligible for such support until review of the corridor plan. Subsequent to such a review, work on a final EIS and any other necessary environmental work would be eligible for funding under this section.

Eligibility for funds from the NCPD program is limited to high priority corridors identified in Section 1105(c) of the ISTEA, as amended, and any other significant regional or multistate highway corridors selected by the Secretary after consideration of the criteria listed for selecting projects for NCPD funding. Fund allocation to a corridor does not constitute designation of the corridor as a high priority corridor. The FHWA has no statutory authority to make such a designation.

Eligibility—CBI Program

Projects eligible for funding include:

1. Improvements to existing transportation and supporting infrastructure that facilitate cross border vehicle and cargo movements.

2. Construction of highways and related safety and safety enforcement facilities that will facilitate vehicle and cargo movements related to international trade.

3. Operational improvements, including improvements relating to electronic data interchange and use of telecommunications, to expedite cross border vehicle and cargo movements.

4. Modifications to regulatory procedures to expedite cross border vehicle and cargo movements.

5. International coordination of planning, programming, and border operation with Canada and Mexico relating to expediting cross border vehicle and cargo movements.

6. Activities of Federal inspection agencies.

The statute requires projects to be in a border region. The FHWA considers projects within 100 km (62 miles) of the

U.S./Canada or U.S./Mexico border to be in a border region.

Selection Criteria for the NCPD Program Funding

The statute identifies the following criteria to be used in identifying corridors, in addition to those statutorily designated for eligibility. These criteria will be used for selecting projects for funding:

1. The extent to which the annual volume of commercial vehicle traffic at the border stations or ports of entry of each State: has increased since the date of enactment of the North American Free Trade Agreement (NAFTA); and is projected to increase in the future.
2. The extent to which commercial vehicle traffic in each State has increased since the date of enactment of the NAFTA; and is projected to increase in the future.
3. The extent to which international truck-borne commodities move through each State.
4. The reduction in commercial and other travel time through a major international gateway or affected port of entry expected as a result of the proposed project including the level of traffic delays at at-grade highway crossings of major rail lines in trade corridors.
5. The extent of leveraging of Federal funds provided under this subsection, including: use of innovative financing; combination with funding provided under other sections of the TEA–21 and Title 23 U.S.C.; and combination with other sources of Federal, State, local or private funding including State, local and private matching funds.
6. The value of the cargo carried by commercial vehicle traffic, to the extent that the value of the cargo and congestion impose economic costs on the Nation's economy.
7. Encourage or facilitate major multistate or regional mobility and economic growth and development in areas underserved by existing highway infrastructure.

Specific aspects of the NCPD program require the FHWA to interpret these criteria. Based on the goals noted above in Section I., the FHWA intends to use a flexible interpretation. For example, while the date of the enactment of NAFTA was December 8, 1993, traffic data which provides an average for the calendar year 1993 could be used for the pre-NAFTA information. For another example, since businesses use both imported and domestically produced materials in a constantly changing component mix to produce higher valued products, and because, interregional trade is noted as part of the purpose of the section, either interstate traffic or interregional traffic could be used as a surrogate for "international truck-borne commodities". Similarly, where determining the value of cargo carried by commercial vehicle traffic would be impossible without using proprietary information, a reasonable surrogate could be based on the vehicle traffic multiplied by an imputed value for various classes of cargo.

Selection Criteria for the CBI Program Funding

The selection criteria in the statute are:

1. Expected reduction in commercial and other motor vehicle travel time through an international border crossing as a result of the project.
2. Improvements in vehicle and highway safety and cargo security related to motor vehicles crossing a border with Canada or Mexico.
3. Strategies to increase the use of existing, underutilized border crossing facilities and approaches.
4. Leveraging of Federal funds including use of innovative financing, combination of such funds with funding provided under other sections of the TEA–21 and combination with other sources of Federal, State, local or private funding.
5. Degree of multinational involvement in the project and demonstrated coordination with other Federal agencies responsible for the inspection of vehicles, cargo, and persons crossing international borders and their counterpart agencies in Canada and Mexico.
6. Improvements in vehicle and highway safety and cargo security in and through the gateway or affected port of entry concerned.
7. The extent to which the innovative and problem solving techniques of the proposed project would be applicable to other border stations or ports of entry.
8. Demonstrated local commitment to implement and sustain continuing comprehensive border or affected port of entry planning processes and improvement programs.

As in the NCPD program criteria, the FHWA intends to use a flexible interpretation of the CBI program selection criteria. For example, because local (e.g., county, municipal) agencies sometimes have very small capital improvement budgets, that local commitment for continuing planning and improvement will be considered in the context of local program cooperation with State projects in the border regions as well as in the context of local financial support for such projects.

Selection Criteria Common to all Discretionary Programs

The concept of equity was very important in the development of TEA–21. Therefore, national geographic distribution among all discretionary programs and congressional direction or guidance will be considered by the Administrator in the selection of projects for discretionary funds.

Evaluation Considerations for both the NCPD and the CBI Program

To adequately evaluate the extent to which selection criteria noted above have been met by individual projects, the FHWA will consider the following in each grant application:

1. Likelihood of expeditious completion of a useable project or product.
2. Size, in dollars, of the program grant request in comparison to likely accomplishments (e.g., grant requests that exceed about 10% of the available NCPD and CBI program funding in a given year would be expected to be subject to extra scrutiny to determine whether the likely consequences would be commensurate with that level of funding).
3. Clarity and conciseness of the grant application in submission of the required information.
4. State priorities and endorsement of, or opposition to, projects by other States, MPOs and other public and private agencies or organizations, as well as the status of the project on the State transportation improvement program (STIP) and the metropolitan transportation improvement program (TIP).
5. The extent to which the project may be eligible under both the NCPD and the CBI program.

Section II—Request for Comments on Program Implementation in FY 2000 and Beyond

The NCPD and the CBI programs are new. Furthermore, they represent a substantial public investment. Consequently, in addition to evaluating the overall program based on information in the grant applications, the FHWA is also specifically requesting comments on how program implementation can be improved. The Docket number noted in the beginning of this notice should be referenced. Comments may be on any aspect of the program. The FHWA is particularly interested in comments on discretionary determinations of the agency and in suggestions, consistent with the statute, that will result in more complete realization of the goals noted in the

beginning of Section I of this notice. Lastly, the FHWA requests comments on how applicants can develop useful performance measures to evaluate project implementation.

Section III—Solicitation of Applications for FY 1999 Grants

As noted above, applications for FY 1999 grants are to be sent to the Division office in the State of the applicant or to the Division office in the lead State, where a project is in more than one State.

When sending in applications, the States and MPOs must understand that any qualified projects may or may not be selected; it may be necessary to supplement NCPD and CBI program funds with other Federal-aid and/or other funds to complete a useable project or product and allocations of FY 1999 funds will be made considering the degree to which proposed projects are viable and implementation schedules are realistic.

There is no prescribed format for project submission. However, the following information should be addressed in the application to properly evaluate the candidate projects. Applications that do not include the following information may be considered incomplete:

1. State (if a multi state or multi MPO project list the lead State/MPO and participating States/MPO) and, if applicable, congressional high priority corridor number(s);
2. County(ies) or Parish(es);
3. U.S. Congressional District(s) and name of U.S. Representative(s) in the District(s);
4. Project Location; including a map(s) with U.S., State and local numbered routes and other important facilities clearly identified;
5. Project Objectives;
6. Proposed Work; identifying which specific element(s) or work corresponds to each of the list of eligible items noted above is addressed and disaggregating the work into phases, if applicable;
7. Planning and Coordination Status; identifying whether the project is included, or expected to be included, in State and MPO plans and programs (e.g., STIPs and TIPs); discussing consistency with plans and programs developed by empowerment zone and enterprise community organizations; discussing consistency with plans developed for compliance with the Clean Air Act; and, discussing coordination with inspection agencies and with Canada and Mexico, as applicable;
8. Traffic/Safety Information and Projections; addressing the applicable statutory criteria;
9. Financial Information and Projections; (e.g., total estimated cost of improvements to corridor or border facility, previous funding, commitment of other funds) addressing the applicable statutory criteria;
10. Infrastructure Condition Information; addressing the applicable statutory criteria;
11. Information Regarding Ownership; including whether it is private or public, operating authority and maintenance responsibility for all facilities to be improved as part of the project;
12. Other Information; addressing the applicable statutory criteria (e.g., implementation schedule);
13. Amount of NCPD Program and/or CBI Program Funds; requested as well as written confirmation of the source and amount of non-Federal funds that make up the non-Federal share of the project. If the State is willing to accept partial funding, this also should be indicated;
14. Future Funding Requests; related to the project anticipated under these programs or other discretionary programs;
15. The Priority; the State (or lead State) assigns to this project (e.g., priority one, priority two, etc.) relative to other projects located in the State for which applications are being submitted based on this notice;
16. Public Endorsements/expectations of the project or opposition; to the project by public and private organizations who expect to use the work to be funded by the grant as well as those who expect to benefit or be adversely affected, directly or indirectly, from such work;
17. Corridor plan; for those grant applications for the NCPD program where the work to be funded includes environmental review or construction;
18. Performance measures; which the applicant intends to use to evaluate implementation process in the project; and,
19. Summary Sheet; covering basic project information (see Attachment 1).

Attachment 1—Format for Summary Sheet

Application for NCPD or CBI discretionary funds:

Grantee: List full name of agency.

U.S. Representative/Senator(s): List full names.

Governor/Mayor(s): List full names.

Project: Short name and brief description of project (e.g., This project provides for widening by one lane in each direction of * * * extending from * * * in the vicinity of * * * to * * * in the vicinity of * * * a distance of * * *. This improvement will serve * * * and * * * will result in major safety/time savings * * * to * * *).

FHWA funds requested: Exclude non federal share.

Other funds committed: Specify source and amounts.

Other support: List agencies providing substantive assistance.

Other important information: (e.g., improved access to Indian Reservation, expected improvement to local economy, specify phase of project or corridor development, specify ongoing projects that will be coordinated with this one, identify environmental features, construction scheduling—all if appropriate).

(Authority: 23 U.S.C. 315; 49 CFR 1.48, Sections 1118, 1119 of Pub. L. 105–178)

Issued on: November 4, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 98–30236 Filed 11–9–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Joint Partnership Program; Public Meeting

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting, open to all interested parties, to discuss and comment on the Federal Transit Administration's (FTA) new Joint Partnership Program (JPP). The purpose of the meeting is to outline the JPP, to receive comments and suggestions on the Program from meeting attendees, and to answer questions.

DATES: The meeting will take place on November 13, 1998, from 8 a.m. to 12:00 noon.

ADDRESSES: The meeting will be held in room 2201 at the Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Dr. A.M. (Tony) Yen, Office of Research, Demonstration and Innovation, Federal Transit Administration (TRI–2), at (202) 366–4047 or Donald R. Durkee, Office of Technology, Federal Transit Administration (TRI–20), at (202) 366–0942.

Issued on: November 5, 1998.

Gordon J. Linton,

Administrator.

[FR Doc. 98–30207 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Issuance of Advisory Bulletin

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: We are issuing this advisory bulletin to owners and operators of Hazardous Liquid and Natural Gas Pipelines. The bulletin advises the industry about the potential for damage to pipeline facilities caused by the passage of Hurricane Georges.

ADDRESSES: This document can be viewed on our home page at: http// ops.dot.gov.

FOR FURTHER INFORMATION CONTACT: Linda Daugherty, (202) 366–4577.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this Notice is to advise all operators of natural gas and hazardous liquid pipelines located in offshore waters of the Gulf of Mexico of recurring safety problems that may be resulting from the passage of Hurricane Georges. Operators should be advised that we have received several reports of damage to pipeline facilities, particularly in the area bounded, East of the Mississippi River and West of Mobil Bay.

Several mudslides in this area may have exposed pipelines which could pose a safety threat to the crews of fishing vessels in shallow coastal waters and to other marine operations in shipping lanes and deeper offshore waters. Extensive onshore flooding may also have exposed or weakened facilities. We are working with the Minerals Management Service, the Coast Guard, and the Army Corps of Engineers to address the potential hazards of exposed or weakened pipeline facilities in areas affected by Hurricane Georges. This Notice reminds operators of offshore pipelines that may have been affected by flooding of Federal pipeline safety requirements. We are advising pipeline operators of similar problems that may occur in inland navigable waterways. Also, we are advising the commercial fishing industry of the potential of unburied offshore pipelines by sending this Notice to Louisiana Shrimp Association, Texas Shrimp Association, Southeastern Fisheries Association, National Fish Meal & Oil Association, and Concerned Shrimpers of America. Pipeline operators or mariners aware of any damage or exposure to a portion of a submerged pipeline should report that information to the appropriate US Coast Guard District. The Coast Guard has issued a radio advisory to vessel operators operating in or near the mouth of the Mississippi and an advisory in its Notice to Mariners.

II. Advisory Bulletin (ADB–98–3)

To: Owners and Operators of Hazardous Liquid and Natural Gas Pipelines.

Subject: Recurring safety problems which may be resulting from the passage of Hurricane Georges.

Purpose: We are advising all operators of natural gas and hazardous liquid pipelines located in offshore waters and other areas that may have been impacted by flooding due to the passage of Hurricane Georges. The recent passage of Hurricane Georges and major storms may have contributed to the exposure or instability of pipelines in the vicinity of the Gulf of Mexico.

Advisory: On October 1, 1998, a 10-inch pipeline located in the Gulf of Mexico south of the Mississippi River; in an unstable mudslide area with a water depth of 108 feet, ruptured and released an estimated 3,700 barrels of crude oil. Other reported incidents include pipeline exposures and natural gas and hazardous liquid releases.

Our pipeline regulations require operators to patrol their lines periodically for the presence of unusual operating and maintenance conditions and to take corrective action if conditions are unsafe. Because this patrolling is generally done using aircraft, pipelines exposed or damaged on the seafloor can not be visually detected. It is likely that some pipelines located in the area of Hurricane Georges' impact are exposed or damaged. It is important to note that if a pipeline operator has knowledge that its pipeline is exposed or otherwise presenting a danger to the public or the environment, 49 CFR sections 192.613 and 192.703 applicable to gas pipeline operators, and 49 CFR section 195.401 applicable to hazardous liquid pipeline operators would require the operator to take steps to mitigate the hazard. Additionally, 49 CFR sections 192.612(b) and 195.413(b) require that, if upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, it shall promptly notify the National Response Center (1–800–424–8802) with the geographic coordinates of that pipeline, mark the location of the pipeline in accordance with 64 CFR, and within six months of discovery, place the pipeline so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

In view of the above, pipeline operators should consider taking the following actions regarding the natural gas and hazardous liquid pipelines located in areas impacted by Hurricane Georges.

1. Identify and caution persons who normally engage in commercial fishing, shrimping, and other marine vessel operations in shallow coastal waters where Hurricane Georges may have affected a pipeline. Submerged offshore pipelines may have become unprotected on the ocean floor. Marine vessels operating in water depths comparable to a vessel's draft or when operating bottom dragging equipment can be damaged and their crews endangered by an encounter with a submerged pipeline. The pipeline company's public education and damage prevention programs may be used to facilitate this notification process. Pipeline operators may want to consider a joint public education effort in areas of common concern.

2. Identify and caution marine vessel operators in offshore shipping lanes and other offshore areas where Hurricane Georges may have affected a pipeline that deploying fishing nets or anchors, and dredging operations may damage the pipeline, their vessels, and endanger their crews. The pipeline company's public education and damage prevention programs may be used to facilitate this notification process. Pipeline operators may want to consider a joint public education effort in areas of common concern.

3. Identify and correct any conditions on the pipeline that could violate pipeline safety requirements, and the terms and conditions of the pipeline's Corps of Engineers permit.

Issued in Washington, D.C. on November 6, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–30279 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 4, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 14, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0074.

Form Number: IRS Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE.

Type of Review: Revision.

Title: U.S. Individual Income Tax Return.

Description: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistical use.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 71,877,464.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form/schedule	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS	Totals
Form 1040	3 hr., 34 min	2 hr., 13 min	4 hr., 30 min	7 min	10 hr., 57 min.
Schedule A	2 hr., 32 min	26 min	1 hr., 10 min	27 min	4 hr., 35 min.
Schedule B	33 min	8 min	11 min	20 min	1 hr., 12 min.
Schedule C	6 hr., 26 min	1 hr., 11 min	2 hr., 6 min	35 min	10 hr., 18 min.
Schedule C–EZ	46 min	4 min	34 min	20 min	1 hr., 4 min.
Schedule D	1 hr., 11 min	2 hr., 7 min	2 hr., 39 min	1 hr., 3 min	4 hr., 10 min.
Schedule D–1	13 min	1 min	11 min	35 min	1 hr., 0 min.
Schedule E	2 hr., 52 min	1 hr., 7 min	1 hr., 16 min	35 min	5 hr., 10 min.
Schedule EIC		2 min	5 min	20 min	27 min.
Schedule F:					
Cash Method	4 hr., 2 min	36 min	1 hr., 14 min	20 min	6 hr., 12 min.
Accrual Method	4 hr., 22 min	25 min	1hr., 19 min	20 min	6 hr., 26 min.
Schedule H	46 min	30 min	48 min	35 min	1 hr., 35 min.
Schedule J	20 min	8 min	1 hr., 8 min	41 min	2 hr., 17 min.
Schedule R	20 min	15 min	22 min	35 min	1 hr., 32 min.
Schedule SE:					
Short	20 min	13 min	11 min	14 min	58 min.
Long	26 min	22 min	34 min	20 min	1 hr., 2 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,211,582,312 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–30183 Filed 11–10–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Agency Information Collection Activities: Discontinuance

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Discontinuance of information collection.

SUMMARY: Notice is hereby given of the discontinuance by the OCC, the Board, and the FDIC (the "agencies") of an information collection, the "Monthly Consolidated Foreign Currency Report of Banks in the United States" (FFIEC 035). Banks will no longer be required to complete this report after the December 31, 1998 report date.

DATES: The final date as of which the FFIEC 035 will be collected is December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Additional information may be requested from any of the agency clearance officers or the Office of Management and Budget (OMB) Desk Officer whose names appear below.

OCC: Jessie Gates, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Mary M. McLaughlin, Chief, Financial Reports Section, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

OMB: Alexander T. Hunt, OMB Desk Officer, (202) 395–7860, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Discontinuance of the Following Report

Title: Monthly Consolidated Foreign Currency Report of Banks in the United States.

Form number: FFIEC 035.

Frequency of Response: Monthly.

Affected Public: Businesses or other for-profit.

For OCC:

OMB Number: 1557–0156.

Estimated Number of Respondents: 29.

Estimated Average Hours per Response: 12.68 burden hours.

Estimated Total Annual Burden: 4,413 burden hours.

For Board:

OMB Number: 7100–0178.

Estimated Number of Respondents: 116.

Estimated Average Hours per Response: 12.68 burden hours.

Estimated Total Annual Burden: 17,651 burden hours.

For FDIC:

OMB Number: 3064–0105.

Estimated Number of Respondents: 4

Estimated Average Hours per Response: 10 burden hours.

Estimated Total Annual Burden: 480 burden hours.

General description of report: This information collection is mandatory: 12 U.S.C. 248(a) and 1844(c) (Board), 12 U.S.C. 1817(a) (FDIC), and 31 U.S.C. 5315—5321, and 12 U.S.C. 161·(OCC).

Abstract: The agencies have used the FFIEC 035 data to monitor the foreign exchange activities of individual U.S. banks and banking institutions.

Current Actions: The agencies have determined that the foreign exchange activities reported in the FFIEC 035 can be monitored through other supervisory means. Therefore, the FFIEC 035 will no longer be collected after this year. The final date as of which banks must file this report is December 31, 1998.

In a **Federal Register** notice dated July 13, 1998 (63 FR 37622–37623), the Department of the Treasury proposed to collect some of the information currently reported on the FFIEC 035 on their Foreign Currency Forms FC–1 (Weekly Consolidated Foreign Currency Report of Major Market Participants), FC–2 (Monthly Consolidated Foreign Currency Report of Major Market Participants), and FC–3 (Quarterly Consolidated Foreign Currency Report). Banks should determine whether they must file one of these Foreign Currency Forms beginning in 1999. Requests for copies of the Foreign Currency Forms and instructions should be directed to T. Ashby McCown, Director, Office of International Financial Analysis, Department of the Treasury, Washington, DC 20220, telephone (202) 622–2250, FAX (202) 622–0607.

Dated: October 30, 1998.

Karen Solomon,

Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, November 5, 1998.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 28th day of October, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–30211 Filed 11–10–98; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–55

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–55, Extension of Relief for Late S Elections.

DATES: Written comments should be received on or before January 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Extension of Relief for Late S Elections.

OMB Number: 1545–1548.

Revenue Procedure Number: Revenue Procedure 98–55.

Abstract: Revenue Procedure 98–55 updates the Service's instructions for requesting relief for a late S corporation election and other late elections that must be filed by or for an S corporation. Revenue Procedure 98–55 provides that a corporation will have 12 months from the original due date for the S election (but not later than the due date for the tax return for the first year it intended to be an S corporation) to request relief for a late S election by filing Form 2553, Election by a Small Business Corporation, and attaching a statement explaining the reason for the failure to file a timely S corporation election.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 5, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

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Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 432

Energy Conservation Program: Test Procedures for Distribution Transformers; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 432

[Docket No. EE–TP–98–550]

RIN 1904–AA85

Energy Conservation Program: Test Procedures for Distribution Transformers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Proposed Rulemaking and public hearing.

SUMMARY: Pursuant to Section 346(a) of the Energy Policy and Conservation Act as amended (EPCA), 42 U.S.C. 6317(a), the Department of Energy (DOE or the Department) proposes to adopt test procedures for measuring the energy efficiency of distribution transformers. The Department proposes to use these test procedures in the process of evaluating whether and what efficiency standards are appropriate for distribution transformers. If standards are promulgated, then use of these test procedures would be required to determine compliance and as a basis for representations. The proposed rule would incorporate by reference clauses from test procedures contained in commercial standards. The Department is proposing to use one of two alternative sets of standards as the primary references: alternative (A) is primarily based on American National Standards Institute (ANSI)/Institute of Electrical and Electronics Engineers (IEEE) standards C57.12.90–1993 and C57.12.91–1995, and alternative (B) is based on National Electrical Manufacturers Association (NEMA) standard TP 2–1998, pending its approval by ANSI.

DATES: The Department will accept comments, data, and information regarding the proposed rule no later than February 5, 1999. Ten (10) copies must be submitted. In addition, the Department requests that an electronic copy (3½" diskette) of the comments on WordPerfect™ 6.1 be provided.

A public hearing will be held on January 6, 1999, in Washington, DC. Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., December 23, 1998. Ten (10) copies of statements to be given at the public hearing must be received by the Department no later than 4:00 p.m., December 23, 1998, and the Department requests that a computer diskette (WordPerfect™ 6.1) of each statement also be provided at that time.

ADDRESSES: Requests to make statements at the public hearing and copies of such statements should be addressed to Ms. Brenda Edwards-Jones, and written comments should be addressed to Ms. Kathi Epping, each at the following address: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121. All such documents should be identified both on the envelope and on the documents as "Energy Conservation Program for Commercial Products: Test Procedures for Distribution Transformers, Docket No. EE–TP–98–550." The hearing will begin at 9:00 a.m., on January 6, 1999, and will be held in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC. For more information concerning public participation in this rulemaking proceeding, see section IV, "Public Comment," of this notice.

Copies of the transcript of the public workshop and public comments received may be read in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Copies of the standards to be incorporated by reference may be viewed at the Department of Energy's Freedom of Information Reading Room at the address stated above. Copies of the referenced standards may be obtained by request from Global Engineering Documents World Headquarters (for NEMA Standards TP 1–1996 and TP 2–1998), 15 Iverness Way East, Inglewood, CO 80112–5776 or the American National Standards Institute (for ISO Standard 9001–1993 and ANSI standards C57.12.90–1993, C57.12.91–1995, C57.12.00–1993, and C57.12.01–1989), 11 West 42nd Street, New York, N.Y. 10036.

FOR FURTHER INFORMATION CONTACT: Kathi Epping, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–43, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0121, (202) 586–7425, e-mail: Kathi.Epping@ee.doe.gov, or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9507, e-mail: Edward.Levy@hq.doe.gov.

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I. Introduction

A. Authority

The National Energy Conservation Policy Act of 1978, Pub. L. 95–619, amended the Energy Policy and Conservation Act (EPCA) to add a Part C of Title III, which established an energy conservation program for certain industrial equipment. The most recent amendments to EPCA, in the Energy Policy Act of 1992 (EPAct), Public Law 102–486, included amendments that expanded Title III of EPCA to include certain commercial water heaters and heating and air-conditioning equipment, incandescent and fluorescent lamps, electric motors, and electric distribution transformers.

Among these amendments is Section 124(a) of EPACT, which amended Section 346 of EPCA, 42 U.S.C. 6317, to provide that the Secretary of Energy must prescribe testing requirements and energy conservation standards for those distribution transformers for which the Secretary determines that standards "would be technologically feasible and

economically justified, and would result in significant energy savings." 42 U.S.C. 6317(a). On October 22, 1997, the Department issued a notice setting forth its determination ("Determination notice") that, based on the best information currently available, energy conservation standards for electric distribution transformers are technologically feasible and economically justified and would result in significant energy savings. 62 FR 54809. Consequently, the Department is now proceeding to establish, by notice and comment rulemaking, test procedures for distribution transformers.

In the Determination notice, the Department construed the term "distribution transformer" in section 346 of EPCA to mean "all transformers with a primary voltage of 480 V to 35 kV, a secondary voltage of 120 V to 480 V, and a capacity of either 10 to 2500 kVA for liquid-immersed transformers or 0.25 kVA to 2500 kVA for dry-type transformers," except for transformers which are not continuously connected to a power distribution system as a distribution transformer. The Department believes this exception would include regulating transformers, machine tool transformers, welding transformers, grounding transformers, testing transformers, and other transformers which are not designed to transfer electrical energy from a primary distribution circuit to a secondary distribution circuit, or within a secondary distribution circuit, or to a consumer's service circuit. The Department indicated that all products included in this definition of "distribution transformer" would be addressed in its rulemakings on energy efficiency test procedures and standards for transformers.

Subsequently, the Department has learned that industry typically classifies transformers with a secondary voltage up to 600 V as distribution transformers. These transformers are included, for example, in the scope of NEMA standard TP 1. In light of industry usage and practice, the Department has decided that the term "distribution transformer", in the statute, includes transformers with a secondary voltage 480 V to 600 V, in addition to those transformers in the above-mentioned definition. These additional transformers are covered by today's proposed test procedures, and will be included in the Department's consideration of efficiency standards for transformers.

B. Background

The Secretary's Determination notice was based, in part, on analyses conducted by the Oak Ridge National Laboratory (ORNL). In July 1996, ORNL published a report, entitled "Determination Analysis of Energy Conservation Standards for Distribution Transformers, ORNL–6847" which assessed several options for setting efficiency standards. The report was based on information from annual sales data, average load data, and surveys of existing and potential transformer efficiencies that were obtained from several organizations. In September 1997, ORNL published a second report, entitled "Supplement to the "Determination Analysis" (ORNL–6847) and Analysis of the NEMA Efficiency Standard for Distribution Transformers, ORNL–6925". The purpose of this report was to assess NEMA TP 1 along with the options considered in the determination study, using the more accurate analysis model and transformer market and loading data developed subsequent to the publication of the original ORNL report.

On February 10, 1998, the Department held a public workshop with representatives from the National Electrical Manufacturers Association (NEMA), manufacturers, utilities, Federal and state agencies, foreign government, and other interested parties in Washington, DC. Draft Test Procedures were presented as a basis for discussion. In addition, the following issues were discussed: (a) adoption of national and international consensus standards in the test procedures for determining energy efficiency of distribution transformers, (b) burden imposed on industry, especially on manufacturers, by additional testing and data processing, (c) the definition of "basic model" for distribution transformers, (d) sampling plan for units to be tested, (e) selection of a measure of energy consumption for distribution transformers, (f) selection of reference temperatures, (g) requirement for applying corrections to measurement data of both liquid-immersed and dry-types of transformers, (h) requirements for quality assurance in testing, and (i) defining the transformers which are to be covered by the test procedures. A transcript of the public workshop is available at the Freedom of Information Reading Room.

NEMA submitted a written statement at the workshop, and 5 comments were received subsequent to the public workshop. A letter from Don Ballard (industry consultant) and a letter from the US Department of Agriculture concerning issues relating to today's notice were submitted to DOE prior to the public workshop. The Department will consider these two letters as part of the public comment received. The comments made at the workshop as well as the written comments were considered in preparing the test procedure presented in today's proposed rule, and recommendations were incorporated where appropriate. The reasons for not incorporating any significant recommendations are explained in section II of today's proposed rule.

C. Summary of the Proposed Test Procedures

The Department will use the test procedures in today's proposed rule in the process of evaluating whether and what efficiency standard levels are appropriate for distribution transformers. If efficiency standards are promulgated, then manufacturers would be required to use these test procedures to determine compliance with the standards and as a basis for representations they make as to the efficiency levels of the transformers they produce.

The Department is proposing that a uniform set of test procedures be applied to all distribution transformers for which standards will be considered, and to all for which standards are ultimately adopted. This does not necessarily mean, however, that a single standard or set of labeling requirements will be adopted for all transformers. In possible future rulemakings addressing standards and labeling, distribution transformers will be divided into classes, if appropriate. A separate class and an appropriate standard will be created for each group of products where the record indicates the product includes a utility or performance-related feature that affects energy efficiency. Moreover, in evaluating an efficiency standard in a future rulemaking, the Department will consider whether the standard would result in any lessening of the utility or performance of the transformer(s) that would be covered by the standard. Finally, even if standards are promulgated for distribution transformers, some classes of transformers may be excluded from standards.

The Department proposes today to incorporate by reference clauses from industry standards for measuring the energy efficiency of distribution transformers. The proposed rule contains two alternative sets of standards for testing transformers for energy consumption and efficiency, and the Department intends to select one of

these alternatives for inclusion in the final rule. Alternative (A) is primarily based on American National Standards Institute (ANSI)/Institute of Electrical and Electronics Engineers (IEEE) standards C57.12.90–1993 and C57.12.91–1995, and alternative (B) is based on National Electrical Manufacturers Association (NEMA) standard TP 2–1998. The two reference test standards under alternative (A) are well established within the industry and have been used for over two decades. Limited additional reference is made under alternative (A) to ANSI/IEEE C57.12.00–1993 regarding reference temperatures, loss tolerances, and measurement tolerances. With respect to actual tests and measurements for power losses leading to energy consumption and efficiency, the material in the C57 series standards and TP 2 is nearly identical. The NEMA standard TP 2–1998, referenced in alternative (B), combines all information applicable to tests, measurements for energy consumption, and calculation of efficiency in a single document applicable to both liquid-immersed and dry-type transformers.

The test procedure involves the measurement of electric power consumed by the transformer in the form of no-load and load losses, as well as the determination of certain other quantities needed to establish the test conditions: temperature of the windings and the core; current; voltage; frequency and waveform of voltage; and direct current resistance of the windings. Today's proposed rule also proposes a sampling plan for testing a basic model to establish its compliance with standards and to provide a basis for efficiency representations.

In addition to discussing the standards to be incorporated by reference, the following issues are discussed below: distribution transformers not subject to the test procedures, the reference conditions in the test procedure, measures of energy consumption, the definition of a "basic model" to permit grouping of models for testing purposes, and the sampling plan.

II. Discussion

A. Standards to be Incorporated by Reference

The Department is proposing to incorporate by reference specific portions of either three widely used commercial standards, or of a standard being developed by the National Electrical Manufacturers Association (NEMA), as a test procedure in Appendix A of 10 CFR part 432. The three national standards were prepared by the IEEE and approved by ANSI: (1) ANSI/IEEE C57.12.90–1993, "IEEE Standard Test Code for Liquid-Immersed Distribution, Power and Regulating Transformers and IEEE Guide for Short Circuit Testing of Distribution and Power Transformers," (2) ANSI/IEEE C57.12.91–1995, "IEEE Standard Test Code for Dry-Type Distribution and Power Transformers," and (3) ANSI/IEEE C57.12.00–1993, "IEEE Standard General requirements for Liquid-Immersed Distribution, Power and Regulating Transformers." ANSI/IEEE C57.12.90–1993 and ANSI/IEEE C57.12.91–1995 are considered primary references as they address tests and measurements leading to the energy consumption and efficiency values. ANSI/IEEE C57.12.00–1993 complements the previous two ANSI/IEEE standards by specifying the reference temperatures and measurement tolerances, which are essential in fully defining the measurement data. The three aforementioned standards contain more material than the information that is applicable to loss or efficiency testing. Hence, only the applicable sections and clauses are incorporated by reference in today's proposed rulemaking.

The Department is considering referencing a single clause, 4.11.1, of International Standards Organization (ISO) Standard 9001–1993, "Quality Systems—Model for quality assurance in design, development, production, installation, and servicing," for guidance purposes only, concerning compliance with requirements for quality assurance of the test and measuring equipment.

The remaining reference standard being considered by the Department was prepared by NEMA: TP 2–1998, "Test Method for Measuring the Energy Consumption of Distribution Transformers." It is also considered a primary reference standard. This NEMA publication is planned for submission to the ANSI C57 committee for review and possible approval as a national standard, thus including in the approval process a broader constituency, such as the electric utility industry, which is the principal user group of distribution transformers.

In addition, IEEE PC57.123, "Draft Guide for Transformer Loss Measurement" is nearing completion and provides additional guidance on how to conduct transformer loss measurements. The Department is also aware that a revised version of ANSI/IEEE C57.12.01 is currently being balloted. If adopted, this revision would make C57.12.01 more consistent with C57.12.00 in specifying measurement tolerances. DOE will examine these documents for possible incorporation by reference in the final DOE test procedures, if they have been approved by IEEE, their sponsoring organization (and preferably by ANSI as well), prior to adoption of the final rule. After the final rule is published, however, any subsequent amendments to any of the referenced standards by the standard-setting organizations (ANSI, IEEE, NEMA, ISO) would become part of the DOE test procedure only if DOE amends the test procedure to incorporate them.

In comments on workshop issues, NEMA recommends TP 2–1998 as the sole primary reference to be incorporated in the DOE test procedure, because it combines in one document the subject matter that is now available in several documents. DOE recognizes the advantages of having all relevant testing requirements in a single primary reference because it enhances the convenience for users and will facilitate future harmonization. However, DOE also desires to incorporate consensus standards that have the broadest acceptance by the stakeholders, such as the cited ANSI standards.

The Department is concerned over whether TP 2 has undergone broad-based scrutiny. In order for DOE to accept TP 2, the Department would need to have sufficient evidence that all users and stakeholders have had an opportunity to review TP 2. The Department would like comments from stakeholders, such as utilities and contractors who specify transformers for commercial and industrial applications (e.g., retail, industrial, and office buildings), on the adequacy of TP 2 to measure transformer efficiency. The Department also is concerned that portions of the current version of TP 2 have been abbreviated from the ANSI/IEEE standards, and certain portions are ambiguous and should be made more explicit. There are also instances in which the terminology should be changed. In addition, certain portions do not read as if the current version of TP 2 is a final document. If these concerns with TP 2 are addressed during the ANSI approval process as the Department believes is likely, and if TP 2 receives approval from ANSI, the Department would be inclined to adopt alternative B.

B. Distribution Transformers Not Subject to the Test Procedures

The commercial standards on which today's proposed test procedures are based are intended to test 60 Hz transformers, although the standards allow for minor variations in frequency. Many manufacturers would need to

modify test equipment in order to accurately conduct tests for transformers that operate at frequencies that deviate substantially from 60 Hz. Because such distribution transformers comprise a small segment of the market, they have little potential for resulting in significant energy savings. In addition, transformers with frequencies other than 60 Hz were not included in the ORNL Determination analyses. Consequently, the Department is proposing that the test procedures in today's proposed rule cover only 55 to 65 Hz transformers, and the Department intends to evaluate only 60 Hz transformers in a possible future standards rulemaking. The Department does not believe this will cause "loopholes" because it would not be beneficial to the manufacturers to substitute transformers at substantially different frequencies for 60 Hz applications.

In addition, the Department recognizes that the efficiency of distribution transformers connected to rectifier and converter circuits cannot be readily tested or accurately measured by the conventional loss measurement test procedures outlined in today's proposed rule. The nameplates of these transformers contain a rating for the fundamental-frequency apparent output power and a rating for the apparent output power with non sinusoidal current produced by the converter. The latter is inherently smaller than the former, because harmonic currents produce losses in addition to those of the fundamental-frequency current. As a result of additional physical and electrical requirements in the design of converter and rectifier transformers, their performance is optimized for the output power rating with non sinusoidal current, yielding less than the optimal performance at fundamental frequencies, as would be required in a general purpose distribution transformer. Conversely, optimally designed distribution transformers of other types will not meet the optimal requirements of a converter and rectifier transformer. These transformers also were not included in the ORNL Determination analyses. In addition, rectifier and converter transformers generally have more than two windings per phase, requiring more magnetic material and resulting in higher no-load losses. For these reasons, the test procedures in today's proposed rule will not apply to converter and rectifier transformers with more than 2 windings per phase, and the Department is not inclined to evaluated these transformers in a possible future standards rulemaking.

For the purposes of these test procedures, the Department proposes to define the term "distribution transformer" to mean all transformers with a primary voltage of 480 V to 35 kV, a secondary voltage of 120 V to 600 V, a frequency of 55–65 Hz, and a capacity of either 10 kVA to 2500 kVA for liquid-immersed transformers or 0.25 kVA to 2500 kVA for dry-type transformers, except for transformers which are not designed to be connected to a power distribution system as a distribution transformer. These exceptions would include regulating transformers, machine tool transformers, welding transformers, grounding transformers, testing transformers, and other transformers which are not designed to transfer electrical energy from a primary distribution circuit to a secondary distribution circuit, or within a secondary distribution circuit, or to a consumer's service circuit. Converter and rectifier transformers with more than two windings per phase also would not be included.

C. Reference Conditions

There is considerable diversity in the reference conditions specified in the existing commercial standards. Under the current industrial practice, the load losses of liquid-immersed transformers are reported at the rated load and the reference temperature of 85° C, as specified by ANSI/IEEE C57.12.00. This reference temperature is based on an ambient temperature of 20° C and the temperature rise of 65° C. The load losses of dry-type transformers are reported at the rated load and, depending on the insulation system used, at one of five specified temperature rises in addition to an ambient temperature of 20° C, as specified by ANSI C57.12.01. The resulting reference temperatures are: 80, 100, 135, 150, and 170° C. ANSI standards C57.12.90 and C57.12.91 provide an identical algorithm for converting the measured load loss values to specified reference temperatures.

For no-load losses of liquid-immersed transformers, ANSI C57.12.00 specifies the reference temperature of 20° C, thus approximating ambient conditions. Additionally, ANSI C57.12.90 provides an algorithm for converting a no-load loss value measured at another temperature to that at the reference temperature. No reference temperature is specified for the no-load losses of the dry-type transformers.

Finally, NEMA TP 1–1996 recommends minimum efficiencies and the following reference conditions for distribution transformers:

	No-load losses	Load losses
Liquid-immersed (50% of rated load)	20° C	85° C
Medium-voltage dry-type (50% of the rated load)	20° C	75° C
Low-voltage dry-type (35% of the rated load)	20° C	75° C

In order to address the inconsistencies in the reference conditions among the industry standards, the proposed rule specifies the following: (1) Use a consistent reference temperature of 20° C for reporting the no-load losses of both liquid-immersed and dry-type transformers, and correct the measured no-load loss data of dry-type transformers to 20° C as required in ANSI standards for liquid-immersed transformers, if such a correction is significant relative to required measurement accuracy; (2) correct the measured load loss data of dry-type transformers for phase angle errors in the measuring equipment as required in ANSI standards for liquid-immersed transformers, if such errors are significant relative to required measurement accuracy; (3) use an efficiency selected at lower than the rated loading and using a reference temperature for load losses that approximates the temperature rise at new loading conditions, as opposed to using temperature rises, as in ANSI/IEEE standards, for rated nameplate loading; and (4) measure losses of dry-type transformers to the same accuracy as specified for liquid-immersed transformers.

These reference conditions enhance uniformity in requirements and facilitate comparison of products using both liquid-immersed and dry-type insulations. Therefore the proposed rule requires that test results be reported at the following loads and reference temperatures: [1]

[1] Establishing specific loading levels is properly part of the energy conservation standard, but correction of measurement data to new reference conditions (including loading levels) must be included in the test procedure. Today's proposed test procedures use the loading levels in NEMA TP 1, because they appear to be widely used in the industry and are reasonable for testing that is conducted to consider and develop standards. Any standards that are prescribed for transformers will include specific loading levels, which the Department will incorporate into the applicable test procedures.

	No-load losses	Load losses
Liquid-immersed (50% of rated load)	20 °C	55 °C
Medium-voltage[2] dry-type (50% of the rated load)	20 °C	75 °C
Low-voltage[3] dry-type (35% of the rated load)	20 °C	75 °C

Under the proposed rule, the measured no-load and load losses used in the efficiency computation would be adjusted to the stated reference conditions, the total uncertainty (including measurement inaccuracy and uncertainty resulting from lack of reference condition adjustments) exceeds 3 percent.

These reference temperatures were selected with the objectives of obtaining uniformity in reference conditions, having reference conditions that best reflect the actual operating conditions, and maintaining consistency with the practices of the current commercial standards as much as possible. Fully satisfying all three criteria, however, was not practical or even possible, due to the previously mentioned diversity in the existing practice and the inherent differences between liquid-immersed and dry-type transformers. The proposed reference temperature to which no-load losses would be adjusted for both types of transformers is 20 °C, which is consistent with C57.12.00 and TP 1, but not with C57.12.01 which does not specify the reference temperature for no-load losses of dry-type transformers. The 20 °C reference temperature is close to the ambient temperature; therefore losses can be easily measured when the transformer is cold, but this reference temperature does not represent operating conditions. However, because the changes in the core losses due to temperature are small (quoted in C57.12.90 as 6.5×10^{-4} per unit per °C), these differences will have only a small effect on the resulting calculated efficiency.

If a transformer is being tested for efficiency at less than full-rated or nameplate loading (as may be the case for a possible future efficiency standard), it is proper to adjust the reference temperature for load losses. A well established algorithm published in ANSI C57.12.90 and ANSI C57.12.91 is used to perform the computational operation to convert load losses measured at a given temperature to equivalent load losses at a different reference temperature. For load losses of dry-type transformers, TP 1 recommends a single reference temperature of 75 °C, as a substitute for the five temperatures at the rated load corresponding to the five insulation classes. To assess the adequacy of this adjustment, reduced operating temperatures were calculated at 50% and 35% of rated load for all five temperature classes of dry-type insulation and for liquid-immersed insulation. The relationship whereby the temperature rise (ΔT) is proportional to the 0.8th power of the dissipated power (W) was used for this calculation. Thus, $\Delta T = kW^{0.8}$, where k is a constant. The assumption was made that, at the rated load, 75% of dissipated power is the load loss and the remainder is no-load (core) loss.

The results are summarized in Table 1 for both 50% and 35% of the rated loads. Note that for dry-type transformers, out of 10 estimated reference temperatures, five are below 75 °C, four are above, and one is exactly on. Thus, the selected value in TP 1 represents a reasonable compromise, especially if each of the 10 groups were to have similar installed kVA capacity.

TABLE 1.—CALCULATED TEMPERATURE RISES FOR TRANSFORMERS OPERATED AT LOWER THAN THE RATED (NAMEPLATE) LOAD

Insulation system temperature rating °C	Temperature rise at rated load °C	Reference temperature °C	Temperature rise at 50% of rated load °C	Estm. reference temperature at 50% of rated load °C	Temperature rise at 35% of rated load °C	Estm. reference temperature at 35% of rated Load °C
Liquid-Immersed						
85	65	85	35	55	.....	.....
DryType						
130	60	80	30	50	25	45
150	80	100	40	60	35	55
185	115	135	60	80	50	70
200	130	150	65	85	55	75
220	150	170	75	95	65	85

Assumptions:
No-load losses 25%; load losses 75%.
Algorithm: $\Delta T = kW^{0.8}$.
ΔT—temperature rise.
W—dissipated power.
k—constant.
ΔT rounded off to the nearest 5 °C.

For liquid immersed transformers, in the proposed test procedure the reference temperature for the load losses is lowered from 85°C (in C57.12.00 and C57.12.90) to 55°C. This adjustment better approximates the conditions of the actual use of these transformers, and was arrived at using the same type of approach that was used to calculate the adjustment of the load loss reference temperature for dry-type transformers.

The written comments received in conjunction with the workshop on February 10, 1998, support 20°C as the reference temperature for no-load losses of both types of transformers and 75°C as the reference temperature for load

[2] Medium voltages are considered to be greater than 1200 volts.

[3] Low voltages are considered to be no greater than 1200 volts.

losses of dry-type transformers. For load losses of liquid-immersed transformers, stakeholders agreed with using a reference temperature lower than 85°C but did not recommend a specific value.

D. Measures of Energy Consumption

The test procedure provides for three interrelated measures of energy consumption: (a) total transformer losses, (b) transformer efficiency, and (c) estimated annual energy consumption (EAEC). Under the test procedure, each measure is computed at the loading parameters used in NEMA TP 1–1996: 50% of the rated load for liquid-immersed and medium-voltage dry-type transformers, and at 35% of the rated load for low-voltage dry-type transformers.

Transformer losses consist of load losses and no load losses. Load losses vary quadratically with the output current and, hence, with output power. No load losses vary with excitation volatge. The efficiency of a transformer varies with the output power as a result of varying losses.

The industry practice, as required by the cited ANSI standards, has been to measure and report transformer losses rather than energy efficiency. DOE believes that efficiency is the preferable energy descriptor because it is a normalized measure and allows trade-offs between the two types of losses, load losses and no-load losses. Workshop participants supported efficiency as a measure for energy conservation in distribution transformers. Consequently the Department is inclined to use efficiency as the energy descriptor for any standards that may be promulgated.

Expressing energy consumption in terms of efficiency presents some difficulties in calculations and adjustment of test data (e.g. to reference conditions) because accuracy may be lost in the rounding-off process to the nearest tenth of one percent. To avoid this loss of computational accuracy, under the proposed rule, the intermediate calculations would use transformer losses (in watts) or would use percent efficiency with two digits after the decimal point. Only the final efficiency percentage would be rounded off to the nearest one tenth of one percent.

E. Basic Model

It is common for a manufacturer to make numerous models of a product covered by EPCA, and under the Act each model is potentially subject to testing for energy efficiency. Moreover, for appliances covered by the EPCA energy conservation program, although not for distribution transformers, several models often are essentially the same, with each model having some refinement that does not significantly affect the energy efficiency or performance. In order to lessen the burden of test procedures, generally appliance models having essentially identical electrical and mechanical characteristics are categorized into a family of models. The Department has used the term "basic model" to identify a family of such models, which consist of products or items of equipment whose performance, design, mechanical, and functional characteristics are essentially the same. Components of similar design may be substituted in a basic model without requiring additional testing if the represented measures of energy consumption continue to satisfy applicable provisions for sampling and testing. Only representative samples within each "basic model" are tested.

Thus, the term "basic model" has been defined as follows: "Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer and—* * *[as to dishwashers, for example] which have electrical characteristics that are essentially identical, and which do not have any differing physical or functional characteristics which affect energy consumption." 10 CFR 430.2.

At the February 1998 workshop, DOE presented a similar definition for transformers, but it was opposed by all groups and individuals because distribution transformers, unlike consumer appliances, are not produced in large numbers of virtually identical units. However, NEMA presented an approach in which a basic model could be defined to include all transformers having the same nominal power (kVA) rating, the same insulation type (liquid-immersed or dry-type), and the same number of phases (single or three), and operating within the same voltage range. Under NEMA's definition, "rating" means a standard output power rating, as tabulated in NEMA TP 1–1996, tables 4–1 and 4–2 (reproduced herein as tables 2 and 3), but will encompass some ratings that are close but not equal to the standard ratings. These power ratings are also the preferred ratings from ANSI/IEEE C57.12.00–1993 for liquid-immersed transformers and ANSI/IEEE C57.12.01–1989 for dry-type transformers.

The Department believes the foregoing approach to defining "basic model" is a sound means to reduce the burden of testing. It would apply an approach to distribution transformers that has proven effective in the residential appliance program, but with appropriate modifications given the nature of distribution transformers. The factors outlined in this approach are the design variables that affect a transformer's efficiency. Design considerations cause a transformer's efficiency to increase as its power rating increases. For dry type transformers, efficiency decreases as voltage increases, when all other factors are held constant. In addition, liquid-immersed insulation is inherently more efficient than dry-type insulation, and multiple phases slightly decrease efficiency. Consequently, the Department believes the assignment of minimum efficiencies will likely be made in accordance with such groupings. For example the Canadian energy conservation standard for distribution transformers implements this approach. Therefore, the Department is proposing the definition for "basic model" be based on NEMA's approach.

TABLE 2.—PREFERRED STANDARD KVA RATINGS LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS

Single-Phase
Power Rating:
10
15
25
37.5
50
75
100
167
250
333
500
667
833
Three-phase
Power Rating:
15
30
45
75
112.5
150
225
300
500
750
1000
1500
2000
2500

TABLE 3.—PREFERRED STANDARD KVA RATINGS DRY-TYPE DISTRIBUTION TRANSFORMERS

Power rating, kVA	Low voltage, > 1.2 kV	Medium voltage, ≤ 1.2 kV
Single-Phase		
15		
25		
37.5		
50		
75		
100		
167		
250		
333		
500		
667		
833		
Three-Phase		
15		
30		
45		
75		
112.5		
150		
225		
300		
500		
750		
1000		
1500		
2000		
2500		

The Department has some concern, however, that this approach may allow manufacturers who sell some high efficiency models to deliberately under design other transformers within that basic model, while still meeting the standard for the average efficiency of the basic model. The Department is considering addressing this point by imposing a maximum efficiency variation within a basic model, similar to what is now done in ANSI/IEEE C57.12.00 and C57.12.01, as well as NEMA TP 2. The Department would like comments on this concern.

F. Number of Units to be Tested

As discussed above, the classification of transformers into "basic models" is one step to reduce the burden of testing. The Department also proposes to permit the use of a statistically meaningful sampling procedure for selecting test specimens, so as to further reduce the testing burden on manufacturers while giving sufficient assurance that the true mean energy efficiency of a basic model meets or exceeds the efficiency level claimed by the manufacturer.

Although the sampling plan presented in this test procedure rule might have some application during the evaluation of possible efficiency standards, it would become operative primarily if and when standards are promulgated. At that point, the efficiency of each basic model of distribution transformer would be established initially by "compliance testing" for the purposes of determining whether the transformer complies with the applicable efficiency standard and of labeling the transformer. A sampling plan for compliance is intended to provide a statistically meaningful sampling procedure for conducting tests, so as to reduce the testing burden while giving sufficient assurance that the true mean energy efficiency of a basic model (i.e., the average efficiency of all units manufactured) meets or exceeds a given performance level.

For this purpose, one product under 10 CFR Part 430, § 430.24, involves some similarities with distribution transformers. The required sampling plan for compliance testing of fluorescent lamp ballasts under § 430.24 (q)(1) states, "For each basic model of fluorescent lamp ballasts, as defined in paragraph (14) of § 430.2, a sample of sufficient size, no less than four, shall be tested to insure that (i) any represented value of estimated annual operating costs, energy consumption, or other measure of energy consumption of a basic model for which consumers would favor a lower value shall be no less than the higher of (A) the mean of the sample or (B) the upper 99 percent confidence limit divided by 1.01, and (ii) any represented value of the ballast efficiency factor or other measure of energy consumption of a basic model for which consumers would favor a higher value shall be no greater than the lower of (A) the mean of the sample or (B) the lower 99 percent confidence limit of the true mean divided by 0.99."

A sampling plan for enforcement, on the other hand, is intended to provide a statistically meaningful sampling procedure for conducting tests, so as to reduce the testing burden while giving sufficient assurance that a distribution transformer found to be in noncompliance will actually be in noncompliance. The sampling plan for enforcement testing under Part 430 is provided in 10 CFR 430.70, Appendix B. This sampling plan is based on the statistical t-test yielding 97.5 percent probability of obtaining a determination of compliance when the true mean efficiency is equal to the applicable standard.

At the February 1998 workshop, DOE presented both sampling approaches for consideration for compliance testing for distribution transformers. In the comments on workshop issues, NEMA recommended the enforcement sampling test also be used for demonstration of compliance. However, after reviewing these approaches more closely, the Department believes the sampling plan for compliance in Part 430 favors consumers by providing high statistical probability that the mean performance of the basic model meets or exceeds the performance level claimed by the manufacturer based on testing a small number of models. Most of the error introduced by estimating the performance of the basic model from a sample (rather than from testing all units) is absorbed by the producer (manufacturer). The probability of false determination of compliance is low and is quantifiable from the confidence limit and the divisor. For example, for transformer losses, using a lower confidence limit of 95%, 0.97 as the divisor, and assuming a standard deviation of 3% for a basic model and a minimum sample size of five, possible errors and corresponding probabilities for false determinations of compliance are:

Error in percent	1.5	2.0	2.9
Probability in percent	10	5	1

Under these constraints there is a probability of less than 5% that the estimated average losses of the entire population exceed the true average by 2%.

Conversely, the enforcement sampling approach in Part 430 is based on a Student's t-test; it generally tests whether there is a sufficiently high probability to conclude that the average performance of all units of the basic model is below the standard to warrant enforcement action. By selecting an upper confidence limit and a minimum sample size, the probability of the populations not meeting the standard by a certain amount can be established. For example, for transformer losses, using the upper 95% confidence limit and a sample size of five, on a population with standard deviation of 3%, the possible errors and corresponding probabilities for significant false determinations of compliance are high as shown in the table below:

Error in percent	0.8	2.9	5.7
Probability in percent	90	50	5

Under these constraints there is a probability of almost 50% that the estimated average losses of the entire population exceed the true average by 3%.

Thus, after considerable review, the Department is proposing in today's proposed rule to use Part 430's sampling

approach for compliance testing. For transformer losses, the proposed lower confidence limit is 95%, and the divisor is 0.97, with a minimum sample size of five.

Some manufacturers, however, particularly small companies, have limited output of certain basic models; consequently, under today's proposed sampling plan, a manufacturer would need to test a relatively high proportion of the units it manufactures of such a basic model. Moreover, although the Department could provide in its sampling plan that the minimum number of units tested of a low production basic model be reduced from five to two or three, any such basic model would be subject to increased risk of being determined to be in non-compliance due to the statistical probabilities associated with testing a small number of units. To allay these concerns, the Department is considering three possible approaches for sampling limited production models:

(1) Combine two or more limited production basic models of distribution transformer into an aggregate "basic model";

(2) Allow testing of a sample fewer than five units, and also permit the use of a represented efficiency value that exceeds, by a specified increment, the average efficiency of the sample, so long as each tested unit exceeds a minimum level of efficiency [4];

(3) Allow compliance testing over a period of time.

The third alternative would be similar to the Department's approach for lamps, which permits lamp manufacturers to submit a certification report up to one year after the date the manufacture of a new model commences, provided that prior to distribution the manufacturer submits a statement describing how it determined the model meets the energy conservation standard. See section 430.62(c)(2) and 42 U.S.C. 6295(i)(7). The Department solicits comments on these possible approaches.

G. New Part 432

10 CFR part 430 covers consumer products as distinct from commercial and industrial equipment. The Department proposed to create a new part 431 in the Code of Federal Regulations (10 CFR part 431) to cover certain commercial and industrial equipment 61 FR 60439 (November 27, 1996). The Department is now contemplating adding a new Part 432 which would include products addressed under 346 of EPCA.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this rulemaking, the Department proposes provisions to establish test procedures for electric distribution transformers. These test procedures would be used initially only for the purpose of considering the adoption of energy conservation standards. During a subsequent rulemaking concerning such standards, the Department will address the extent to which these test procedures would become generally applicable and binding for determining the energy efficiency of distribution transformers.

The Department has concluded that this rule would not have a significant effect on the human environment, and is covered under the categorical exclusion A.6 of appendix A to Subpart D, 10 CFR Part 1021, which applies to procedural rulemakings. (10 CFR Part 1021 is a DOE regulation implementing the National Environmental Policy Act of 1969 (NEPA), and Appendix A to Subpart D sets forth DOE actions excluded from NEPA review.) Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Review Under Executive Order 12866, "Regulatory Planning and Review"

Today's proposed rule has been determined not to be a "significant regulatory action," as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 603, requires the preparation of an initial regulatory flexibility analysis for every rule which by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts.

Today's proposed rule prescribes test procedures that will be used to determine what standards, if any, DOE would adopt, and that would likely become generally applicable only upon adoption of standards. Unless and until such standards are adopted, the Department anticipates that manufacturers will use the test procedures to voluntarily test their transformers and provide to DOE efficiency information about their products. No entities, small or large, would be required to comply with these test procedures. Therefore DOE believes today's proposed rule does not have a "significant economic impact on a substantial number of small entities," and the preparation of a regulatory flexibility analysis is not warranted.

D. Review Under Executive Order 12612, "Federalism"

Executive Order 12612, "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the National Government and States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The proposed rule published today would not regulate the States. At this point, it primarily would affect the manner in which DOE determines whether standards should be adopted, as prescribed under the Energy Conservation and Policy Act. The proposed rule published today would not alter the distribution of authority and responsibility to regulate in this area. Accordingly, DOE has determined that preparation of a federalism assessment is unnecessary.

E. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights"

It has been determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

[4] DOE is considering, as a method of implementing this approach, the following: If fewer than 5 units of a basic model are manufactured in a period of 180 days, all units manufactured within this period shall be tested, and the average efficiency of the sample $\bar{E}$ shall satisfy the condition

$$\bar{E} \geq E_S [1 - 0.04 + \sqrt{n} (1 - E_S + 100)]$$

where n is the number of units in the sample, and E_s is the represented value of efficiency.

For sample sizes of two, three, or four transformers, the lowest efficiency in the sample E_{min} shall satisfy the condition

$$E_{min} \geq E_S [1 - 0.08 (1 - E_S + 100)]$$

F. Review Under the Paperwork Reduction Act

Today's notice of proposed rulemaking would not impose any compliance certification, labeling or other reporting requirements. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's proposed regulation under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

H. Review Under Section 32 of the Federal Energy Administration Act of 1974

Pursuant to Section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy is required to comply with Section 32 of the Federal Energy Authorization Act (FEAA), as amended by Section 9 of the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). Section 32 provides in essence that, where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards.

The rule proposed in this notice incorporates by reference commercial standards NEMA TP 2. The Department has evaluated these standards and concludes they were not developed in a manner which fully provides for public participation, comment, and review. The rule proposed in this notice also incorporates by reference commercial standards IEEE/ANSI C57.12.90–1993, C57.12.91–1995, C57.12.00–1993, and C57.12.01–1989, as well as ISO Standard 9001–1993. The Department has evaluated these standards and is unable to conclude whether they were developed in a manner which fully provides for public participation, comment, and review. However, the Department believes the IEEE/ANSI and ISO review processes provide for participation from a larger group of entities than the NEMA standards review process.

As required by Section 32(c) of the Federal Energy Administration Act, the Department will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of these standards on competition, prior to prescribing a final rule.

I. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

IV. Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in the proposed rulemaking by submitting data, comments, or information with respect to the proposed issues set forth in today's proposed rule to Ms. Kathi Epping, at the address indicated at the beginning of the notice. All submittals received by the date specified at the beginning of this notice will be considered by the Department in developing the final rule.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat as confidential information that has been submitted include: (1) a description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Public Hearing

1. Procedures for Submitting Requests To Speak

The time and place of the public hearing are indicated at the beginning of this notice of proposed rulemaking. The Department invites any person who has an interest in today's notice of proposed rulemaking, or who is a representative of a group or class of persons that has an interest in these proposed issues, to make a request for an opportunity to make an oral presentation. If you would like to attend the public hearing, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. Requests to speak may be hand delivered to the address indicated at the beginning of the notice between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and state why he or she, either individually or as a representative of a group or class of persons that has such an interest, is an appropriate spokesperson, and give a telephone number where he or she may be contacted.

Each person selected to be heard is requested to submit an advance copy of his or her statement prior to the hearing as indicated at the beginning of this notice. Any person wishing to testify who cannot meet this requirement, may at the Department's discretion be permitted to testify if that person has made alternative arrangements with the Office of Codes and Standards in advance. The letter making a request to give an oral presentation shall ask that such alternative arrangements be made.

2. Conduct of Hearing

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and Section 336 of the Act. The Department of Energy reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing.

Each participant will be permitted to make a prepared general statement, limited to five (5) minutes, prior to the discussion of specific topics. The general statement should not address these specific topics, but may cover any other issues pertinent to this rulemaking. Other participants will be permitted to briefly comment on any general statements. The hearing will then be divided into segments, with each segment consisting of one or more topics covered by this notice, as follows: (1) proposed test procedures; (2) adequacy of TP 2 to meet the requirements of users; (3) distribution transformers not subject to the test procedures; (4) grouping of transformers for testing purposes, as manifested by the definition of a basic model; (5) sampling plan for compliance; and (6) general statutory requirements. Any issue concerning a definition in the proposed rule should be addressed during the discussion of the topic(s) to which that issue pertains.

The Department will introduce each topic with a brief summary of the relevant provisions of the proposed rule, and the significant issues involved. Participants in the hearing will then be permitted to make a prepared statement limited to five (5) minutes on that topic. At the end of all prepared statements on a topic, each participant will be permitted to briefly clarify his or her statement and comment on statements made by others. The Department is particularly interested in having participants address in their statements the specific issues set forth below in Section IV–C, "Issues for Public Comment," and participants should be prepared to answer questions by the Department concerning these issues. Representatives of the Department may also ask questions of participants concerning other matters relevant to the hearing. The total cumulative amount of time allowed for each participant to make prepared statements shall be 20 minutes.

The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any further procedural rules, or modification of the above procedures, needed for the proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by the Department of Energy and made available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues Requested for Comment

The Department of Energy is interested in receiving comments and/or data concerning the feasibility, workability and appropriateness of the test procedures proposed in today's proposed rulemaking. Also, DOE welcomes discussion on improvements or alternatives to these approaches. In particular, the Department is interested in gathering comments on the following:

- The adequacy of TP 2 to meet the requirements of non-NEMA manufacturers and users, such as utilities and contractors who specify transformers for commercial and industrial applications (e.g., retail, industrial, and office buildings);
- Distribution transformers not subject to the test procedures;
- Grouping of transformers for testing purposes, as manifested by the definition of a basic model; and
- The sampling plan for compliance (The Department is particularly interested in discussing how small populations should be handled.)

List of Subjects in 10 CFR Part 432

Administrative practice and procedure, Energy conservation, Household appliances. Incorporation by reference.

Issued in Washington, DC., on October 2, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended by adding a new Part 432 to read as follows.

PART 432—ENERGY CONSERVATION PROGRAM FOR DISTRIBUTION TRANSFORMERS

Sec.

432.1 Purpose and scope [Reserved].
432.2 Definitions.
432.22 Reference Sources.
432.24 Units to be tested.
Appendix A to Part 432—Uniform Test Method for Measuring the Energy Consumption of Distribution Transformers.

Authority: 42 U.S.C. 6317.

§ 432.1 Purpose and scope [Reserved].

§ 432.2 Definitions.

Basic model means all units of a given type of distribution transformer manufactured by a single manufacturer and which have a comparable nominal output power (kVA) rating, operate within the same voltage range, have the same insulation type (liquid-immersed or dry type), and have the same number of phases (single or three).

Converter transformer means a transformer designed for the dedicated applications of converting direct current (dc) to alternating current (ac), or converting alternating current to direct current. Its nameplate contains a rating for the fundamental-frequency apparent output power and a rating for the apparent output power with non

sinusoidal current produced by the converter.

Distribution transformer means a transformer with a primary voltage of 480 V to 35 kV, a secondary voltage of 120 V to 600 V, a frequency of 55–65 Hz, and a capacity of either 10 to 2500 kVA for liquid-immersed transformers or 0.25 kVA to 2500 kVA for dry-type transformers, except for:

(1) Converter and rectifier transformers with more than two windings per phase, and

(2) Transformers which are not designed to be continuously connected to a power distribution system as a distribution transformer. This second exception includes regulating transformers, machine tool transformers, welding transformers, grounding transformers, testing transformers, and other transformers which are not designed to transfer electrical energy from a primary distribution circuit to a secondary distribution circuit, or within a secondary distribution circuit, or to a consumer's service circuit.

Dry-type distribution transformer means a distribution transformer in which the core and coils are immersed in a gaseous or dry-compound insulating medium.

Efficiency means, for a distribution transformer, the ratio of the useful output power to the total input power.

Liquid-immersed distribution transformer means a distribution transformer in which the core and coils are immersed in an insulating liquid.

Load losses mean, for a distribution transformer, those losses which are incident to the carrying of a specified load. Load losses consist of ohmic (I^2R) loss in the windings due to load and eddy currents; the loss due to circulating currents in parallel windings or in parallel winding strands; and stray losses due to leakage fluxes in the windings, core clamps, and other parts.

Low-voltage dry-type transformer means a distribution transformer with a primary voltage rated at 1.2 kV and below.

Medium-voltage dry-type transformer means a distribution transformer with a primary voltage rated above 1.2 kV. .

No-load losses mean, for a distribution transformer, those losses which are incident to the excitation of the transformer. No-load losses consist of core loss, dielectric loss, conductor loss in the windings due to exciting current, and conductor loss due to the circulating currents in parallel windings.

Rectifier transformer means a transformer designed for the dedicated application of converting alternating current to direct current. Its nameplate contains a rating for the fundamental-frequency apparent output power and a rating for the apparent output power with non sinusoidal current produced by the converter.

Total losses mean, for a distribution transformer, the total of the no-load and load losses. It does not include losses due to accessories, such as cooling fans.

Transformer means a static electromagnetic device consisting of a winding, or two or more coupled windings, with a magnetic core for introducing inductive coupling between electric circuits, designed to transfer power by electromagnetic induction between circuits at the same frequency.

§ 432.22 Reference Sources.

(a) Materials Incorporated by Reference. (1) General. The following standards which are not otherwise set forth in this part 432 are incorporated by reference. The material listed in paragraph (a)(2) of this section has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE test procedures unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register.**

(2) Availability of Standards.

Option One for Paragraph (a)(2)(i) [5]

(i) Copies of ANSI standards C57.12.90–1993, C57.12.91–1995, and C57.12.00–1993 can be obtained from the American National Standards Institute, 11 West 42nd Street, New York, N.Y., 10036;

Option Two for Paragraph (a)(2)(i)

(i) Copies of NEMA Standards Publication TP 2–1998 can be obtained from Global Engineering Documents World Headquarters, 15 Iverness Way East, Inglewood, CO 80112–5776;

(ii) All standards incorporated by reference are available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, Forrestal Building, 1000 Independence Ave, SW, Washington, DC 20585.

[5] In the preamble to this proposed rule, the Department states its intention to adopt as the test procedure for distribution transformers either portions of standards prepared by IEEE and approved by ANSI, or portions of a standard being developed by NEMA. In the proposed rule language, passages introduced by the phrase "OPTION ONE FOR PARAGRAPH____" constitute the language DOE proposes to use if it decides to adopt the ANSI/IEEE standards, and the phrase "OPTION TWO FOR PARAGRAPH_____" introduces the regulatory language proposes in the event the NEMA standard is adopted.

(iii) All standards incorporated by reference are available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, N.W., Washington, DC.

Option One for Paragraph (a)(3)

(3) List of standards incorporated by reference. (i) ANSI/IEEE Standard C57.12.90–1993, "IEEE Standard Test Code for Liquid-Immersed Distribution, Power, and Regulating Transformers and IEEE Guide for Short-Circuit Testing of Distribution and Power Transformers", sections 5 through 5.3.2, sections 8 through 8.4, and sections 9 through 9.4.1.

(ii) ANSI/IEEE Standard C57.12.00–1993, IEEE Standard General Requirements for Liquid-Immersed Distribution, Power, and Regulating Transformers" clause 9.4.

(iii) ANSI/IEEE Standard C57.12.91–1995, "IEEE Standard Test Code for Dry-Type Distribution and Power Transformers" clauses 5 through 5.4.2.3, clauses 8 through 8.3, and clauses 9 through 9.4.2.

Option Two for Paragraph (a)(3)

(3) Standard incorporated by reference. NEMA Standards Publication TP 2–1998, "Standard Test Method for Measuring the Energy Consumption of Distribution Transformers" sections 1, 2, 3, 4, 5, and 6. Deviations from these sections are set forth at Appendix A to Part 432 section 3.2(ii).

Option One for Paragraph (b)

(b) Reference Standard. The following standard is referred to in the DOE test procedure and elsewhere in 10 CFR part 432 but is not incorporated by reference and is provided here for guidance: ISO Standard 9001–1993, "Quality Systems—Model for quality assurance in design, development, production, installation, and servicing" clause 4.11.1.

Option Two Omits Paragraph (b)

§ 432.23 Test procedures for measures of energy consumption.

Option One for Paragraph (a)

(a) Total losses, expressed in kilowatts, of a liquid-immersed distribution transformer operated at 50% of the rated load shall be determined in accordance with clause 3.1.2 of Appendix A to this part. Total losses of a dry-type distribution transformer operated at either 50% or 35% of the rated load, as appropriate, shall be determined in accordance with clause 3.2.3 of Appendix A to this part.

Option Two for Paragraph (a)

(a) Total losses, expressed in kilowatts, of a liquid-immersed distribution transformer operated at 50% of the rated load shall be determined in accordance with clause 3.3 of Appendix A to this part. Total losses of a dry-type distribution transformer operated at either 50% or 35% of the rated load, as appropriate, shall be determined in accordance with clause 3.4 of Appendix A to this part.

Option One for Paragraph (b)

(b) Efficiency, expressed in percent, of a liquid-immersed distribution transformer

operated at 50% of the rated load shall be determined in accordance with clause 3.1.2 of Appendix A to this part. Efficiency of a dry-type distribution transformer, expressed in percent, operated at either 50% or 35% of the rated load shall be determined in accordance with clause 3.2.3 of Appendix A to this part.

Option Two for Paragraph (b)

(b) Efficiency, expressed in percent, of a liquid-immersed distribution transformer operated at 50% of the rated load shall be determined in accordance with clause 3.5 of Appendix A to this part. Efficiency of a dry-type distribution transformer, expressed in percent, operated at either 50% or 35% of the rated load shall be determined in accordance with clause 3.5 of Appendix A to this part.

(c) The estimated annual energy consumption (EAEC), expressed in kilowatt-hours per year, for a distribution transformer operating continuously at 50% or 35% of the rated output power, as appropriate, shall be the product of:

(1) The total losses in kilowatts as determined in paragraph (a) of this section; and

(2) The representative use cycle of 8766 hours per year.

§ 432.24 Units to be tested.

For each basic model of distribution transformers, a random sample of sufficient size, but no fewer than five production units, shall be tested to insure that any represented value of efficiency shall be no greater than the lower of the:

(a) Mean of the sample; or

(b) The lower 95% confidence limit of the estimated true mean divided by a number equal to $[1-0.03(1-E_s/100)]$, where E_s is the represented value of efficiency claimed for that particular basic model.

Appendix A to Part 432—Uniform Test Method for Measuring the Energy Consumption of Distribution Transformers

1. Definitions. Use the definitions in 10 CFR 432.21 and the following:

1.1 ANSI Standard means a standard approved by a committee accredited by the American National Standards Institute.

1.2 IEEE Standard means a standard developed and approved by the Institute of Electrical and Electronics Engineers. All IEEE standards referenced in Appendix A have been approved or recognized by ANSI.

1.3 ISO Standard means a standard developed and approved by the International Standards Organization.

1.4 NEMA Standards Publication means a standard developed and approved by National Electrical Manufacturers Association.

1.5 Phase angle error means an error introduced in the phase angle displacement between voltage and current phasors by the test equipment. Phase angle error, if significant, can introduce errors in measured transformer losses.

1.6 Phase angle correction means the adjustment (correction) of measurement data to negate the effects of phase angle error.

1.7 Reference temperature means the temperature, specified in a standard, to which the transformer losses shall be corrected and reported.

1.8 Temperature correction means the adjustment (correction) of measurements of no load losses and load losses, obtained with the distribution transformer under test at a temperature that is different from the reference temperature, to values that would have been obtained with the distribution transformer at the reference temperature.

1.9 Test voltage means the voltage of the electric power supplied to the distribution transformer under test.

1.10 Waveform correction means the adjustment (correction) of measurement data obtained with a test voltage that is non-sinusoidal (distorted) to values that would have been obtained with sinusoidal voltage.

Option One for Paragraph 2

2. References.

2.1 ANSI/IEEE Standard C57.12.90–1993, "IEEE Standard Test Code for Liquid-Immersed Distribution, Power, and Regulating Transformers and IEEE Guide for Short-Circuit Testing of Distribution and Power Transformers" (ANSI/IEEE C57.12.90).

2.2 ANSI/IEEE Standard C57.12.00–1993, IEEE Standard General Requirements for Liquid-Immersed Distribution, Power, and Regulating Transformers" (ANSI/IEEE C57.12.00).

2.3 ANSI/IEEE Standard C57.12.91–1995, "IEEE Standard Test Code for Dry-Type Distribution and Power Transformers" (ANSI/IEEE C57.12.91).

2.4 ISO Standard 9001–1993, "Quality Systems—Model for quality assurance in design, development, production, installation, and servicing."

Option Two for Paragraph 2

2. References.

NEMA Standards Publication TP 2–1998, "Standard Test Method for Measuring the Energy Consumption of Distribution Transformers" (NEMA TP 2).

Option One for Paragraph 3

3. Test Procedures' Measurements and Instrumentation, Reference Conditions, Calculations.

The resistance of transformer windings, the no-load losses, and the load losses of transformers shall be measured, and the total losses and efficiency shall be computed at the specified loading levels and reference temperatures, using the methods described in the following industry standards (with certain specified modifications and exceptions): ANSI/IEEE standards C57.12.90–1993 and C57.12.91–1995 (primary references); ANSI/IEEE standard C57.12.00–1993 (supplemental reference). The methods to be used, including applicable sections and clauses in the referenced standards, as well as exceptions and modifications to such sections and clauses, are listed in this appendix: §§ 3.1–3.3 and their subclauses.

3.1 Liquid-Immersed Distribution Transformers.

Using the methods specified in ANSI/IEEE standard C57.12.90–1993 sections 5, 8, and 9, measure the resistance of transformer windings, the no-load losses and load losses of liquid-immersed distribution transformers. Perform waveform correction on the measured no-load losses and perform phase angle correction for the load losses.

3.1.1 Perform temperature corrections for the loss data of § 3.1 by converting the no-load losses to 20°C and converting the load losses to 55°C with the loading at 50% of the rated load. To perform these temperature corrections, the provisions in sections 8.4 and 9.4.2 of ANSI/IEEE standard C57.12.90–1993 are applicable. For the conversion to the 50% loading the quadratic relationship $P_{(LS0)}=P_{(LM)}\ (50/M)^2$ applies, where $P_{(LS0)}$ is the load loss power at 50% loading, $P_{(LM)}$ is the load loss power at M% loading, and (50/M) is the ratio of the loading at the 50% reference condition to the loading during the measurement (near 100% loading).

3.1.2 Calculate the total losses (P_{50}) at 50 % loading by adding the no-load losses and the load losses as computed in § 3.1.1, and calculate the efficiency at 50 % loading according to the equation:

$E_{50}=100\ [P_{O(50)}/(P_{O(50)}+P_{L(20)})]$,

where E_{50} is the efficiency at 50% loading, and $P_{O(50)}$ and $P_{L(50)}$ are the output power and total loss power, respectively, at 50% loading.

3.2 Dry-Type Transformers.

Using the methods specified in ANSI/IEEE standard C57.12.91–1995, sections 5, 8, and 9, measure the resistance of transformer windings, the no-load losses and load losses of dry-type distribution transformers. Perform waveform correction on the measured no-load losses and perform phase angle correction for the load losses.

3.2.1 In addition to the requirements of ANSI/IEEE standard C57.12.91–1995, the following two additional requirements apply to the measurements in section 3.2 of this appendix:

(i) Perform phase angle correction for the measured load losses as specified in ANSI/IEEE standard C57.12.90–1993, clause 9.4.1 and Table 1;

(ii) Measure the no-load losses with the transformer at the reference temperature of 20°C; a temperature tolerance of ±10°C is permissible; if no-load loss measurements are conducted outside this temperature tolerance, perform the appropriate temperature correction such as that specified in ANSI/IEEE standard C57.12.90–1993, clause 8.4.

3.2.2 Perform temperature corrections for the loss data by converting the load losses of medium-voltage dry-type transformers to 75°C, at 50% of the rated load, and converting the load losses of low-voltage dry-type transformers to 75°C, at 35% of the rated load. To perform these temperature corrections, the provisions of ANSI/IEEE standard C57.12.91-1995, clause 9.4.1 shall apply. For the conversions to the 50% and 35% loading levels the algorithm of § 3.1.1 applies.

3.2.3 Calculate the total losses, $P_{L(50\text{or}35)}$, at either 50% or 35% loading, as appropriate, by adding the no-load losses and load losses as computed in § 3.2.2, and calculate the efficiency of the transformer at either 50% or 35% loadings according to the equation:

$E_{(50\text{or}30)}=100\ [P_{O(50\text{or}30)}/(P_{O(50\text{or}30)}+P_{L(50\text{or}30)})]$,

where $E_{(50\text{or}30)}$ is the efficiency in percent, $P_{O(50\text{or}30)}$ is the output power in kilowatts, and

$P_{L(50X30)}$ is the loss power in kilowatts. The subscripts, (50) or (35), denote the loading levels, either 50% or 35%.

3.3 Quality Assurance in Testing.

Accuracies required for measuring the winding resistances, the no-load and load losses, and the temperature of distribution transformers shall be those specified in ANSI Standard C57.12.00–1993, Section 9.4.

Test equipment and measuring instruments shall be calibrated and maintained in their normal operating condition. Calibration records shall be maintained to demonstrate compliance with the required measurement accuracies. General guidance as to procedures that will aid in meeting these objectives is provided by the following Clause 4.11.1 of ISO Standard 9001–1993, "Quality Systems—Model for quality assurance in design, development, production, installation, and servicing.":

"The supplier shall establish and maintain documented procedures to control, calibrate and maintain inspection, measuring and test equipment (including test software) used by the supplier to demonstrate the conformance of product to the specified requirements. Inspection, measuring and test equipment shall be used in a manner which ensures that measurement uncertainty is known and is consistent with the required measurement capability."

Option Two for Paragraph 3

3. Test Procedures—Measurements and Instrumentation, Reference Conditions, Calculations.

The resistance of transformer windings, the no-load losses, and the load losses of transformers shall be measured, and the total losses and efficiency shall be computed at the specified loading levels and reference temperatures, using the methods described in the following industry standards (with certain specified modifications and exceptions): NEMA standard TP 2. The methods to be used, including applicable sections and clauses in the referenced standards, as well as exceptions and modifications to such sections and clauses, are listed in this appendix: sections 3.1–3.5 and their subclauses.

3.1 Liquid-Immersed and Dry-Type Distribution Transformers.

In accordance with NEMA TP 2, sections 1, 2, 3, 4, 5, and 6, do the following: measure the resistance of transformer windings, the no-load losses, and the load losses of liquid-immersed and dry-type transformers; apply waveform corrections, phase angle corrections, and temperature corrections to the measured data for no-load losses and load losses; and ensure the quality assurance measures for testing operations.

3.2 Deviations from NEMA TP 2. For the purpose of this DOE test procedure the following deviations from TP 2 shall apply:

(i) Section 7 of TP 2, Demonstration of Compliance, shall not be a part of the DOE test procedure.

(ii) The reference conditions for reporting the data under the DOE test procedure shall be: 20 °C ± 10 °C for no-load losses of liquid-immersed distribution transformers and dry-type distribution transformers; 55 °C for load losses of liquid-immersed distribution transformers operated at 50% of the rated load; 75 °C for load losses of medium-voltage dry-type transformers operated at 50% of the rated load; and 75 °C for load losses of low-voltage dry-type transformers operated at 35% of the rated load.

(iii) The exceptions listed in item 4 of the Scope of TP 2 do not apply to the DOE test procedure.

3.3 The total losses of liquid-immersed distribution transformers, at the specified reference conditions, shall be computed according to clause 5.2.3 of TP 2.

3.4 The total losses of the dry-type distribution transformers, at the specified reference conditions, shall be computed data according to clause 5.3.3 of TP 2.

3.5 Compute the efficiency values of liquid-immersed distribution transformers and dry-type distribution transformers at the specified reference conditions using the algorithm provided in clause 5.4 of TP 2.

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Part III

Department of Labor

Employment and Training Administration

Draft White Paper: Workforce Investment Act of 1998 Implementation; Comment Request; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice: request for comments.

SUMMARY: The purpose of this notice is to obtain comments on the Department of Labor's draft White Paper on the implementation of the Workforce Investment Act (WIA or Act), Public Law 105–220 (August 7, 1998). The paper sets forth in general terms the approach the Department is taking to implement title I, III and V of the Act. The implementation of title V will be conducted in conjunction with the Department of Education. This paper is only one of a series of documents and other materials that will guide the implementation of the Act. It is not intended to answer all questions relating to implementation, but rather to provide the general philosophy and approach to implementation. Other documents will address more specific issues. While the Department does not plan to revise this paper, all comments received by the closing date will be considered in future aspects of the implementation process. This notice is not a proposed rule. The Department will consider comments on regulations throughout the rulemaking process.

DATES: The Department invites written comments on this notice. Comments received on or before December 1, 1998 will be considered in the development of regulations and policy guidance as well as the overall implementation strategy. Statute requires regulations to be promulgated by February 1999.

ADDRESSES: Submit written comments to Mr. Eric Johnson, Workforce Investment Implementation Taskforce Office, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S5513, Washington, DC 20210. All comments will be available for public inspection and copying during normal business hours at the address above. Copies of the draft White Paper are available at the address above, as well as on the WIA web site at http://usworkforce.org. Comments may be submitted electronically to that web address. Commenters wishing acknowledgment of receipt of their comments must submit them by certified mail, return receipt requested.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Johnson, Workforce Investment Implementation Taskforce Office, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S5513, Washington, DC 20210, Telephone: (202) 219–0316 (voice) (This is not a toll-free number), or 1–800–326–2577 (TDD).

SUPPLEMENTARY INFORMATION: Signed into law on August 7, 1998, the Workforce Investment Act provides the framework for a unique national workforce preparation and employment system designed to meet the needs of job seekers, individuals who want to further their career, as well as the nation's businesses. The Act encourages States to reform existing employment and training programs and to think broadly about how Federal, State and local resources can be integrated into a comprehensive workforce investment system. The Act builds on the most successful elements of previous Federal legislation. Just as important, its key components are based on local and State input and extensive research and evaluation studies of successful training and employment innovations over the past decade. The Act makes changes to the current funding streams, target populations, delivery systems, accountability systems, labor market information systems, and governance structures. The White Paper is attached.

Signed at Washington, D.C., this 5th day of November, 1998.

Raymond L. Bramucci,

Assistant Secretary of Labor.

Message From the Secretary of Labor

With an economy more vibrant than any we've seen in 30 years, America is looking forward to a new century filled with endless possibilities for growth and opportunity. Just this year, millions of new jobs have been created. Unemployment is at an all-time low, and wages are on the rise.

But with new high-skill jobs growing at nearly three times the rate of other jobs, many employers are having a hard time attracting qualified workers. And millions of workers with few or no skills feel trapped in jobs leading nowhere.

As Secretary of Labor, one of my chief goals is bridging the gap between job opportunities and the pool of workers who are qualified to fill them. I want to equip every American worker with skills that will not only secure a good job, but guarantee every step up the workforce ladder leads to even greater opportunities.

That is why the Department of Labor worked with Congress to create the historic Workforce Investment Act, signed into law this year. Five years in the making, the Workforce Investment Act represents a total overhaul of our country's job-training system—a customer-driven overhaul that will help employers get the workers they need and empower job seekers to meet the challenges of the new century by getting the training they need for the jobs they want.

The Workforce Investment Act makes this possible through an innovative "One-Stop" system designed to provide a full menu of job training, education and employment services at a single neighborhood location where adults, veterans, dislocated workers and youth will receive skills assessment services, information on employment and training opportunities, unemployment, services, job search and placement assistance, and up-to-date information on job vacancies—all at one center specifically tailored to meet the needs of the community it serves.

Best of all, job seekers will control their own careers by choosing the training programs and services that fit their needs. And they'll keep that control for life. So when it's time to make another move up the career ladder, sharpen a skill, learn a new one, or just get information, workers will be able to continue to rely on their local One-Stop Center.

The Workforce Investment Act also provides for increased accountability. The performance of states, localities and training providers will be monitored against goals set by the Act —including job placement rates, earnings, retention in employment, and skill gains. Failure to meet the goals will lead to sanctions, while exceeding them will lead to incentive funds.

But the Workforce Investment Act is more than a new job training system. It's a strong network of interlinked programs designed to provide wide choices to Americans seeking new opportunities and valuable information. And, it's a chance for us to harness today's opportunities for success and invest them in the workforce of tomorrow.

I am immensely proud that 15 million young out of school Americans will not be left out of this system. The law focuses on the needs of kids in left-out communities to ensure they are pulled into the inner circle of opportunity offering all of us a pool of talent for the future. That is why I am inviting everyone—government, business, labor and communities to work together to prepare America's workforce for the challenges of the 21st Century.

Implementing the Workforce Investment Act of 1998

(10/8/98 DRAFT)

The Workforce Investment Act will empower all workers—young and old—

with the skills and knowledge to build better lives for themselves and their families as we enter the new century.

Secretary of Labor Alexis Herman

August 8, 1998.

Purpose

This paper sets forth in general terms the approach the Department of Labor is taking to implement titles I, III, and V of the Workforce Investment Act. The implementation of title V will be conducted in conjunction with the Department of Education. Implementation is guided by the goals and specific requirements of the new law, as well as by the Act's legislative history, the bipartisan "reform" principles that have been articulated by the President and Members of Congress, the views of workforce investment system stakeholders, and specific Departmental and Administration principles that affect implementation (such as regulatory reform).

This paper is only one of a series of documents and other materials—including regulations, questions and answers, technical assistance guides, etc.—that will guide implementation of the Act. It is not intended to answer all questions relating to implementation, but rather to provide the general philosophy and approach to implementation.

Other documents will address more specific issues. Comments on this paper and other implementation materials are welcome and should be sent to the address at the end of this paper.

Introduction

The Workforce Investment Act of 1998 represents the first major reform of the nation's job training system in over 15 years. The enactment of this legislation is the culmination of a four year bipartisan effort on the part of the Administration and Congress to design, with States and local communities, a revitalized system that provides workers with the information, advice, job search assistance, and training they need to get and keep good jobs—and provides employers with skilled workers.

This reform comes at an opportune time. The American economy is stronger than it has been in a generation, and it is increasingly driven by creativity, innovation and technology. New high-skill jobs are growing at nearly three times the rate of other jobs. Many employers are finding it increasingly difficult to locate and attract qualified workers for high-skilled, high-paying jobs—as well as qualified workers for entry-level jobs. At the same time, millions of workers with little or no skills feel trapped in low-wage, dead end jobs. Reforms under the Workforce Investment Act will permit us to build a delivery system in which any adult interested in advancing his or her career—regardless of income—can keep on learning, and where job seekers—such as low-income adults including welfare parents, disadvantaged youth, unemployed or displaced workers, and others willing to learn and work—can access high quality information and services. This delivery system should be designed with the participation of employers, labor, education and community groups which have a large stake in its success.

The enactment of the Workforce Investment Act provides unprecedented opportunity for major reforms that will result in a reinvigorated, integrated workforce investment system. States and local communities should seize this historic opportunity by thinking expansively and designing a customer-focused, comprehensive delivery system. New, strong, business-led local boards can contribute fresh thinking about the labor market and its needs—as well as about quality and continuous improvement—in a way that earns sustained support by local business leaders. We will know if we have successfully implemented this legislation if in less than five years, businesses actively use the workforce investment system to fill their labor force needs, "graduates" increase their skills and earnings, and more and more Americans seek access to the system's services.

States and communities will be able to strengthen ongoing reforms that have been supported by the Department of Labor through the One-Stop initiative, the School-to-Work Opportunities initiative which is administered jointly with the Department of Education, and through flexibility provided through waivers and Work-Flex. By eliminating many of the administrative and regulatory barriers that have previously existed, this Act provides States and local communities with the tools they need to finally build the comprehensive systems they have been striving towards.

Background

The current patchwork of Federal job training programs has taken shape over the last six decades, each element responding to a particular concern at a specific time, but never fully brought into alignment with the other components of the "system". The effects of this approach include:

- *Limited choice.* In most programs, choices about job training are made through bureaucratic processes. Men and women seeking new opportunities must settle for what the system has available rather than being permitted to search the market to select the job training that is right for them.
- *Lack of quality information.* Good choices call for reliable data about what jobs are available, what skills they require, and which training institutions offer the best value and performance. But, the current system too often does not provide this type of information to individual job seekers and employers.
- *Weak strategies.* Confronted with splintered and disorganized programs, States and local communities have found it challenging to devise effective strategies for deploying Federal resources, or for effectively integrating Federal efforts with one another and with their own resources. As a result, the private sector has questioned the value of the system.
- *Absence of strong accountability.* The quality of training and related services is highly uneven. Institutions can continue to get Federal funds regardless of performance. Too often, rewards are not targeted to the best programs.

By integrating numerous Federal education, training and employment programs into a comprehensive, streamlined system, the Workforce Investment Act strives to overcome these and other shortcomings of the nation's job training system.

Principles

The Workforce Investment Act gives American workers the chance to equip themselves with the skills and information needed to compete in the new economy, and helps workers take responsibility for building a better future for themselves and their families. To accomplish the goals of the new legislation, the new workforce investment system will be built around several key principles:

- *Streamlining services.* Multiple employment and training programs will be integrated at the "street level" through the One-Stop delivery system. By building on One-Stop implementation efforts already underway in the vast majority of States, this integrated system will simplify and expand access to services for job seekers and employers.
- *Empowering individuals.* Individuals will be empowered to obtain the services and skills they need to enhance their employment opportunities. This empowerment will be accomplished through Individual Training Accounts which will enable eligible participants to choose the

qualified training program that best meets their needs. The development of "consumer reports" containing information for each training provider will allow individuals to make informed training choices.

• *Universal access.* Through the One-Stop system, every individual will have access to core employment-related services. Customers can obtain job search assistance as well as labor market information about job vacancies, the skills needed for occupations in demand, wages paid, and other relevant employment trends in the local, regional and national economy.

• *Increased accountability.* States, localities and training providers will be held accountable for their performance. The Act identifies core indicators of performance—including job placement rates, earnings, retention in employment, skill gains, and credentials earned—that States and local areas would have to meet. Failure to meet the performance goals will lead to sanctions, while exceeding the levels could lead to the receipt of incentive funds. Training providers will have to meet performance goals to remain eligible to receive funds under the Act.

• *Strong role for local boards and the private sector.* Local boards will become business-led "Boards of Directors" for the local areas. By relieving them from "nitty-gritty" operational details, the Act ensures they will be able to focus on strategic planning, policy development and oversight of the local system.

• *State and local flexibility.* States and localities will have exceptional flexibility to build on existing reforms in order to implement innovative and comprehensive workforce investment systems. Through such mechanisms as unified planning, waivers, and Work-Flex—as well as through the Act's grandfathering provisions which allow States to continue innovative practices—States and their local partners have the flexibility to tailor delivery systems to meet the particular needs of individual communities.

• *Improved youth programs.* Youth programs will be linked more closely to local labor market needs and the community as a whole, and will provide a strong connection between academic and occupational learning. In addition, traditional employment and training services will be augmented by an array of youth development activities. The establishment of a youth council in every local area will raise the visibility of youth programs and facilitate coordination and strategic design. The Act also authorizes Youth Opportunity Grants that are designed to provide funding to increase job opportunities for youth in high poverty areas. In addition, the Act reforms the Job Corps program by strengthening linkages among Job Corps centers, the State workforce investment systems, the local communities in which they are located, and employers.

A fundamental reform of Federal programs and policies based on these principles will permit communities and States to craft a workforce investment system that respects individual choices, reflects local conditions, and delivers results.

Goals

Through the establishment of comprehensive State and local workforce investment systems that are constructed around the basic principles described above, the Act strives to increase the employment, retention, and earnings of participants, and increase occupational skills attainment by participants. In achieving these goals, the new system will also:

1. Improve the quality of the workforce. Finding workers to sustain America's economic growth is becoming one of the most crucial concerns of business owners and managers across the United States. Changing job requirements and the resulting demand for new skills, the desire for reliable worker credentials, and shifting company and industry structures mean continuing intense demand for high-quality services that enable workers to meet the needs of the labor market. The Act was developed with the recognition that, as the 21st century approaches, we have to develop training opportunities that respond to market needs and provide consumer choices.

2. Enhance the productivity and competitiveness of the Nation. The world of work is continuously changing. Economic progress greatly benefits many American workers and American businesses, but it poses important challenges as well. New technologies, changes in international trade, deregulation, and greater competition have led to structural changes in the U.S. labor markets. Research suggests that rapid technological progress, fierce competition, further integration of the U.S. economy with other economies, and significant demographic changes will continue. This Act will create a system that can quickly respond to such changes, and that is intended to efficiently prepare workers to meet the needs of the labor market, provide key labor market information, and help provide businesses with the resources to remain competitive. An integrated, highly accountable workforce investment system is critical if American workers and businesses are to keep pace in this rapidly changing economic environment.

3. Reduce welfare dependency. Working with the hardest to serve is a major challenge in welfare reform despite reduced caseloads. This Act aims to reduce welfare dependency and provide the tools to do so through the One-Stop system that includes the Welfare-to-Work program, and is able to integrate TANF and other programs that serve the welfare customer—in order to invest in the employment and job retention of the hardest to serve. In areas where adult funding is limited, welfare recipients and other low wage individuals will receive priority for intensive and training services. Collaboration between the workforce investment and welfare systems is important for several reasons. Both systems now focus on helping clients become employed. In addition, the two systems serve many of the same customers. Common customers also include employers who hire clients of the two systems. Finally, given scarce resources, strong collaboration will ensure that efforts are not duplicated.

Fundamental Change in Service Delivery

This bill is tailored to meet the local needs of both workers and business for years to come. It will help all Americans who want to take advantage of the new high paying jobs that our economy is creating. It will provide business with the skilled employees they need to compete in the global high-tech economy. Above all it will make sure that as our economy moves into the 21st century, our job training system does too.

Secretary of Labor Alexis Herman
July 31, 1998.

One-Stop Service Delivery

The cornerstone of the new workforce investment system is One-Stop service delivery which will unify numerous training, education and employment programs into a single, customer-friendly system. The underlying notion of "One-Stop" is the integration of programs, services and governance structures. The Employment Service plays a critical role in One-Stop service delivery as the primary job finding source, especially for unemployment insurance (UI) claimants. It provides quality information to the public about jobs, the dynamics of the labor market, available training and education opportunities, and the links to other public and private services.

It is envisioned that each State could use common intake and case management systems in order to take full advantage of the One-Stops' potential for efficiency and effectiveness. A wide range of services from multiple training and employment programs will be available to meet the needs of a variety of customers—employers and job seekers. In addition, these local One-Stop centers will be places where all Americans can access high quality local information on available jobs, skill requirements, and training provider performance.

The Act requires the establishment of a One-Stop system in each local area. The local board, in collaboration with the local elected official, is responsible for overseeing the One-Stop system in their local area. While the Act establishes certain minimum requirements for the structure of the local system, it allows local communities significant flexibility in the design and implementation of their One-Stop systems.

Each local One-Stop system will be comprised of numerous partners that will provide core services through the One-Stop system. It is envisioned that every local system will represent true collaboration between all of the One-Stop partners. Partners will provide such services in a way that is consistent with their authorizing legislation.

Required Partners

- Adult, Dislocated Worker, and Youth Activities.
- Employment Service.
- Adult Education.
- Postsecondary Vocational Education.
- Vocational Rehabilitation.
- Welfare-to-Work.
- Title V of the Older Americans Act.
- Trade Adjustment Assistance.
- NAFTA Transitional Adjustment Assistance.
- Veterans Employment and Training Programs.
- Community Services Block Grant.
- Employment and training activities carried out by the U.S. Department of Housing and Urban Development.
- Unemployment Insurance.

The Act specifies several Federal programs and activities that are required to participate in each local One-Stop system. The local area may also include other appropriate Federal, State or local programs—as well as private sector initiatives—as partners in the One-Stop system. Ultimately, a local community could have dozens of designated partners in their system.

Each One-Stop partner is required to enter into a Memorandum of Understanding (MOU) with the local board. The MOU will describe: (1) the services to be provided through the One-Stop system; (2) how the costs of the services and the operating costs of the system will be funded; (3) methods of referral of individuals between the One-Stop Operator and the One-Stop partners; (4) the duration of the MOU; and (5) the procedures for amending the MOU. The MOU may also be used to address such other issues as the parties determine are appropriate. One-Stop partners also are required members of the local board —in order to provide them with an integral role in policy development and overall system evaluation

A One-Stop operator will be designated to manage the day-to-day functioning of the local One-Stop system. One-Stop operators may be designated or certified through a competitive process or in accordance with an agreement reached between the local board and a consortium of entities that, at a minimum, includes three or more of the mandatory One-Stop partners. A wide range of organizations and entities—such as postsecondary educational institutions, local Employment Service offices, community-based organizations, private for-profit entities, or government agencies—are eligible to be designated or certified as a One-Stop operators. However, a local board may only be designated or certified as a One-Stop operator with the agreement of the chief local elected official and the Governor.

Each local area is required to have at least one physical "full service" center at which customers can access services from each of the One-Stop partners. This comprehensive center can be augmented by additional "full service" centers and through a network of affiliated sites, or a network of One-Stop partners that can consist of physical sites or electronic access points.

Regardless of the design that a local area chooses, it must be based on a "no wrong door" approach which will assure customers that information all of the core services will be available regardless of where the individuals initially enter the system. This means it does not matter whether an individual enters the system as a UI claimant or as a job seeker seeking information through the Employment Service—in either case, he or she will have access to the full range of services available through the local system.

Adults and Dislocated Workers—A Continuum of Services. It is envisioned that One-Stop centers will offer a wide spectrum of services—ranging from self-service activities such as using a computer to get information from America's Job Bank, to intensive staff-assisted services such as group counseling, and include access to training and other services for which the individual may be eligible. While this range of services is to be made available, the levels to be offered are not prescribed in the Act. Individuals with special needs—for example, persons with disabilities, non-English speaking persons, or those who lack computer skills—will be accommodated so that they can access all services offered for which they are eligible.

There are separate funding streams for adults and dislocated workers. For both, the Act provides for three levels of services: core services; intensive services; and training. These levels of services are to be accessed sequentially—that is the more extensive levels of services are provided when the individual is unable to obtain employment with the more basic services.

In the new system, "placement" no longer needs to be immediately followed by "termination." This will result in a shift from short-term "episodic" fixes to a system where individuals can access information and services continuously throughout their lifetime. This focus will provide new opportunities for low-wage workers to benefit from the workforce investment system. For example, former welfare recipients who are placed in a job through the Welfare-to-Work initiative will be able to remain in the workforce investment system and continue to obtain the information and services they need in order to progress through the labor market.

Core Services. In the new workforce investment system, all Americans will see the One-Stop Centers as a community resource they can use throughout their lifetime to enhance their job skills as they move up the career ladder—rather than just a place to go in times of a crisis, such as when they lose their jobs. Previously, only Wagner-Peyser funds could be used to provide labor market information and labor exchange services for any employer or job seeker without regard to specific program eligibility. This Act expands the concept of universal access to all core services provided through the One-Stop Centers. By integrating the services offered through multiple programs and using available technology, the One-Stop system will be able to offer customers—job seekers and employers—a choice of any or all core services and information. The combination of Wagner-Peyser funds, funds from the Workforce Investment

Act, and funds from other One-Stop partners should result in a dramatic expansion of accessability to core services.

Core Services

- Determination of eligibility of services.
- Outreach, intake (which may include worker profiling), and orientation to the One-Stop system.
- Initial assessment.
- Job search and placement assistance, and career counseling.
- Provision of labor market information.
- Provision of information on:
- Eligible training providers;
- Local performance outcomes;
- One-stop activities;
- Filing claims for Unemployment Insurance;
- Supportive services.
- Assistance in establishing eligibility for Welfare-to-Work and financial aid assistance.
- Follow-up service.

Consistent with the MOU and the legal requirements applicable to each One-Stop partner, the core services in the centers and One-Stop system may be provided by the partners, the operator, or through other arrangements. Local boards cannot directly provide core services unless the chief local elected official and the Governor agree to allow the board to provide such services.

It is important to note that the Employment Service has been and will continue to be an essential component of any One-Stop system. The Act requires that all basic Wagner-Peyser-funded labor exchange services be provided as part of the One-Stop system. Similarly, the One-Stop system is intended to maintain close linkages to the unemployment insurance system. In addition to providing information on filing for UI as a core service, the system would also be the provider of reemployment services to UI claimants who are "profiled" as needing these services to become reemployed. The UI program may be co-located in the centers, the centers may be a source for filing telephone claims for UI assistance, or other arrangements may be made. Finally, through the Employment Service component of the One-Stop, the system will continue to assist the UI program in verifying that UI claimants are actively seeking employment.

Intensive Services. Intensive services may be provided to adults and dislocated workers who are unemployed and are unable to obtain employment through core services, if the One-Stop operator determines that the individual is in need of more intensive services in order to obtain employment. Adults and dislocated workers who are employed, but who are determined by the One-Stop operator to be in need of intensive services in order to obtain or retain employment that allows for self-sufficiency are also eligible to receive intensive services.

Intensive Services

- Comprehensive and specialized assessments of skill levels (i.e. diagnostic testing);
- Development of an individual employment plan;
- Group counseling;
- Individual counseling and career planning;
- Case management;
- Short-term prevocational services.

Intensive services may be provided by One-Stop operators or through contracts with service providers, including contracts with public, private for-profit and private nonprofit service providers, approved by the local board. Local boards cannot directly provide intensive services unless the chief local elected official and the Governor agree to allow the board to provide such services. If the local board and the Governor determine that there is a shortage of adult funds in the local area, they will direct the One-Stop operator to give priority in the use of these funds for intensive services to welfare recipients and other low-income individuals.

Training Services. Individuals who have met the eligibility requirements for intensive services, and are unable to obtain or retain employment through intensive services may receive training services. Through the One-Stop system, these individuals will be evaluated to determine whether or not they are in need of training and if they possess the skills and qualifications needed to participate successfully in the training program in which they express an interest. Training services must be directly linked to occupations that are in demand in the local area, or in another area to which the individual receiving services is willing to relocate. As with intensive services, in areas where the local board and the Governor determine that adult funds are limited, welfare recipients and other low-income individuals shall receive priority in the use of such funds for training services.

The underlying principle of the provision of training services under the Act is customer choice. One-Stop centers will provide access to consumer information relating to training providers that can assist individuals in gaining relevant skills—including information on the performance of such providers in placing graduates in employment. Through local boards, each State will compile a list of eligible training providers that meet performance levels as set by the Governor, and adjusted upward, as appropriate, by local boards. Individuals may choose any provider from the list of approved providers, whether or not the provider is located in the local area where the individual resides. In addition, States may enter into agreements on a reciprocal basis which allow individuals to access training in another State.

The Act creates a market-based system for training services, and will provide "a level-playing field" for a wide array of providers—large and small, public and private. Those who provide training services under the Act will have to meet the test private businesses face every day. They will have to deliver value to their customers, or risk losing them. With individuals making their choices based on past performance, ineffective training providers will not survive.

With limited exceptions, training services will be provided through the use of Individual Training Accounts (ITAs). States and local boards will determine how to structure the ITA system in their local areas. For example, an ITA could take a variety of forms such as a voucher, credit, debit card, or even a repository for training funds from other programs. In addition, the law does not prescribe a limit on the amount that may be provided to assist an individual in obtaining training, but does not preclude a State or locality from establishing such limits.

Training services may be provided through a contract for services instead of an ITA only if: (1) such services are on-the-job training provided by an employer or customized training; (2) the local board determines there are an insufficient number of eligible providers of training services in the local area (such as rural areas) to accomplish the purposes of the ITA system; or (3) the local board determines that there is a training program of demonstrated effectiveness offered in the local area by a community-based organization or another private organization to serve special participant populations that face multiple barriers to employment (e.g. individuals with substantial language or cultural barriers, offenders, homeless individuals, or other hard-to-serve populations as determined by the Governor). Local boards may not directly provide training services unless they receive a waiver from the Governor. Since the intent of the Act is to reform the local service delivery system, and to move away from the

current practice of contracting for blocks of services, and then finding participants to fill them—these exceptions are meant to be limited.

Youth Programs. Through the reform of the current youth training system and the Job Corps program, and the authorization of the Youth Opportunity Area initiative, the Act provides a variety of activities that will prepare youth for academic and employment success. The youth programs authorized under this Act are designed to create youth systems that are closely linked to the labor market and are designed to provide participants with a comprehensive set of service strategies.

Formula Youth Program. Through the combination of the Year-Round Youth Training funding stream and the Summer Youth Employment Program funding stream into a single youth funding stream, local areas will have greater discretion in determining how to allocate resources to serve youth. The new single youth program fuses youth development activities (i.e. leadership growth opportunities such as community service) with traditional employment and training activities. It is based upon several key elements: integrated academic and vocational education; integrated work-based and classroom-based instruction; effective connections to intermediaries with strong links to the job market and employers; and intensive private-sector involvement.

A Youth Council will be established as a subgroup of the local board in each local area and will include representatives of: youth service agencies; parents; public housing authorities; Job Corps; former youth program participants; and other appropriate individuals. The Youth Council will be responsible for developing portions of the local plan relating to youth, recommending the providers of youth activities to be awarded grants by the local board, conducting oversight of these providers, and coordinating youth activities in the local area. The creation of these councils will be an unprecedented opportunity for a broad range of entities to play an integral role in the development and oversight of the youth development and training system. and facilitate the enhanced coordination of youth services. Youth services are to be delivered by entities that are competitively awarded a grant or contract by the local board to provide such services. Such entities may or may not be the same as those providing services under the One-Stop system in the local area. Each local area can determine the extent to which they want to integrate youth services with the adult and dislocated worker delivery system based in the One-Stop. It is envisioned that States and localities would make connections to the adult system through relationships with the private sector and higher education institutions, and through their streamlined administrative structure.

In order to be eligible for services, a youth must be ages 14–21, low income, and meet at least one of the six specified barriers to employment. Five percent of the youth served in a local area may be non-low-income if they experience one or more specified barriers to school completion or employment. In addition, in an attempt to focus resources on those most in need, thirty percent of funds in each local area must be expended on out-of-school youth. Youth that do not meet the eligibility requirements must be referred to the One-Stop or another appropriate program for further assessment in order to meet the basic skills and training needs of the individual.

Eligible Youth—Barriers to Employment

- Basic skills deficient;
- A school dropout;
- Homeless, a runaway, or a foster child;
- Pregnant or a parent;
- An offender;
- An individual who requires additional assistance to complete an educational program, or to secure and hold employment.

The new law requires an individual assessment of skill levels and service needs and the development of a service strategy for each youth participant. The Act also outlines the required elements of the youth program. These elements are to include such activities as: tutoring, study skills training and instruction; alternative secondary school services; summer employment opportunities; paid and unpaid work experiences; occupational skill training; leadership development activities; supportive services; adult mentoring; and comprehensive guidance and counseling. An emphasis is placed on longer-term service through the provision of adult mentoring both during and after participation, for a total of not less than one year, and follow up services for not less than one year after the completion of participation. In addition, each participant must be provided information on the full array of appropriate services that are available through the local One-Stop system.

Youth Opportunity Grants The Act authorizes the Youth Opportunity Grants initiative to direct resources to Empowerment Zones, Enterprise Communities, and other high-poverty areas, to provide comprehensive services designed to increase employment and school completion rates of youth. Through a national competitive grant process, the initiative will provide employment and training services to all disadvantaged youth in high-poverty areas for an extended period to change the culture of joblessness and high unemployment. Local boards will be the recipients of these grants, thus ensuring a strong linkage between these targeted investments and the formula youth program. The funds provided are to be used for the youth activities required under the formula program, and youth development activities such as leadership development, community service, and recreation activities. In addition, the program must provide intensive placement services and follow-up services for not less than two years after a youth has completed participation in other activities.

Job Corps The Act contains several changes designed to strengthen the Job Corps program and to ensure that it functions as an integral part of the workforce investment system. The new provisions will ensure strong linkages among Job Corps centers, State workforce investment systems, employers, and local communities. It also assures that applicants are assigned to centers nearest to their homes.

Due to the size and scope of the Job Corps investment, the Act holds the program and individual Job Corps centers accountable to additional requirements. The Act identifies core indicators of performance including vocational completion and placement rates of students, earnings and retention in employment. It also requires the provision of continued services to graduates for one year after completion of the program.

The Act requires Job Corps centers to have a business and community liaison and an industry council to enhance cooperation with business. These requirements ensure connections between local labor markets and Job Corps centers, that the vocational training offered is relevant to labor market needs, and that participants learn occupational skills that are in demand in their home communities.

National Programs

Native Americans. Grants to support employment and training activities for Indian, Alaska Native, and Native Hawaiian individuals are authorized in order: (1) to develop more fully the academic, occupational, and literacy

skills of such individuals; (2) to make such individuals more competitive in the workforce; and (3) to promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities in accordance with the goals and values of these communities. Provisions are similar to those contained in the Job Training Partnership Act. The Native American Employment and Training Council is retained to provide the Secretary of Labor with advice on program operations and administration. In addition, authority was added allowing the Secretary to waive statutory or regulatory requirements of this program (other than labor standards) pursuant to a request from a grantee.

Migrant and Seasonal Farmworkers. Similar to provisions in the Job Training Partnership Act, grants to support migrant and seasonal farmworkers and their dependents are authorized to: (1) strengthen the ability of the eligible individuals to obtain or retain unsubsidized employment or stabilize their unsubsidized employment; and (2) provide supportive services and related assistance. The Act adds specific eligibility criteria for migrant and seasonal farmworkers. In addition, funds are specifically earmarked for migrant youth activities.

Veterans. The Act retains the current law veterans' employment program (JTPA title IV-C) and expands the eligibility for the program to include, in addition to veterans with service-connected disabilities and recently separated veterans, veterans who have significant barriers to employment and veterans who served on active duty in the armed forces during a war or in which a campaign badge has been authorized (e.g. the Persian Gulf War).

National Activities

The Act requires the Secretary to conduct a wide variety of national activities. Every two years the Secretary must publish a plan that describes the national activity priorities for the next five-years. This plan, which will be published in the **Federal Register** and shared with Congress, will ensure that investments are planned in a strategic manner. The Act also requires the Secretary to conduct a study on improving the formulas for allocating funds contained in Act.

National Activities

- Technical Assistance.
- Dislocated Worker Technical Assistance.
- Pilot, Demonstration, Multiservice, Multistate and Research projects.
- Dislocated Worker Pilot, Demonstration, Multiservice, Multistate and Research projects.
- Evaluation.
- National Emergency Grants.

Through this broad range of authorized activities, the Department will develop and implement techniques and approaches, and demonstrate the effectiveness of specialized methods, of addressing employment and training needs of individuals. Funds will also be used to evaluate the impact of workforce investment activities. In a change from current law, most awards are subject to competitive requirements, matching requirements, peer review, and time limits. These provisions will ensure the continued integrity of these investments.

Holding States and Localities Responsible for Results

Consistent with the performance-based approach provided in the Government Performance and Results Act (GPRA), the Department is placing a special emphasis on the area of program performance. This includes a focus on: outcomes rather than inputs; results rather than process; and continuous improvement rather than management control. The performance provisions contained in the Act reflect this emphasis, and provide increased flexibility in service delivery in exchange for increased accountability for results. Through these provisions, the Act strives to establish a comprehensive performance accountability system in order to optimize the return on investment of Federal funds in State and local workforce investment activities. This accountability system will assess the effectiveness of States and local areas in achieving positive results as well as the continuous improvement of their workforce investment systems.

Core Indicators of Performance. The Act establishes core indicators of performance for all adult, dislocated worker, and youth programs to be applied to States as well as local areas. The core indicators of performance for adult and dislocated worker activities (except for self-service and informational activities) and for youth participants age 19–21 include:

1. Entry into unsubsidized employment;
2. Retention in unsubsidized employment 6 months after entry into employment;
3. Earnings received in unsubsidized employment 6 months after entry into the employment; and
4. Attainment of a recognized credential relating to achievement of educational or occupational skills for individuals who enter employment. (For youth age 19–21, educational and skill attainment is measured for all individuals who enter postsecondary education, advanced training, or employment.)

The core indicators of performance for youth age 14–18 include:

1. Attainment of basic skills and, as appropriate, work readiness or occupational skills;
2. Attainment of secondary school diplomas and their recognized equivalents; and
3. Placement and retention in postsecondary education or advanced training, or placement and retention in military service, or employment—including qualified apprenticeship.

In addition, a customer satisfaction indicator must be established that measures employers' and participants' satisfaction with the services received under this Act. The inclusion of a customer satisfaction indicator is important because securing employment is not the sole concern when job-seekers enter the workforce investment system. Customers are also concerned with their access to quality information, their treatment by program staff, and their access to services—in short, how well they feel that the system met their needs. Recent research suggests that satisfaction with these other aspects of a system are important to individuals whether or not they find a stable job as a result of a training program or other service.

States also have the ability to identify additional indicators of performance, and must report annually on a number of other indicators specified in the Act, including employment, retention and earnings (12 months after entry into employment) and performance information on specific population groups.

Negotiated Levels of Performance. For each core indicator, and the customer satisfaction indicator, the State will negotiate its expected levels of performance for the State as a whole with the Secretary. These levels must be included in the State Workforce Investment Plan and the negotiation must be completed before a State receives any funds under the Act. Several factors are to be taken into account in this negotiation process: (1) the extent to which the levels will assist the State in attaining a high level of customer satisfaction; (2) how the levels compare with the levels for other States—taking into account differences in economic conditions, characteristics of participants, and the services to be provided; and (3) the extent to which

the levels promote continuous improvement in performance and ensure optimal return on the investment of Federal funds.

The State will carry out a similar negotiation with the local areas within their State—taking into account specific economic, demographic and other characteristics of the areas—to establish their expected levels of performance for each core indicator.

Incentives, Sanctions and Technical Assistance: In an effort to drive positive results and continuous improvement, the Act contains strong ties between performance and funding. If a State fails to meet its expected levels of performance in any year, it can request technical assistance from the Department of Labor. If a State continues to fail to meet its agreed-upon performance levels for a second year—or if a State fails to report its performance information in any year—its funding can be reduced by up to five percent. If a State exceeds its expected levels of performance—as well as its levels of performance under Adult Education and Vocational Education—it will receive an incentive grant which must be used to finance innovative workforce investment projects within the State. The linking of performance for these three programs—workforce investment, adult education, and vocational education—illustrates the importance of collaboration of those systems.

New Roles and Flexibility

Partnerships at all levels—local, State and Federal—and across the system is the hallmark of the new workforce investment system. All levels will be required to coordinate and collaborate with agencies and entities that have not been a part of the "traditional" workforce development system. The incorporation of programs and activities administered by agencies other than the Department of Labor into the One-Stop system will require enhanced coordination between Labor, Education, Housing and Urban Development, Transportation, Health and Human Services, and Agriculture—and will require these entities to develop collaborative strategies for service delivery and work towards common goals. In addition, it is envisioned that business, labor organizations, community organizations, school, and other interested entities will be fully involved in the design and quality assurance of the new system. Dialogue with customers, partners, stakeholders, and Congress will be ongoing and consistent—at every level, and between levels.

Accountability and responsibility for outcomes at all levels of the system will exist, with each level having unique and integral roles and responsibilities. This will result in high quality, effective services for customers.

Local: In the new system, the local level remains key for policy and administrative decisions. It is where customers access services and where the design for the new One-Stop system and the consumer-driven training system will be implemented. Local Workforce Investment Boards will have important roles in the new system. Some of these roles include the development of a 5-year local plan, the identification of eligible providers of training services, and coordination of activities across programs. Through the local plan, the operation of the workforce investment system can be tailored to meet local needs.

The chief local elected officials continue to have a central role in the administration of workforce investment activities. Specifically, the chief local elected official:

- Appoints the members of the local board, which is responsible for establishing workforce investment policies in the local area;
- Develops, in collaboration with the local board, the local workforce investment plan, which specifies the types of services that will be provided, such as summer youth employment and training;
- Serves, or designates an entity to serve, as the grant recipient for job training funds provided under the Act, which includes the responsibility for receiving and disbursing formula grant funds;
- Works with the local board to conduct oversight of the One-Stop customer service system in the local area, designates and certifies One-Stop operators, appoints One-Stop partners (i.e., participating programs) and develops and approves the memoranda of understanding under which the One-Stop system will be administered; and
- Works with the local board to negotiate with the Governor the performance levels that will be applicable to local areas and that could result in incentive funds or sanctions.

Additionally, representatives of chief elected officials are members of the State board that develops the State plan and carries out other statewide activities.

State: The Act includes numerous features designed to provide States with increased flexibility in designing and implementing workforce investment systems. It also prescribes new roles for Governors. For example, the Workforce Investment Act:

- Eliminates mandatory set-asides for education coordination grants and older worker programs, and combines the year-round and summer youth programs into a single funding stream—resulting in far fewer funding constraints.
- Requires that each State establish a business-led State Workforce Investment Board, consisting of the Governor and appointees of the Governor representing business, education, labor, local elected officials and others, to develop a comprehensive 5-year strategic State plan for all workforce investment activities, and monitor the operation of the workforce investment system.
- Allows Governors to submit a single "unified" State plan covering numerous Federal education, training and employment programs. This provision also includes a requirement for joint planning and coordination through which the entities responsible for planning or administering such programs will review and comment on all components of the plan.
- Allows, through the inclusion of grandfathering provisions, features of State laws enacted prior to December 31, 1997 relating to designation of service areas and sanctioning of local areas for poor performance that are inconsistent with the Act. In addition, all States may retain their existing State councils and local boards created under JTPA if they substantially meet the requirements of the Act and were in existence on December 31, 1997.
- Assures that States retain any existing waivers that they have received from the Department of Labor and codifies the Secretary of Labor's waiver authority that previously only existed in annual Appropriations language. In addition, the Act expands eligibility for "Work-Flex" to all States—flexibility that is currently limited to a six State demonstration.
- Increases, significantly, the Governor's flexibility in using State reserve funds to finance activities that are State priorities. Under the Act, the State reserves fifteen percent from each of the three funding streams and may merge those funds and use them for an array of workforce investment activities—including incumbent worker projects.
- Provides the Governor with a significant new role in developing performance measures. They will have an important new opportunity to affect the measures that will be used to evaluate the effectiveness of the workforce investment system in their State.

State Workforce Investment Boards will also play an important role in the design and implementation of State systems. For example, the Board will assist the Governor to develop a 5-year strategic plan, continuously improve the system, designate local workforce investment areas, develop State performance measures, and develop allocation formulas.

Federal: The Federal role also is changing. The Federal role in the new workforce investment system will be one of a leader and an enabler—with a focus on ensuring overall accountability for results rather than adherence to administrative process. The Federal role can be separated into the following areas that range from the most "hands-on" activities, to facilitating progress, to the administrative and support functions needed in this new system:

- Strategic planning and policy formulation which defines and focuses the direction of the public system.
- Performance accountability to ensure that States and localities meet program performance requirements and provide the highest level of service to customers.
- Knowledge development which provides important research and evaluation findings to the workforce investment system to facilitate better ways of delivering workforce investment-related activities.
- Technical assistance which provides expert assistance to State and local partners and other stakeholders.
- Administration and oversight to ensure financial accountability of programs and compliance with legal requirements.
- Prototype information systems which design and support national information and communication needs.

Transition Efforts

The Department is in the process of organizing for the transition to the new workforce investment system. An implementation task force has been appointed, and a number of workgroups have been established to focus on a wide variety of transition issues. The following workgroups have been established: (1) Policy Development; (2) Performance Accountability; (3) Outreach and Communications; (4) Administration and Close-Out; (5) Program Services; and (6) Technical Assistance.

Although States are not required to fully implement all of the requirements of the Act until July 1, 2000—the Department encourages States that are ready to implement early, beginning July 1, 1999. In order to enable States to implement beginning in July of 1999—the Department intends to work quickly to develop planning guidance. The Department intends to publish interim final regulations in the Federal Register by early February 1999.

The Department recognizes that flexibility is key to implementing the legislation. The Act is not the status quo; and a "do it this way" approach dictated by the Federal government will not work. States and local areas must be able to work in partnership to address the needs of workers and employers by designing systems that make sense for local labor markets and produce results. We can help as a partner, but the most important linkages will be ones forged at State and local levels.

Consultation Process. The transition can only be enhanced by tapping into established networks to draw on the broadest possible participation and contribution to the planning, implementation and follow up of the Workforce Investment Act by the organizations and people who will be the ones to make it happen. The Department of Labor is taking an all inclusive approach to engaging the system in the implementation of the Act. A variety of strategies will be used to ensure continuous, two-way communication between the Federal, State, and local partners, stakeholders, and other interested organizations and individuals.

Information will be openly shared throughout the planning and implementation process. Input will be sought on a continuous basis to ensure that this process is truly a collaborative one. Various meetings of workforce investment partners, customers, and other stakeholders will be used as an arena to share current information on proposed implementation policies/strategies as well as seek input from the system. In addition, various roundtables and policy forums will be held in each of the Department's ten regions to facilitate and encourage a continuous face-to-face dialogue throughout the planning and implementation process.

A workforce investment website (http://usworkforce.org) has been established to provide a vehicle for continuous, ongoing communications. The website is intended to function as an open forum for dialogue between federal, state, local partners, stakeholders and other interested individuals and organizations. This website will enable implementation plans to be shared as they are developed, questions to be raised, issues to be surfaced, and solutions to be proposed. A question and answer system is being developed to provide a medium through which the Department can respond to questions raised by State and local partners and individual stakeholders. Once answers are developed, they will be posted promptly on the website. Hard copies of questions and answers will be prepared and distributed to the system on a periodic basis.

Regulations. The Department intends to publish interim final regulations by early February 1999, with final regulations scheduled to be issued by the end of 1999. The Department has developed a set of principles to guide the regulations writing process. These principles include:

- *Customer First.* The first consideration in writing regulations will be to consider how they may impact on service to the customers—participants and employers.
- *Consistency.* The regulations will be internally consistent, in terms of the message, tone, length and quality, and written in a style that conveys information in a manner that is easy to read and understand.
- *Input on Key Issues.* Input will be sought from the workforce investment community as a whole through various media and through individual workgroups, as appropriate, on issues which need to be addressed in regulations before and during regulation writing.
- *Minimal Regulations.* Regulations will be prepared only when:—clarifications are needed to implement legislative provisions;—explanations on how the agency intends to interpret the Act are necessary;—specific issues are not addressed in the legislation requiring a rule to fill gaps in the legislation; and—policy guidance would be insufficient to allow grantees to ensure that critical provisions are implemented.
- *Flexibility.* All regulations will permit the maximum flexibility to customers as well as State and local governments in terms of service and implementation of legislative provisions.
- *Administrative Feasibility.* Regulations will be written in a manner which permits persons at State and local levels to use them under a variety of circumstances.

Technical Assistance: By early 1999, a comprehensive technical assistance strategy will be in place. It is envisioned that the technical assistance effort will focus on three areas: (1) Assisting States and localities in closing-out the JTPA system; (2) assisting "early implementers"— States that will begin operating under the Act in 1999; and (3) assisting States that will not begin

implementing the new requirements until the year 2000.

Initial Implementation Timeline

The Department intends to meet the following timeline for the implementation of the new system:

Begin Consultations on Planning/Program/Policy Guidance, *September 1998*

Regions and States Identify Closeout Issues, *October 1998*

Publish Planning Guidance, *November 1998*

Publish Interim Final Regulations, *February 1, 1999*

Early States Submit Plans, *April 1, 1999*

Early State Implementation and Operation, *July 1, 1999*

Publish Final Regulations, *December 31, 1999*

All States Implementing Workforce Investment Act, *July 1, 2000*

For Further Information Contact: Workforce Investment Act Implementation Taskforce Office, U.S. Department of Labor, 200 Constitution Ave. NW, Room S5513, Washington, D.C. 20210, Telephone: (202) 219–0316 (voice), 1–800–326–2577 (TDD), Fax: (202) 219–0323, E-mail: wia98tf@doleta.gov, Website: http://usworkforce.org.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 3910/P.L. 105–355

To authorize the Automobile National Heritage Area in the State of Michigan, and for other purposes. (Nov. 6, 1998; 112 Stat. 3247)

S. 2232/P.L. 105–356

To establish the Little Rock Central High School National Historic Site in the State of Arkansas, and for other purposes. (Nov. 6, 1998; 112 Stat. 3268)

Last List November 6, 1998

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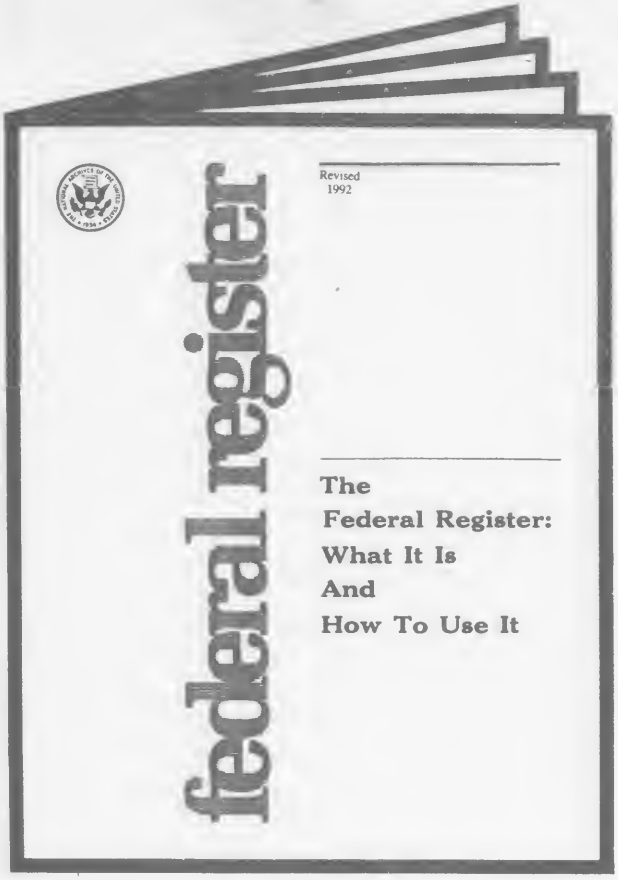

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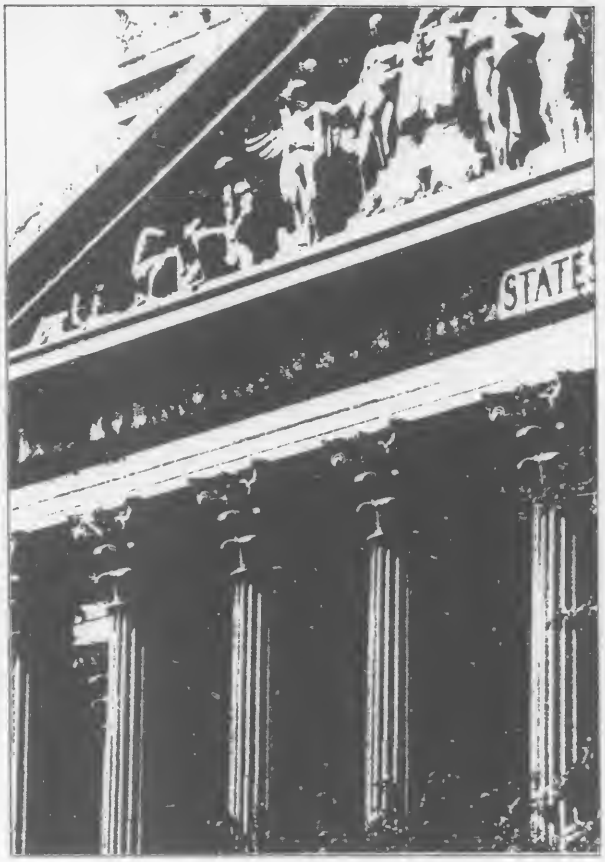

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